INTRODUCTION

1. The Royal Commission into Institutional Responses to Child Abuse now turns its attention to the Retta Dixon Home in Darwin, Case Study 17.

2. The Retta Dixon Home was established in 1946 and operated until 1980 as a home predominately for indigenous children as well as a hostel for young indigenous women.

3. The home was situated in the centre of the Bagot Compound on the Bagot Road Aboriginal Reserve on the outskirts of Darwin.

4. The Retta Dixon Home was run by the Aborigines Inland Mission (AIM) throughout the period of 1946 until 1980. AIM, a non-governmental interdenominational faith ministry, was established in 1905 by a woman
called Retta Dixon. The organisation sought to administer to Aboriginal persons in isolated areas. It still operates today but has amended its name to Australian Indigenous Ministries.

5. Many of the children who lived at the home identify themselves as members of the Stolen Generation, that is Aboriginal and Torres Islander Children who were forcibly removed from their families under Commonwealth government policy between 1909 and 1969. Various laws were in place at that time which permitted the Commonwealth government of the day to make Aboriginal persons wards of the state and to place children of mixed descent into institutional care. It was not until the late 1970’s that the practice of placing Aboriginal children in large residential institutions began to change. It was this change in policy which eventually led to the Retta Dixon Home being closed.

6. Former residents of the Retta Dixon Home will give evidence of their experience of sexual abuse while living at the home. The alleged perpetrators were house parents or other children at the Retta Dixon Home, some of whom were also allegedly sexually abused by house parents themselves. Indeed the experience of former residents at the Retta Dixon Home is characterised by harrowing allegations of physical and sexual abuse, by those entrusted to care for them.

7. In the 1960’s and 1970’s, numerous children came forward and complained of sexual abuse by house parents to other members of staff. As a result, two house parents were the subject of criminal proceedings.

8. In 1966, Mr Reginald Powell, a house parent, was charged with three counts of indecent assault of three boys. Mr Powell pleaded guilty to the
charges and was sentenced to a bond to be of good behaviour for three years. He ceased working at the Retta Dixon Home after his arrest.

9. Another house parent, Donald Henderson was prosecuted for sexual offending against several of the children at the Retta Dixon Home in 1975 and again in 2002. In 1975, Mr Henderson was charged with five counts of indecent assault on four boys. He denied the allegations. The charges never proceeded to trial. It appears four of the charges were dismissed at committal and one charge was subsequently not proceeded with by the Office of the Director of Public Prosecutions.

10. Many years later, in 2002 after the Retta Dixon Home had long closed, Mr Henderson was again charged with numerous sexual offences against four complainants, all of whom had been residents at the Retta Dixon Home at the time of the alleged abuse. All of the offending was said to occur when Mr Henderson was a house parent at the Retta Dixon Home. Henderson was committed for trial on the charges. However, the Office of the Director of Public Prosecutions ultimately declined to prosecute the case on the basis there was no reasonable prospect of conviction.

11. Consequently, Mr Henderson has never been convicted of any sexual offence relating to offending which was said to occur when he was a house parent at the Retta Dixon Home. He maintains his denials of the allegations.

12. This case study will hear of the experiences of men and women who allege they were sexually abused as children at the Retta Dixon Home. Several of the former residents of the Retta Dixon Home will give evidence about those experiences. It is important to acknowledge and understand that most of the children, now men and women, who lived at the Retta Dixon
Home were members of the Stolen Generation, to appreciate the full impact of the alleged sexual and physical offending. However, this case study will not examine the circumstances and government policies under which those children were removed from their parents, except to outline the legislative framework under which the Retta Dixon Home was established and children came to be placed at the home. The hearing will instead focus on the institutional response to sexual abuse committed at the Retta Dixon Home.

13. The hearing will inquire into the response of the Australian Indigenous Ministries and the Commonwealth and Northern Territory governments to allegations of child sexual abuse against AIM workers raised by the residents of the Retta Dixon Home.

14. The hearing will also examine the response of the Northern Territory’s Police Force and prosecuting authorities in 2002 to the formal report of allegations of sexual abuse against Donald Henderson.

15. The case study will consider the current laws, policies and procedures governing the protection of children in out-of-home care in the Northern Territory from child sexual abuse today; what lessons have been learnt from Retta Dixon and examine what is currently considered good practice in this area, with a particular emphasis on the needs of Aboriginal children.

16. Finally the case study will inquire into the redress schemes available to those former residents of Retta Dixon Home who allege they were victims of child sexual abuse.
THE RETTA DIXON HOME

17. I will now turn to the legislative framework under which Aboriginal children were forcibly removed from their families and placed at the Retta Dixon Home to provide the context in which the Retta Dixon Home was established and operated and the Commonwealth’s responsibility for the Retta Dixon Home and the children placed there.

LEGISLATIVE FRAMEWORK

18. The Commonwealth Parliament enacted the Northern Territory Acceptance Act 1910 (Cth) which created a regime for the administration of the Northern Territory until self-government in 1978. The Act provided for the appointment of an administrator for the Territory.

19. The Aboriginals Ordinance 1918 (Cth) provided for the appointment by the Administrator of a Chief Protector of Aboriginals. The Chief Protector was given the duty to “exercise a general care and supervision over all matters affecting the welfare of the aboriginals and to protect them against immorality, injustice, imposition and fraud.”

20. Significantly, the Aboriginals Ordinance 1918 also provided that the Chief Protector shall be the legal guardian of every Aboriginal and half-caste child, notwithstanding that the child has a parent or other relative living, until the child attains the age of 18 years.

21. The Chief Protector was provided the power to enter premises and undertake the care, custody or control of any aboriginal or half-caste if in his opinion it was necessary or desirable in the interests of the aboriginal or half-caste for him to do so, or to cause any Aboriginal or half-caste to be
kept within the boundaries of any reserve or aboriginal institution or to be removed and kept within the boundaries of any reserve or aboriginal institution.

22. The Commonwealth Department of the Interior, (also known as the Department of Territories between 1951 and 1968) was responsible for the administration of the Territory. The Department of the Interior established the Native Affairs Branch in 1939 which became responsible for Aboriginal welfare. In 1939, the title of Chief Protector of Aboriginals became Director of Native Affairs but the functions of the role remained the same.

23. The Commonwealth’s responsibility was broadened with the introduction of the Welfare Ordinance 1953 (Cth). The Welfare Branch replaced the Native Affairs Branch and the position of Director of Welfare replaced Director of Native Affairs. The Director of Welfare had legal guardianship over all persons who were declared by the administrator as wards. Any person could be declared a ward if that person had special needs concerning their manner of living, ability to live adequately without assistance and to manage their own affairs, their standard of social habit and behaviour; and personal associations.

24. The Director of Welfare also had a general power to take a ward into custody and order that ward be removed to a reserve or institution.

25. The Social Welfare Ordinance 1964 (Cth) replaced the Welfare Ordinance 1953 (Cth). The Ordinance provided for a Director of Social Welfare. The legislation repealed any reference to wards but the Director of Social Welfare retained a number of duties in relation to “persons who in the opinion of the Director are socially or economically in need of assistance,
to provide upon such conditions as he sees fit such relief from poverty or hunger or both and such other assistance as may in the opinion of the Director be necessary or appropriate”.

26. From 1972, the Welfare Division of the former Territory Administration was transferred to the Department of Aboriginal Affairs which existed until the Northern Territory’s self-government in 1978.

27. It was as a consequence of this legislation, and in accordance with earlier policies of assimilation, that Aboriginal children were forcibly removed from their families and placed in homes such as the Retta Dixon Home.

ESTABLISHMENT OF THE RETTA DIXON HOME

28. I will now turn to the establishment of the Retta Dixon Home.

29. In 1912, the Chief Protector of the Northern Territory created the Darwin Aboriginal compound. The compound was set up for the containment, control and protection of Aborigines. The Darwin Aboriginal compound later became known as the Kahlin Compound and a children’s home was set up within its boundaries.

30. In 1939, Aboriginal children at Kahlin Compound were moved to a new compound at Bagot called the Bagot Compound and Aborigines Inland Mission (AIM) began preliminary work with those children.

31. On 17 December 1947, the Northern Territory Administrator declared the Retta Dixon Home as an “aboriginal institution for the maintenance, custody and care of aboriginal and half caste children”. The home was run by the AIM throughout the period of 1946 to 1980, under the direction of the Superintendent. The Superintendent was not a Commonwealth
employee but was appointed by the Administrator of the Territory. Mrs Amelia Shankleton was the first superintendent of the home in 1946. She was replaced by Mr Mervyn Pattemore in 1963. He remained in that position until the home was closed in 1980.

32. The Retta Dixon Home was situated in the centre of the Bagot compound. A fence was erected to separate the home from the rest of the Bagot settlement.

33. The Retta Dixon Home generally housed between 70 and 100 children at any one time. Children were housed in dormitory style accommodation. Children stayed at the home until they were 18 years of age. They attended local schools. They received religious instruction and were required to attend church regularly.

34. In 1956, following reports of overcrowding, work commenced on new buildings. The new facilities were officially opened on 16 July 1961. The accommodation consisted of eight 6-bedroom cottages which could house in total up to 80 children. Each cottage was staffed by house parents (often a married couple) and run autonomously although under the general control of the Superintendent of the Retta Dixon Home. The staff at the Retta Dixon Home also organised for children to go on camping holidays to places leased by AIM, including Lee Point Beach, Berry Springs and Coomalie Creek. These locations were isolated and would feature in later allegations of sexual abuse at the hands of house parents.

35. By the early 1970’s the number of children being cared for at the Retta Dixon Home was declining. In 1973 one of the cottages was closed. In 1974, the home was devastated by Cyclone Tracy and five out of eight cottages
were destroyed. About 50 children were temporarily sent interstate. Upon their return, the children were accommodated for 12 months at Batchelor, a town south of Darwin. Four of the cottages were repaired and the children returned to the Retta Dixon Home.

36. Changes to government policy in the late 1970’s, moving away from institutional care in favour of placing children in custody of individual families, led to the decision to close the Retta Dixon Home.

37. The Retta Dixon Home was officially closed on 30 June 1980.

EXPERIENCES OF FORMER RESIDENTS

38. Nine former residents of the Retta Dixon Home will give evidence or provide statements to the hearing about their experiences of alleged sexual and physical abuse when they were children living at the home.

39. First, Mrs Lorna Cubillo will tell the hearing of her experiences at the Retta Dixon Home. She was forcibly removed from her family in 1946 or 1947, when she 7 or 8 years old and taken to the Retta Dixon Home. Two missionaries, Mr and Mrs Walter, worked at the Retta Dixon Home. Mrs Cubillo will give evidence of the alleged sexual touching and physical abuse inflicted on her by Mr Walter. She will say that she was too scared and ashamed to tell anyone at the time or indeed for many years later. Mrs Cubillo will describe the devastating impact of her time at the Retta Dixon Home on her marriage, family life, mental health and her loss of culture.

40. Mr Walter was never charged with any criminal offence in relation to these allegations. He is still alive and was notified of this public hearing.
41. Mrs Sandra Kitching will also give evidence about her experiences as a child and young adult at the Retta Dixon Home. She was made a ward of the state when she was 2 years old. She was then sent to the Retta Dixon Home with her siblings. She originally lived in a dormitory where older children were separated from younger children; boys separated from girls. However, when she was 12 years old she was moved into a cottage.

42. Mr Pounder was her house parent. Mrs Kitching will give evidence that he used to watch her while she showered. She will also describe the circumstances in which Mr Pounder is alleged to have sexually touched her. Mrs Kitching complained to the Superintendent, Mr Pattemore. She will give evidence, as far as she was concerned, he did nothing. Mr Pounder was never charged with any criminal offence. He is now deceased.

43. Mrs Kitching will give evidence of the impact of the sexual abuse. She will speak of her loss of hope, and the opportunities she missed because of her lack of self-confidence.

44. Witness AKU, Witness AJW and Witness AKV will all give evidence about their experiences while living at the Retta Dixon Home and in particular about the alleged sexual abuse they suffered at the hands of Mr Donald Henderson.

45. AKU was placed in Bagot Reserve when she was a baby. Her brothers were also housed at the Retta Dixon Home. While she lived there, Mr Pattermore was the Superintendent. She lived in a cottage with her brothers. Her house parents were Donald and Barbara Henderson.

46. AKU will describe physical beatings she says she received from Donald Henderson which caused her to be extremely frightened of him. She will
also describe the alleged sexual abuse by Donald Henderson which lasted
from when she was 5 years old until she was about aged about 15. She will
give evidence that he came into her room at night and asked her to follow
him into his room. He then placed her feet on his penis until he became
aroused. She will also describe other occasions at a swimming pool at the
Retta Dixon Home when Donald Henderson bounced her up and down on
his lap so her feet rubbed his penis.

47. AKU will say she was too afraid to complain to anyone at the time, in part
because of the physical beatings she says she endured from Donald
Henderson. She also cannot recall anyone from Welfare or the government
of the day checking on her or providing her with any opportunities to speak
about what was happening to her.

48. AKU will describe the devastating impact of the alleged sexual and physical
abuse on her mental health, employment opportunities and the loss of her
childhood.

49. AJW was placed at the Retta Dixon Home when she was 3 years old. She
stayed there until she was 12 years old. She will say she was subjected to
physical beatings and sexual abuse while she lived there. For many years
she had no recollection of any sexual abuse. When she was 26 or 27 years
old and in hospital for an operation, she saw reference to a document
stating that she had been sexually abused as a child. She can now recall two
distinct occasions of alleged sexual contact with Donald Henderson. She
will describe an occasion when he asked her to ride on a motorbike ride
with him and asked her to wrap her legs around him. Second, she will
describe an occasion when he asked her to start tickling his feet.
50. AJW will also describe the devastating impact the offending has had on her life.

51. AKV was placed at the Retta Dixon Home in 1966 or 1967 when he was 6 or 7 years old. He will describe the harsh environment at the home, the physical punishment he says was inflicted upon him by some of his house parents and the alleged sexual abuse he suffered from Don Henderson. He will describe the manner in which Don Henderson is said to have sexually touched him. He will say there were occasions in a swimming pool at Berry Spring when Don Henderson grabbed him, placed him on his lap, bounced him up and down and rubbed his penis against his bottom. AKV will say he also saw Don Henderson sexually touching other boys and heard other boys discuss the size of his penis.

52. AKV never reported the allegations to anyone as he was frightened and says he had been physically beaten and intimidated by Don Henderson.

53. AKV will describe the terrible effect the alleged sexual abuse he suffered at the home has had on his life.

54. Kenneth Stagg, Kevin Stagg and Veronica Johns are siblings. They were all placed in the Retta Dixon Home as young children. All will say they suffered or witnessed sexual abuse by house parents or other children living at the home. All will describe the devastating impact of their time at the Retta Dixon Home on their lives.

55. Finally, Witness AJA will tell the hearing of her experiences at the Retta Dixon Home when she was a very young child including the sexual abuse she says she suffered from other children at the home. She will describe the impact the abuse has had on her life.
56. Mr Henderson is still alive and was notified of this public hearing.

57. Superintendent Pattemore is also still alive and was notified of this public hearing.

**RESPONSE OF AIM**

58. The allegations of sexual abuse by at least two house parents came to the attention of the Superintendent of the day, Mr Pattemore. In 1966, Mr Powell was prosecuted and convicted of sexual offences relating to children at the home.

59. The allegations of sexual abuse by Henderson were also brought to the Superintendent’s attention. In effect children told other house parents of alleged sexual offending by Henderson who then informed the Superintendent, Mr Pattemore.

60. The Royal Commission will hear from two of those house parents.

61. Lola Wall will give evidence to the Royal Commission. She will say that in 1973, she and her husband Norman Wall commenced work as house parents at the Retta Dixon Home. They remained house parents until the home closed. Lola Wall was told by some of the girls that Henderson had been sexually inappropriate with boys. She and her husband decided to report the matter to Pattemore. She will give evidence Mr Collins of AIM headquarters came to the Retta Dixon Home. She was informed by Mr Collins there was insufficient evidence to take any action against Henderson and he continued to be a house parent.

62. Next, Witness AKR will give evidence or provide a statement to the Royal Commission. She worked as a house parent from 1972 until 1978. In 1975,
AKR was told by some children that Donald Henderson had sexually abused other children. AKR approached Norman Wall. She also spoke directly to several of the children. She informed Superintendent Pattemore who told her that he would report the matter to the police.

63. AKR will give evidence that she was not aware of any guidelines at the time that set out the responsibilities in respect of reporting child sexual abuse. She will also say that there was a view amongst some house parents that the matter should be dealt with internally and not reported to the police.

64. However, in 1975, the matter was reported to police and Donald Henderson was charged with a number of sexual offences. He was committed on one count of indecent assault. However, the Prosecutor entered a nolle prosequi on that charge. He was not convicted of any offence in respect of those allegations. However, Donald Henderson was stood down from his duties at the Retta Dixon Home and ultimately did not return to work at the Retta Dixon Home.

AUSTRALIAN INDIGENOUS MINISTRIES

65. Reverend Trevor Leggott is AIM’s current General Director and has been since 1996. Reverend Leggott will give evidence that AIM’s historical organisational structure and policies are set out in the old AIM Mission manual that was in effect until February 2004. The manual describes general operating principles but does not refer to any guidelines or policies in respect of how staff should responding to allegations of sexual abuse. He has no knowledge of any material which documents allegations of sexual abuse by AIM workers at the Retta Dixon Home. However, much documentation was destroyed in Cyclone Tracy.
AIM continues to operate today but has changed its name to Australian Indigenous Ministries. The organisation is currently an interdenominational Protestant and Evangelical organisation which provides full time workers undertaking evangelical, disciplinary and counselling work to Northern Territory indigenous communities. AIM maintains a number of ministries in the Northern Territory including in Darwin, Katherine and Tennant Creek, although its registered office is in NSW. AIM is currently funded through voluntary contributions. AIM does not receive any government subsidy. AIM staff are self-employed, non-renumerated missionaries, although their expenses/wages are funded by donations.

COMMONWEALTH RESPONSE TO ALLEGATIONS OF CHILD ABUSE BY AIM WORKERS AT THE RETTA DIXON HOME

The AIM was originally provided financial assistance by the Commonwealth Government to operate the Retta Dixon Home. In 1952, the funding arrangements between AIM and the Commonwealth Government changed so that while the Commonwealth Government continued to pay a subsidy for each child resident at the Retta Dixon Home, the AIM was required to pay for rations and clothing for each child, except where a child’s mother was working and could afford to pay.

The home was run by the AIM under the direction of the Superintendent. The Superintendent was not a Commonwealth employee but was appointed by the Administrator of the Territory. However, there is some material which suggests the Commonwealth exercised some level of supervision of the home.
69. The Commonwealth involved itself in matters relating to appointments at the home. For example, on 2 November 1954, AIM wrote to the Acting Director of the Native Affairs Branch and indicated a Mr Walter was to be appointed as Assistant Superintendent of the home. On 24 November 1954, the Acting Director of the Native Affairs Branch suggested the AIM reconsider the decision. The Acting Director also noted that as the home was situated within the Bagot Aboriginal Reserve, the Acting Director was “required to give careful thought to the staffing of any organisation exercising control of any persons within the Reserve.” On 15 December 1954, AIM wrote to the Director of Welfare to advise he would not press the appointment.

70. Also, on occasions patrol officers and other Commonwealth officials would attend the home and undertake inspections and provide reports on a range of topics including housing conditions, food storage, preparation and consumption, health education, spiritual teaching and worship, employment placement, recreation and social life, transport and communication, corporal punishment and staff and supervision.

71. There is no documentation which reveals the Welfare Division were made aware of the sexual offending by Mr Powell against three boys at the home for which he was convicted in 1966. Nor is there any material which suggests the Department of Aboriginal Affairs had any knowledge of the allegations or charges brought against Mr Henderson in 1975. There is no record of any response by the Commonwealth government in their somewhat unclear supervisory role over the Retta Dixon Home.
POLICE RESPONSE TO ALLEGATIONS AGAINST DONALD HENDERSON

72. In 1998, a police investigation commenced into allegations Donald Henderson had committed sexual offences against former residents of the Retta Dixon Home in the 1960’s and 1970’s. The process began with a complaint by a former resident of the Retta Dixon Home known as AJB which was made on the 12 May 1998. The complaint related to events which had taken place in the 1960’s when he lived at the home.

73. Detective Roger Newman assumed conduct of the investigation. He made enquiries as to the identity of other children who lived at the Retta Dixon Home while Henderson worked there who may too have been sexually abused by him.

74. During the course of the investigation, Detective Newman took statements from persons known as AJD, AJE and AKU, all of whom alleged sexual abuse by Henderson. A person known as AJC also provided a statement to police about his observations of Henderson sexually touching other children.

75. Detective Roger Newman will give evidence at the hearing about that investigation and the subsequent prosecution of Mr Henderson. At the time of the Henderson investigation there were no policies, guidelines or general police orders which specifically dealt with the investigation of historical sexual offences. Detective Newman was guided by a General Order dealing with sexual assaults. There was also considerable liaison with the Office of the Director of Public Prosecutions throughout the investigation and charging process.
76. Detective Newman will give evidence that the investigation was a difficult one because in part there was a marked reluctance on many former residents of the home to speak about Henderson. Many were frightened of Henderson and others felt shame when speaking of the sexual allegations against Henderson. Detective Newman spent much time building a rapport with those who had provided statements and believed they showed exceptional courage in speaking with the police.

77. Detective Newman interviewed Donald Henderson at the Caloundra Police Station on 6 March 2001. He did so before laying any charges on the advice of the office of the Director of Public Prosecutions. Henderson made no admissions to the alleged offending. He requested an opportunity to obtain legal advice and then exercised his right to decline to answer any further questions.

78. In mid May 2001, Detective Newman then submitted a brief of evidence to be considered by the Office of the Director of Public Prosecutions. Detective Newman will give evidence that he consulted with the Office of the Director of Public Prosecutions before laying any charges against Henderson.

79. On 4 June 2001, the police laid an Information charging Donald Henderson with 79 sexual offences and one count of assault occasioning actual bodily harm. Henderson was charged with 61 counts of indecent assault and 4 counts of buggery on the male complainants and 20 counts of indecent assault on a female under the relevant legislation operating at the time of the offending. The complainants were A JB, AJD, AJE and AKU, all former residents of the Retta Dixon Home.
80. Detective Newman continued as the Officer in Charge of the investigation throughout the subsequent prosecution and committal proceedings.

PROSECUTION OF DONALD HENDERSON

81. The Office of the Director of Public Prosecutions assumed conduct of the committal proceedings which were heard before Mr Gilles SM on 5, 6 & 7 of February 2002.

82. At the commencement of the proceedings, the Office of the Director of Public Prosecutions elected to proceed with nine counts only. The charges relating to AJB were discontinued as he had died. It appears that the other charges did not proceed as each complainant could not give evidence about a particular occasion in respect of each charge, that is, the charges were bad for a lack of particulars.

83. The complainants AJD, AJE, AKU and the witness AJC gave evidence at the committal. At the conclusion of the hearing, Mr Henderson was committed for trial on nine counts, along with a further six charges which were added by the magistrate to the original Information. The remaining charges were dismissed.

84. A Supreme Court Information was presented by the Office of the Director of Public Prosecutions charging Henderson with the 15 counts upon which he had been committed.

85. A Supreme Court trial was listed to commence on 11 December 2002. The matter was subsequently brought forward to 9 December 2002.

86. On 11 November 2002, the Office of the Director of Public Prosecutions filed a nolle prosequi in respect of all charges. The charges did not proceed
to trial. The Office of the Director of Public Prosecutions did so on the basis there was no reasonable prospect of conviction and in accordance with guidelines issued by the Office of the Director of Public Prosecutions pursuant to section 25 of the Director of Public Prosecutions Act (NT).

87. However, it was not until 27 November 2002, that Detective Newman, or the complainants were informed of the Office of the Director of Public Prosecution’s decision not to prosecute Henderson. On that date, Detective Newman, AJE and AKU met with a senior prosecutor at the Office of the Director of Public Prosecutions and were advised of the decision not to proceed with the charges. Detective Newman was unable to contact AJD so he was not advised of that decision.

88. Detective Newman will give evidence that it was the first time he had been made aware of the decision not to prosecute Henderson. Indeed, he believed they were attending a meeting at the Office of the Director of Public Prosecutions to prepare the witnesses for trial. Detective Newman will give evidence he was unhappy with the decision, as was AJE. He felt he had let the complainants down.

THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION’S DECISION NOT TO PROCEED WITH THE CHARGES

89. Mr Karczewski QC is the current Director of Public Prosecutions, Northern Territory. In 2002, he held the position of the Deputy Director of Public Prosecutions. Mr Karczewski QC has no independent recollection of the conduct of the prosecution of Donald Henderson. However, by reference to the materials and Office of the Director of Public Prosecutions file he will
give evidence about why the charges against Henderson did not proceed to trial.

90. In 2002, the Office of the Director of Public Prosecutions concluded there was no reasonable prospect of conviction primarily because of the latent ambiguity in the majority of the charges. Effectively, the evidence revealed a multiplicity of offences with nothing to identify any one of them as the offence with which the accused was charged in any particular count. In that way, the charges offended against the principle enunciated in S v The Queen. On that basis, Mr Karcewski QC is of the view that the correct decision was made to enter nolle prosequis and discontinue the proceedings.

91. Memorandums and minutes held within the Office of the Director of Public Prosecutions file also refer to a proposed application made by Henderson’s counsel for a separate trial for each set of offences relating to each complainant, and an application for a permanent stay of proceedings. There was no appeal. It is unclear whether such matters contributed to the decision to discontinue the charges.

92. Mr Karcewski QC is concluding today that the Office of the Director of Public Prosecutions made the correct decision also relies on the strong warnings it is said the trial judge would have been required to give to a jury of the danger in convicting on the uncorroborated evidence of each complainant because of the delay between the time of the offences and the trial.

93. The hearing will examine the reasons provided for why the charges did not proceed to trial in 2002 and the process by which that decision was made.
The hearing will also consider the legislative changes which have occurred since 2002, to meet the difficulties presented by a person who has been the subject of extensive sexual misconduct by another and thereby cannot sufficiently particularise an offence.

OUT-OF-HOME CARE IN THE NORTHERN TERRITORY

94. The sexual abuse allegedly inflicted at the Retta Dixon Home occurred in the context of Aboriginal children having been removed from their families and placed in out-of-home care, that is, at the Retta Dixon Home.

95. The hearing will consider some aspects of the current laws, policies and procedures governing the protection of children in out-of-home care in the Northern Territory from child sexual abuse today and what lessons can be learnt from Retta Dixon. The Royal Commission will examine what is currently considered good practice in this area, with a particular emphasis on the needs of Aboriginal children.

CURRENT LAWS, POLICIES AND PROCEDURES

96. Ms Simone Jackson, Executive Director of the Out-of-Home Care Division of the Northern Territory Department of Children and Families, will give evidence at the hearing.

97. By way of background until 1959, child protection in the Northern Territory was subject to South Australian legislation. Full responsibility for child protection and child welfare in the Northern Territory did not pass to the Northern Territory Administration until the Child Welfare Ordinance 1959 (Cth) came into force.
98. After self-government commenced on 1 July 1978, a review was undertaken of child protection legislation. In 1983, the Community Welfare Act 1983 (NT) came into force. The Act moved away from traditional criteria concerning the placement of children in state care because they were “destitute, neglected, incorrigible or uncontrollable” and instead referred to children as being in “need of care”. It also mandated the reporting of suspected child abuse and neglect. Significantly, the Act introduced the Aboriginal Child Placement Principle, which prescribes that an Aboriginal child should, as far as practicable, be placed in close proximity to their family and community.

99. Between 2005 and 2011, there were two significant reviews of child protection and child sexual abuse in the Northern Territory. The reviews also considered social policy in the Northern Territory relating to Aboriginal persons in remote communities.

100. First, the Northern Territory Inquiry into the Protection of Aboriginal Children from Sexual Abuse was established by the Chief Minister in August 2006 to enquire into the nature and extent of child sexual abuse in remote communities and to identify better ways to prevent sexual abuse in communities. The report “Little Children are Sacred” was released on 15 June 2007.

101. The primary recommendations of the report included the establishment of a Northern Territory Children’s Commissioner, enhanced employment screening and information sharing, the establishment of Family and Children’s Services as a division and the permanent establishment of the Child Abuse Taskforce.
102. In December 2007, the Community Welfare Act 1983 (NT) was replaced by the Care and Protection of Children Act 2007 (NT).

103. The second review commenced in November 2009, when an independent board of inquiry into the Northern Territory Child Protection system was announced. The Inquiry was conducted by an external panel of independent experts appointed by the Chief Minister. In 2010, the report “Growing Them Strong Together” was published. The report made 147 recommendations to improve the child protection system.

104. In January 2011, the Department of Children and Families was established as a standalone government agency responsible for child protection, out-of-home care and family support.

105. Currently, the Care and Protection of Children Act 2007 and regulations provide the mandate and criteria for taking a child into care. The Act refers to the Aboriginal Child Placement Principle which again outlines the principles specific to placing Aboriginal children in care by recognising the role and importance of kinship groups, representative organisations and communities in promoting the wellbeing of Aboriginal children. It prescribes that an Aboriginal child should, as far as practicable, be placed in close proximity to their family and community.

106. Under the Act, all carers must hold a clearance notice, be capable of meeting the responsibility of a carer and be a fit and proper person to care for a child. The regulations also require that each mature person, that is aged 15 years or over residing with the individual is required to be a fit and proper person to have daily contact with the child.
107. The Act also makes it a requirement that all children entering care be provided with a copy of a Charter of Rights for Children and Young People in Care. Caseworkers are required as a matter of policy to meet with children in care at least once every month.

108. In November 2013, an out-of-home care division was created to provide centralised coordination and accountability for services in the Northern Territory. A placement unit was created to centralise placements via a placement request form. The form captured the child’s subjective need in an attempt to inform the placement decision. The division is committed to placements that are home based as the preferred option. In the Northern Territory, the government manages and provides the majority of home based services. All general and kinship carers are recruited, trained, assessed and supported by the Department of Children and Families. In respect of kinship carers, the assessment process has been extended to include all persons who will have contact with the child or young person in recognition of the fact that there may be more than one primary caregiver.

109. It is only when home based placements are not possible that the placement unit considers a short term option with a Family Day Care Educator or as a last resort within a residential facility. These placements are not assessed or monitored to the same degree as kinship or foster carers and as a result the government is transitioning away from this placement type.

110. Ms Jackson will also give evidence about the recruitment process for carers and the training and the monitoring of carers. Carers are monitored through the out-of-home care division. They are contacted at least once per month; sign a placement agreement and are required to meet regularly with case workers.
111. Ms Jackson will also outline the current procedures for responding to allegations of sexual abuse.

112. On 1 January 2014, legislative amendments gave the Department of Children and Families the power to investigate allegations that a child in care is likely to be suffering harm, including the power to inspect a place and apply investigative powers.

113. On 1 August 2014, the policy named Responding to Concerns About the Safety of Children in Care was implemented. The policy requires that any concerns about the safety or wellbeing of a child in care is now reported to Central Intake and an investigation case opened on the child’s electronic file, through which a whole of Department response is recorded. The policy also established an Internal Review unit responsible for the facilitation, coordination and monitoring of all investigations into those concerns.

114. Significantly, all substantiated matters are reported to the Northern Territory Children’s Commissioner who is able to investigate report and review the child’s file to determine if DCF’s actions are appropriate.

MR HOWARD BATH

115. Mr Howard Bath, the Northern Territory Children’s Commissioner will also give evidence at the hearing.

116. He will explain the role and powers of the Northern Territory Children’s Commissioner.

117. The Commissioner is not authorised to conduct an investigation aimed at establishing whether or not abuse or exploitation has occurred as that is the role of the Department of Children and Families and indeed the police.
The Commissioner examines the adequacy of the response of the relevant agency. The Commissioner can respond to a complaint or conduct investigations into the standard or adequacy of the service on his/her own initiative in the absence of a formal complaint. The Commissioner also monitors the way in which the Department of Children and Families deals with alleged incidents of harm including child sexual abuse with a focus on the systemic approach to the issue.

118. The Office of the Commissioner also attends engagement activities with children in out-of-home care to provide an opportunity for children to hear about their rights and to give them the opportunity to make any complaint about their care.

119. Mr Bath, as the Commissioner, is in a unique position to comment on the success of the Northern Territory legislation, policies and procedures established with the aim of preventing or minimising child sexual abuse in out-of-home care.

120. He will give evidence that despite the Aboriginal Child Placement Principle, the Northern Territory has the lowest placement rate of Aboriginal children with Aboriginal carers in Australia. The reasons are thought to be complex and include the limited number of available Aboriginal carers for a relatively large number of vulnerable children and the challenging living circumstances of many Aboriginal people which impacts on their capacity to provide care. There are also difficulties with the recruitment of kinship carers and caseworkers in remote areas combined with the problems of supervision and communication caused by that remote location.
121. Mr Bath believes there is still a pressing need for a community visitor program which provides for regular visits to children in residential care settings so independent adults could advocate on their behalf. It would help address the reluctance of children to make formal complaints. The visitor program was previously one of the recommendations of the Board of Inquiry.

PROFESSOR MURIEL BAMBLETT

122. Professor Bamblett was asked to provide her opinion to the Royal Commission as to what is currently considered good practice in the provision of out-of-home care with a particular emphasis on the needs of Indigenous children.

123. Professor Bamblett has been employed as the Chief Executive Officer of the Victorian Aboriginal Child Care Agency since 1999. She was also the co-chair of the Board of Inquiry in 2010 into the Northern Territory child protection system.

124. Professor Bamblett will give evidence that the most successful approach to reducing institutional child sexual abuse is to reduce the number of children in out-of-home care. Therefore policies and practices that reduce the rate of children in out-of-home care is critical. Professor Bamblett is of the view that kinship care is the most culturally appropriate placement option for Aboriginal children. Further, to allow for a sufficient number of kinship carers, having a criminal record should not automatically disqualify a person from gaining a clearance. There needs to be some discretion as for example young persons may have engaged in criminal activities but by
adulthood be responsible members of the community and appropriate carers.

125. Of equal importance is the provision of professional development and training to ensure all staff are well versed in child sexual development and indicators of child sexual abuse, targeting and grooming behaviours of perpetrators. The training needs to be culturally relevant for carers of Aboriginal children.

126. Professor Bamblett also stresses the importance of an adherence to the Aboriginal Child Placement Principle. She is of the strong view that culture is a protective factor and indigenous children are safest immersed in their own culture.

127. Importantly, while the response to allegations of child sexual abuse needs to have the safety of the child as its focus, Professor Bamblett considers that there needs to be an emphasis on prevention, by providing a system which avoids becoming ineffectual because of bureaucratic considerations. The most effective way to monitor good practice is with regular supervision and by providing a solid, culturally sensitive infrastructure of supports and lines of reporting.

REDRESS

128. Finally, the hearing will consider the redress schemes available to the former residents of the Retta Dixon Home and indeed other victims of child sexual abuse in the Northern Territory. It is important to note that most of the victims and survivors of the Retta Dixon Home have not sought any form of financial compensation. Many have also expressed a desire for
non-pecuniary forms of compensation such as an apology, a memorial at the site of the Retta Dixon home or further counselling.

129. First, the common law as applicable in the Northern Territory provides a civil cause of action for intentional trespasses to the person, including assault and battery. For incidents occurring prior to 1 May 2003, damages in such actions are assessed in accordance with ordinary common law principles. For incidents occurring after that time, damages are assessed in accordance with the Personal Injuries (Liabilities and Damages) Act 2003 (NT), which makes certain modifications to the common law principles in relation to matters such as aggravated or exemplary damages, the discount rate for further pecuniary loss, the maximum award for non-pecuniary loss and the calculation of interest payable on damages.

130. The availability of a claim is subject to the provisions of the Limitation Act 1981 (NT) which provides that an action founded on tort is not maintainable after three years from the date the cause of action first accrued to the plaintiff. The three year period may be extended following its expiry if the applicant can show the plaintiff’s case was not ascertained until after the expiration of the limitation period; the action was instituted within 12 months after that time; and it is just in all the circumstances to grant the extension of time.

131. The Supreme Court of the Northern Territory appears to not have had occasion to rule on the limitation question in the context of an historical sexual abuse case.

132. Secondly, the Northern Territory has a statutory criminal injuries assistance scheme established by the Victims of Crime Assistance Act 2006 (2006) and
the Victims of Crime Rights and Services Act 2006 (NT) which commenced on 1 May 2007. Mr Shanahan, Chief Executive of the Northern Territory Department of Attorney General and Justice, will give evidence about the operation of the scheme. The scheme provides financial assistance and counselling services to victims of criminal offences. It appears that at least one complainant of sexual abuse at the Retta Dixon Home has made a successful claim for compensation under the scheme.

133. To date, on the materials, it appears that AIM has not provided any form of redress to any of the former residents at the Retta Dixon Home.

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