REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO CHILD SEXUAL ASSAULT MATTERS

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At Sydney on Friday 10 May 2002

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The Committee met at 10.00 a.m.

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PRESENT

The Hon. R. D. Dyer (Chair)

The Hon. P. J. Breen
The Hon. J. Hatzistergos

Transcript provided by C.A.T. Reporting Services

YOLANDE LUCIRE, Forensic Psychiatrist, 2A Kendall Street, Woollahra, affirmed and examined:

GRAHAME FRANK FORREST, Member, Australian False Memory Association, P.O. Box 285, Fairfield, Victoria, and

GLORIA ELIZABETH BRADLEY, Past Chairperson and New South Wales Representative, Australian False Memory Association, P.O. Box 285, Fairfield, Victoria, sworn and examined:

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

Dr LUCIRE: I am as, I hope, an expert in a couple of areas and as a person who has concern about what is happening.

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

Dr LUCIRE: I have.

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

Dr LUCIRE: I have, but I can only address one or two of them.

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

Dr LUCIRE: I am a doctor. I have a degree in psychiatry. I have a PhD in social sciences concerning another moral panic, so I have expertise in moral panics and mass hysterias.

As well as that, I have undertaken research on what is known as false memory or recovered memory and I currently have a psychologist studying for a PhD, which I am supervising, and this continues the work that I started doing on developing criteria for differentiating true from false allegations that will eventually, we hope, help the Courts and clinicians.

CHAIR: You have made a written submission to the Committee, for which we are very grateful. Is it your wish that that submission be included as part of your affirmed evidence?

Dr LUCIRE: It is.

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

Mr FORREST: I did.

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

Mr FORREST: I am.

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

Mr FORREST: I am a graduate of Wagga Wagga Teachers College in Primary Teaching. I have a Bachelor of Arts from the University of New England and a Master of Arts in Linguistics with the research directed towards function in child language.

CHAIR: The Australian False Memory Association has given a written submission to this Inquiry. Is it your wish that that be included as part of your sworn evidence?

Mr FORREST: It is.

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

Mrs BRADLEY: Yes, I did.

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

Mrs BRADLEY: Yes, I am.

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

Mrs BRADLEY: My experience is practical. I have been falsely accused myself and have therefore become involved in this problem and have become involved in the aims and objectives of the False Memory Association.

CHAIR: As you are aware, the Australian False Memory Association has made a written submission to this Inquiry. Is it your wish that that be included as part of your sworn evidence?

Mrs BRADLEY: Yes.

CHAIR: If any of you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request, however, I must add that the House does have the right to override our decision in that regard.

Dr Lucire, could I invite you to make a short opening statement before we ask you any questions?

Dr LUCIRE: I don't need to beyond the introduction I have given.

CHAIR: You don't wish to?

Dr LUCIRE: No, there is no need.

CHAIR: Mrs Bradley, would you like to make any short opening statement?

Mrs BRADLEY: Yes, I would.

CHAIR: No more than five minutes, if I may say so.

Mrs BRADLEY: The Australian False Memory Association was formed by people who have been either personally falsely accused or are connected to somebody who has been falsely accused, usually as a result of recovered memories, and we formed the association as a support group and also to further the awareness of this problem of false memories or recovered memories, or repressed memories, whichever term is used. However, it must be stressed that the Australian False Memory Association abhors child sexual abuse, but we do stand strongly against unjust accusations. The incidence of child sexual abuse is exaggerated. It has been stated that one in three girls were abused by their fathers, whilst international research shows that less than one per cent of children are sexually abused by their fathers. That is research by Brandon in England and also Elizabeth Loftus in America. The New South Wales Government has accepted the figure of one in three when it funded ASCA by a donation of $50,000.

The moral panic regarding child sexual abuse is very similar to the McCarthy era Reds under Beds scare in the USA in the fifties and also the Salem witch-hunt. Indeed, child sexual abuse has become a witch-hunt.

The incidence of declared child sexual abuse has been exaggerated due to the influence of popular psychology books, such as "The Courage to Heal". The authors of this book have declared in their book that they have no formal qualifications, yet this book has become a textbook in the training of counsellors without formal qualifications of the authors.

Gullible and well-meaning counsellors are responsible for damage to individuals and families through implanting or encouraging the creation of false memories in their clients and the advice to separate from families and any person who questions the memories. The basis of communication for reconciliation and commonsense is destroyed.

Recent surveys of the Department of Community Services reveal that 35 per cent of female health, education and welfare professionals believe up to 24 per cent of fathers abuse their children. That was stated by Bettina Arndt in the Sydney Morning Herald on 19 March of this year. That is one quarter of all fathers.

The Australian False Memory Association believes that all counsellors should be licensed and fully trained by accredited institutions and that the industry should be properly regulated to discourage the excesses of the past and the present.

The diversion of energy of police and DOCS from the far more prevalent physical and emotional abuse and neglect of children due to the moral panic about child sexual abuse is a scandal. It is a misuse of the available resources.

Earlier comments to this Committee by Ms Hinchcliffe on 23 April at page 26 reveals that nine per cent of allegations made against a parent and the Family Court were false; that is nine per cent who are suffering the heart break and the indignity of false accusations in Court cases. Some even face imprisonment and the taint of the false accusation may remain with them for life. It is a case of a witch hunt based on unscientific and faulty theories.

We are very grateful to the New South Wales Government for setting up this inquiry and hope and pray that reason and commonsense will prevail.

CHAIR: In commencing the questioning could I indicate that any question I or my colleagues ask may be responded to as you choose, by any one or more of you. In both of the submissions, which are from Dr Lucire and the Australian False Memory Association, the term "moral panic" is used. I note it has been used again this morning more than once. I take it that term refers to something in the nature of hysteria, something that is not based on fact? Would you like to add anything by way of clarification to explain the use of the term moral panic?

Dr LUCIRE: Moral panic is the modern word for what used to be called mass hysteria. Mass hysteria is based on what are technically hysterical beliefs. In a moral panic, reasoning is not done by logical means but rather by jumping to conclusions because people are so frightened. Many people beside the people sitting here have called this phenomenon, internationally, a moral panic. There is a considerable amount of literature on this which I could provide.

The characteristics here are those of a moral panic. There are a lot of vested interests who are generally known as the sex abuse industry, but the considerable influence they have is on the basis of knowledge which is not scientific. The language is typical of a moral panic in that the term "sexual abuse" incorporates anything from fondling to full-on sadistic rape.

The statistics of what is happening thereby become blurred, so we have studies which show three per cent of children have been abused to 60 per cent of children have been abused, and I am talking about international studies. As Mrs Bradley pointed out, the extent of this hysteria is such that a week ago at a conference I heard a reputable psychiatrist state, on a public podium, that one in six women is a victim of incest, whereas I confirm what Mrs Bradley said, the population studies show it is between half a percent and one per cent. That and the statistics give you the magnitude of the difference between what is popularly believed and what is scientific opinion. What is popularly believed is driving the resource allocation in this and the resource allocation is making it worse.

CHAIR: Under its terms of reference the Committee is required to consider that. In particular what makes your attendance appropriate is the one relating to the role of sexual assault counsellors in the complaint process. I note Dr Lucire in your covering letter to which you attach your submission you say:

> … dangerous techniques and evaluation procedures have been taught and they are still being taught to counsellors of various types.

Could you briefly indicate what you mean by that?

Dr LUCIRE: Yes. I presented the content of these courses and some of the training that I know that some sexual abuse counsellors have been exposed to. The theory underlying sexual abuse counselling is the same as the theory underlying recovered memory treatment. The hypothesis is that sexual abuse in the past needs to be talked about in order to recover from whatever elements of current personality behaviour are currently being attributed to it.

So it is the same, in both theory and philosophy as recovered memory therapy. Recovered memory therapy has been thoroughly discredited in the United States and has caused many people to be litigated against and struck off medical registers and by psychiatry registration boards, and it is generally acknowledged to be malpractice. There are many statements of claims available on the Internet to identify the elements of malpractice never happened in each individual case and this litigation is beginning here.

My concern is that people who are operating as sexual abuse counsellors are very well meaning, but they are inexperienced and untrained. They do not know what they are dealing with and they do not know what they are doing. I would have little doubt that, just as happened when the people were charged with malpractice in the United States, many of them would be bewildered by being confronted with what we believe are the effects of their activities and they would be personally destroyed. That is a concern for me.

CHAIR: We did have some counsellors appear before us previously to give evidence – I must say that when I asked them questions regarding their qualifications and experience, they each appeared to have formal degrees. However, I note Dr Lucire in your material you say:

… some counsellors … are social workers, others are three year graduates who have a psychology major together with ten days of in-service training focused on writing reports for Victims' compensation. This is not sufficient to be muddling with peoples' minds.

Further on you say:

Many 'counsellors' have no relevant qualifications at all.

The Australian False Memory Association in their submission recommends that the minimum training required for registration be:

> …qualification at the Bachelor's level in a university recognised in New South Wales of at least four years in length which includes significant study in the empirical research in the area of memory.

I invite you each to say something briefly about the matter of minimum qualifications for counsellors, and what your perception is regarding the qualifications that counsellors generally have or do not have?

Dr LUCIRE: "Counsellors" seems to be a very general term and involves people like six-month trained rehabilitation counsellors. There needs to be not only full professional training but, in order to counsel in a specific area such as this, also that people would be required to have knowledge and education in this area of the dangers and risks. They would certainly need to have experience working with mentally ill and mentally disordered persons, which many psychologists in New South Wales have not had.

CHAIR: Mrs Bradley, Mr Forrest, would you like to say anything about the question of qualifications?

Mr FORREST: Yes, I am concerned. I believe the Association is concerned by the fact it is possible for a person to purport to be a counsellor, and indeed receive payment for such functions as they might undertake, with no training at all. I know personally of two cases where clients approached a local Community Health Centre – in one case they were counselled by a social worker and in the other case joined a group therapy session led by a nurse – I believe both of these qualifications would be inadequate to deal with the kinds of problems which a person concerned about sexual abuse, or believing it possible that they have experienced sexual abuse, should be involved in.

This is an area where, as Dr Lucire has pointed out, it is not simply a matter of great controversy; it is simply a matter that there is absolutely no scientific evidence for the concept of recovered memory. A great deal of misuse of public monies is happening because people who firmly believe in this spurious notion are encouraging, helping to create in clients false memories which result in damage to those clients.

Here I would point out there is plenty of evidence of much higher rates of attempted suicide or suicidal thoughts following such counselling than were present in the client before they entered into such counselling. I think it is desperately important that appropriate, reasonably lengthy, properly supervised training should be undertaken before anyone is allowed to hang up their shingle as a counsellor.

The Hon. PETER BREEN: What is the motive you say these people have for these activities and what is the method by which they execute them?

Mr FORREST: I believe in the large part that their motives are pure. In other words, they believe that much of the presenting problems, emotional and mental, of adults arise from those adults being sexually abused when children. They wish to relieve the clients who present with these kinds of problems by delving into their past in order to reveal that child sexual abuse caused the problems and that when that is understood the problems may well go away.

That, I believe, is the motive, despite the fact that, as the report commissioned by the Royal College of Psychiatrists published under the name S. Brandon, J. Boakes, D. Glaser and R. Green, found, there is absolutely no proof of any kind of connection between presenting adult problems and earlier child sexual abuse. So, they have pure motives but they are totally misled in their thinking.

The Hon. JOHN HATZISTERGOS: How do they exhibit it?

Dr LUCIRE: This is an area in which we are currently involved in research. The major problem seems to be unquestioned acceptance. The counsellor should display "affective neutrality", which means one does not take a position on the truth of otherwise of the content, one just listens. If people come in with fantasies or a notion they can be very much encouraged by this kind of attitude in the treater. The fact the treater unquestionably believes, leads to a process which the American Psychiatric Association calls confabulation, which the lay term "recovered memory" or "false memory" covers. It can be induced by simply a credulous listener, by hypnosis, by relaxation therapies like EMDR, which is the eye wiggle movement therapy, by body work but basically by a subtle form of suggestion from the therapist to the client to the effect that she is being believed and will be believed. This is extremely important when this phenomenon escapes from the clinical situation into the Court rooms.

The Hon. PETER BREEN: Can I ask you about something else in the same context? What about spiritual healing, prayer, those kinds of things?

Dr LUCIRE: I personally have nothing against cultural healers, provided they are aware of their limitations and don't treat conditions that are better treated by doctors. I have one instance in my mind of a religious group, I would call it a small cult, in a town where I work, that does go on about this, but most of them don't have that much to do with sexual matters nowadays, but it does happen.

The Hon. PETER BREEN: The mainstream religions have people who pray in a certain way. I am not sure what it is called, maybe intercessory prayer or healing prayer, but there are fairly well established principles that these people use in order to resurrect memories, if you like, of things that

might have happened when the person was a child. Do you think these should be discredited out of hand?

Dr LUCIRE: I don't discredit anything out of hand. However, there is the literature which does confirm a known correlation between religious hysteria and sexual hysteria. However, I cannot say anything about individual churches and their ways of praying, other than my experience with this small subcult.

The Hon. PETER BREEN: There's plenty of people who would say that what's happening in the Catholic Church at the moment, for example, in relation to the interference by members of the clergy in the sexual activities of under-age people and children in particular and some people would say that it has developed hysterical proportions. Would you agree with that?

Dr LUCIRE: I have followed this from a number of aspects. First of all, there were massive allegations against one Cardinal Bernandin in New York, which the accuser recanted, so there are false allegations within the church as well as real ones. Then there's another group which I have actually seen, which are the "Me too", the people who didn't give the priest's fondling a second thought until the police came along and said, "Look, he has confessed, but did he do anything to you? You can claim". I don't think that has anything to do with religion, except when you talk about this group prayer phenomenon and the possibility of dissociation and so on and the possibility of seeing visions. It used to be seeing witches years ago – it is now likely to be sexual imagery. There is a risk there, but I wouldn't discredit them.

The Hon. PETER BREEN: Would you say that the people who are involved in that sort of activity in religious groups are no better or no worse than say lay counsellors involved in the same activity.

Dr LUCIRE: I can't make that kind of generalisation. I can only tell you what I have seen. I understand that the Uniting Church withdrew from this area completely, on advice, because their counsellors had caused some problems. I can't make general statements.

The Hon. PETER BREEN: For my own edification, if someone presents as having A problem that might appear to relate back to their childhood, is a mainstream counsellor going to benefit that person by delving into their past, or would you argue that they just should forget about the past and get on with the present?

Dr LUCIRE: I certainly would argue that therapists that deal entirely with the past and allow a patient to focus entirely on the past don't do very much for his or her future. I believe that good therapies are about the here and now and about tomorrow. Whereas one is allowed to ventilate about the past and certainly the past has predicated their reactions to the present, I know of no evidence which says that remembering the past, true or otherwise, is in fact curative of anything.

The Hon. PETER BREEN: Would it be fair to say that you would agree with the proposition that the past should not be over-emphasised?

Dr LUCIRE: It should not be dwelt on, yes. The present and future should be dwelt on.

CHAIR: Dr Lucire, you do say in your material:

Many 'counsellors' have no relevant qualifications at all.

Dr LUCIRE: That is true.

CHAIR:

Only in Australia are there no standards for 'counselling' for emotional distress.

Dr LUCIRE: That is what I understand.

CHAIR: Is that right, throughout Australia?

Dr LUCIRE: That is what I understand. I have put in my written response that in the United States you need a PhD in order to be able to do therapy. Whilst some American PhDs are not what they are here, but there are standards of education that are required. However, the standards of education don't guarantee that one will be sensible because, for instance, the American Psychological Association split very badly about this issue and it is an issue that is heavily contested and there are still a lot of people that believe that recovered memories are all true and all this should be done; there are people who genuinely believe that, and it is a major problem, and they are well educated and well-intentioned people. It seems to relate to the personality of the believer.

CHAIR: You have made some reference to this already, but I note that you say in your written comments:

> The training documents that I have seen advocate the uncritical acceptance of an allegation of abuse, recent or delayed. This is not acceptable, given the knowledge available about a parallel epidemic of false allegations.

That causes me some concern, that you say that training documents you have seen advocate uncritical acceptance of an allegation of abuse. What training materials might you be referring to there?

Dr LUCIRE: I think I sent them in. Our nurse unit manager and another one went on a course on treating victims of sexual abuse, about 18 months ago and I got hold of the documents, they were given to me and I copied them and I sent them in. This actually goes even further. The young psychologist I am supervising in her PhD told me that in her psychology training they are taught to uncritically accept what the patient tells them. They are trained in this, which is a major concern. This might be only in the particular school where she did it, I don't know, but I have heard this quite a lot.

The Hon. PETER BREEN: It is probably more of a problem in counselling than it is in ultimately what happens to the alleged perpetrator, because the legal system does not accept anything uncritically and cross-examines the accused and makes all kinds of what some people would call damaging accusations against the person who ultimately is the victim. Perhaps there is a balance there. Would you agree with that?

Dr LUCIRE: I am saying that the legal system is failing in this area and I think my colleagues are now saying the same thing. I have addressed that issue separately.

Mr FORREST: I note that earlier today we were asked what our qualifications and interests were, but the mere statement of what qualifications we had was accepted and I understand that in the Courts that is a similar situation, so a person appearing either for the prosecution or the defence simply is able to indicate that they have a particular qualification and perhaps a particular experience in the use of that qualification and then their evidence is accepted without any questioning as to the scientific validity of whatever it is that they say, so we have situations where, let's put it hypothetically, in a Court case the defendant's expert witness may be relying not only on his or her qualification, but also on scientific research that backs up the particular point of view, while the evidence for the prosecution is given by a person of similar qualification who relies upon clinical experience and the belief that people coming in with great distress don't tell fibs.

CHAIR: On another matter, Dr Lucire's submission mentions that in her view it is essential that all complainants' interviews be recorded and you go on to say:

> Police tend to exclude all the seeming irrelevant or obviously loopy information.

Dr LUCIRE: Correct.

CHAIR: The Australian False Memory Association submission also deals with this matter and I note that you say that you recommend that all interviews, especially of children, be recorded on video tape from the time of first contact. We have had evidence here from the Police Service and also from Ms Helen Syme, the Deputy Chief Magistrate. It is our understanding that under the joint investigation response team model that it is a matter of standard practice for a child's statement to be video recorded, although it appears not to be the practice for that material to be introduced as evidence except in rare cases. There are some reasons that have been given for that, one of which is the length

of the statement that is often made. Another reason that is given is that in the trial proceedings, as distinct from the committal proceedings, if the video recording is introduced as evidence the child would go in cold as it were to cross-examination by the defence counsel.

What is the point you are making about video recording, because it is our understanding on the basis of what we have heard that it is standard practice to video record children's statements?

Dr LUCIRE: I have not actually been talking in any of my submissions about children making allegations and it needs to be standard practice to record children and I believe it is. My area has been with delayed allegations and it has not been, it is not standard practice. There is a great deal of what we call "pruning" of evidence, which is sort of excluding the loopy bits, that is often only discovered during the course of the trial. In order to be able to do what I want to do, which is analyse the statement, I need the first hand stuff, not as it is doctored by the police. I would want to see video taping of every interview with an adult as well.

CHAIR: I am sorry, what do you mean by "doctored by police"?

Dr LUCIRE: Well, pruning. There's a lot of things that go on in a record of interview, which is being typed.

The Hon. PETER BREEN: That does not happen any more.

CHAIR: It is a video recording.

Dr LUCIRE: Of adults?

The Hon. PETER BREEN: Of adults.

Dr LUCIRE: I hope so, but I have been involved in a number of cases where there has not been video taping.

The Hon. PETER BREEN: I have too, in the legal system, and I agree with you, it is appalling, but I think they have done away with that practice now.

Dr LUCIRE: I hope so, but I would also video tape the interviews with counsellors, because that is where taint occurs. If you are a lawyer you know that tissue samples or samples from a forensic scene should not be thrown on to somebody's carpet or into the back of a car because they become contaminated. These statements are evidence and they should not be allowed to become contaminated either.

CHAIR: The Australian False Memory Association's submission states:

> Some child protection and police personnel have used suggestive and repetitive questioning of children. Because of the strong emotions aroused by the thought of child abuse, this zealous but unprofessional conduct may continue in spite of training intended to correct it.

I am disturbed to think that that might ever happen. Perhaps I should disclose to you that as Minister for Community Services I was closely involved in setting up the joint investigation teams, as they were then known, on the basis that there needed to be a multi-disciplinary approach involving both the police and the Department of Community Services in interviewing children where these allegations are made. We have had evidence here from the police and from the Department of Community Service as to how the joint investigation response teams, as they are now known, are working.

It has seemed to us that they are well trained. Could I ask you: what leads you to make the allegation that some child protection and police personnel do use what you term suggestive and repetitive questioning of children?

Mr FORREST: Whether that currently continues in New South Wales, I would not be prepared to make a declaration on. I would remind Mr Dyer of the Mr Bubbles case in the northern

beaches, a case where children were inappropriately interviewed by police and others and this resulted in bizarre claims –

CHAIR: Pardon me, that happened some years before these response teams were set up.

Mr FORREST: Right. I am not able to declare that I know of a current or very recent case in New South Wales. There is certainly significant uproar in New Zealand about the Peter Ellis case where bizarre claims were not revealed in the Court hearing. Bizarre claims are made arising from interviews of young children and the inter-action between them and their greatly concerned parents. It has resulted in those people, those young people now almost mature, continuing to believe these absolutely bizarre claims that they have been led to make.

This person refused to accept the rehabilitation programme offered to convicted child sexual abusers on the basis that he had to admit to guilt before he could be allowed to enter the programme; and arising from that was not allowed to have parole. I think this is a matter which has happened also in the United States very frequently. It is because of the fact that this is an international moral panic that I think it is worth our while to draw the attention of this Committee to it.

CHAIR: I take it all of you recognise that there are genuine cases of child sexual abuse?

Mr FORREST: Absolutely, yes definitely.

Mrs BRADLEY: Yes.

Dr LUCIRE: Yes. I worked in prisons with confessed paedophiles for 12 years.

CHAIR: Dr Lucire, you wanted to say something?

Dr LUCIRE: Mr Chair, I am concerned international statistics indicate child sexual abuse is about three per cent of the spectrum of abuse and neglect. Science indicates that the most harmful of those is child neglect. It is more harmful than child abuse.

Two years ago I looked at the DOCS statistics. There were 7,000 reported cases of which 2,640 – a number I remember because it is the Albury postcode – were "substantiated" cases of sex abuse. There is an international concern about the meaning of the word "substantiated". Those statistics indicate that a third is sexual. There is something very very wrong there. I don't know where the wrongness is. I suspect it could be found in the meaning of "substantiation". I have been quite impressed from time to time that DOCs have thrown out allegations which the Family Court then has to re-investigate. So, in some areas DOCS are doing well, but I have experienced DOCS not having done so well.

CHAIR: I agree with you that neglect tends to be even worse than abuse. In a previous inquiry this Committee conducted into Crime Prevention Through Social Support, evidence was given by Tony Vinson, former Professor of Social Work at the University of New South Wales. The statistics he drew to our attention certainly do establish, so far as criminal offending by young people, the very best predictor of that occurring is neglect by the parents or carers of the child.

The Hon. PETER BREEN: Dr Lucire, you have experience in the Victims' Compensation Tribunal?

Dr LUCIRE: I do.

The Hon. PETER BREEN: Can you explain to the Committee what that experience is?

Dr LUCIRE: From time to time I am called by the Victims' Compensation Tribunal to look at the documents of someone who is claiming compensation. I have brought such a document in, actually, to identify for you. I would like to give it to you. This is what they call a "paradigmatic example", it is not untypical.

CHAIR: You are tabling this document?

Dr LUCIRE: Yes. This relates to a woman of 56 years, who had many years of therapy with a reputable psychiatrist, who recovered memories of a rape. She gave that statement to the police and it passed through several groups of gatekeepers. A colleague of mine could not see that this was confabulation. I could see it because of my understanding and research. What happened in the Victims' Compensation Tribunal was that rather than have a row between me and the other psychiatrist, the Tribunal Member brought up the fact that this woman had given birth to a child before she was 16 years nine months, therefore she was deemed to have been the victim of an assault, therefore she was to be awarded $25 - $35,000. I understand she got that money.

That is actually a flood-gate situation. The law deems her to have been a victim of an assault because she had under-age sex. She gave birth to a child. She is to be compensated for what most likely was a consensual act.

CHAIR: Did she claim she was raped?

Dr LUCIRE: She claimed she was raped, but this was nonsense. She never made that claim before she had recovered her memories in therapy. She could not remember what school she went to but she could remember the details of the man's clothes, blonde hair. She made implausible allegations such as they gave her an injection in the car that sedated her – such injections were not available in 1961. She described being tied up in a certain position and then being raped, but a person tied up in that position could not be raped. There are a lot of implausibilities there. It is quite a lengthy analysis.

The Hon. PETER BREEN: I have had similar experiences, the fact of a young woman making serial claims on the Victims' Compensation Tribunal.

Dr LUCIRE: I have seen that too.

The Hon. PETER BREEN: I am quite disturbed by that. I know of a recent case where a young man claimed to have been sexually interfered with. There was no evidence required.

Dr LUCIRE: Exactly.

The Hon. PETER BREEN: There was no conviction necessary and this man walked off with $135,000.

Dr LUCIRE: That is correct. I see it again and again. I see the serial claims too. I saw one woman making her fourth claim. She was being paid. There is nothing they can do. They have one young lawyer running that. I thing it has $8,500,000 per year to give out. She is worked off her feet. The standards are such that a person is deemed to have been offended against and then the language says "entitled to compensation". There is a certain amount of circular reasoning in that because, as I said in this submission, in most compensation jurisdictions you have to not only prove the accident occurred but you have to have medical evidence to the effect that you were harmed by it. This area is a complete exception to that.

The Hon. PETER BREEN: In other jurisdictions there has to be a conviction as well.

Dr LUCIRE: It would be a good idea, but in some cases there need not be a conviction because there is so much physical evidence that something happened. The conviction is not necessary.

The Hon. PETER BREEN: What is your position? Do you provide this information to the Tribunal or do you provide it to people giving evidence to the Tribunal?

Dr LUCIRE: I am a forensic psychiatrist. I am an independent expert. I occasionally do victims' reports and occasionally I do victims' defence reports.

The Hon. PETER BREEN: Are you able to indicate how many you might have done?

Dr LUCIRE: Twenty, thirty.

The Hon. PETER BREEN: Over what period?

Dr LUCIRE: I have been a forensic psychiatrist since 1978 and I have been a psychiatrist since 1967. I do not keep tabs on it.

The Hon. PETER BREEN: You would have been giving these reports since the Tribunal began?

Dr LUCIRE: Yes.

The Hon. PETER BREEN: You have seen the evolution of the Tribunal?

Dr LUCIRE: I have certainly seen, in my career as a psychiatrist, the evolution of this phenomenon in every jurisdiction. It comes up in workers' compensation, in personal injury, it comes up –

The Hon. PETER BREEN: They do not involve sexual allegations?

Dr LUCIRE: Yes they do. It comes up in disability insurance claims, it comes up in the Family Court, it comes up in victims' compensation, it comes up in the defence of a person who was charged with public nuisance after she had been making these claims, and it comes up in the criminal jurisdiction. I have seen it in about eight jurisdictions. Suddenly all these jurisdictions have sexualised issues.

The Hon. PETER BREEN: In workers' compensation you would be talking about sexual harassment allegations?

Dr LUCIRE: No, I am talking about allegations made by people in the course of workers' compensation that they were raped by work mates. Also teacher falsely charged and put on suspension.

The Hon. PETER BREEN: That is not uncommon?

Dr LUCIRE: I do not know how common it is. I have seen this kind of allegation – I actually had no reason to disbelieve the one where a woman was raped.

The Hon. PETER BREEN: People spend 50 per cent of their time at work. It is likely that a lot of people will be subject of sexual assaults at work?

CHAIR: Dr Lucire, in your material you refer to a course purporting to teach and accredit sexual abuse counsellors. You say it is being offered by the New South Wales Department of Health. You state that the course advocates, among other things, immediate acceptance of the allegation and encourages focusing on it?

Dr LUCIRE: That is right.

CHAIR: That is very disturbing if that is the case?

Dr LUCIRE: It is a course based on the notion that child sexual abuse is the cause of subsequent problems, which is the underpinning theory.

CHAIR: I am putting to you the disturbing matter is your reference to unquestioned acceptance of an allegation?

Dr LUCIRE: Yes.

CHAIR: Do you say that is common?

Dr LUCIRE: Absolutely, yes.

The Hon. PETER BREEN: What about the legal system, the checks and balances of cross-examination, they are not working?

Dr LUCIRE: Not working, no.

The Hon. PETER BREEN: In what way?

Dr LUCIRE: I have done some notes on this, because it is one of the questions I have been asked. I also saw the evidence of something else. In order to understand why it is not working, you should not be looking at the legal system but the characteristics of the complainants in this jurisdiction, in this area. We are not dealing with your average range of normal people who make complaints against others of having assaulted them or caused some other injuries. We are looking at Cluster B personality disordered individuals. This has been the experience of people looking at clinical populations who "recovered memory" or become preoccupied with past events that may be real or may not be real. They are clinically quite different from normal people who were abused.

The Courts do not recognise this. These people are very plausible. They genuinely believe what they say. The fact you are not dealing with the population of normals explains what was asked of the Australian False Memory Association as to why so many claims do not succeed.

The second issue is the Evidence Act – I am not a lawyer – I am concerned the government felt moved to exclude sexual abuse counselling therapy records from the defence. I have seen some disasters as a result of that. I am more concerned it was done against the background of what the world already knew about where memories were originating, where this phenomenon had started. The American False Memory Association found it started in counselling and therapy sessions.

I am concerned about that. I am concerned about other things that I see as flaws in the Act. The new Evidence Act has changed the meaning of corroboration and to allow the fact that somebody who is making allegations now and who said the same thing ten years ago, that is supposed to be corroboration. It is not, because if she is a liar, then she could have been a liar then. I have written it out.

CHAIR: I am aware you have come along here with responses to the written questions that we put to you. Would you like to tender those?

Dr LUCIRE: I have given you a copy, Mr Dyer and I have also e-mailed it. There are a number of aspects that I am concerned about.

CHAIR: I know you have given me a copy, but I am just inviting you to formally say that you tender that material.

Dr LUCIRE: Thank you. There is quite a lot there that concerns not only me.

CHAIR: On the question of access or otherwise to complainants' counselling and therapy records, what would you say to the consideration or the argument that such access might well undermine the privacy of the complainant and potentially inhibit the therapy given to the complainant?

Dr LUCIRE: If she has sacrificed her privacy to the extent that she has gone to the police and is prepared to stand up in Court and say "I accuse", then she has already sacrificed her privacy.

CHAIR: The Australian False Memory Association in your submission refers to what you term the extreme difficulty of defendants in defending themselves against charges of child sexual assault where there is no corroboration of the complainant's accusation. The law was amended in recent years to provide that corroboration is not essential in these matters. However, what I would like to put to you is: how do you explain the remarkably low conviction rate in regard to child sexual assault offences?

Mr FORREST: I consider there would be a number of factors which would contribute to this. One would be quite obviously that while in the early 1990s there was a general community belief that recovered memories were real, there has been a significant amount of publicity now in the normal press, in magazines and so on, which, gathered together, would probably have suggested to quite a number of jurors and indeed whole juries some scepticism about the potential for recovered memories to be true and therefore when recovered memories are part of charges it would not be unlikely that juries would determine, well, this is simply not credible.

The absence of corroboration is also contrary to what happens in other criminal proceedings and therefore again jurors would probably be wondering, well, why isn't there some evidence to back up a situation where we have one person saying this is true and another person saying, no, this is not true.

CHAIR: This is a rather particular offence, is it not? We can be dealing with quite a young child and the person who is committing the abuse could hardly in most cases be expected to be doing it very openly, so corroboration would be a matter of some difficulty to obtain, in some cases, I would have thought.

Mr FORREST: I accept that.

Dr LUCIRE: No, I do not accept that. In the cases that I have been involved with, and I think I have given you some detail, there have been allegations that a father had sexual intercourse with his daughter 300 times a year between her age 9 and 12. It is a household with five children, everybody is in and out. There was no emotional evidence of it. Nobody ever came across the activity. There was no physical evidence, that it had happened and memory of it had been recovered in therapy. This is where I introduced the term spectral evidence from the Salem magistrates, who were faced with more and more allegations from 12 year old Abigail Williams and her cousins. They were implicating more and more people in witchcraft and they said that the witches had copulated with animals or came and visited them in the night. The Salem magistrates, rather than be soft on witchcraft, decreed that it was not the witch herself who had done it, but the spectre of the witch, her ghost that had done it. This was 'spectral evidence' and this means no evidence at all of matters which should have had very high visibility at the time. While I agree that some instances, single instances, rare instances cannot be corroborated, the claims that I have seen go to Court to the effect of a man leaving his wife's bed to copulate with the daughter three times a week without the wife ever having known it over many years are areas in which the lack of corroboration ought to be a matter of evidence.

The Hon. PETER BREEN: In that sort of case it would be unlikely that the person would be convicted?

Dr LUCIRE: I have seen three convictions like that.

The Hon. PETER BREEN: No other evidence?

Dr LUCIRE: No evidence whatsoever, except recovered memory.

The Hon. PETER BREEN: I find that extraordinary.

Dr LUCIRE: I can give you the cases. They need judicial review.

CHAIR: The indications to the Committee seem to be that perhaps in three quarters of cases where a conviction is recorded an appeal ensues and the Court of Appeal then scrutinises the matter with great care and more often than not orders a new trial. The suggestion made to is that the conviction rate at first instance is very low, and even if there is a conviction that a new trial is commonly ordered.

Dr LUCIRE: I am not a lawyer and I haven't kept any look at the statistics, I only know the cases, and I am certainly not satisfied in the ones that I have been involved with. In one of them it did go to the Court of Appeal and in the other one it went to the High Court, but it went to the High Court on issues other than the issues I am raising in front of you here. The man remains in gaol. I do not know the statistics. I am totally dissatisfied with the Courts.

CHAIR: Could I ask any or all of you whether you have any opinions regarding the existing judicial warnings that have to be given in regard to delayed complaints? For example, a judge is now required to advise a jury that there may be good reason why a child has delayed in making a complaint. Also, at common law judges sometimes, and we are advised quite commonly, tell a jury that where corroboration does not exist that the evidence should still be scrutinised with great care. I know you are not lawyers, but do you have any views regarding the question of delayed complaint and the warnings that judicial officers are required to give and the advice to juries that they are required to give?

Dr LUCIRE: I have sat through cases until about 18 months ago. I have met with in some cases great hostility to the notion of myself even giving evidence by judges who for one reason or another are emotionally involved with the issue. I can't make generalisations here. I think it is a good thing that they should give these warnings; I have not been happy with what I have seen, but it may be before the warnings were instituted.

Mr FORREST: I believe that it is important that the judges provide advice to juries. However, no matter now experienced, indeed perhaps because of the length of experience, a judge may well be unaware of just how much his language could be characterised as legalese. That is, a particular register in English which is appropriate for the Court and in dealing with people of like training, but which could become extremely opaque to the ordinary person in the jury.

We have seen recently with insurance companies, and I instance the NRMA as a particular example, have issued policies now in what is known as plain English. These are still absolutely legal documents, but they are designed so that the normal person may be able to read them with understanding, without having to re-read them several times and still perhaps remain somewhat puzzled.

I would suggest to this Committee that it would be a very good idea, should the assistance of people expert in the construction of plain English be called upon, to prepare printed documents which judges may be able to tender to the jury which would help the jury to understand better some of the problems that arise out of understandings and misunderstandings of the function of memory, of the scientific evidence available regarding recovered memories, about whether or not corroboration is required in particular instances and so on. I believe, though I have no personal experience, that it may well be of assistance to the Courts and to the jury system.

CHAIR: I agree with what you have had to say about plain English, Mr Forrest. Wood, CJ at CL, in a recent case decided earlier this year in the Court of Appeal, did draw attention to the complexity of the warnings and the number of warnings that now have to be given to juries in these matters, and virtually called for a reconsideration of those warnings with a view to rationalising them and simplifying them.

Mr FORREST: I am very encouraged to hear that.

The Hon. PETER BREEN: It is a problem generally. The Evidence Act is such a complex document that even lawyers who are experts on evidence will tell you that they do not understand what many of the sections mean. We are all facing the same problems.

Mr FORREST: But it would be a much bigger problem for the non-legally trained person.

The Hon. PETER BREEN: There is no question about that. People who are involved with the legal system who are not lawyers go away in despair. There is no question about that.

CHAIR: On the point that Mr Breen raises, Dr Lucire, you do say in your material that in your view the Evidence Act is seriously flawed.

Dr LUCIRE: I do.

CHAIR: Could you tell us what you mean by that?

Dr LUCIRE: The provision that does not allow sexual abuse counselling records is wrong. What constitutes corroboration is not corroboration. What constitutes evidence of prior fact is not evidence of prior fact, as it is quite likely that somebody who is lying has lied before. I think there was one other thing that I was worried about.

Also, in general terms, I have great difficulty getting into the Court, in to give evidence, in an area of knowledge that I seriously have. I can get in occasionally on a case called Farrell, when the person who is disordered has a condition that affects their reliability, but generally I have not seen the accuser, so it is very, very difficult. In many jurisdictions I would be able to get in and give what I think is the right evidence. It is always a point of appeal if I don't get in.

| **The Hon. PETER BREEN:** You would only ever, in any jurisdiction, get in for one side or the other, isn't that the position?

Dr LUCIRE: No, but the judge does not hear what I have to say.

The Hon. PETER BREEN: So your evidence would not be accepted from either the complainant or the defendant?

Dr LUCIRE: No, the defendant is calling me, but the judge does not want to hear it. He says, "I am not going to hear from Dr Lucire. I refuse to."

The Hon. PETER BREEN: Would the judge have had the benefit of a written report from you, for example?

Dr LUCIRE: Yes.

The Hon. PETER BREEN: Having read the written report, then did not want to hear from you?

Dr LUCIRE: Yes

The Hon. PETER BREEN: That could happen with respect to a number of experts in any jurisdiction.

Dr LUCIRE: Yes. That is a major concern because of the kind of analysis that I am able to put on this.

(The witnesses withdrew)

(Short adjournment)

DALE ROBERT TOLLIDAY, Programs Director, New South Wales Pre-Trial Diversion of Offenders Program and New Street Adolescent Service, 28 Railway Parade, Westmead, sworn and examined:

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

Mr TOLLIDAY: Yes I did.

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

Mr TOLLIDAY: Yes I am.

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

Mr TOLLIDAY: I have qualifications in social work and law. I have worked as a social worker during my professional life in a variety of health settings, in the areas of adult, child and adolescent mental health, in-patient units, community-based units. For the past 13 years I have been Director of the Pre-Trial Diversion Program and Director of the New Street Adolescent Service since it began, four years ago. I am President of the Australian and New Zealand Association for Treatment of Sexual Abusers; and Chairperson of a Voluntary Accreditation Scheme being run by the New South Wales Commission for Children and Young People for people who work with people who sexually abuse children.

CHAIR: If you consider at any stage today during your evidence that it is in the public interest certain evidence or documents you 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 if it chooses, any decision we might make in that regard.

I thank you for coming to assist the Committee in connection with this Inquiry and invite you to speak to us about both of these programs, Cedar Cottage and the New Street Adolescent Service?

Mr TOLLIDAY: I have prepared some notes of which I hope you have a copy. I will start with the Pre-Trial Diversion Program, which is the Program which has been in existence longer. This is a program funded by NSW Department of Health and is auspiced through Western Sydney Area Health Service.

CHAIR: This is the Cedar Cottage Program?

Mr TOLLIDAY: This is the Cedar Cottage Program. It is located at Westmead. It is a specialised treatment and management service for parental child sexual offenders. It used to be referred to in documents as parental incest offenders but that is not quite correct, it is parental child sexual offenders. It is legislatively-based. The legislation was enacted in 1985, proclaimed in 1989 and amended in 1993. There are currently proposed amendments that the Attorney General is considering.

The notion of the scheme is to provide an incentive for offenders of a designated category or class to plead guilty, to be diverted to a community-based treatment program instead of other sentencing options. Diversion for assessment occurs in the pre-trial phase but the diversion for treatment itself occurs after conviction and after the person has entered an undertaking in the District Court. In that way the program is supervised by the District Court.

The perceived benefits of this scheme are: First that there is early acknowledgement and validation of a complaint made by a child. That child is not required to give evidence in Court and be subject to cross-examination. As a result of the validation of the complaint appropriate supports can be put in place for the child. The conduct of the offender can be assessed and reviewed and, where appropriate, restricted in relation to all children, not just the complainant. The offending parent is

given an opportunity to substantially address his offending behaviour, including its impact on all family members including the child victim.

The service is quite small. There is myself, nominally half-time because I am half-time with the other program as well. There is a Co-ordinator of Clinical Services, who is full time; we have provision for 4.25 full-time equivalent treatment co-ordinators, we call them, but they are psychologists or social workers; and some administrative support.

The Program is overseen by an Interdepartmental Advisory Board of Management which has representatives from NSW Department of Health, NSW Police, Department of the Attorney General, Department of Community Services and we have a community representative from a funded child sexual assault service on that body as well.

The Program has a goal of child protection. One of the matters that was in the 1993 amendments was to place a preamble in the Act stating the Act existed for the purposes of promoting interests of children. It is a civil type of wording. It is interesting in a piece of criminal legislation to say where the interests of a child and those of an accused person coming towards this scheme clash, the interests of the child prevail.

Another goal of the Program is to prevent future harm; to promote community safety and provide incentive for an offender to accept responsibility. I would like to stress it is not a goal of the Program for, or to promote family reunification. Diversion schemes for intrafamilial offenders were very popular in 1970's and 1980's in North America. A number of those programs had as the stated goal, reunification of the family. That has never been our stated goal. It is an outcome for some families, which I will move onto later. To have that as a goal is something which would have us acting contrary to the interests of children in many families.

Each individual offender who requests referral to Cedar Cottage represents four to six individuals to whom services will be offered. Those other persons include the partner or former partner of the child victim, siblings of the child victim and other relevant family members and persons closely associated with the child victim and/or offender.

In participating in the Program the offender has a specific and well defined set of conditions for his participation in the Program. Contained in documents that I will tender is a document called Orientation Information for Offenders Commencing Treatment at Cedar Cottage. Part of that document outlines those conditions for people who are eligible for the Program.

Eligibility is defined by the legislation and the DPP determine whether a person is eligible or not. The person needs to be the child's parent, step-parent, or parent's de facto spouse and the child sexual offence must not have been accompanied by acts of violence. That is a little difficult to define in some instances but it has been interpreted by the DPP as excluding people who have used a weapon or considerable force in the commission of an offence. It is not unusual for threats of violence or violence to have been used on day one and an assault to have been a couple of days later and part of the assault is the knowledge of violence of the offender.

The offender is over the age of 18, the child and victims are all under the age of 18 at the time of referral. That is defined as being the time the matter is first in Court.

The offender does not have a previous conviction for a sexual assault offence. An exceptional qualification on those criteria is that if a person has a conviction entered when the person was a juvenile that does not preclude a person from coming into the Program. If they have a conviction as an adult they do not get access to the service. The offender has not been offered the Program previously; and finally, whether a vacancy exists in the Program.

If those criteria are met, the matter proceeds to clinical assessment. We have eight weeks to do that assessment. That assessment essentially looks at whether the person is committed to participate, to address his sexually abusive behaviour and to do things to assist the child victim in the early stages. Essentially we are looking to see that he can validate the complaint and show us he is beginning addressing matters relevant to that; such as acknowledging how he has gone about offending and acknowledging that to his partner. Typically men who have come to the service have had a range of

explanations and range of minimisations they have presented. We want to see in that assessment period they are prepared to identify and start addressing those.

Participation in the Program is for a period of two years and can be extended by a further year. One of the proposed amendments currently being held is that the period of three years may in some instances be extended to four years. That is based on our experience with a number of people in the Program.

Our client numbers, bearing in mind the numbers I am about to refer to are multiplied by a factor of four to six in terms of the absolute number of people we are working with are as follows. We have had 193 referrals since we began. We have assessed 83 people as suitable for treatment. Of those 83, 40 have completed and 31 have breached their undertaking and have been returned to Court to be sentenced. It is significant to see even in a scheme such as this there is a significant rate of breach of those undertakings. We currently have 12 participating in the Program which is a low number; we have no assessments in progress currently although in the last week we have completed two.

We have two people who have completed the Program who have re-offended. The number of families who have reunified after completion out of the 40 is 12 – I think that is an error, I am sure it is 14. I am sure the two who re-offended were omitted from that number. There has been a shift in the proportion of families who have reunified. There is a lower proportion now than in the earlier days of the Program. In six of those 14 cases the child who was abused was not living in the family home at the time of reunification.

The Hon. PETER BREEN: What is the difference between re-offending and breach of the undertaking?

Mr TOLLIDAY: A breach of an undertaking is a wide range definition. It may be having unauthorised contact with the child. The most significant we had was a person who secretly moved back into the family home. There are other levels of contact. A further offence in the period of participation would be a breach; we have had one instance reported of that, an offence against a subsequent partner.

CHAIR: The undertakings you refer to have been given to the District Court?

Mr TOLLIDAY: Yes. The form of the undertaking comes from section 23 of our Act. It is simply an undertaking – I will undertake to follow reasonable directions from the Program Director. We have a formal treatment agreement that spells out what those things are which, the person signs and we provide that to the District Court. The document I talked about earlier goes into some detail about that.

There is also part of that agreement, that a person will make satisfactory progress. In effect, we are trying to have a way of assessing whether a person would come into the scheme, then effectively sit on their hands, turn up and not be doing any of the work.

We assess them every four months as to whether they are making progress or not which is in respect to goals and criteria the men are aware of. If over time there are a number of assessments of making unsatisfactory progress, we refer those back to the Court. A number of those have been of that nature as well.

The Hon. PETER BREEN: The two cases you mentioned of re-offending would have been new offences after the current one that you are dealing with has been disposed of?

Mr TOLLIDAY: Yes. They completed two years of participation in the programme and after completion of the programme they offended again.

The Hon. PETER BREEN: In a separate instance altogether?

Mr TOLLIDAY: Yes, that's correct

The Hon. PETER BREEN: That is a pretty good success rate.

Mr TOLLIDAY: It is. On the other hand, we would like it to be zero. Those two people who reoffended have been people who completed at a very early stage in the programme and we have adjusted how we address things accordingly, as I guess you would expect. Both those people offended against children in the same family, in one instance the same victim, which has had very grave outcomes for that young person, of course, and in another instance against a different child in the family.

CHAIR: You say in the document you have tendered that you are able to provide services to 20 to 22 offenders and their families at any one time?

Mr TOLLIDAY: That is correct.

CHAIR: Historically has that been more or less adequate to meet the demand or is that not enough?

Mr TOLLIDAY: Since 1989 we have only twice been at capacity and unable to accept a person for an assessment, so it has been adequate to the demand. The rate of referral is a very interesting matter, because it is very small compared to the number of people who may be eligible for the scheme; and we have struggled with the issue of trying to work out what it is that people in this situation who have other outcomes, including perhaps significant periods of time in prison in front of them, that they don't seek an assessment with us.

We have found that at earlier times there was quite a variation about whether people were informed about the programme and we are now satisfied that the police have adopted a procedure that is consistently applied. It is part of the matters that must be signed off at the time of charging, that people are informed of this. What we are aware of at the moment is that many people are being advised by their legal advocates to not apply for assessments because it involves making admissions of guilt. Again, in the amendments that are with the Attorney General at the moment—and I must say those amendments have been put together in a process of wide consultation with bodies including the Bar Association and the Law Society of New South Wales and so on—there is a proposal that the assessments of the programme be privileged on the basis that a prosecution case should be completed before the people walk through our door and our association should not be gathering information to bolster a prosecution. That privilege would be conditional or limited if it were to be enacted, in that if a person tells us about other sexual offences against the same or different people, that we would report those matters and they would be separately investigated.

The Hon. JOHN HATZISTERGOS: Doesn't a person have to plead guilty to come to your premises?

Mr TOLLIDAY: Yes, after the assessment they are not required to enter a plea or indeed to have made a statement to the police. They need to have been charged and they can come to us.

The Hon. JOHN HATZISTERGOS: For the assessment?

Mr TOLLIDAY: Yes.

The Hon. JOHN HATZISTERGOS: To come to the programme they need to have actually pleaded guilty?

Mr TOLLIDAY: Yes, after we make our assessment of suitability, it is a simple notification to the court, whether a person is suitable or unsuitable. If they are unsuitable, we provide reasons for the decision so that clearly there are grounds if they wish to appeal that decision.

CHAIR: You used the expression "appeal that decision".

Mr TOLLIDAY: Yes.

CHAIR: Where does the appeal lie? That is the decision not to admit to the programme, is it?

Mr TOLLIDAY: Yes.

CHAIR: To whom do they appeal?

Mr TOLLIDAY: It is a long time since we had an appeal, it was ten years ago and it was to the Administrative Law Division of the Supreme Court.

The Hon. JOHN HATZISTERGOS: How do you assess suitability?

CHAIR: As I understand it, if you could respond to this, there are two gateways, so to speak, one is that eligibility is assessed by the Director of Public Prosecutions?

Mr TOLLIDAY: That's correct.

CHAIR: On various set criteria and then there is a second gateway or hurdle and that is a clinical assessment?

Mr TOLLIDAY: That's correct.

CHAIR: Who carries out the assessment? Do you?

Mr TOLLIDAY: Yes, or staff at our service.

The Hon. JOHN HATZISTERGOS: What features are you looking for in terms of a suitable person for the programme?

Mr TOLLIDAY: Yes, we are looking for a person who in the course of the assessment will validate the account provided by the child in anticipation of their entering into a true guilty plea, that that person will make a commitment to addressing all of the harm they have caused to others and we start them on a number of tasks to start showing that it is more than words, it is action; so typically that will be addressing their account of their conduct to their partner or the child's mother—typically they have given a minimised or different version at an early stage; that they also identify that they have significant problems in themselves that they need to address and are needing to seek treatment for—and they can outline a range of those matters and again show us in the assessment period evidence of their desire to pursue those matters; and we start them on some things that have the appearance of treatment, but are actually for assessment.

The Hon. JOHN HATZISTERGOS: We have heard in the course of this Inquiry that in a number of instances the charges do not reflect the course of behaviour, that there may have been an on-going course of behaviour and the charges only reflect those in respect of which evidence can be gathered.

Mr TOLLIDAY: Yes.

The Hon. JOHN HATZISTERGOS: Do you simply address the charges?

Mr TOLLIDAY: No. We are addressing the complaint.

The Hon. JOHN HATZISTERGOS: Or do you address the course of behaviour?

Mr TOLLIDAY: The course of behaviour.

The Hon. JOHN HATZISTERGOS: Is the seriousness of that behaviour a factor which you take into account in terms of assessing suitability of the programme? For example, if a person has been engaging in these sorts of activities over a prolonged period of time, is that a factor which influences whether you regard that person as suitable or not suitable?

Mr TOLLIDAY: No, that is not a factor. Whether that person is prepared to accept that they have engaged in that behaviour over a long time is a matter we would look at.

The Hon. JOHN HATZISTERGOS: What about if there have been a number of different victims?

Mr TOLLIDAY: Under this scheme the person will come to us only if there are victims within the family.

The Hon. JOHN HATZISTERGOS: I know that.

Mr TOLLIDAY: So that if there were a number of children within the family that have been abused, we would look at what that may indicate in terms of prospects for treatment. By definition, because of the way the person is streamed towards us for diversion, they have not had access to treatment earlier and that a person has a number of victims identified at that stage does not become a criterion that would exclude them. We have had the experience that a number of men in the course of their participation, after coming to the programme, identify a range of victims over the course of the programme. The difference is we know about them.

CHAIR: Would it be true to say that the main factor in determining whether a person is admitted to the programme or not so far as your clinical assessment is concerned is not so much the nature of the offence or the period during which it might have occurred, but your assessment of how well you think they would respond to the programme?

Mr TOLLIDAY: Yes, that would be a fair summary, in addition to which I would say that we are wanting to see that there is going to be some benefit to the child or children of that person participating.

The Hon. JOHN HATZISTERGOS: It is pretty high risk, some would regard it as high risk?

Mr TOLLIDAY: Some men.

The Hon. JOHN HATZISTERGOS: Some people. Outside this, people would regard this as pretty high risk. You are going through a programme which will place the person back in the setting, that is part of it, without any criminal sanction apart from a conviction.

CHAIR: I think you said here you do not aim to reunite them with the family?

Mr TOLLIDAY: That's correct. Some families work with an agenda that they wish to reunite. Our attitude is that we will work with them on that, not that we will work with them towards that, because it is likely, for example, that the partner has been subjected to abuse in the same way.

The Hon. JOHN HATZISTERGOS: Perhaps I should have said you are putting them back in a community setting?

Mr TOLLIDAY: All child sexual offenders, except the most serious offenders, end up back in the community at any rate. We are trying to make an assessment of whether the person is going to be safe enough in the community whilst undergoing this assessment. Other matters we look at is if bail has been imposed or an apprehended violence order has been imposed, what degree of certainty is there they will be living in the community, but we do not have the resources to supervise that on a day to day basis.

CHAIR: I think it is a common factor in diversion programmes, not only this one, that the offender is required to plead guilty before they can enter into it. You referred earlier to some people being unwilling to co-operate. Would that be the main factor?

Mr TOLLIDAY: That is our perception of people not asking for referral to the programme. In relation to the people who we have assessed and found them to be unsuitable, there are a range of reasons. Usually those things have included only a partial admission of the facts or that they admit their behaviour but blame the child, and that is an untenable position in our view for people to be beginning that treatment. It is very clear that it is about them taking responsibility for their own actions.

CHAIR: I notice you say in the document you have supplied us with conceming Cedar Cottage that:

> The program provides significant training to other organizations including; JIRTs, Department of Community Services, NSW Police, NSW Health, University Courses and other service providers.

Could I ask you how you relate in particular to JIRTs, Department of Community Services and the police?

Mr TOLLIDAY: Yes, I can do that easily. As an example, on Tuesday of this week I spent the day in Dubbo providing core training to the joint investigation team in rural New South Wales; wisely in my view those trainings are opened up to a range of bodies so that they can get trainer input from a number of areas. In my area I provide training. It is important to assess what prospects of treatment outcomes there are. I provide a module in the JIRT training course. From time to time I have provided input to detective training.

In the past I have provided a day training to general entry level training course for Department of Community Services officers. That has ceased over the last two years. I am not clear how that module is being delivered now. It is not something that our service is involved in further..

CHAIR: You are an officer of the Department of Health?

Mr TOLLIDAY: Yes, I am.

CHAIR: Is that the position?

Mr TOLLIDAY: Yes.

CHAIR: Is there some difference to how you relate to JIRTs in urban areas and how you relate to the structure that exists in country and regional areas?

Mr TOLLIDAY: In relation to training?

CHAIR: Yes.

Mr TOLLIDAY: In urban areas the way the training is organised for JIRTs is that it is specifically just for JIRTs and it is delivered now, well, recently they have moved to Westmead to a building directly across the road from my building. It is very convenient. It used to be in Goulburn or other locations in Sydney. Those trainings are for officers in those teams. I think it is more valuable for people in Sydney by bringing in other people.

The Hon. PETER BREEN: Do you have any statistics on offenders? We have heard evidence previously that people who offend against pre-pubescent children are less likely to benefit from treatment than those who offend against children who are older. Do you have any observations or do you keep any statistics about that?

Mr TOLLIDAY: We have not kept statistics. We have a database that we could compare the age of victims with that.

The Hon. PETER BREEN: Even if you did that, it would only be linked to those who have been through your programme?

Mr TOLLIDAY: That's correct. I am not aware of any significant research that divides the likelihood or prospects of treatment on that basis between pre-pubescent and post-pubescent children. The things that start to count in terms of diminishing prospects of successful outcome of treatment are things known as crossing over, where a person has a target of their sexual offending, where they will cross over gender or ages and the prospects will become more difficult if that person also has other anti-social parts of their behaviour as well.

The Hon. PETER BREEN: The manual for describing psychiatric disabilities I think describes a paedophile as someone who interferes with pre-pubescent children. That term is often

used loosely to describe offenders against older children and it seems to me anyway that there is according to the psychiatric assessments some less likelihood of a true paedophile being rehabilitated than someone who offends against older children. Are you aware of anything in the literature to confirm that?

Mr TOLLIDAY: I am not. At our service we do not use those categories diagnostically. We have found with the men in our service who have all been referred to us in the time, when we investigate the focus of their sexual interest it is usually quite diverse and it is not limited to pre-pubertal or post-pubertal. It is quite diverse.

The Hon. PETER BREEN: One explanation could be they are a group who are willing to admit their guilt, whereas the other group which fall under the psychiatric disorder category do not admit they have a problem, is that a possibility?

Mr TOLLIDAY: It is a possibility. There are some people who are quite politically motivated, to use a loose term, about sexual offending and take that position. If a person is fixed in that position it is going to be difficult, perhaps impossible to get them to shift their behaviour.

CHAIR: How do you know how the Program we are discussing is travelling? Has there been a formal assessment as to how it is performing in practice?

Mr TOLLIDAY: There have been two evaluations. One was conducted by Professor Tony Vinson in 1992 and that was a positive evaluation but really that was an evaluation of the establishment phase of the Program.

Dr Lesley Laing did her PhD study on the impact of the Program on the lives of children. Her PhD was completed in 1996. She found a substantial improvement in outcomes for children in the families that came through our service, irrespective of whether there was reunification or not on a range of criteria; and an improvement for the partners and former partners of the men. She said it was too early and a bit equivocal to predict outcomes for the men.

We have a project in train to look at long term outcomes, now we have been in operation for more than ten years, of all the men referred to the Program, to compare outcomes to review what is known of their conduct. Unfortunately we do not have a control group to match against. It will simply be an evaluation of the people who have asked to be diverted.

CHAIR: In relation to the studies or evaluations by Professor Vinson and Dr Laing, was the department involved in engaging them or are they evaluations that just happened to occur?

Mr TOLLIDAY: The department engaged Professor Vinson; and Dr Laing approached the department and was given permission to conduct her PhD study.

CHAIR: What is the structure of the current evaluation and how did that originate?

Mr TOLLIDAY: It is something I initiated. It is simply establishing a review with the police and, if necessary, with the DPP to track persons by name and date of birth, to look for whether they have faced further charges or convictions in the time since they were referred to us. We know a fair amount about all of those people because of the initial information on referral, so we can do some an analysis on that data.

CHAIR: I understood you to say there is no control group?

Mr TOLLIDAY: We do not have a matched group of people who were in all other respects eligible or perhaps even suitable, but certainly eligible, that we can tap into, who did not ask for diversion that we can compare.

CHAIR: How valid would the findings be in the absence of a control group?

Mr TOLLIDAY: They will provide us with some validity in relation to the people who asked to be diverted. One of the things we want to check is the rate or proportion of people coming to us

who had already admitted full or partial guilt. If those persons were not assessed as suitable, how did they plead when then went to court later, to see what their plea rate was. We can compare that with the total other population. We can make some comparisons with that. We want to test if there is an effect contained in the assessment process, whether or not a person comes into the Program or not.

CHAIR: Leaving aside formal studies, intuitively how do you feel the Program is performing?

Mr TOLLIDAY: My sense is the Program is performing very well. One of the most difficult things to do within the Program is to make assessments of whether a person is progressing through the Program. One of the things about the integrity of the Program is that we will exercise our responsibility to refer matters back to the District Court if there are difficulties. That gives us some hope of being clearer that the people finishing are getting the full benefit of the Program.

The Program at the end of the time when a person completes, has a person who has developed a relapse prevention strategy for himself, has engaged a small group of people in his life, particularly family members or close friends who are aware of his sexual offending and matters of on-going risk that may be present that he has to address and in that sense he is no longer able to be totally private or secret about his behaviour. There are other people very close to him. That seems to be matched by some overseas studies that there needs to be a service delivered that addresses the internal world of the man, or therapeutic services for want of a better word, or description, as well as some external management and monitoring.

CHAIR: Is the factor you have just mentioned something that would inhibit someone from entering the Program in the first instance? Is there a disclosure that they do have to be open with some closely involved people?

Mr TOLLIDAY: Yes. We have had men who have come into the assessment and have told us in the course of the assessment that they are not prepared to disclose to their partner or their parents or talk to people close to them. Of course, those people are also people such as the mother of the child or children, grandparents, aunts, uncles of the children. We believe it is an untenable position for those men to hold.

CHAIR: Could you go on to New Street, please Mr Tolliday?

Mr TOLLIDAY: New Street again is an initiative of the NSW Department of Health. It was established in 1998. There was actually a period of preparation for the Program during 1997 as well. It is located at North Parramatta in the grounds of Cumberland Hospital. It became very clear in the early days of the adult program that many of the men began their offending as adolescents. It also became evident in literature that a significant prevention strategy is to provide treatment as early in a person's life as possible that we can detect that they are behaving in a sexually abusive way.

The target population for this Service, whilst it is called an Adolescent Service, is for children and adolescents because it goes from ages 10-17. Those ages were selected to match the ages of the target population of the Department of Juvenile Justice. Under 10's who exhibit sexually abusive behaviour are provided with services through NSW Department of Health, through child and family teams and through sexual assault services around the State.

The Hon. JOHN HATZISTERGOS: People under ten? What sort of behaviour?

Mr TOLLIDAY: Yes. The full range of sexually abusive behaviours. Behaviour we have seen from children, and I can give you some examples, is as extreme. In some cases children seem to be less inhibited about the extremes to which they would go in their behaviour.

CHAIR: Would I be correct to assume those children had been abused themselves?

Mr TOLLIDAY: That is a good question. The younger a child is exhibiting more extreme behaviour the more likely they have been abused themselves. Not the majority of children in our Program have been exposed to serious sexual abuse. There is a significant rate of that. There is a significant rate of a background of emotional abuse and neglect. Gail Ryan from the Kempe

Children's Centre in the United States, who is probably the most pre-eminent person in the world in the area of adolescents who sexually abuse, was here recently for a conference. She indicated to us that the most significant predictor of this behaviour, which of course must be addressed in treatment, is exposure to domestic violence; which is very interesting for us because we had been noticing a high rate of exposure to witnessing violence in the family home and/or being subjected to violence.

CHAIR: It is a strong predictor of young children sexually abusing other children?

Mr TOLLIDAY: Yes. There seems to be a stronger association of exposure to domestic violence than of having been subjected to sexual abuse themselves.

The Hon. PETER BREEN: You are talking about children under age ten, abusing other children?

Mr TOLLIDAY: Yes. In the answer I am giving I am extending that to children over the age of ten as well. I started answering on the basis the younger the child the more likely they have been exposed to serious abuse.

The Hon. PETER BREEN: You are not talking about a six year old exposing themselves in the supermarket?

Mr TOLLIDAY: One of the things Gail Ryan has done, which has been quite excellent, is that she has written a book and published articles on normal childhood sexual development. She has devised a range at different life stages of what is normal, what is problematic; what is more severe than that. A child of that age exposing themselves in the supermarket is not normal but it is not necessarily an indicator of serious sexual offending. It can be something in between and require a different level of intervention, which is the usefulness of her study to let us see that we have behaviour in children which extends across a very broad spectrum that requires different levels of intervention. The key thing with children is that they have not fully formed their identity, including their sexual identity and we have an opportunity to address those matters where they do not follow a life script where they are labelled or label themselves as offenders, because they are not. They are quite different to adults who have taken on these behaviours as a form of more continuing part of the way they lead their lives.

CHAIR: You say there are significant differences between the population at the New Street Service and that being serviced by the Department of Juvenile Justice?

Mr TOLLIDAY: Yes.

CHAIR: One of the differences is that juvenile justice offenders have a conviction, yours do not?

Mr TOLLIDAY: Yes.

CHAIR: What other differences would there be, if any?

Mr TOLLIDAY: Our average age of young person who we see is 13. I am not sure what the juvenile justice average age is. I did some work for two of their sex offender programs a few years ago and the average age was around 17 to 18. We are working with a younger age group. The other difference, and I am not sure of the proportion in juvenile justice but I know it is much lower than ourselves, somewhere around 40 or 45 per cent of young people we see have sexually abused siblings.

CHAIR: How do people present to this Service?

Mr TOLLIDAY: The notion of this Service is it targets the same age range and same behaviours of young people as juvenile justice, but we are there for young people who do not get access to those services in that they are not charged or convicted. That is, in reality, the larger part of the pool particularly for the younger end of the spectrum, where there are evidentiary issues that can prevent that from happening.

CHAIR: How does referral occur?

Mr TOLLIDAY: The referral occurs by being made by a person from any source it can be made by a parent, someone from a Community Service Centre, or from a JIRT. We will take that information. We then have our particular protocol and the key issue is that we will not proceed to work with the young person until we are satisfied, and it has been confirmed for us there has been appropriate investigation by a joint investigation team and a decision made of what they are going to do; that is, confirmation about whether it is going to head down the pathway towards juvenile justice, or whether it is going to head down to ourselves.

In the early days there was some confusion about that in that we were probably suggesting ourselves, getting involved in the issue: Would we be a better service? Would this young person need something from us better than the other? That confuses the whole system. It is better that they conduct their assessment, investigate the assessment, make their decision, then there is an outcome or pathway one way or the other.

CHAIR: So the New Street Adolescent Service, the lead agency is the Department of Health, is that the position?

Mr TOLLIDAY: That's correct.

CHAIR: But there is an inter-agency agreement involving departments such as Education, Department of Community Services, the Police?

Mr TOLLIDAY: Yes. It is a very strong part of the programme. One of the documents I have here to leave with you is a memorandum of understanding that has been signed off between five key agencies; health, police, juvenile justice, education and training, community services; of the roles and responsibilities of each agency in relation to young people coming into our service. Part of what the Department of Community Services has done to support the service has been to appoint a specialist officer to support the needs of young people who are referred to our service. That role has been expanded over the last six months to be a role where that person consults across other offices of the department to help with children that we are not seeing who have the same behaviour.

CHAIR: Could you formally tender that agreement that you are referring to?

Mr TOLLIDAY: Yes, I can.

CHAIR: Would you like to say something about the number of referrals you have had and the outcomes you have experienced?

Mr TOLLIDAY: Yes. The figures are very interesting. We have had 261 referrals in the time that we have been operating, so that is in a period of almost four years. The number of young people of the 261 who have entered into an assessment with our service is 47, which is a low part of that. That reflects our capacity to offer a service. 104 young people did not get a service through us because they were referred and we were at capacity and did not have an ability physically or any space to see them. We did not know what the demand would before the service came, we just had anecdotal bits of evidence. It was growing. There was no way to measure it. The moment we hit the ground, we hit the ground running and went very hard.

CHAIR: The 104 you could not assess, would you have any idea what happened to them?

Mr TOLLIDAY: We have got some information. We have a database that we have established to try and track as best we can, but again managing that tracking takes away from what we can do in treatment. Each of those referrals was provided with some alternate information. Many of those occurred before there was this position in the Department of Community Services. This person I was just describing has a significant role in trying to find a positive outcome for those young people. The bottom line is that none of those young people, or very few, have had access to a programme.

CHAIR: That is a matter of some concern, I would have thought?

Mr TOLLIDAY: It is, and again the Department at the moment is negotiating and is about to formalise a commitment for some funds for us to conduct a substantial evaluation in which we will be using those referrals as a control group, if you will, and we can actually get some true comparisons. There are no ethical issues there in terms of creating control, because the control group we know about simply have not been able to provide a service.

The Hon. PETER BREEN: So the 104 is included in the 261?

Mr TOLLIDAY: Yes.

CHAIR: What fundamentally happens in the programme?

Mr TOLLIDAY: Again, it is a little similar to the adult programme, in that every young person who comes with a group of people requiring services, typically being their parents or carers. The young person has a different threshold to come into our service. We will accept for referral any person where there is a confirmed sexually abusive behaviour.

The young person can be in total denial at the time and in our assessment. For the young person to move from assessment into our intensive programme the young person needs to make some acknowledgement, but again we don't require them to make full acknowledgement, bearing in mind that they are children or young people, and that can happen at different rates. Over time the young persons are encouraged to address their conduct, to look at it. Frequently those young people themselves have been subjected to various injustice or abuse and we need to be mindful of providing a space to look at that. Indeed, for most young people that needs to come before looking at their sexually abusive behaviour, because they have a sense of it being unfair having to look at what they have done if they have been subjected to things that are unfair.

At the very beginning there is a combined process of protection planning, to look at the needs of that young person, of the person they have abused and of potential victims. With such a significant proportion of young people who have sexually abused siblings, we have significant and very traumatic issues for families to address, because as a principle of our service we will insist that the young person be living in a safe placement. We do not proceed on a basis of removal, we find that a very negative concept. We look at promoting safe placement. We try and help families find places within their family network, where that is required, that the young person can be with somebody familiar in a familiar environment and that they can live for a period of time that we don't determine at that stage because it is unclear always how long it is going to take that person.

In general, the younger the person is, the briefer the period we want that to be. We want the disruption to be as brief as possible. On the other hand, typically where the young person has moved out of their family home, the person who they abused ends up telling us more about what was done to them and there is significant relief for them and it is an important thing that needs to happen for that young person as well.

The Hon. PETER BREEN: Significant relief for the victim?

Mr TOLLIDAY: For the victim, yes, and so there are benefits for both. When parents have got both in the one house, it is an extraordinarily difficult situation and we have seen a wide range of responses by families.

CHAIR: The placement of the child that you are referring to, albeit temporary, is with someone in the extended family in the usual case, not for foster carers?

Mr TOLLIDAY: Our preference is within families. It is probably evenly balanced between the people who have actually got those sorts of resources or abilities and placement of young people with foster carers, and there are not enough foster carers for young people. We have young people in supported accommodation, we have had young people living in refuges. We have had one young person whose parents were separated and whose father was in a treatment facility himself for some other problems and the young person lived in the facility with the father, which is not the best outcome, but there was no real alternative for that person.

CHAIR: In some cases you might refer to foster care?

Mr TOLLIDAY: Definitely.

CHAIR: Sometimes even to a refuge, a youth refuge?

Mr TOLLIDAY: Yes, and those sorts of arrangements recognise that we are highly dependent on the Department of Community Services as part of the team providing those resources.

CHAIR: Referral to a youth refuge, though, I take it would be a least preferred option?

Mr TOLLIDAY: Yes, both in terms of being a place where there is less supervision, the young person might be exposed to things that would exacerbate a range of unhelpful behaviours and the young person may exhibit some of their sexually abusive behaviours and victimise or be a threat to victimise other people in that refuge. We need to consider all those matters.

I noticed in evidence from an earlier person who was formerly from the Department of Juvenile Justice indicating that our service is aimed at the lower end of the spectrum, whereas the Department of Juvenile Justice takes people at a more severe end. That is probably correct in theory. In reality we have young people with us from right across the spectrum and the reason they are from right across the spectrum is there are issues in relation to the criminal process of court and evidence and so on that make a prosecution unavailable and therefore there is no access to that service whereas those young people definitely need a service, so our service from time to time has been over-represented with some young people that take a substantial resource from us who are quite high risk of offending again. In fact, we have had four young people who have been with us who have re-offended whilst they have been in the service.

CHAIR: So you are saying, are you, that the substantial difference between your clients and the Juvenile Justice clients is that on the one hand there is a conviction and in your case there is not?

Mr TOLLIDAY: Yes, and then those other features seem to be there, of us having younger people and that there is a high rate of people coming to us for sexually abusing their siblings and those matters are different, so there are some differences in how those pathways are negotiated.

The Hon. PETER BREEN: Are there any cases of people being referred to you where you say, "This is not as serious as it appears, it's part of growing up, kids do this to each other, you have not got a problem"?

Mr TOLLIDAY: We have entered those discussions. By the time we have accepted any referral, that matter has been resolved as being something more serious than that.

The Hon. PETER BREEN: Who would resolve that? Where would that be focussed on?

Mr TOLLIDAY: The Department of Community Services. They would be the ones to establish whether it is sexualised behaviour or within normal range or whether it is something that is more concerning.

CHAIR: You say in a note that you have provided us that there have been four young people who have re-offended during participation in the programme?

Mr TOLLIDAY: Yes.

CHAIR: I gather from what is said here though that notwithstanding that you still endeavour to help them if they will agree to co-operate?

Mr TOLLIDAY: That's correct. It is in line with our philosophy and our understanding of children; that children are of different capacity and different ability and perhaps even awareness of the nature of what they are doing at different stages and it is quite understandable that they may continue offending. The first thing that we try and do when we begin our work is to establish a safety plan that takes away any opportunity for further sexual offending and to counterbalance that with giving the

child an opportunity to live as normal a life as possible at that time. We want to promote their ability to develop normal peer relationships. They need to be with other children, but that needs to be safe. Those matters are quite delicate in many cases.

The Department of Education I should say, I was not sure how their commitment to the memorandum would work out, but we have been delighted with how that has worked and the department has placed extra resources where required within schools to provide extra supervision, so that the young people who come through our service are actually getting a service I think of some excellence and are very lucky indeed and the critical issue is that there seem to be a lot of other young people who are not getting the service. We can only see young people from Sydney. The furthest afield we have had a young person brought to us is from Nowra and we were dubious about that because it means taking a whole day out of their life and out of school, but the nature of his behaviour was such and there was no reasonable alternative and the school was going to break down at any rate, but we worked with him. Beyond that, the greater metropolitan area, we are not really in a position to provide a service directly to children.

The Hon. PETER BREEN: In that example of the child from Nowra, did the child go back to Nowra and back to school?

Mr TOLLIDAY: No. That child at the time he was referred to us was living with foster carers, a young couple, who in that time started a family. That young person had a long history of disturbed behaviour and drowned a family pet around the time of the birth of the child. They decided that they were unable to continue with him so he was moved. He is now living in a group home facility in western Sydney.

The Hon. PETER BREEN: There would be cases where the child, after treatment, goes back into the school, back into the environment that they came from?

Mr TOLLIDAY: Yes, definitely.

The Hon. PETER BREEN: Do they go back in with additional support?

Mr TOLLIDAY: Yes, yes. One of the four young people we reported here as re-offending – I must say the re-offence was never confirmed, but we count anything told to us, so we have a low threshold, if you like, with counting. We were very disappointed in that case in that he was living with foster carers and was restored to his family in a place outside of Sydney. His family did not continue with the follow-up with us. We were concerned, transport was arranged, a range of things were put in place. For whatever reasons, which remain largely unknown to us, they did not continue. DOCS maintained a supervision role. It was in that context the report came to us that he abused a child in the family. It wasn't confirmed. We know he continues to live with that family without further support.

The plan we have in our Service is not that we withdraw, in fact that is the time to intensify what we are doing because it is a critical point, a critical moment when the young person is restored to the family.

The Hon. PETER BREEN: What sort of support do you offer in a situation such as you have just mentioned?

Mr TOLLIDAY: Certainly there would be intensive counselling with us, which would be weekly, home visits by ourselves, home visits by the Department of Community Services, and regular planning meetings between the Services to review how things are going. Of course, the young person is involved in those reviews as well.

CHAIR: Your Service is located at North Parramatta within the grounds of Cumberland Hospital. How do your clients relate to you in a physical sense? Is it a residential service?

Mr TOLLIDAY: It is non-residential.

CHAIR: They attend daily over a period?

Mr TOLLIDAY: Once or twice a week, intensively for six to nine months, then the intensity of their participation diminishes. During that intensive time with us we will have spent an amount of our time with them individually, conjointly with their parents. They do some sessions with their family as a whole. They will also have participated in group therapy.

The Hon. PETER BREEN: Cedar Cottage is also non-residential?

Mr TOLLIDAY: Yes it is.

CHAIR: Referring to the relationship with other departments, you have an Interdepartmental Advisory Committee comprising representatives of the participating agencies. Would you say the relationship with the other agencies works generally well, or not? If it does not, can matters be ironed out by the Advisory Committee?

Mr TOLLIDAY: Yes, the Advisory Committee was something we saw as being essential because of the success we had with that body with the adult program to do what you have described. That is, it gives us at a program level access to reasonably senior officers to work through any difficulties or issues that may appear. In any single case there are always difficulties and issues. The Memorandum of Understanding has a conflict resolution strategy at the rear of it, and from time to time we have used that. We have found as time has gone on we have used that less, in fact it would probably be over 18 months since we have regarded ourselves as needing to revert to the procedure there to resolve a difficulty.

CHAIR: Is there anything we might have overlooked in regard to either New Street Adolescent Service or Cedar Cottage that you would like to draw to our attention?

Mr TOLLIDAY: I am not sure if you are planning to go to other areas of questions with me. I have some other material prepared.

CHAIR: We were not intending to unless you wished to table something?

Mr TOLLIDAY: If I could, I have material prepared in relation to what we know of the incidence of sexual assault by adolescents; and what we know about recidivism rates by adolescents and details about other treatment programs and services.

CHAIR: Would it be satisfactory if we ask you to tender the material?

Mr TOLLIDAY: I am happy to tender the typed notes.

CHAIR: Do you want to put a supplementary position? If you are not in a position to at the moment, you can do so subsequently.

Mr TOLLIDAY: I am happy to make it more legible than it is at the moment.

CHAIR: Do you wish to say anything orally? We have asked you what we wished. Is there anything additional you wish to say?

Mr TOLLIDAY: I have one other matter to raise in the context of this being a relatively new field in that we are finding our way and feeling our way as we go. Things I mentioned about siblings being abused is the heart of what we are doing at the moment. The New Street Service was constructed to plug a hole so that there was a service as for the under 10's. There could be services with a court mandate or without a court mandate. The Children's Care and Protection Act provides a civil order for treatment which has not been used. I am not sure that part of the Act has been proclaimed.

That would be an advantage because with the adult services there has been a high rate of drop out. You will notice in the figures we have a rate of drop out with the adolescent service as well. When people do that with the adolescent service there seems to be no fall-back to encourage people to persist or follow through.

This is the point I wanted to raise. There is no residential service or residential treatment program in New South Wales. In fact there is no residential service I am aware of in Australia. In New Zealand they have a service in Christchurch, yet to be fully evaluated. Around the world most jurisdictions have a combination of out-patient and residential treatment. We do not have that in New South Wales.

There is an organisation at present in the community attempting to open a residential service in the Southern Highlands. It is auspiced by Youth off the Streets. This is the third or fourth time they have tried to launch this service, known as Mirvac House. I believe that company or corporation is sponsoring this new endeavour. They have engaged consultants who appear to be solid in what they are doing but they have struck a difficulty in that they have tried to have the facility licensed.

The Department of Community Services found they do not have a capacity to license a treatment program and they have made some inquiries of the NSW Department of Health. I understand the NSW Department of Health can only license day hospitals or private hospitals. Those two departments are currently talking with each other about what they can do to assist in that process.

My view is that we are so early in the development of these services we do not yet have a capacity to properly regulate services as they might come on board. This is an example, this seems like it could be important. We do not have a body or logical point of reference to establish standards. The Children's Commission Accreditation Scheme is one attempt to get something happening, but it appears at a service level there is another gap.

CHAIR: Would it be important to have a formal and concluded assessment of your service before a residential service is attempted?

Mr TOLLIDAY: I think that would be of some value. I am not putting my hand up to establish a residential service, though there are clearly a number of young people around who would benefit from a well-structured, well-run residential treatment service. A formal evaluation of our service would be a good pre-cursor for that. That evaluation is about to commence. It is timely for that to happen.

(The witness withdrew)

(The Committee adjourned at 12.40 p.m.)