

**SUPPLEMENTARY WITNESS STATEMENT OF JUSTIN
CAMPBELL WHALLEY**

**I, JUSTIN CAMPBELL WHALLEY, Consultant State
Prosecutor with the Office of the Director of Public
Prosecutions for Western Australia, do say as follows:**

1. This supplementary statement has been prepared with the assistance of the State Solicitor's Office for the purposes of the Royal Commission into Institutional Responses to Child Sex Abuse.

BACKGROUND

2. I have previously supplied a witness statement to the Royal Commission dated 3 March 2016 which has been designated with the Document Reference STAT.0912.001.0001 R.
3. I have now had the opportunity to read the witness statement of CDW (Document Reference STAT.0864.001.0001) and make this supplementary statement to address some issues raised in paragraphs [21] to [35] of that statement under the heading of "*DPP dealings.*"
4. CDW states at paragraph [21] that "*a lot of the criminal process was left unexplained.*"
5. My initial contact with CDW was made in a telephone call to her at 9.10 am on 21 January 2010. The relevant file note indicates that we discussed issues relating to the prosecution and that CDW informed me that I had answered all the questions that she had at that stage.

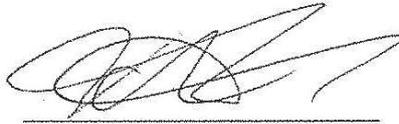
6. I gave CDW my phone number for future contact and asked her to have the complainant CDX contact me if he had any questions about the process.
7. I do not recall CDW taking us up on that invitation to contact me prior to the first trial. My recollection is that all enquiries relating to the forthcoming trial came from CDW acting on behalf of CDX.
8. Owing to technical limitations I do not presently have access to emails sent or received prior to the first trial.
9. Annexed to this statement and marked '*JCW(S)1*' to '*JCW(S)15*' are email exchanges between myself or my junior counsel Ms Lisel AVEY and CDW or the complainant CDX in which aspects of the prosecution process were explained in response to emailed requests for information.
10. Even though these emails post-date the first trial I am confident that the pattern of prompt and comprehensive responses to enquiries from CDW and CDX demonstrated by these annexures is indicative of the manner in which any enquiries from CDW pre-dating the first trial were dealt with.
11. I am confident that there was no enquiry from CDW made before the first trial, either by phone or by email, that was not responded to promptly and with as helpful a response as we were able to provide.
12. At paragraph [23] of CDW's statement she states that she was told by CDX that the DPP spent very little time, about 30 minutes, preparing CDX for trial.

13. In Western Australia the preparation of a witness for trial is not entirely the responsibility of the ODPP. The Victim Support Service is an Agency of the Department of the Attorney General and plays an important role in the preparation of a witness for trial by familiarising them with the prosecution process.
14. In the case of the complainant CDX, CDW engaged with The Victim Support Service on his behalf on 11 September 2009 and thereafter had ongoing contact with them to assist CDX's preparation for trial.
15. Whilst I do not keep timesheets and am therefore unable to advise of an exact duration of my pre-trial meeting with CDX, my recollection is that it lasted for considerably longer than 30 minutes.
16. Whatever the precise duration, the meeting took as long as it needed to take to clarify any issues relating to CDX's proposed evidence and to answer any questions that CDX had regarding the trial process. CDX was an important witness and we were not operating under time constraints at the time of the meeting.
17. As noted by CDW, CDX's briefings with the DPP were separate from the other victims. That is standard practice to ensure that witness evidence is not contaminated by exposure to the evidence of other witnesses.
18. At paragraph [32] CDW refers to an '*inadequate explanation*' from the DPP as to the basis of the retrial.

19. That explanation was provided in an email from Ms AVEY dated 7 December 2011 and accompanied by an invitation to CDW to contact myself or Ms AVEY if she required further explanation. That email is annexed to this statement as '*JCW(S) 11A*'
20. CDW's email in response dated 7 December 2011 (also Annexure '*JCW(S) 11A*') thanked Ms AVEY for the explanation provided and did not convey any indication that the explanation had been inadequate.
21. At paragraph [35] of her witness statement CDW refers to CDX being denied the opportunity to rewrite and submit an amended victim impact statement following the retrial.
22. I have no recollection of any such request being made and the file contains no emails nor file notes relating to a request to update CDW's victim impact statement.
23. That is not to say that such a request was not made by or on behalf of CDX and it may have been made through the Victim Support Service who assisted CDX with the preparation of his first victim impact statement. Any belief that CDX was not permitted to amend his victim impact statement may be the result of a misunderstanding or miscommunication.
24. At paragraph [37] of her witness statement, CDW refers to the first trial being scheduled during CDX's exams as a result of the DPP misplacing the availabilities provided when the trial was scheduled.

25. CDW's unavailable dates were not misplaced by the ODPP. They were known to us and factored in to the list of suitable trial dates provided to the Court at the Trial Listing Hearing on 7 May 2010. The Court chose not to have regard to the suitable trial dates advised by the State when listing the trial to begin on 21 June 2010.
26. The contents of this statement are true and correct to the best of my knowledge and belief.

SIGNED:



DATE:

14 MARCH 2016