REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO CHILD SEXUAL ASSAULT MATTERS

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At Sydney on Friday 17 May 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

GILLIAN ELIZABETH CALVERT, Commissioner, Commission for Children and Young People, Level 2, 407 Elizabeth Street, Surry Hills, affirmed and examined:

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

Ms CALVERT: I did.

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

Ms CALVERT: I am.

CHAIR: Please briefly outline your qualifications and experience as they are relevant to the terms of reference for this inquiry.

Ms CALVERT: I am the Commissioner for Children and Young People, and I have a Bachelor of Arts degree, a Bachelor of Social Work degree and a Master of Business Administration.

CHAIR: I thank you for the commission's written submission. Is it your wish that that submission be included as part of your affirmed evidence?

Ms CALVERT: 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 heard or seen only by the Committee, the Committee will be willing to exceed to your request. However, the House has the right to override the Committee's decision in that regard if it chooses. I invite you to make a brief oral statement.

Ms CALVERT: I want to make two main points regarding the prosecution of child sexual assault. First, it is very important that the prosecution process focuses on the best interests of the child complainant wherever possible. Why should the best interests of the child be the focus? Well, I think there are two main reasons. One, the principle is already accepted in New South Wales law. For example, it is in a number of existing statutes. The Commission for Children and Young People Act, section 10, states that the safety, welfare and wellbeing of children should be the paramount consideration in our decisions. Children are particularly vulnerable in the prosecutorial experience. Childhood is a developmentally sensitive period and we need to account for that in our treatment of children and young people.

Because of their age and that sensitive developmental period, children are inherently excluded from meaningful participation in the prosecution process. That is because the process itself is dominated by adult language, adult-driven investigative and court processes and court structure, and really is focused on a non-child centred outcome, which is the determination of whether someone is guilty or innocent. Children are also particularly vulnerable in the prosecutorial process because of the nature of child sexual assault itself. It places great strain and stresses on them. What you have are inherently vulnerable children, who have been subject to very difficult and unpleasant circumstances, appearing in a non-child friendly environment.

That places a great responsibility on government to ensure that the best interests of children are one of the primary focuses of the prosecutorial process. I also think that the prosecution process should focus on the best interests of the child complainant because they will get better prosecutorial results. They should do it because it is not only good for children but also good for the prosecutorial process. And the aim of any improvement to child sexual assault prosecution cases must be to achieve a system that will maximise the success rate of prosecutions; and that is without the cost of the defendant's right to a fair trial and at minimal cost to the involvement of the child victim.

Focusing on the best interests of the child complainant will achieve not only best results for the child but also sets the scene for a professional measured approach to communicating with children as witnesses and as victims, it will produce more reliable and complete testimony from child

witnesses, which goes towards achieving accurate prosecutorial results. In our submission we have outlined how the prosecutorial process could be improved to achieve a greater focus on the best interests of the child complainant. For example, in recommendations 4 and 5 we talk about the training and consistency of the Department of Public Prosecution solicitors. In recommendation 10 we look at providing pre-recorded video evidence for cross-examination. In recommendation 11 we talk about the need for treatment programs specifically for children who are demonstrating sexually abusive behaviours.

The first message I want to give the Committee is the importance of the prosecutorial process focusing on the best interests of the child. The second message is the importance of adequately supporting child complainants from the very first point of contact with the prosecutorial process in child sexual assault matters. It is important that we provide services and support to children from the very first point of the crisis of disclosure of abuse. It is at the very beginning of this process that children are at their most vulnerable, both personally and in the context of their family, particularly if the alleged offender is a member of their family.

It is at that point that the child complainant requires support and counselling. It is also at that point that they are most vulnerable to suggestion and intimidation. Our system needs to provide for a complete multidisciplinary response to the child complainant within his or her family context. Recommendation 2 in our submission, that the Joint Investigative Response Teams [JIRTs] must place equal emphasis on the forensic process as well as their care and support processes with the Department of Community Services and the Department of Health, is a very important recommendation.

The JIRTs have a very important role in guiding the child complainants through the prosecutorial process and supporting them as they navigate their way through the labyrinth of activities and services that they will be subject to. Again, to reiterate, it is important that we support child complainants from the very beginning of the prosecutorial process and in doing that we are giving practical application to my first clear message, which was that children's best interests must be the primary focus in the prosecutorial process of child sexual assault matters.

CHAIR: In your submission, in support of recommendation 1 you point out that it is very important for child complainants to require and receive age-appropriate information in regard to the prosecution and general information as to how the matter is progressing. The Committee has received evidence from components of the JIRT structure, namely the Police Service and the Department of Community Services. The Committee has also received complaints from people who have been through the system. One of the most frequent complaints is that they have difficulty ascertaining at any given time what is happening, when their matter is coming on, what the process is, and so on. You made a recommendation for a case manager from the existing JIRT staff. I take it that that means one case manager per JIRT. Do you think that the resources exist to apply to that task? I certainly would agree with you that it is a useful suggestion.

Ms CALVERT: Yes. Disclosure and prosecution is a very anxious time for kids. Having easy access to a familiar face, someone who can keep them up to date, is one of the best ways that we can help kids and families manage that anxiety. Familiarity also helps kids to share their concerns and help them tell aspects of their story that they may not have told up to that point. We thought that providing a case manager from within the existing JIRTs was one way that we could set up a familiar face. The case manager should be from the existing JIRT staff, but it should not be a permanent position. It would be as part of someone's everyday activities as a JIRT member to be allocated as a case manager to one of the existing kids that that worker was seeing. The worker would then be responsible for managing the case and being the familiar face for that child. I think it is something that can be done within existing resources because, in fact, the JIRTs should be doing that in any case. We are formalising a familiar face for the child and making it very explicit for the child and for the worker what the responsibilities are and the relationships they have to attend to.

CHAIR: No doubt you are aware of the witness assistance service, based within the Office of the Director of Public Prosecutions. How do you see the case manager from the JIRTs interacting with the witness assistance service in regard to a support role for children and their families who are complainants?

Ms CALVERT: My sense is, from a kid's point of view, that they are more likely to see the JIRT worker as the familiar face because presumably the case manager would be the person who conducted the interview and who is then proceeding to prepare briefs and so on, so that they, having been through that process, would be more likely to turn to them for advice and information. It is my understanding that the Witness Assistance Scheme comes into the disclosure process quite late - at the point at which the child starts to enter the court system as opposed to the entire process. My view is that the child would probably still turn to the case manager in the JIRT for advice and information. The case manager would liaise with the Witness Assistance Scheme. I think they would be able to complement each other rather than duplicate their role.

CHAIR: The Committee is concerned about the practical way in which the JIRTs operate where a decision has to be taken as to the priorities to be assigned, if I can put it that way, to the prosecution and care proceedings. The Committee questioned various witnesses regarding this, particularly the witness from the Department of Community Services, to explain the role of DOCS within the JIRTs, and her response was to the effect that if there were ever any conflict between the two objectives, the welfare concerns of the child would rank first. How much difficulty is there in practice in sorting out the two objectives, given that it is important where a prosecution is being contemplated not to contaminate the investigative process by extraneous matters?

Ms CALVERT: I refer to the point I made in the opening statement that the welfare of the child should be the primary focus of the prosecutorial process. What you have described is a practical example of that. I think if you adopt the childs best interest as your first principle then you try to make the processes work together as closely and as effectively as you can. If they are irreconcilable then you have to make a decision, and it is appropriate to use the best interests of the child as the principle underneath that decision. I am aware that there is a perception that the JIRT processes have been dominated by the police or forensic aspects of the investigation and assessment and that there has not been sufficient attention paid to the support and care aspects of the child through that process.

I think it is imperative that the JIRTs be evaluated so that we get some objective evidence or objective information about that particular issue. I am not sure where the evaluation of the JIRTs is up to but I would certainly be recommending that the evaluation be completed as a way of giving us information about their functioning. I also do not think that it is just a matter of the processes of the Department of Community Services not being sufficiently promoted through the JIRT structure. I am aware that some sexual assault services that are provided through the Department of Health have expressed concern that since the JIRTs began they have not had the level of referrals that they had prior to the JIRTs or that the referrals have come later in the process.

As I said earlier, the needs of the child needs to be considered from the very first point of disclosure. We need to look at how early the sexual assault services are being involved and included in the process, because they are the ones who provide crisis counselling to the child and the child's family. While time is of the essence in collecting physical evidence and acting on the allegation from a forensic point of view, and keeping that as non-contaminated as possible, time is also and equally of the essence in relation to the child's care and support needs. As I said earlier, I think putting the needs of the child first is not only a benefit to the child but also a benefit to the prosecutorial process. You will probably get a better prosecutorial outcome if you support and care for the child rather than just leaving them abandoned in this adult-driven process.

CHAIR: On the question of evaluation of the JIRTs, the Committee has been told that a form of evaluation has been done by Professor John Taplin, an academic formerly of the University of New South Wales, now evidently transferred to the University of Adelaide. There seems to be some difficulty in getting that material completed and accessed, and the Committee is trying to get to the bottom of that. However, I think you would agree with me that it is important to evaluate how the JIRTs are travelling?

Ms CALVERT: Yes, it is important. The issue of the balance between the forensic process and the care and support process must be an intrinsic part of that evaluation. The perception is too strong and the anecdotal evidence sufficient for me to want to specifically look at that issue as an aspect of the evaluation.

CHAIR: I note that in passing you mentioned that videotaping will be used to record primary investigative interviews in a maximum number of cases. It is my understanding that it is now standard practice to video a child's statement at the JIRTs?

Ms CALVERT: Yes, that is correct. I am aware that that is being evaluated by a member of the Police Service and that evaluation is progressing quite well. We should have some information certainly by the end of this year, on the impact of videotaping from a child's point of view and I would hope also from a prosecutorial point of view as well.

CHAIR: The Committee has heard evidence, particularly from Ms Helen Syme, a Deputy Chief Magistrate, as to the extent to which video material is introduced in evidence. It appears that it very rarely is. Do you have a view regarding that? Before you respond, I say that one of negatives was said by Ms Syme to be that it could have the effect of a child going in cold to cross-examination if at the trial proceedings the video recording were just fairly formally introduced.

Ms CALVERT: Yes, I am aware of that concern. I want to wait until we have the evaluation before I comment because the objectives of videotaping children's statements were broader than just reducing the time in which the child goes to court. For example, it may be that the use of videotaping statements has increased guilty pleas which would of course be a desirable outcome from a child's point of view because the child then does not even have to go to court in the first place. I would rather wait until the evaluation was released.

I am aware, in relation to the evidence in chief being given by way of recording, that it is difficult for the child to go straight into cross-examination. The advantage of having the child examined in chief is that they can become familiar with the environment or the closed-circuit television and relax and get some sense of confidence in their ability to talk.

Recently I was a guest of the Western Australian legal system and had a look at the way they conduct their child sexual assault trials. They pre-record the child's statement by way of video and they then go on to pre-record the child's evidence and cross-examination.

The video of the statement, evidence in chief and cross examination is then submitted during the trial. So that has the advantage of having the child give evidence early on or close to the time of disclosure. So the memory of the child certainly around peripheral events is probably going to be fresher. It also has the advantage of being able to have the child give their evidence continuously rather than in an interrupted way, which sometimes happens now through court listing delays and so on. It also has the advantage, from the child's point of view, of getting it over and done with early on so that they can then get on with the process of living their lives and whatever healing and recovery they might need.

I was quite impressed with that system. Everybody I spoke to certainly indicated that they thought it had many benefits for the child. They talked also about the benefits to the prosecutorial process as people who participated in the prosecutorial process felt better because the child's interests had been looked after and they could then get on with the business of conducting the trial. They felt also that the child generally gave better evidence, which is of advantage to both the prosecution and defence. In our submission we have actually recommended that this approach be considered by the Committee as a quite effective and proven way of really making life a bit easier for everybody in these matters.

The Hon. JOHN RYAN: I take it the cross-examination record takes place at a different time than the evidence in chief, does it?

Ms CALVERT: No, it does not.

The Hon. JOHN RYAN: How do they get all the elements together if it all happens reasonably quickly? For example, one would imagine the defendant would want to be represented and participate in the cross-examination through their legal counsel?

Ms CALVERT: Yes.

The Hon. JOHN RYAN: Would they normally have all of that together quickly enough to do it all within a week or so?

Ms CALVERT: It is certainly not within a week of the child's disclosure. It is a question of three months or something like that. Given that in our case it can be 18 months to two years before the child goes to court, that is a great improvement.

The Hon. JOHN RYAN: They usually go to the JIRTs fairly early though, do they not?

Ms CALVERT: Yes, and that is fairly similar everywhere in Australia. What happens then, though, in Western Australia, as I understand, is that the child, within I think a six-month period of disclosure, gives evidence and is cross-examined. That is then video-recorded and the tape of that examination and cross-examination is then used in the trial, which may take place some 18 months later.

CHAIR: Are you referring to this taking place in the courtroom?

Ms CALVERT: Yes, it takes place in the courtroom.

The Hon. JOHN HATZISTERGOS: In front of the same judge?

Ms CALVERT: No, it may be different. I would have to get advice on that. I cannot quite remember. We were actually able to observe a pre-recorded session. We went into a courtroom. There was the judge, the prosecutor and defence, and then there was the accused and also the accused's family in the courtroom. The child was located in a different part of the building and she gave her evidence by way of closed-circuit television [CCTV]. The prosecution then took the child through her examination-in-chief and the defence cross-examined the child. That entire process was videotaped and that video tape will then be used in the trial that will occur at a later date.

The Hon. JOHN RYAN: The only people that did not appear to be present was the jury?

Ms CALVERT: That is right. So what would then happen is that the matter would go to trial in front of the jury and rather than have the child come back and give evidence and be cross-examined, they would use the tape of that pre-recorded examination and cross-examination and then they would continue with the rest of the trial. The jury would then make its determination and it would proceed from there.

The Hon. JOHN HATZISTERGOS: Is there a committal hearing?

Ms CALVERT: I would have to check that, but I do not think there is. I think it is a paper committal in the same way that we have paper committals. But I would have thought if there were to be a committal hearing, presumably the pre-recorded examination-in-chief and cross-examination tape would be used in the committal as well as the trial itself, if it went to trial.

CHAIR: Your submission suggests by way of recommendation that Director of Public Prosecutions [DPP] solicitors should be adequately trained and supported in their understanding of child sexual assault prosecutions and, further, that the DPP should achieve consistency of legal counsel in 95 per cent of child sexual assault cases. I assume the use of the term "consistency" means that in a maximum number of cases the objective should be that the same counsellor is attached to the particular prosecution throughout?

Ms CALVERT: Yes, both counsel and instructing solicitor, I think, should aim to have consistency. Again it is that notion of a familiar face for the child and family.

CHAIR: The submission states also that the onus currently in place under the guidelines adopted by the DPP on victims to seek information about progress should be reversed and that the DPP should have the onus cast on his office to inform victims. I am inclined to agree with that. Would you like to say anything to the Committee about that matter?

Ms CALVERT: Well, I think the Committee has probably heard from a number of people about the difficulty that kids and family have in understanding the process. It is a highly anxious time for them. They do want to know what is going on. I think from the point of view of putting the child's needs first, thinking about the impact on the child and just offering a decent customer service, that really the onus should be on the prosecution, the DPP, to be proactive in contacting the child or the child's family and keeping them up to date with where things are in the prosecution process.

CHAIR: Could you tell the Committee why, given that there is an existing witness assistance service located within the office of the DPP, the commission is urging on the Committee that there ought to be a designated child witness service?

Ms CALVERT: Again this is partly based on my experience and visit to Western Australia, but I was impressed with the child witness service over there for a couple of reasons. The first one was that the child witness service is separate from the DPP and it is not a prosecutorial service. It is in fact a court service, which means that people other than the DPP can actually use it. So, for example, if the defence wanted a child to appear as a witness, it would be able to avail itself of the child witness service, which I think is better for children. At the moment if kids have to give evidence in a trial, and they may well do so because they may have been a witness to something, particularly if it is intra familial or so on, if it is for the defence then there really is not the same support structure around the child because the witness assistance service is located only within the DPP.

So one of the benefits of locating it in the court is that you broaden it out to the range of child witnesses, not just the victim, and you give other players in the process, like the defence, access to that support service. Presumably you would also be able to use it for civil matters as well as criminal matters. The other thing is that we would want the child witness service located in the major court environments so that the child had a place in the court environment where they felt comfortable. You could in fact locate your CCTV room as part of your child witness area. You can make it child friendly, you can give time out to the child. Certainly what we saw in the Western Australia example was that when the child became distressed with the giving of her evidence, the judge adjourned the matter. The child then had ready access to her child witness support counsellor. She settled down and was able to come back and give evidence. That is efficient for the court, but it is effective also for the child in that she can get her evidence over and done with. So, while I think that the Witness Assistance Scheme the DPP offers is a good scheme, I think there are benefits in broadening it out to other than just prosecutorial witnesses.

CHAIR: The commission's submission discusses the matter of corroboration warnings. You indicate to us, correctly, that in this State the requirement that a mandatory warning be given was abolished in 1995. Notwithstanding, it is still common practice for judicial officers to give a warning that uncorroborated evidence must be scrutinised with great care following the formulation in the case *The Queen v Murray* in 1987. You go on to say that the Judicial Commission should assess the impact of judges' practice of warning juries in relation to the need for co-operation of children's evidence in child sexual assault cases". Are you suggesting that the judges are being overcautious and that they are in effect undercutting the Legislature's intention?

Ms CALVERT: I think that is a concern that many people hold and it would be useful if we were able to evaluate or assess the veracity of that concern. Over the last 25 years it has been seen as one of the impediments to children's involvement in the court system. Given that we have tried to fix it and improve it over the past 25 years, I think it is appropriate that we have some independent evaluation of how we have gone with that and whether it is achieving the objectives that we all intended it to achieve.

CHAIR: I notice that quoting Dr Judy Cashmore the submissions states, "On the basis of extensive empirical research it is also generally accepted that children's evidence is unlikely to be dishonest, fabricated or otherwise unreliable." If we accept that as being true, of course it still remains the case that in an individual matter it is possible that the child could be lying. So, I think it is reasonable to say that there would still need to be appropriate care and caution exercised in regard to anyone's evidence, child or not?

Ms CALVERT: That is correct. I think, though, the concern is the level of understanding of judicial officers of the reliability of children's evidence and the research to back up the statement that

Dr Judy Cashmore has made. Judicial officers may not be aware of that research or their own beliefs may override the research and the warning, in a sense, operates differentially. So they may apply it in an uneven way to children because they are not aware of the research that indicates that children's evidence or memories are as reliable as adults.

CHAIR: Earlier in this inquiry the Committee received evidence from Dr Anne Cossins of the University of New South Wales regarding the impact of various warnings and the need or otherwise for them. I note in a case decided earlier this year, *The Queen v BWT*, Mr Justice Wood, Chief Justice at Common Law, suggested that the time might have arrived for consideration to be given to the complexity and number of warnings that are given in child sexual assault cases not only in regard to the question of corroboration but in regard also to the matter of delay in making a complaint, for example. Do you think this Committee should give some attention to that matter, not that we can draft the warnings but that we ought to call for some reconsideration of the position in regard to the number and complexity of warnings?

Ms CALVERT: Yes, I think that would be very useful and as part of that we should actually get some evidence as to what is happening with warnings. I think that people form points of view. It is very helpful to have some objective evidence of what is actually going on to guide us in reformulating or rethinking the whole issue about warnings.

CHAIR: I turn to another matter. Some witnesses—not many—who have appeared before this inquiry have suggested that we ought to rethink the adversarial system and that there really ought to be an inquisitorial system regarding those matters. That is not a suggestion I am particularly attracted to because I think it is very difficult to treat those criminal offences as a one-off case in that respect. I note, though, that in your submission there is a section, beginning at page 10, in which you deal with alternative procedures for prosecution of child sexual assault matters. Among other things you say, "Alternatives might include a specialised court system and/or a investigative system." You are aware that in an informal conversation before this hearing commenced I discussed with you very briefly a suggestion made by the DPP that there ought to be a trial or a pilot of a court where child-friendly systems, as it were, were tried. Would you like to say something to the Committee about the matter I am raising?

Ms CALVERT: Yes. I think there are a number of positive aspects of the proposed pilot project. In particular, the DPP or the Director stated that the purpose of the pilot or a specialised court would be to minimise the trauma to children in sexual assault hearings and to maximise the opportunity for achieving the best possible outcomes. However, I do not think that it is necessary to establish a specialist court in order to achieve those aims. The weakness, from my point of view, of the proposal is the flawed assumption on which it is based, which is if we just load up more and more expertise and specialists into the court process or into the prosecutorial process that we will provide a complete solution to children's involvement in child sexual assault prosecutions. I do not think it will.

I think that in reality children are always going to be vulnerable to the prosecutorial process because of their very development as children. Because they are children they will always be vulnerable to the prosecutorial process. I do not think it is ultimately, a dilemma that experts can solve. In a sense it is almost like an irreconcilable difference between the nature of childhood or childs development and the needs of the court process that have been built up over the past 400 years. I think that this difference is the fundamental problem. Creating more and more specialists and loading more and more experts into the process will not solve that irreconcilable difference.

CHAIR: I am not suggesting that such a model will provide any complete solution. However, there are particular problems affecting children's evidence, such as intimidatory cross-examination, the use of unduly complex forms of questions such as questions containing a double negative, hypothetical questions and so on. The point has been made to us by the Deputy Chief Magistrate, Ms Syme, to whom I referred earlier, that leaving aside the question of intimidatory questioning, quite often the child simply does not understand the question. It is her practice to say when that happens in her court, "Mr and Ms so and so, how does this question assist the court given that the child appears not to understand it?" What I am coming to is might it not be useful, at least on a trial basis, if, as an example, the judicial officer and the court staff could at least understand child psychology and the stages of a child's intellectual development so that the questioning could be more attune to the child's age?

Ms CALVERT: I certainly do not disagree with you that there needs to be improvement. One of the areas that needs improvement is the way in which language is used and last year the Commission hosted a seminar with Ann Grafam-Walker, a forensic linguist. She talked extensively about the use of language in the court process. I would say several things. One is that the earlier weakness that you referred to probably demonstrated the solution, which is for judges to manage their court, and that power already exists.

CHAIR: The power exists but do they have the inclination or even the knowledge to do it?

Ms CALVERT: The second thing is that if our existing judiciary do not have that existing power, inclination and knowledge why do we think setting up a separate court or a series of courts, which is what you would eventually have to do, drawing from that same body of people, is going to improve the situation? You are still going to have to provide training and support to those judicial officers so why not do it now as opposed to having to set up a separate court.

CHAIR: I suppose the answer is that there is an inherent suspicion in regard to grafting these training methods, explanations and so on, onto the system. If it were shown to work well in practice, that resistance might be broken down.

Ms CALVERT: One of the issues around pilots that I always have is you can often get a good result from a pilot because you pick your best person and you put the resources in. What happens when you roll it out across the State is that it dilutes and you end up pretty much with what you had before you conducted the trial. There is a pilot effect that can enhance the results that are then not replicated when you roll it out in a more complete and across-the-State way. You would still be drawing on your existing set of judges to staff the special courts and you would need to have a number of them just because of the sheer volume of sexual assault matters currently being heard in the District Court. Also, because of the size of New South Wales you could not just have the specialist court sitting in the metropolitan area.

The Hon. JOHN HATZISTERGOS: You could have a specialist list within the court. I do not understand your opposition. If you have a specialist list or a specialist court you could develop practice notes, guidelines, procedures and a particular culture.

Ms CALVERT: I think a specialist list has some value. My understanding is that it may in fact already be operating in an informal sense and to formalise that might be a reasonable approach. There are judges who do have expertise in child sexual assault matters already sitting on the District Court bench and I think the idea of a specialist list is something that is well worth considering. My understanding is that that is a little different to a specialist court where you might want to set up a court that is specifically designed, physically designed as well as organised around child sexual assault matters.

The Hon. JOHN HATZISTERGOS: We have a specialist Children's Court at the Local Court level that deals with children as their primary focus.

Ms CALVERT: Yes.

CHAIR: There is a Drug Court now.

Ms CALVERT: Yes.

The Hon. JOHN HATZISTERGOS: There is a specialist Drug Court that seems to be evaluated as a success.

Ms CALVERT: I also think it is interesting that the idea of a specialist court has been put forward by the DPP given that there used to be a specialist prosecutorial service within the DPP that was disbanded in 1996 because it was seen as unnecessary. When questioned as to why that was disbanded the argument was it was unnecessary because prosecution is a specialty of itself so then to come back and say you need a specialist court I would have thought the same argument would apply. As well as the idea of a specialist list, there may be some value in thinking about whether or not you

need to reintroduce specialist prosecutors back into the process as a way of helping judges manage their court so that if there is a problem with the language, prosecutors can raise similar things that your former witness raised in her court. Issues like pre-recording evidence go some way to improve things and that approach would probably have a better impact on children than having a specialist court.

CHAIR: Much earlier in my parliamentary career I was involved in something called the model court project, which was based at Blacktown court. As result of that quite simple things happened that were intended to save time and make the Local Court process more efficient. For example, seemingly since time immemorial when a magistrate came on the bench he or she would say, "Are there any matters for mention?" and 20 or 30 solicitors would be on their feet rushing to adjourn matters out of the list, and the whole process took about 45 minutes. The model court project decided there ought to be a call-over by the registrar at 9.30, and that works very well. Other basic things were that a soft drink machine was installed in the waiting area, and an interactive video machine where you could press a button and ask, "What happens to me if I am a witness?" and things like that were introduced. I agree that you could do all that without having a model court project but I would suggest that the judicial system is inherently conservative and unless you put in a model and trial something people say, "No, we are not going to do that. It would be a waste of time." That is why, speaking for myself, I am interested in Mr Cowdery's suggestion of trialling things via a project.

The Hon. JOHN RYAN: It counters the problem of judicial reticence to take on judicial education. Some judges just cannot get enough education while others regard it as a threat to their independence and others do not see any value in training because they think they already possess that expertise in any event. The model court might attract certain judges who quickly discover that they need this additional training and expertise. This could create something of a culture change. Whilst in most circumstances I prefer your approach of a systemic change rather than what could be called tokenism, there seems to be a real logjam in trying to get the judiciary to respond, and we wind up having to start with tokens, which eventually become systems later on.

Ms CALVERT: I think there is probably a difference between a model court, where you model things and you then think about how do you roll those out as opposed to trialling a new system or a new way of doing things. There are major problems with how we roll it out. We may get a couple of really good judges and maybe the Director of Public Prosecutions would also re-establish a specialist prosecutorial service as well, so we get the best of the prosecutors and it is paid attention to because it has a high profile and is public. When you roll it out it is very hard to replicate that. However, a systemic change, such as prerecording your examination-in-chief and cross-examination, can be replicated. You do not run into the same difficulties of replication as you would when trying to solve what is essentially a personnel problem through structural means.

The Hon. JOHN HATZISTERGOS: I think you are talking about the abstract, with respect. I would like you to focus for a moment on the specific problems. We are told that judges do not distinguish child sexual assault cases from other criminal prosecutions. For example, in many instances they take the hands-off approach to lawyers who believe the style of advocacy they use in every other criminal trial is appropriate for a child sexual assault trial, even when young children are involved. They do not understand special rules and laws in relation to young children, and specifically how they should be applied in practice. We are told that this leads to a high number of successful appeals, which increases the trauma for children who must give evidence for a second time. We are also told that in some instances children and their families do not want to go through the process for a second time so the prosecution must be abandoned.

It has been put to us that if we had a specialist court—there has obviously been some discussion about what that would involve—we would have experienced judicial officers who were familiar with the laws as they apply in practice to children's evidence. First, there would be fewer avenues for appeals, which would mean that, by and large, children would have to give evidence on only one occasion and the process would be completed. Secondly, child sexual assault trials would not have to compete in the listings with every other criminal trial. They would be allocated a special designated place and the trial could potentially come on faster. In addition, judicial officers would take their responsibilities seriously—I am not suggesting that many do not do so at present—in the case of a barrister or prosecutor who was approaching the matter inappropriately in terms of that jurisdiction. For instance, prosecutors might badger children and use adversarial tactics that are

appropriate in adult cases but not in those involving children. That would develop into a culture because specialist barristers and solicitors on both the prosecution and the defence sides would appear regularly before the tribunal. They would be aware of what is expected and the attitudes of the jurisdiction to matters of procedure. I am not saying that it would be nirvana, but is that not a pretty good case for saying, "Let's give it a go"?

Ms CALVERT: What happens if the judge to which you referred, who makes no distinction between children's and adults' cases, is the judge appointed to the specialist court? You would then have an inappropriate person locked into hearing most of those cases. That is the other side of the argument.

The Hon. JOHN HATZISTERGOS: That could be addressed easily.

Ms CALVERT: I, too, wish that all of those things could happen. If I had some guarantee that they would happen as a result of establishing a specialist court, that would be wonderful. However, we need to look at what actually happens rather than what we wish would happen. You referred earlier to the Children's Court as a specialist court. Let us look at that example. Representations have been made to me from the children's legal profession, or parts thereof, that it is not working. Magistrates who were specially selected as a result of their supposed special expertise in this area do not have that expertise. All magistrates now rotate through the specialist Children's Court, so it is not operating as a specialist Children's Court. Magistrates are sitting who do not know about child development and child abuse and neglect and who do not understand families and how they work from social and behavioural points of view.

CHAIR: That is an argument for better judicial education, is it not?

Ms CALVERT: I am saying that that special structure was set up to try to solve a problem, but we are back where we started. We are still not getting magistrates on the bench with the level of expertise that we desire. Cases are not being heard more quickly because magistrates have insufficient understanding of the impact of delays on children and their development. Some of the things that we wished would happen as a result of setting up a specialist Children's Court have happened but representations have been made to me that this is not happening nearly enough and that the situation is deteriorating. So while I, too, wish for those things, we must be careful that what we propose will deliver those outcomes over time.

The Hon. JOHN HATZISTERGOS: Notwithstanding the problems that you have identified, surely you would not advocate that the specialist Children's Court be abolished and that all children's criminal matters be referred to the Local Court to be dealt with.

Ms CALVERT: No, I would not advocate that. I was talking about the protection side of the Children's Court not the criminal side. That is partly because I think the care jurisdiction is very different from the other matters that the Local Court deals with. Child sexual assault is a criminal matter; it is not completely different from other criminal matters that the District Court deals with.

CHAIR: But the clients are different.

Ms CALVERT: Yes, child witnesses are different. I am not ruling out the idea of a trial, but I am not sure that it will deliver what we hope it will deliver. I think there would be difficulties in rolling it out statewide and I think the Committee should consider other options that are probably more effective and that have been proven to have an impact on a child's experience of the court process.

The Hon. JOHN HATZISTERGOS: We could do both.

Ms CALVERT: You could.

CHAIR: What do you think about diversion schemes? We have heard evidence from Mr Tolliday regarding Cedar Cottage at Westmead and the New Street program for young sexual offenders. What role do you think they can play in this area?

Ms CALVERT: I think the pre-trial diversion programs have a very important role to play in relation to child sexual assault matters. They are an alternative to prosecution. They make children's experiences of the court and prosecutorial process much less onerous because children do not have to go to court and give evidence. I also like these programs because they divert people into treatment programs, which can help them to manage their sexual offending behaviour. I think it is important not to lose sight of one of the primary functions of why we are here: to put in place things that stop people sexually offending. The best thing we can do is interrupt their offending career and stop people sexually offending and committing further crimes. Pre-trial diversion programs do that in a much more systematic way than the usual prosecutorial process. I strongly support the pre-trial diversion approaches because they make the prosecutorial process better for children but, more importantly, attempt to stop further offences being committed in the future.

CHAIR: You will be well aware, as I am, that there used to be a Child Protection Council. A previous witness suggested that there might be some problem at present given that the functions of the Child Protection Council in regard to liaison and so forth are presumably absorbed by your organisation, the Commission for Children and Young People. Are you responsible for liaison between government and non-government and community groups on matters relating to child sexual assault and, if so, how is that function working?

Ms CALVERT: Ours is not the only body responsible for liaison between non-government organisations and the Government—although that is one of the things that I do. I make recommendations to government and to other organisations as well. I have been extensively involved in liaising and working with government and non-government organisations on child protection matters. I will outline some of them. Firstly I am involved in ongoing forums. For example, the Commission is represented on the Ministerial Reference Group for Sex Offenders within the New South Wales Department of Corrective Services. I am also a member of the National Child Sexual Assault Reform Committee, and we are hosting the next meeting in July. I am also a member of the Child Protection Chief Executive Officers [CEOs] Group that meets on a regular basis and I raise in that forum matters that the community has raised with me. The Commission is certainly involved in ongoing forums.

Secondly, we are also partly responsible for leading processes to try to reform aspects of the child protection system. For example, we developed the initial paper for the child protection learning and development framework in New South Wales, which was later adopted by the child protection CEOs. That sets out a four-year plan for child protection learning and development across New South Wales on an interagency basis . We were also responsible for rewriting and reviewing the Interagency Guidelines for Child Protection Intervention lead processes for addressing issues of concern.

Thirdly, we are also trialling new responses to child protection, and certainly child sexual assault. For example, we are currently facilitating a project called Aboriginal Communities Protecting Children. That is an example of our trying to work with a particular community to improve its responses to child sexual assault. We also responsible for protecting children through the Working With Children Check, which involves the employment screening of workers' background histories. In the first year of operation we conducted more than 250,000 checks. We are also responsible for the operation of the Child Protection (Prohibited Employment) Act, which as you know prohibits a person with a sex offence conviction from working. So we are the corespondent in any applications for exemption under that Act. We also organise seminars. For example, in April 2002 we organised a seminar with Gail Ryan on reducing the risk of children becoming abusive.

Finally, we also work on standard setting and monitoring development and trying to build capacity of staff in relation to child sexual assault. For example, we co-ordinate and oversee the voluntary Child Sex Offender Counselling Accreditation Scheme, which is a voluntary scheme that accredits counsellors who want to work with child sex offenders so that the court knows who is and who is not an expert in this area. We ran the Grafan-Walker forensic seminar in 2001. I am also the co-chair of the fifteenth International Congress on Child Abuse and Neglect that will occur in Brisbane in 2004. Finally, we work with the Child Death Review Team. We have identified some matters relating to child sexual assault, and we are moving that forward in respect of policy change.

In outlining those things we currently do, you get some idea that we have taken up a lot of the work of the Child Protection Council, and we are moving forward. The difference is that there is not a

clearly identified body whose sole job is to work with child protection. But that debate occurred four years ago with the establishment of the Commission. There was widespread support for the work of the proposed childrens commission being broadened to include much more than just child protection issues and covering all issues relating to children. That emphasis came out of the Wood Royal Commission.

CHAIR: We thank you very much for your assistance and the submission, which contains constructive suggestions.

(The witness withdrew.)

RONALD KIM OATES, Paediatrician and Chief Executive of the Children's Hospital, Westmead, Hawkesbury Road, Westmead 2145, sworn and examined:

CHAIR: In what capacity are you appearing before the Committee?

Professor OATES: Both as a paediatrician who has worked in the area of child abuse for more than 25 years and also as Chief Executive of the Children's Hospital, where we have a strong view about the need to advocate on behalf of children.

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

Professor OATES: Yes, I did.

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

Professor OATES: Yes.

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

Professor OATES: I am a paediatrician, FRACP, I have a Doctorate in Medicine based on research into child abuse and neglect, I have written six books on child abuse and more than 100 publications, and I have held a variety of positions in child abuse over the years.

CHAIR: You have made a written submission to this inquiry, attaching three articles published in past years in learned journals. Is it your wish that that submission be included as part of your sworn evidence?

Professor OATES: Yes, it is.

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 heard or seen only by the Committee, the Committee will be willing to accede to your request. However, the House has the right to override our position in that regard if it so decides. I understand that you are happy to go straight into questions?

Professor OATES: That is right.

CHAIR: I will deal first of all with the topic of children and their capacity as witnesses. One of three articles you referred to the Committee is entitled "Children as Witnesses", published in March 1990 in the *Australian Law Journal*. I note that you say, among other things:

> Young children from six to eight years have been shown to be just as accurate as older subjects in recall but report significantly less information.

Further on you say:

> However, they were just as accurate as the adults in answering the objective questions, were no more susceptible to the leading questions and were just as accurate as the adults in correct identification from photographs.

Obviously, I have left out some of the words. Would you say something to the Committee in general terms regarding children, their memory and their capacity to give evidence?

Professor OATES: Yes, I would be happy to. I think there is a view in the community that children may not be reliable witnesses, and are not able to recall detail accurately. This has been tested in a number of studies, largely in the USA, where children have had their memories for events that they have either witnessed or been told about compared with memories of the same evidence from groups of adults, usually college students. The evidence is quite consistent that certainly from six years up children are able to recall events just as well as adults. An example would be choosing

somebody's photographs from a series of photographs that the child had been shown. The children's ability to do that is as good as adults.

The evidence is that in children under six the memory is not always quite as consistent. Many children under six are quite good, but ability to consistently recall accurately falls off under six. It does not mean that younger children cannot do it, but they cannot be considered to be just as a good as adults. In fact, some of the studies show that children from six up are even better than adults. The differences are really do to with the amount of the detail the child remembers. For example, if the child was questioned about an incident in which she was involved, perhaps a sexual abuse incident, and was asked about the colour of the curtains in the room, the child may not know that detail but she would remember in vivid detail what had happened to her.

Adults seem to be able to recall more detail as well as the central events. The other thing that gives adults the impression that children do not remember things well is that they often do not volunteer information. We all know when we say to our children, "What did you do at school today?" They say, "Nothing." They say, "I didn't do anything." But when you ask them specifically about events then they can relate them quite clearly and tell you all about them. They do not volunteer information, and I think that is what gives people the impression that children do not remember things very well.

CHAIR: You also say in the article to which I have just referred:

> A recent Australian study of court transcripts in child sexual abuse cases has shown that children become quickly confused under cross-examination. This is partly because of the language used in the court situation, but also because of the way in which some questions are multi-faceted making a "yes" or "no" answer difficult.

One of the things that is most troubling to the Committee during this inquiry relates to the amount of complaints that are made in regard to the form and tenor of questioning of children in courts in child sexual assault prosecutions. For example, we are told that sometimes questioning can be unduly complex, questions might contain a double negative and sometimes the question can be verging on or actually intimidatory. What do you think can be done about that?

Professor OATES: What really needs to be done, and I think I mentioned it in that article as well, is that those who deal with children in court, those whose role it is to question them or defend them, as well as those involved in the judiciary during these cases, really need to understand more about child development and child language, and understand the language of children, which can be very different from the language of adults. A good example is a case from the US, where a four-year-old was asked in court, "Does your father make love to you?" "Make love" was not a concept in the four-year-old's vocabulary, but "love" was a concept in the four-year-old's vocabulary. The child, who thought that she was being asked, "Does your father love you?" said "Yes" to the question "Does your father make love to you?" when in fact the father turned out not to be the offender. It was someone else. It takes quite some experience in talking to children and understanding children's concepts and language to be able to frame questions in a way that are clear and understood by children.

The other difficulty that children have is that they are afraid. It is an intimidating atmosphere. They know they have to obey adults, and they are supposed to, so they want to be helpful, and they often want to be helpful by giving answers that they think will help, particularly if it is a long, gruelling process without adequate sensitivity to the child's needs and breaks. The child might just answer "yes" to everything to get it over with without feeling the need to relate exactly what happened. There are number of examples where that can be really quite stressful for children, particularly when they are intimidated by being told, "I put it to you that you are making this up to get money or to get out of something." It is terrifying for a child.

CHAIR: We have been told, in the context of children being asked questions like that, perhaps on a repetitive basis, that judicial officers are most reluctant to intervene because if they do they will be corrected by a court of appeal. Can we come to the question of what, in practical terms, can be done about this? There appears to be no difficulty about what are the problems. The child may be either intimidated or simply not understand the questioning. You are aware, I understand, that Mr Cowdery, the Director of Public Prosecutions, has made a suggestion to the Committee that there ought to be a model court, a pilot, at which an attempt would be made to create a more child-friendly atmosphere. By saying that I am referring to training all judicial officers, court staff and so on in

matters you adverted to a short time ago, such as stages of child development, what they understand and do not understand. How do you see that suggestion? Do you think it is useful?

Professor OATES: I think it would be a great suggestion, and it is something that I think I referred to in "Children as Witnesses". I referred to the need for legal people to be trained in child development and talking to children. If there were a pilot like that where I noticed the DPP talks about the need for the judiciary to be trained as well, that would be much more child friendly. It would make a big difference. It seems to me that there are three things that need to be done, and one is a more child-friendly court where the language is language that children can use and the people asking the questions are people who can understand the replies that children give.

The second thing to do is to recognise the difficulty of the child seeing the offender, if it is the offender, in court. I know there are techniques like screens and closed-circuit television, but they are certainly not always used and sometimes when they are available they do not work. But if you think of it from a four or five-year-old's point of view that has been told, for example if it is a stranger assault or relative assault, "If you ever tell anybody that I have done this I will kill you" or "I will cut your fingers off", the young child is not really capable of knowing that the person over there in court will not jump up and attack, even though we know that will not happen. That is terrifying for the child.

I certainly think protecting a child in that way is an important thing. The third thing really relates to the time delay. The DPP's paper talks about fast-tracking some of these cases. I illustrate it by saying that we always say, "Every year seems shorter." It is shorter in relation to our lifespan. For a 50-year-old every year is 2 per cent of his or her total lifespan. For a four-year-old a two-year delay for a case to be heard represents 50 per cent of that child's total lifespan—not the 2 per cent that it represents for a 50-year-old. During those two years there is an enormous amount of learning about child development and understanding change. It is unacceptable for anybody to wait 50 per cent of his or her lifespan for a court case to come up. Adults would not wait 25 years for that to happen. It seems to me that if we could fast-track these cases in a child sensitive way and in a way in which a child felt safe in court and comfortable that would be an enormous advance.

CHAIR: In the article to which I am referring you also state:

> It may be that the time has come for the development of a specialty in child law where those undertaking the specialty can have some training in developmental psychology, child development and experience in interviewing children.

Would you like to say something to the Committee about that?

Professor OATES: I think that that sentence basically summarises my views. It would be good, as I have said, if the people who were talking to and listening to children had some experience. I think that they need formal training. There is one thing that I would really like to see in the DPP's submission. The submission talks about these people being trained. I think it would have to be an accredited proper, supervised training program in which people were accredited as being competent and safe to talk to children in a way that would not disadvantage them.

CHAIR: On the question of currently available technology in the courts, such as video recordings, screens and matters of that sort, how well do you think that that works in practice? You said a moment ago that the equipment is not always available and that it does not always work well. Where it is available and where it does work to the extent that it is supposed to, how effective do you think it is in protecting the interests of children?

Professor OATES: I think it is good when it works. The introduction of it was an important move. I guess the disappointment is that it is not available to all children. It is not seen as absolutely essential before the child gives evidence that these things are in place and working. It should be just a basic part of the process.

CHAIR: I must say that I have not seen the equipment working in practice. However, one of the matters that has been raised in evidence here is that the child's image on the television screen or monitor may be unrealistically small, particularly so far as a jury is concerned. The image is too small for members of a jury to see properly the child's reactions. Have you seen the equipment and are you able to express any opinion?

Professor OATES: Yes. I think that is right. It could be too small. The technical solution to that is to have equipment that provides a bigger image. It is not an insurmountable problem.

CHAIR: What has been said to us is that when a prisoner at the Long Bay correctional complex makes a bail application over a video, the screen is quite large; the judge is looking at Queen's Square. So it seems to me that, if this is a problem at all, as you say, it is a problem that one presumes can be corrected?

Professor OATES: There seems to me to be a fairly simple technical solution. It does not have to be a small picture just because a person is small. It can be a proper size picture.

CHAIR: In regard to the suggestion that has been made that defence lawyers, among others, should take training about stages of child development, what would you say to the argument that, in the case of the defence lawyers in particular, they might use this added knowledge to confound the child. It might help them, in effect, to deal with the child even more effectively and in a more sophisticated way for improper ends?

Professor OATES: I cannot imagine that being any more intimidating than the sorts of complex double negatives and language that are used now. I do not really think that that is a problem. Of course, the defence lawyer would not be the only person understanding child language and development. The prosecuting lawyers and the judiciary would as well under the system.

CHAIR: You submitted another article to the Committee which you described as quite old—an article published in the *Medical Journal of Australia* in December 1987—entitled "Sexual Abuse of Children—An Area with Room for Professional Reforms." A passage within it states:

> Legal reforms, some of which are under discussion currently and which must protect all parties, are needed to allow an expert who has talked with the child to present the evidence of this interview in court without any need for a child to attend. The use of a video recording as the child describes the assault to a skilled interviewer may be able to be tendered as evidence and obviate the need for multiple interviews which culminate in a court appearance.

Our understanding, as a result of the joint investigative response teams, as they are now called, is that video recordings are invariably used to take the child's evidence initially. However, apparently it is very uncommon for it to be actually introduced as a whole in the court proceedings. Is it your view that it would solve a problem for the child if the video recording were more commonly introduced as evidence?

Professor OATES: I think it could certainly help. There are the problems of course concerning the length of the video recording. I guess that there would be problems if it was edited. But one of the difficulties for the child is multiple interviews. Certainly one very good video recording might stop the need for multiple interviews. But I have always felt that the answer is not buying the video equipment; the answer is training people to do extremely competent videos that will stand up properly—videos that will not be able to be dismissed because they have not done the questioning properly. That seems to me to be far more crucial. Buying the technical equipment is just a matter of dollars, which would not be a very vast amount. Training people to use the equipment properly is the key to this.

CHAIR: Some points that have been made to us in connection with introducing the video evidence, if it were to be done that way, is that it may be unduly lengthy as to its content in some cases. The more common criticism that is made is that if it were to be introduced as evidence and the child were to go in cold, so to speak, he or she would be less prepared for cross-examination. I suppose that there is a halfway house. Following the introduction of the video recording there could be some basic, formal or summary questions asked by the child in chief before the child is cross-examined. What do you think about that? By that I mean there might be difficulties if it were more commonly the case that the video recording were introduced in evidence itself.

Professor OATES: I think there are real problems with having video recording evidence. I guess when I wrote this article 15 years ago the concept had not been floated of having a children's court, particularly for these areas where staff were skilled and where cases were fast-tracked. I guess in many ways I see that as far more important. If we are going to have a child questioned

appropriately in a child-friendly court there would not be as much need to introduce this sort of technology with the attendant problems that you have mentioned.

CHAIR: I note in your article published in the *Medical Journal of Australia* that you refer to the New South Wales Task Force on Sexual Assault, which reported, I think, in about 1984. You state:

> It made a number of recommendations for legal reform, including the use of video recordings as evidence in court proceedings, the option of a closed court, and the conduct of court proceedings in a manner that is not intimidating to the child witness.

Now video recordings are certainly taken and, as you know, when I was Minister for Community Services the joint investigation teams were set up to have an interagency approach to interviewing children. It is somewhat distressing, though, that we are still talking now in 2002 about making court proceedings not intimidating to the child witness. What do you think can be done realistically? Is it a matter largely of training or does it go beyond that?

Professor OATES: I suppose that it is a matter of people wanting to be interested in working in the area as well. I am not sure whether lawyers want to specialise in this area. Clearly, it would not be a big earner in monetary terms. I guess it is a reason why a lot of paediatricians do not like to get involved in child abuse either. It is a tough area to work in. From the point of view of this very important group of children who have been traumatised already by the abuse, it just seems to me important that we try to convince the people who are involved in these cases of the importance of doing it in a way that protects the child's interests. It seems to me that it is much more important that the child does not suffer as a result of this process. That is certainly equally important as the outcome of the case.

CHAIR: On the basis of what the Committee has been told in previous evidence, these cases are far from uncommon. In any circuit sittings of the District Court it could be that up to 50 per cent of matters within such a list concerned child sexual assault matters. Given that that is the case, it seems to me that it calls for some attention if children are not being treated appropriately. The conviction rate appears to be quite low and there seem to be a number of reasons for that including the rules of evidence relating to corroboration, whether a complaints is recent or not and the disinclination of judicial officers to intervene in the questioning process, and the propensity of the Court of Appeal to order new trials after going through the transcript with great care. I know that you are not here as a legal witness, but there seem to be a lot of barriers in the way to securing convictions.

Professor OATES: Many cases do not even get to court. One study we did showed that a number of parents decided not to go ahead because they were afraid of the stress to the child. A couple of others pulled out because they were intimidated by the alleged offender. Certainly the number of cases that go to court is relatively low, as you say.

CHAIR: Committee members were having something approaching a debate with the previous witness, the Commissioner for Children and Young People, Ms Calvert, about Mr Cowdrey's suggestion of a pilot, or trial, of a court in which procedures and facilities were more child friendly. She tended to the view that if we were going to do these things we should do them anyway, put them in the system across the State. My personal approach at this stage is that even on the basis of my past experience with the model court project at Blacktown, it often is a good way to go, to have a pilot to trial various initiatives. If they prove satisfactory and worthwhile in practice they could be replicated elsewhere. What do you think about that?

Professor OATES: I do not think that a pilot and a statewide practice are incompatible, I think they are sequential. It seems to me that the pilot might have a few hiccups that would need to be ironed out. It would be a learning experience. It would be important that it is not set up to fail, but set up with every chance of success. It would need to be relatively well resourced and training would have to be provided. There would have to be a dedicated period to review it at the end, to assess its value, and to iron out any problems and then to roll it out. I would be a little aware of rolling out something like this because it is such a big thing, it might never get rolled out unless it could be proven that it was really going to work.

The Hon. JOHN RYAN: You referred to the need to give people in the legal profession or involved in child sexual assault matters appropriate training in child development. Most child development courses are usually offered by institutions in regard to training teachers, medical practitioners, and so on. Are you aware of any expertise in any local universities that deal specifically with child development and how that might interact with the legal system?

Professor OATES: No.

The Hon. JOHN RYAN: It is one thing to recommend it, it is another thing to find it.

Professor OATES: We could ask one of the universities to set one up. One could be set up within the Law School, which would be terrific. Certainly in the early days when I was Professor of Paediatrics I offered to give just one lecture to law students on child abuse, but it was felt that that was not an appropriate part of the curriculum There is a bit of education needed within the Law School itself to get these concepts across.

The Hon. JOHN RYAN: Are you familiar with any training that has been offered to judicial officers in child development? Have you ever been asked to participate in anything of that nature?

Professor OATES: No. There may have been training, but I am not aware of it and I certainly have not been involved in providing it.

The Hon. JOHN RYAN: The Committee has been presented with ideas that perhaps child sexual assault matters are so difficult and there are phenomenal difficulties in determining the best interests of the child with regard to continuing to prosecute the matter or not. One suggestion was to utilise alternative methods of conducting the trial, and alternative methods might be inquisitorial or alternative dispute resolution mechanisms that do not result in the same sorts of outcomes as you would have from the criminal court, but nevertheless there is some sort of outcome that might be seen to be dealing with it more satisfactorily than a not guilty outcome in a badly conducted criminal trial. Do you have any views as to whether those alternative methods of trying child sexual assault matters have any value?

Professor OATES: It is somewhat out of my area of expertise, so I cannot comment extensively. I know that the Israeli system uses an inquisitorial system which appears to be less stressful for the child. On basic principles I would be worried about it being taken out of the criminal system, because this is a crime and these people should not be sexually abusing children. I do not know enough about legal issues to make any other comment.

The Hon. JOHN RYAN: Do you have any experience in dealing with children who have reported child sexual assault, been through the rigours of the trial, and the outcome was not a conviction for the accused? What sorts of difficulties might that have on the child who has been through that experience?

Professor OATES: I think that would probably cause more problems for the parents than for the child. It depends, of course, on the child's age. We published one survey in which we looked at the view of parents of the court process; that is one of the papers I have submitted. A couple of years later we asked them their views and the majority of parents said that they were dissatisfied with a process. In a subsequent study, when half the cases went to court and the other half did not for a variety of reasons, we asked the parents the same question. The parents whose cases had been to court said that they were not happy. I guess they had a lot of reasons not to be happy. Several years later, when we looked at the effect on the children's behaviour, self-esteem and depression, of the group of children who had been to court and those who had not, there was no difference. Certainly it was upsetting for the child at the time, but whether there was any long-term effects is difficult to know. I do not think it is an argument against making a process more child friendly, because as well as being better for the child it is a more accurate process in getting the information that the court requires.

The Hon. JOHN RYAN: There are special considerations that might be required when children are the accused in a child sexual assault matter. Do you have any research or comment to make in dealing with children in that circumstance?

Professor OATES: When the child is the offender, perhaps a 12-year old?

The Hon. JOHN RYAN: Yes.

Professor OATES: No, not a great deal. There is evidence that those offending children really need to get into a treatment program early, because past thinking used to be that it is just kids mucking around so do not bother about it. There is very good evidence now, looking at adult offenders, that many of them started as juvenile offenders. Finding a juvenile offender seems to be an opportunity, perhaps not so much for prosecuting the offender without any form of treatment, but for trying to rehabilitate and reorientate that young person.

The Hon. JOHN HATZISTERGOS: I am intrigued by a paragraph in your article of 6 February 1995 entitled "The criminal justice system and the sexually abused child". You referred to other research and stated:

> Testifying in court can be traumatic for adults. Children have the stress of facing the accused in court, increased subsequent behavioural problems and a delay in the resolution of negative symptoms caused by the sexual abuse. Conversely, with the right safeguards, the experience of testifying has been suggested to be therapeutic. Runyan et al. showed that children who testified had a significant decrease in anxiety compared with those who did not, although the testimony was in a juvenile, rather than a criminal, court.

What are the right safeguards that you referred to?

Professor OATES: I would have to go back and read the Runyan paper. That was a summary of the literature and is an example of how different authors reached different findings. The Runyan article was about children who were testifying in juvenile courts, quite different from the experiences in the United States of America and different from testifying in an adult court. Runyan certainly found that those who testified were less anxious than those who did not, so they seemed to get some resolution as a result of being able to have their say. Of course, they had their say in an atmosphere that was more user friendly than in the criminal court.

The Hon. JOHN HATZISTERGOS: That does not necessarily correspond with your research, although it was in a different setting, does it?

Professor OATES: That is why there is a whole variety of different views. Our research showed two different findings; the 1997 paper showed that the parents were upset and we thought from that that the children must be upset. The 1995 study showed that the parents were upset but it did not seem to affect the children's behaviour.

The Hon. JOHN HATZISTERGOS: The parents being upset was relative to the outcome of the case?

Professor OATES: To the outcome and the process. The children were upset and disturbed at the time and that upset the parents.

The Hon. JOHN HATZISTERGOS: In your article you said that there was a strong relationship between the outcome in the level of dissatisfaction?

Professor OATES: When there was an adverse outcome the parents were dissatisfied.

The Hon. JOHN HATZISTERGOS: What were the factors that the parents were dissatisfied about if it was not the outcome? What aspects of the process?

Professor OATES: To answer that I would have to go back to the data that we collected in 1991 and 1992. I could not answer that without reviewing the original research.

CHAIR: Presumably, a basic cause would be in cases where there was no conviction?

The Hon. JOHN HATZISTERGOS: That was the outcome, yes, but were they the reasons?

Professor OATES: To be accurate, I would have to look at the research.

CHAIR: Referring to diversion programs, in your 1997 article you referred to a program in California called the Giaretto program, in which offenders within the family have to leave the home and in most cases continue in employment and are required to continue to support their family and participate in a rehabilitation program which aims at eventual family reunification. Recently Mr Tolliday, who runs Cedar Cottage and the New Street program, appeared before this inquiry. Cedar Cottage is a diversion program and requires the offender to plead guilty and to undergo treatment. My recollection of his evidence is that it is not an aim of the program to reunite the offender with his family but it is an aim to prevent reoffending. Are you familiar with the Cedar Cottage program or other diversion approaches?

Professor OATES: As I understand, the Cedar Cottage program is the pre-trial diversion program. The Giaretto program, which started in the 1980s, was described to me by Giaretto as post-trial and there is an option: if the person is found guilty, they are given an option to go to gaol or into treatment and follow the program. Generally they take the treatment option. There are certainly some views in the literature that families feel that justice has been done once there has been a guilty verdict. I guess the pre-trial program, which has got a lot of merit in terms of treating offenders, does not give that satisfaction that the person who has done this to the child has been convicted.

CHAIR: How acceptable would it be if there were such an aversion program in New South Wales post-trial? Is it your impression that the fact of a conviction is sufficient? To take a notorious example, I wonder if the *Daily Telegraph* would say "Thrashed with a feather" if someone were to be convicted and, rather than gaoled, sent to such a program, however worthy or constructive that program might be?

Professor OATES: This is outside my area of expertise but I would imagine the option would only be given depending on the circumstances of the case. Some cases may be so horrific that there would not be the option and other cases the option might occur.

CHAIR: In relation to children's evidence, it has been said to the Committee that leaving aside intimidatory questioning, quite often the judicial officer simply does not recognise that the child does not understand the question. Ms Helen Syme, a Deputy Chief Magistrate told the Committee in evidence that she has often formed the impression that the child simply does not understand what is being put. It is her practice to say "Mr or Ms so and so, how does this assist the court? The child simply does not understand what is being put." Have you seen that happen?

Professor OATES: I cannot recall it, but it is some years since I have given testimony in court. That is an example of a magistrate who is child-sensitive and has been listening and is aware of the problem.

CHAIR: Ms Syme said to the Committee that it can be a difficulty as simple as the judicial officer having his or her head down looking at papers and simply not recognising that the child does not understand the question. Do you agree that it seems to me to be a very easy aspect to deal with in terms of training of judicial officers?

Professor OATES: Yes, certainly.

CHAIR: Do you want to tell the Committee anything else that you might have overlooked during your questioning?

Professor OATES: We published an extensive study out of a large sample of children in Denver looking at false allegations by children of sexual abuse because this question often comes up. That study showed that the level of false allegations of children was 1.2 per cent, so there are occasions of false allegations by children but they are not very common. When we looked at those ones they tended to be older children, often who are more emotional at that stage, or who might have been put up to it by somebody else. It is very unusual for young children to make false allegations, although young children sometimes confuse what has happened to them and may say something that a very anxious parent might over-interpret and go off and call the police when something quite innocent had happened. That stresses the need for the initial investigators to be skilled and to ask the appropriate questions and to be able to understand the answers.

The movement that was around a while ago saying "children never lie" was an error because we all know that children lie about things, or they can be loose with the truth at times but they are not very good at it. One can often tell when a child is making a false allegation whereas adults, particularly offenders, are brilliant liars and manipulators. The various studies that have been done about false allegations from children fall into two groups. The most recent one was the one that we published and there are several others but all show that very low percentage, when they are carefully looked at, of false allegations by children. Another group of a small number of studies are quite small samples that have got false allegations up around 20 or 30 per cent of children and all of the ones in that latter group are custody cases where the child is being coached. A skilled interviewer can usually tell the difference because children who are sexually abused are intimidated and they are told not to tell anybody. When they eventually pluck up the courage and tell somebody they tell it partially and haltingly and in fear and need a lot of reassurance whereas children who have been bribed or coached to tell a story of sexual abuse tell it the way they tell a speech they have learnt for school speech day. It is quite a different process.

CHAIR: How useful has the initiative of the joint investigative response teams been? Is it your intuitive opinion that it has been a useful initiative and that the multidisciplinary approach as between the police and the Department of Community Services has been worthwhile?

Professor OATES: It has been a real advance in terms of those different professional groups talking to each other and not all talking to the child separately. It is a good example of the sort of co-operation that is need in this fairly complex area. Again it depends on the quality and skills of the people in the teams. It does not always work, but the concept itself is very good.

The Hon. JOHN RYAN: If the Committee were to talk about a specialist court for hearing child sexual assault matters, an issue that necessarily arises is what do you use as a cut off point to decide which children need the special attention and which children can quite successfully give their evidence in an adult court? Is it best to use a simple chronological age? Do you think there are other factors that might be taken into consideration that would be just as useful in working out the difference?

Professor OATES: It is really difficult to answer. The chronological age is the easy one. I suppose the group of children I am most concerned about are those who are four, five, six, seven-year-olds who certainly need quite a lot of protection in court. I would just have to think a lot more about it to pick an age but probably the only practical way is the chronological age as long as they have the normal IQ. A 12-year-old with the mental age of five would certainly need special attention. Probably chronological age with a normal intellectual range is probably the most practical way to do it. Picking the age would be the challenge.

The Hon. JOHN HATZISTERGOS: Do adults who are giving evidence of child sexual abuse when they were younger go into the special children's court or into the normal adult system?

Professor OATES: I am not sure I understand that question.

The Hon. JOHN HATZISTERGOS: I am talking about people who are older who are recounting evidence of sexual abuse when they were very young.

Professor OATES: I understand.

The Hon. JOHN HATZISTERGOS: Are they put in the same system as young children giving evidence or in the adult system?

Professor OATES: They are adults at the time and that is fraught with problems. That is the whole problem of recovered memory, which is a very difficult area. Certainly adults who are making allegations of sexual abuse in their childhood would be appropriate for the normal court system.

CHAIR: Recently the Committee heard evidence about recovered memory, and it appears to be a controversial area. Dealing with counselling generally, it was put to the Committee by a set of

witnesses that in the counselling situation counsellors are told to accept the allegation of abuse virtually uncritically. Is that your understanding of how it works?

Professor OATES: I do not deal with adults so I do not know a great deal about it. The basic principle in working in this area is to approach every allegation with an open mind, and that is to be open to the fact that it did occur, and equally open to the fact that it did not occur. It is dangerous if people approach it with a closed mind.

(The witness withdrew)

(The Committee adjourned at 12.25 p.m.)