ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES
TO CHILD SEXUAL ABUSE
AT DARWIN

COMMONWEALTH OF AUSTRALIA

*Royal Commissions Act 1902*

PUBLIC INQUIRY INTO
THE RETTA DIXON HOME

SUBMISSIONS OF SENIOR COUNSEL ASSISTING THE ROYAL COMMISSION

---

**Table of Contents**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>INTRODUCTION</strong></td>
<td>2</td>
</tr>
<tr>
<td>A</td>
<td>EXPERIENCES OF FORMER RESIDENTS</td>
<td>5</td>
</tr>
<tr>
<td>B</td>
<td>COMMONWEALTH'S RESPONSIBILITY FOR RESIDENTS OF THE RETTA DIXON HOME</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>i. The legislative framework under which residents were removed from</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>their families and placed at the home</td>
<td></td>
</tr>
<tr>
<td></td>
<td>ii. The establishment of the Retta Dixon Home</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td>iii. Commonwealth's supervisory role of the Retta Dixon Home</td>
<td>25</td>
</tr>
<tr>
<td>C</td>
<td>RESPONSE OF AIM TO ALLEGATIONS OF CHILD SEXUAL ABUSE BY RESIDENTS</td>
<td>28</td>
</tr>
<tr>
<td>D</td>
<td>RESPONSE OF COMMONWEALTH TO ALLEGATIONS OF CHILD SEXUAL ABUSE BY RESIDENTS</td>
<td>31</td>
</tr>
<tr>
<td>E</td>
<td>POLICE INVESTIGATION AND PROSECUTION OF DONALD HENDERSON</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>DPP RESPONSE</td>
<td>43</td>
</tr>
<tr>
<td>F</td>
<td>OUT OF HOME CARE IN THE NORTHERN TERRITORY</td>
<td>49</td>
</tr>
<tr>
<td></td>
<td>i. Current laws policies and procedures in NT</td>
<td>49</td>
</tr>
<tr>
<td>G</td>
<td>REDRESS</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>i. Australian Indigenous Ministries</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>ii. Redress available in the NT</td>
<td>63</td>
</tr>
</tbody>
</table>
INTRODUCTION

1. The Royal Commission into Institutional Responses to Child Sexual Abuse examined the experiences of residents of the Retta Dixon Home in Darwin during the public hearing of Case Study 17.

2. The public hearing was held from 22 September 2014 until 1 October 2014 in Darwin.

3. The scope and purpose for the public hearing was to:

   i) Hear the experience of men and women who were sexually abused as children at the Retta Dixon Home in Darwin, Northern Territory, between 1946-1980.

   ii) Inquire into the response of the Australian Indigenous Ministries (formally the Aborigines Inland Mission) (AIM) and the Northern Territory and Commonwealth governments to allegations of child sexual abuse against AIM workers who were employed at the Retta Dixon Home.

   iii) Inquire into the response of the Northern Territory’s Police Force and the Office of the Director of Public Prosecutions in 1975 and 2002 to allegations raised by residents of the Retta Dixon Home against Donald Henderson.

   iv) Inquire into the current laws, policies and procedures governing children in out-of-home care in the Northern Territory today.

   v) Inquire into the redress schemes available to persons who were victims of child sexual abuse while resident at the Retta Dixon Home.

   vi) Any other related matters.

4. 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.

5. The home was situated in the centre of the Bagot Compound on the Bagot Road Aboriginal Reserve on the outskirts of Darwin.
6. 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.¹

7. 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.² 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 in 1980.

8. Former residents of the Retta Dixon Home gave 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.

9. 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.

10. In 1966, Mr Reginald Powell, a house parent, was charged with three counts of indecent assault of three boys.³ Mr Powell pleaded guilty to the charges and was sentenced to a

² See, for example, the Aboriginals Ordinance 1918 (Cth) which replaced the Northern Territory Aboriginals Act 1910 (SA) and the Aboriginals Ordinance 1911 (Cth); the Aboriginals Ordinance 1939 (Cth), the Welfare Ordinance 1953 (NT), the Aboriginals Ordinance (No. 2) 1953 (NT), the Child Welfare Ordinance 1958-1960 (NT) and the Social Welfare Ordinance 1964 (NT).
³ Exhibit 17-0006, NT.0013.001.0012_R.
bond to be of good behaviour for three years. He ceased working at the Retta Dixon Home after his arrest.

11. Another house parent, Mr 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. Four charges were dismissed at committal and one charge was subsequently not proceeded with by the prosecution.

12. 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. Mr Henderson was committed for trial on the charges. However, the Office of the Director of Public Prosecutions (NT) ultimately declined to prosecute the case on the basis there was no reasonable prospect of conviction.

13. 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.

14. Mr Henderson is still alive and was notified of this public hearing.

15. This case study heard evidence from men and women who allege they were sexually abused as children at the Retta Dixon Home.

16. Most of the children, now men and women, who lived at the Retta Dixon Home were members of the Stolen Generation. However, this case study did 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 how children came to be placed at the home. The hearing

---

4 Exhibit 17-0006, NT.0013.001.0006; Exhibit 17-0006, NT.0013.001.0003.
instead focussed on the institutional response to sexual abuse committed at the Retta Dixon Home.

17. The hearing examined 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.

18. The case study also looked at current laws, policies and procedures governing the protection of children in out-of-home care in the Northern Territory from child sexual abuse today in the context of what lessons have been learnt from the experiences of those residents of Retta Dixon Home. The hearing also considered good practice in this area, with a particular emphasis on the needs of Aboriginal children.

19. Finally the case study inquired into the redress schemes which exist under Northern Territory legislation and the common law. Importantly, the hearing inquired into the response of the Australian Indigenous Ministries to redress for residents of the Retta Dixon Home who have made allegations of child sexual abuse against AIM workers.

A EXPERIENCES OF FORMER RESIDENTS

20. Ten former residents of the Retta Dixon Home gave evidence or provided statements to the hearing about their experiences of alleged sexual and physical abuse when they were children living at the Home.

Mrs Lorna Cubillo

21. First, Mrs Lorna Cubillo gave evidence of her experiences at the Retta Dixon Home. Lorna Cubillo was born in 1938 and is 76 years old.5 Her mother died when she was a young baby. She never met her father but was told he was white. Mrs Cubillo grew up surrounded by her tribal family. She could speak two traditional languages. When she

5 Exhibit 17-0001, Statement of Lorna Cubillo, STAT.0326.001.0001 at [3].
was aged 5 she was forcibly removed from her family and taken to Six Mile.\textsuperscript{6} She was then moved to Seven Mile, an Aboriginal Settlement run by missionaries.\textsuperscript{7} From there she was moved to Phillip Creek Mission run by AIM at the time.\textsuperscript{8}

22. In 1947, Lorna Cubillo was taken to Bagot Mission in Darwin which later became the Retta Dixon Home.\textsuperscript{9} At the time, Bagot and Retta Dixon Home were run by AIM and Ms Shankleton was the Superintendent of Bagot and later Retta Dixon Home. Bagot Reserve housed mainly full-blood aboriginals and adjoined Bagot. Lorna Cubillo recalls being chastised and ‘flogged’ for speaking with children living at Bagot Reserve.\textsuperscript{10}

23. Lorna Cubillo lived in a dormitory at the Retta Dixon Home. She attended school during the day and church on Sundays. She was locked up at night. She also recalls one of her cousins being chained to her bed with a dog chain.

24. Two missionaries, Mr and Mrs Walter, lived and worked at the Retta Dixon Home. They slept in two bedrooms at the end of her dormitory. Mrs Cubillo gave evidence that she was physically and sexually assaulted by Mr Walters. She said Mr Walters flogged her that much it didn’t hurt anymore.\textsuperscript{11} On one occasion she said Mr Walters came up behind her in the shower and fondled her breasts.\textsuperscript{12} On another occasion she was travelling in a car to a basketball game with Mr Walters when he touched on the upper thigh at the front of her skirt.\textsuperscript{13} When she travelled home from the game with another person he accused her of running away and flogged her.\textsuperscript{14}

25. Mrs Cubillo ran away from the Home on at least one occasion. She was located by another missionary and taken to the Welfare Office and medically examined. She

\textsuperscript{6} Ibid at [9]-[11].
\textsuperscript{7} Ibid at [13].
\textsuperscript{8} Ibid at [14].
\textsuperscript{9} Ibid at [22]-[23].
\textsuperscript{10} Ibid at [26].
\textsuperscript{11} Ibid at [26].
\textsuperscript{12} Ibid at [36].
\textsuperscript{13} Ibid at [38].
\textsuperscript{14} Ibid at [42].
believes at the time she had injuries sustained from a flogging by Mr Walters. She was returned to the Home.15

26. Mrs Cubillo said she was too scared and ashamed to tell anyone about the alleged sexual touching at the time or indeed for many years later.

27. Mrs Cubillo described the devastating impact of the abuse she says she suffered at the Retta Dixon Home on her marriage, family life and mental health. She suffers from depression; does not sleep well due to flashbacks and bad dreams about being taken from her family and the abuse she suffered at the hands of Mr Walters.16 She feels very sad about the loss of her culture.17 She has never been initiated in tribal ways. Her years at Bagot caused her much distress in that she does not feel capable of expressing a loving and affectionate relationship with her children.18

28. 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.

Sandra Kitching

29. Mrs Sandra Kitching also gave evidence about her experiences as a child and young adult at the Retta Dixon Home. She was born in 1950 and is now 64 years old.19 Her mother was from the Gurindji people.20 Her father was of German descent.21 Her mother had 11 children and lived in Alice Springs. She was unemployed.

30. When Mrs Kitching was 2 years old she was made a ward of the state.22 She was taken from her mother and put in Bagot settlement.23 She originally lived in a dormitory where older children were separated from younger children; boys separated from girls. The

---

15 Ibid at [47]-[49].
16 Ibid at [63].
17 Ibid at [61]-[62].
18 Ibid at [63].
19 Exhibit 17-0002, Statement of Sandra Kitching, STAT.0325.001.0001_R at [3].
20 Ibid at [6].
21 Ibid.
22 Ibid at [8].
23 Ibid.
dormitory was supervised by two single women. Mrs Shankleton was the superintendent at the time. She was not allowed to speak with full-blood Aboriginal children also living at the settlement.

31. Mrs Kitching’s mother moved to Darwin to be closer to her children. Mrs Kitching was allowed to stay with her mother on weekends initially monthly and then fortnightly. Mrs Kitching gave evidence that it was never explained to her why she was separated from her mother nor could she understand why she was never allowed to return to her mother despite her mother’s efforts in having her stay on weekends.

32. When Sandra Kitching was 12 years old she moved into Retta Dixon Home and cottage-style accommodation.24 Mr Pattemore was the Superintendent of the home at the time. Each cottage had house-parents.

33. Mrs Kitching was placed in cottage 1.25 Her house parents were originally two single ladies. Subsequently, Mr Pounder became her house parent. Mrs Kitching gave evidence that Mr Pounder chained the children to their beds as a form of punishment.26 She also described how he watched her while she showered. He barged into the showers, sniffed her and told her she had not used soap. He then stayed and watched her shower.27 Mrs Kitching confronted Mr Pounder’s wife and told her to keep her husband away from her.28 She also complained to the Superintendent, Mr Pattemore whom she said did nothing.29 She said there was no one else to whom to report the abuse.

34. Mrs Kitching also gave evidence that Mr Pounder would insist on driving her to school. On the occasions he did drive her to school he touched her on the leg in a sexual way.30

35. Mr Pounder was never charged with any criminal offence. He is now deceased.

24 Ibid at [16].
25 Ibid at [18].
26 Ibid at [19].
27 Ibid at [20].
28 Ibid at [21].
29 Ibid.
30 Ibid at [23].
36. Mrs Kitching eventually ran away from the home when she was 15 or 16 years old. She went to live with her mother in Darwin. She never returned to the home.

37. Mrs Kitching gave evidence of the impact of her time at Retta Dixon Home and the sexual abuse on her life. She gave evidence she left the home with no life skills or assistance from welfare. Most importantly it left her without hope. She said she was offered jobs as an air-hostess and model but did not have the confidence to accept them.\textsuperscript{31}

AJA

38. AJA also gave evidence of her experiences at the Retta Dixon Home. She is now 60 years old.\textsuperscript{32} Her mother passed away when she was 2.\textsuperscript{33} Her father was unable to care for her and her siblings. She was placed in Retta Dixon Home by her father in 1958.\textsuperscript{34} She originally lived at the site on Bagot Road. In 1961 she moved into cottage style accommodation on the corner of Bagot Road and Totem Road.\textsuperscript{35} She lived in cottage 7.\textsuperscript{36} Mr Pattemore was the Superintendent. Her house parent was Judy Fergusson.\textsuperscript{37}

39. AJA described how she was physically belted by Ms Fergusson on occasions when she wet the bed.\textsuperscript{38} On one occasion after she had wet her bed, she said Ms Fergusson made her put on a nappy in front of the other children to humiliate her. She also described watching Ms Fergusson physically assault other children including stabbing a child with a can opener.\textsuperscript{39}

40. AJA described the sexual abuse inflicted on her by other boys at the Home. When she was as young as 5, boys living at the Home had sex with her.\textsuperscript{40} She said she did not report the abuse at the time as she did not understand it to be wrong. She thought it

\textsuperscript{31} Ibid at [41].
\textsuperscript{32} Exhibit 17-0003, Statement of AJA, STAT.0329.002.0001_R at [3].
\textsuperscript{33} Ibid at [4].
\textsuperscript{34} Ibid at [5].
\textsuperscript{35} Ibid at [7].
\textsuperscript{36} Ibid.
\textsuperscript{37} Ibid at [8].
\textsuperscript{38} Ibid at [9].
\textsuperscript{39} Ibid at [11].
\textsuperscript{40} Ibid at [15].
was normal behaviour and part of life.\textsuperscript{41} Even if she had known the abuse was wrong, there was no one she could trust to whom to report it.\textsuperscript{42} She felt she would have been punished for lying.

41. AJA left Retta Dixon Home in 1969.\textsuperscript{43} She went to live with a foster family in Sydney. After a year she moved in with another foster family. Her foster father sexually abused her from the age of 14 until her 16\textsuperscript{th} birthday.\textsuperscript{44} When she was aged 15 she tried to commit suicide by overdosing on aspirin.\textsuperscript{45}

42. AJA spoke of the impact of the abuse she suffered at Retta Dixon Home (and in foster care) on her life. She lost her Aboriginal identity and heritage.\textsuperscript{46} She never met any of her mother’s family. She was never taught any life skills at the Home. She believes she was not properly prepared for life as an adult and was robbed of opportunities due to a poor education.\textsuperscript{47} She has had difficulties with a lack of confidence and low self-esteem which has adversely affected her personal and work relationships.\textsuperscript{48}

43. AJA has only started to receive counselling this year and it has helped to explain her emotions. She has never before received any support with dealing with the impact the abuse has had on her life.

AKU, AJW and AKV

44. Witnesses AKU, AJW and AKV gave evidence about their experiences while living at the Retta Dixon Home and in particular about the sexual abuse they describe having suffered at the hands of Mr Donald Henderson.

\textsuperscript{41} Ibid at [18].
\textsuperscript{42} Ibid at 19.
\textsuperscript{43} Ibid at [21].
\textsuperscript{44} Ibid at [26]-[27].
\textsuperscript{45} Ibid at [29].
\textsuperscript{46} Ibid at [35].
\textsuperscript{47} Ibid at [36].
\textsuperscript{48} Ibid at [40].
AKU was born in 1958 and is now 56 years old. She never met her father. She has two brothers, AJE and AIM. The latter is now deceased. AKU was placed in Bagot Reserve when she was a baby. In 1962 she moved to Retta Dixon Home along with her brothers. While she lived at the Home, Mr Pattermore was the Superintendent. She lived in Cottage 2 with her brothers. Her house parents were Donald and Barbara Henderson.

AKU grew up frightened of Mr Henderson. She described physical beatings she received from him. She said they occurred almost every day. She was so frightened of him she wet her bed almost every night until she was 12 years old. Every time she wet the bed, Mr Henderson beat her with a cane.

In 1970, AKU was fostered to a couple in Melbourne. After a year she returned to the Home as she did not settle into her new environment. Mr Pattemore told her she had brought shame to the Retta Dixon Home.

AKU gave evidence that from when she was about 5 until she was 13 years old Mr Henderson sexually abused her. She gave 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 said this occurred on average twice a week. AKU also described other occasions, while she was swimming in the pool at the Retta Dixon Home and at Berry Springs and Howard Springs when Donald Henderson bounced her up and down on his lap so her feet rubbed his penis.

AKU gave evidence that Mr Henderson took her and other children to the Speedway. She saw Mr Henderson take one of the boys into the public toilet. Her brothers told her

---

49 Exhibit 17-0004, Statement of AKU, STAT.0324.001.0001_R at [3].
50 Ibid at [5].
51 Ibid.
52 Ibid at [6].
53 Ibid at [10].
54 Ibid at [17]–[19].
55 Ibid at [23].
56 Ibid at [22].
57 Ibid at [24].
that Mr Henderson sexually abused the boy in the toilet.  

AKU was also told by other children that Mr Henderson sodomised boys in the chook pen and his bedroom at the Home.

50. AKU described an incident when she accidentally slammed the car door and Mr Henderson backhanded her across the face and broke her nose.

51. AKU also described an incident which occurred when she was 15 during which Mr Henderson took her into his bedroom, placed her in front of the mirror, pulled her pants down, pushed her head between her legs and beat her with a cane. She gave evidence this was the last time he sexually abused her.

52. AKU eventually reported this incident and other allegations of sexual abuse to police in 1999. AKU said she was too afraid to complain to anyone at the time of the abuse, in part because of the physical beatings she endured from Donald Henderson. She could not 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.

53. AKU described the devastating impact of the alleged sexual and physical abuse on her mental health, relationships, employment opportunities and the loss of her childhood. She gave evidence she struggles in her relationships with men. She is overly protective of her children. She suffers from depression and as a result relies on alcohol. She still has nightmares about Retta Dixon Home. She hasn’t worked in over 10 years. She said the physical, emotional and sexual abuse she suffered at the Retta Dixon Home took her childhood away.

---

58 Ibid at [25].
59 Ibid at [26].
60 Ibid at [28].
61 Ibid at [29].
62 Ibid at [34].
63 At [44]-[48].
AJW

54. AJW is now 48 years old.\textsuperscript{64} Her mother was an Aboriginal Larrakia Darwin woman and her father was of Irish descent. She and her brother AJS were placed at the Retta Dixon Home when she was 2 years old.\textsuperscript{65} She stayed there until she was 12 years old. She lived in Cottage 1.\textsuperscript{66} AKR was her house parent.

55. After Cyclone Tracey she moved into Cottage 6.\textsuperscript{67} She stayed at Retta Dixon Home until 1980 when the home closed down.\textsuperscript{68} After she left she lived for a short time with her mother until she was abandoned. She then lived with her maternal grandmother. She said she received no support from the government after she left the Home.\textsuperscript{69}

56. She gave evidence 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 a document stating that she had been sexually abused as a child and that she must be told she was sexually molested as a child upon turning 18.\textsuperscript{70} AJW said that before reading the report she had no memory of the abuse. However, she said she now has memories of two incidents of alleged sexual contact with Mr Henderson. She described an occasion when he asked her to ride on a motorbike ride with him and asked her to wrap her legs around him.\textsuperscript{71} She also described an occasion when he called her into his bedroom and asked her to start tickling his feet.\textsuperscript{72}

57. AJW described going to court to give evidence against Mr Henderson in 1975 or 1976.\textsuperscript{73} She remembered being very frightened. She said she was unable to give her evidence because she was petrified. She thought it would have helped her if she did not have to

\textsuperscript{64} Exhibit 17-0011, Statement of AJW, STAT.0332.001.0001_R at [3].
\textsuperscript{65} Ibid at [6].
\textsuperscript{66} Ibid at [8].
\textsuperscript{67} Ibid at [13].
\textsuperscript{68} Ibid at [29].
\textsuperscript{69} Ibid at [30].
\textsuperscript{70} Ibid at [32].
\textsuperscript{71} Ibid at [36].
\textsuperscript{72} Ibid at [37].
\textsuperscript{73} Ibid at [41].
see Mr Henderson at court and if she had some kind of family figure or parental support with her.

58. She gave evidence that Mr Henderson left the Home after the court case. She had nightmares and wet her bed. She said that Mr Pattemore never offered her any support or counselling after the court case.\textsuperscript{74} Both would have assisted her in dealing with the effects of the sexual abuse and court case.

59. AJW described the devastating impact the sexual abused had on her life. She described how she suffered from nightmares and attempted suicide.\textsuperscript{75} She said it affected her education and her inability to concentrate has meant she has never been able to study or get any qualifications.\textsuperscript{76}

AKV

60. AKV was born in 1960 and is now 54 years old.\textsuperscript{77} His mother was an Aboriginal woman and his father was non-Indigenous. In 1966 or 1967 when he was 6 or 7 years old, he was taken from his family and placed at the Retta Dixon Home.\textsuperscript{78} He lived in Cottage 5.\textsuperscript{79} His house parent was Margaret Parker and the Superintendent was Mr Pattemore.\textsuperscript{80} He described the harsh physical punishment and floggings he says were inflicted upon him by some of his house parents. He said he regularly went to school with welts across his back.\textsuperscript{81}

\textsuperscript{74} Ibid at [44].
\textsuperscript{75} Ibid at [47]-[48].
\textsuperscript{76} Ibid at [54].
\textsuperscript{77} Exhibit 17-0007, Statement of AKV, STAT.0338.001.0001_R, at [3].
\textsuperscript{78} Ibid at [5]-[7].
\textsuperscript{79} Ibid at [8].
\textsuperscript{80} Ibid at [10].
\textsuperscript{81} Ibid at [14].
AKV's sister also lived in Cottage 5 after a time. AKV said there were times when she was tied to the clothes line. He said his sister also had faeces rubbed in her face and on another occasion she was deliberately burnt with hot water by a house parent.

AKV also described the sexual abuse he says he suffered from Mr Henderson. He said the children called Mr Henderson 'Ticklefoot' because he would tickle boys on the feet with a feather duster to get sexual pleasure. He described the manner in which Mr Henderson is said to have sexually touched him. He said there were occasions in the swimming pool and at Berry Springs when Don Henderson grabbed him, placed him on his lap, bounced him up and down and rubbed his penis against his bottom. AKV said he also saw Mr Henderson sexually touching other boys and heard other boys discuss the size of his penis.

AKV said he never reported the allegations to anyone as he was frightened that he would be punished. He said that he was intimidated by Mr Henderson.

AKV said the sexual abuse he said he suffered at the Home had a terrible impact on his life. He was not taught life skills or social skills at the Home. He had no educational confidence. He said throughout his life he lacked confidence and remained shy. He dislikes authorities. He tends to run away from tough situations.

Kenneth Stagg, Kevin Stagg and Veronica Johns

Kenneth Stagg, Kevin Stagg and Veronica Johns are siblings. They were all placed in the Retta Dixon Home as young children. All gave evidence of the sexual abuse they say they suffered at the home and the devastating impact of the abuse on their lives.

---

82 Ibid at [16].
83 Ibid.
84 Ibid at [23].
85 Ibid at [24].
86 Ibid at [25]-[26].
87 Ibid at [39].
Kenneth Stagg

66. Kenneth Stagg was born in 1959 and is now 55 years old.\textsuperscript{88} His mother was Aboriginal and his father of European descent. His mother had 14 children. He and two of his siblings were placed at Retta Dixon Home when he was very young.\textsuperscript{89} He lived in cottage 3.\textsuperscript{90} MS Spohn and Mr and Mrs Goodchild were his house parents in cottage 3.\textsuperscript{91}

67. Kenneth Stagg gave evidence that he was caned by Mr Pattemore, two or three times a year.\textsuperscript{92}

68. Kenneth Stagg described sexual activity at the Home. He said he was taught about sex by an older girl.\textsuperscript{93} He was 10 years old at the time and she was aged 15. He also witnessed AJD trying to have sex with other boys.\textsuperscript{94} He said AJD also tried to have sex with him.\textsuperscript{95} He said as a result he ran away from the Home on numerous occasions, probably a couple of times a year at least.

69. Kenneth Stagg said Mr Henderson sexually touched him in the chook house.\textsuperscript{96} He said on at least one occasion, Mr Henderson grabbed him, put him on his knees and brushed his hand over his genitals.\textsuperscript{97} Kenneth Stagg said he could feel Mr Henderson's penis harden through his clothes.\textsuperscript{98}

70. Mr Stagg recalled that his mother visited him at the Home until she died in 1972 when he was aged about 12. It was only then that he was allowed to leave the Home.\textsuperscript{99} Mr Stagg said he was very angry he was not allowed to leave until his mother died. He was placed with his maternal uncle and aunt. He did not know his relatives before he moved in with them. They drank heavily. Mr Stagg expressed his dismay at the irony of him

\textsuperscript{88} Exhibit 17-0005, Statement of Kenneth Stagg, STAT.0342.001.0001_R at [3].
\textsuperscript{89} Ibid at [5].
\textsuperscript{90} Ibid at [6].
\textsuperscript{91} Ibid at [7].
\textsuperscript{92} Ibid at [18].
\textsuperscript{93} Ibid at page 7.
\textsuperscript{94} Ibid at [28].
\textsuperscript{95} Ibid.
\textsuperscript{96} Ibid at [36].
\textsuperscript{97} Ibid.
\textsuperscript{98} Ibid.
having been removed from his mother because she was an alcoholic and then placed being with a couple who drank heavily. He said welfare officers did not come and check on him when he moved in with his aunt and uncle.

71. Mr Stagg then went to St John’s boarding school, Darwin. He was expelled after he complained about one of the brothers mucking around with the boys. Mr Stagg then moved to Adelaide where he went to school and then obtained some employment. He then travelled around Australia.

72. Kenneth Stagg gave evidence that while he lived at Retta Dixon Home he didn’t tell the house parents about the abuse because he didn’t really understand it was wrong behaviour as he had nothing with which to compare it.\(^{100}\) It was only as he grew older that he started to appreciate it was not right. He did not complain at that time because he thought he would get into trouble.

73. Kenneth Stagg described the impact the sexual abuse has had on his life, including not knowing who he is.\(^{101}\) He said after the abuse started he began to rebel and was subsequently expelled from school. As a result, he did not complete his education. He feels he has depression. He said as a young man he abused substances to block out the pain. He also had problems with alcoholism. He said his life has been affected by the abuse.

74. Mr Kenneth Stagg said that no-one from AIMP has contacted him in respect of compensation or counselling. Nor have they offered him an apology for the abused he suffered at the Retta Dixon Home.

Kevin Stagg

75. Kevin Stagg was born in 1960 and is 54 years old.\(^{102}\) He believes he was 4 years old when he was made a ward of the state and sent to Retta Dixon Home. He was housed in

\(^{100}\) Ibid at [56].
\(^{101}\) Ibid at [28] on page 16.
\(^{102}\) Exhibit 17-0010, Statement of Kevin Stagg, STAT.0331.001.0001_R.
Cottage 3 with his siblings. He gave evidence he was physically abused by the house
parent of cottage 1, Mr Pounder who chained him up to the outdoor water tap like a
dog. He also described being caned by Mr Pattemore from the age of 7 until he left
Retta Dixon Home.

76. Kevin Stagg said he had been sexually abused by Mr Henderson at Retta Dixon from the
age of 7. He said Mr Henderson came up behind him in the chook pen, pulled down
his pants and raped him. On other occasions, Mr Henderson would take him in the
old truck, seat him on his lap and fondle his genitals.

77. Kevin Stagg said he tried to tell Mr Pattemore that Mr Henderson would get him to sit
in his lap but Mr Pattemore did not believe him. He tried to tell Mr Pattemore a
number of times about sexual abuse by Mr Henderson but he was caned for ‘lying’.

78. Kevin Stagg also described being sexually abused by other boys in his cottage. AJQ and
AJR played sexual games with him. He said AJD raped him.

79. Kevin Stagg described the impact the sexual abuse at the Retta Dixon Home has had on
his life: his difficulties with the law and his problems with substance abuse. He also
suffers from depression, mental health issues and sexual dysfunction. He said that no
amount of redress will compensate him for the life that was taken away from him. He
gave evidence that he has never had counselling.

Veronica Johns

---

103 Ibid at [6].
104 Ibid at [8].
105 Ibid at [17].
106 Ibid at [19].
107 Ibid at [20].
108 Ibid at [23].
109 Ibid at [24].
110 Ibid at [29].
111 Ibid at [28].
112 Ibid.
113 Ibid at [47].
80. Veronica Johns was born in 1958. She is now 56 years old. She lived at the Retta Dixon Home from when she was aged 3 until she was 15 years old. She lived in Cottage number three with her brothers Kenneth and Kevin Stagg. She described an incident when she was 7 years old when she was sexually penetrated by a boy in the laundry. She didn’t tell anyone and kept it a secret until she was 25 years old. She also gave evidence of other sexual assaults she endured while at the Home, including by a boy AJR who used to get into her bed at night. She would wake to find her hand on his penis.

81. Veronica Johns gave evidence that she reported the sexual abuse by AJR to her house parent, Auntie Ruth Roberts. She also told Mr Pattemore half a dozen times but nothing changed. AJR kept doing it. AJR was not removed from Cottage 3.

82. She gave evidence that she never saw Mr Henderson sexually abuse anyone but the children all talked about the alleged sexual abuse by him.

83. Veronica Johns said she felt bad about the sexual abuse she endured at Retta Dixon Home. She also said she felt guilty she was not there for her brothers. She said no-one ever inquired as to their welfare and there was no-one with whom she could speak of the abuse. She also gave evidence that the abuse had a negative impact on her marriage. She also described going ‘walkabout’ in her mind on occasions.

B COMMONWEALTH’S RESPONSIBILITY FOR RESIDENTS OF THE RETTA DIXON HOME

84. The legislative framework under which residents were removed from their families and placed at the home.

---

114 Exhibit 17-0008, Statement of Veronica Johns, STAT.0327.001.0001_R, at page 1.
115 Ibid.
116 Ibid.
117 Ibid at page 2.
118 Transcript of V Johns, C4932 (Day 46).
119 Ibid.
120 Ibid.
121 Exhibit 17-0008, Statement of Veronica Johns, STAT.0327.001.0001_R, at page 3.
122 Ibid.
85. During the public hearing, the Commissioners requested the Northern Territory and Commonwealth Governments to provide written submissions as to the legislative history of the duties and responsibilities in respect of the welfare of children who were either declared to be wards, or were under the guardianship or otherwise committed to the care of the government, both generally in the Northern Territory, and specifically in relation to children in the Retta Dixon Home.

86. The following submissions are subject to the receipt of those submissions to be made on behalf of the Northern Territory and Commonwealth Governments.

87. The hearing considered 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.

88. The hearing received a statement from Mrs Caroline Edwards dated 22 September 2014. Mrs Edwards also gave evidence at the public hearing. Mrs Edwards is the First Assistant Secretary of the Community Safety and Policy Division within the Department of the Prime Minister and Cabinet. Mrs Edwards had no personal experience with the home. Her statement is based on a general knowledge of the Commonwealth’s historical role in relation to Indigenous Affairs, an analysis of documents held by the Commonwealth relating to the Commonwealth’s role at the home, inquiries undertaken by other Commonwealth officers in relation to those documents and advice from other Commonwealth officers.\footnote{124}

Documents held by the Commonwealth Government

89. Mrs Paula Gonzalez, a Principal Legal Officer with the Commonwealth Attorney General’s Department, provided a statement to the Royal Commission.\footnote{125} Mrs Gonzalez said her staff made a number of enquiries and conducted a number of searches for

---

\footnote{123} Exhibit 17-0025, Statement of Caroline Edwards, STAT.0341.002.0001_R.
\footnote{124} Ibid at [11].
\footnote{125} Exhibit 17-0026, Statement of Paula Gonzalez, STAT.0351.001.0001.
records relating to Retta Dixon Home, including in relation to any allegations or claims of child sexual abuse at the Home. These searches included a review of files held by the Commonwealth departments and agencies whose functions had any connection with Indigenous or welfare affairs or the Home, including past inquiries, as well as with the National Archives of Australia.\textsuperscript{126}

90. The Commonwealth Government produced documents relating to Retta Dixon Home to the Royal Commission which dated from 1946 until 1983. Most of those documents are from the 1950's and 1960's. The Commonwealth Government produced 23 documents which dated from 1970 until 1982. There is no reference in the documents to child sexual abuse or contractual arrangements with AIM.\textsuperscript{127}

91. Mrs Gonzalez said that upon the Northern Territory achieving self-government in 1978, the Commonwealth Government handed over to the Northern Territory Government records which related to functions in the Northern Territory previously performed by the Commonwealth and now to be performed by the NT Government.\textsuperscript{128}

92. The Northern Territory produced to the Royal Commission 24 documents relating to the operation of Retta Dixon Home during the period of 1956 to 1972.\textsuperscript{129} There are no references to child sexual abuse matters in the documents.

93. Reverend Leggott said in his statement dated 4 September 2014 that all of AIM's archival holdings were placed in the State Library of NSW in 2001. That material was produced by the State Library of NSW to the Royal Commission. However, any local documentation that was held at the Retta Dixon Home in 1974 was destroyed by Cyclone Tracy.

\textsuperscript{126} Ibid at [11].
\textsuperscript{127} Transcript of T Leggott, 5589-C5590 (Day 51).
\textsuperscript{128} Exhibit 17-0026, Statement of Paula Gonzalez, STAT.0351.001.0001 at [15].
\textsuperscript{129} Exhibit 17-0022.
Legislative framework

94. The Commonwealth Parliament enacted the Northern Territory Administration 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.

95. The Aborigines 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.'

96. Significantly, the Aborigines 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.

97. 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.

98. 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

---

130 Exhibit 17-0034, Statement of Trevor Leggott, STAT.0330.001.0001_R at [4c].
131 Section 4.
132 Section 5(1)(a)(f).
133 Section 7(1).
134 Section 6(1).
135 Section 16(1).
Aboriginals became Director of Native Affairs but the functions of the role remained the same.\textsuperscript{136}

99. The Commonwealth’s responsibility was broadened with the introduction of the \textit{Welfare Ordinance 1953} (Cth). The Welfare Branch replaced the Native Affairs Branch and the position of Director of Welfare replaced Director of Native Affairs.\textsuperscript{137} The Director of Welfare had legal guardianship over all persons who were declared by the administrator as wards.\textsuperscript{138} Any person could be declared a ward if that person had special needs concerning their manner of living, inability to live adequately without assistance and to manage their own affairs, their standard of social habit and behaviour; and personal associations.\textsuperscript{139}

100. 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.\textsuperscript{140}

101. The \textit{Social Welfare Ordinance 1964} (Cth) replaced the \textit{Welfare Ordinance 1953} (Cth). The Ordinance provided for a Director of Social Welfare.\textsuperscript{141} 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’.\textsuperscript{142}

102. 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.\textsuperscript{143}

\textsuperscript{136} Exhibit 17-0025, Statement of Caroline Edwards, STAT.0341.002.0001_R, at [21].
\textsuperscript{137} See Section 6 of the \textit{Welfare Ordinance 1953} (Cth).
\textsuperscript{138} Sections 14 and 24.
\textsuperscript{139} Section 14.
\textsuperscript{140} Section 17(1)(a)-(c).
\textsuperscript{141} Section 8(1).
\textsuperscript{142} Section 10(a).
\textsuperscript{143} Exhibit 17-0025, Statement of Caroline Edwards, STAT.0341.002.0001_R, at [27].
103. 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.

**ii The establishment of the Retta Dixon Home**

104. 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.

105. 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.

106. 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.

107. 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.

108. 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

---

144 See Exhibit 17-0006, AG.RDH.01.0019.0003_R at page 1.
145 Exhibit 17-0025, Annexure CE-22, AG.RDH.03.0001.0002 at 0002.
146 See Exhibit 17-0025, Annexure CE-22, AG.RDH.01.0017.0100_R at 0100_R, 0101_R and Annexure CE-27, AG.RDH.01.0017.1016; AG.RDH.01.0017.0107; AG.RDH.01.0017.0108.
until they were 18 years of age. They attended local schools. They received religious instruction and were required to attend church regularly.

109. 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.

110. 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.

111. 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.

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

iii. Commonwealth's supervisory role of the Retta Dixon Home

113. 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.

114. 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. The Commonwealth involved itself in the Retta Dixon Home in two main areas: over use of corporal punishment; and the appointment of staff.

115. There were exchanges between the Welfare Branch and AIM on the issue of corporal punishment. On 4 January 1956, the Acting Director of AIM, Mr Collins wrote to Mr Giese, the Director of Welfare about the issue of corporal punishment arguing against corporal punishment and whether corporal punishment was completely forbidden in the Home or whether the rule is that only the Superintendent is to give the punishment or a person in the presence of the Superintendent. Mr Collins ended the correspondence with ‘could you please give us further advice as to how the matter now stands?’

116. A telegram of 21 November 1957 from Mr Harry Giese, the Director of the Welfare Branch to AIM stated ‘corporal punishment of any sort on my wards is forbidden’.

148 In early September 1958, a policy was prepared by the then Department of Territories regarding corporal punishment in Institutions. The policy was given approval on 10 September 1958. On 28 November 1962, an administrative officer attended at the Retta Dixon Home and asked Mr Pattemore about corporal punishment, amongst other topics. Mr Pattemore assured the administrative officer ‘that he is the only one who inflicts corporal punishment.’

117. The policy of the Department of Territories was incorporated in the Aborigines Inland Mission Retta Dixon Home Handbook.

118. The Commonwealth also 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

147 Exhibit 17-0025, Annexure CE-23, AG.RDH.01.0029.0030.
148 Exhibit 17-0025, Annexure CE-23, AG.RDH.01.0029.0031.
149 See Exhibit 17-0025, Annexure CE-24, AG.RDH.01.0027.0022; AG.RDH.01.0027.0025; AG.RDH.01.0027.0026; AG.RDH.01.0027.0027; AG.RDH.01.0027.0028.
150 Exhibit 17-0025, Annexure CE-23, AG.RDH.01.0002.0001 at 0003.
151 Exhibit 17-0025, Annexure CE-25, NT.0006.001.0205 at 0211.
Affairs Branch and indicated a Mr Walters 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.

119. 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.

AVAILABLE FINDINGS

1. The Commonwealth Government actively supervised activities at the Home. This is evident from:

   a. participating in the appointment of the Superintendent at the Home;

   b. visiting and reporting on the activities of AIM at the Home; and

   c. considering and developing a policy in respect of corporal punishment at the Home.

---

152 Exhibit 17-0025, Annexure CE-27, AG.RDH.01.0017.0106.
153 Exhibit 17-0025, Annexure CE-27, AG.RDH.01.0017.0107.
154 Exhibit 17-0025, Annexure CE-27, AG.RDH.01.0017.0108.
C  RESPONSE OF AIM TO ALLEGATIONS OF CHILD SEXUAL ABUSE BY RESIDENTS

120. Allegations of sexual abuse by at least two house parents came to the attention of the Superintendent of the day, Mr Pattemore. First, in 1966, Mr Powell was prosecuted and convicted of sexual offences relating to children at the home.

121. Secondly, allegations of sexual abuse by Mr Henderson were brought to Mr Pattemore’s attention. House parents Mrs Lola Wall and AKR became aware of alleged sexual offending by Mr Henderson. Mrs Wall informed the Superintendent, Mr Pattemore of the allegations in 1973. AKR and Mrs Wall again informed Mr Pattemore of allegations of sexual abuse against Mr Henderson in 1975.

122. The Royal Commission received evidence from Mrs Lola Wall and AKR.

123. Mrs Wall told the hearing that in 1973, she and her husband Mr Norman Wall commenced work as house parents at the Retta Dixon Home. They remained house parents until the home closed in 1980. Mrs Wall was told by some of the girls that Mr Henderson had behaved in a sexually inappropriate way with some of the boys. She and her husband reported the allegations to Mr Pattemore. She understood that Mr Pattemore contacted the headquarters of AIM.

124. Mrs Wall gave evidence Mr Collins of AIM travelled to the Retta Dixon Home. She was told by Mr Collins that there was insufficient evidence to take any action against Mr Henderson. Mr Henderson continued to work as a house parent. To her knowledge, no one considered reporting the matter to police. Nor did anyone speak with the children about their concerns. Mrs Wall said she became more protective of the children in her care.

---

155 See Section A above.
156 See Exhibit 17-0006, NT.0013.001.0012_R, NT.0013.001.0006.
157 Exhibit 17-0013, Statement of Lola Wall, STAT.03333.001.0001_R at [6].
158 Ibid at [20].
159 Ibid at [20]-[21]; Transcript of L Wall, C5005 (Day 47).
160 Ibid at [21].
161 Transcript of L Wall, C5005, (Day 47).
162 Ibid at C5007-5008.
125. AKR provided a statement to the Royal Commission. She worked as a house parent from 1972 until 1978.\(^{163}\) In 1975, AKR was told by some children that Donald Henderson had sexually abused other children.\(^{164}\) AKR approached Mr Norman Wall.\(^{165}\) She also spoke directly to several of the children.\(^{166}\) She informed Superintendent Patmore who told her that he would report the matter to the police.\(^{167}\)

126. In 1975, the matter was reported to police and Mr Henderson was charged with a number of sexual offences. He was committed for trial on one count of indecent assault. However, a nolle prosequi was ultimately entered on that charge. Mr Henderson was not convicted of any offence in respect of those allegations. However, he was stood down from his duties at the Retta Dixon Home and ultimately did not return to work at the Home.\(^{168}\)

127. AKR said that there was a view amongst some house parents that the matter should be dealt with internally and not reported to the police,\(^{169}\) notwithstanding that the allegations against Mr Henderson were eventually reported to the police. AKR said in her statement that she was not aware of any guidelines at the time that set out her responsibilities in respect of reporting child sexual abuse.\(^{170}\)

128. Reverend Trevor Leggott, AIM’s General Director since 1996 gave 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.\(^{171}\) The manual describes general operating principles but does not refer to any guidelines or policies in respect of how staff should respond to allegations of sexual abuse.\(^{172}\) It does not refer to any requirement of a police check or clearance to work as a missionary.\(^{173}\) AKR gave evidence that in 1972 she

---

\(^{163}\) Exhibit 17-0012, Statement of AKR, STAT.0339.001.0001_R at [9], [37].

\(^{164}\) Ibid at [25].

\(^{165}\) Ibid at [26].

\(^{166}\) Ibid at [27].

\(^{167}\) Ibid at [29].

\(^{168}\) Ibid at [30].

\(^{169}\) Ibid at [36].

\(^{167}\) Ibid at [41].

\(^{170}\) Exhibit 17-0035, Supplementary Statement of Trevor Leggott, STAT.0330.002.0001_R; Transcript of T Leggott, CS568-CS571 (Day 51).

\(^{171}\) Exhibit 17-0006, AG.RDH.01.0061.0001.

\(^{173}\) Transcript of T Leggott, T 5568 (Day 51).
received no training or guidance or procedures upon arriving at Retta Dixon Home as a Missionary.\textsuperscript{174} Ms Wall also gave evidence that she received no such training.\textsuperscript{175}

129. Reverend Leggott gave evidence that AIM's current organisational structure and policies are set out in the AIM Practice and Procedure Manual.\textsuperscript{176} The manual refers to criteria for a person to work as a missionary, including a police check, and a working with children clearance if they are to come into contact with children.\textsuperscript{177} There are also procedures for handling allegations of child sexual abuse and sexual misconduct which have been in place since 2013.\textsuperscript{178}

AVAILABLE FINDINGS

2. Prior to 2013, the Australian Indigenous Ministries did not have any guidelines or procedures on how to respond to allegations of child sexual abuse for persons working at the Retta Dixon Home.

3. The Superintendent of the Home, Mr Pattemore, in 1973 was informed of allegations that Mr Henderson had sexually assaulted children at the home. He notified AIM headquarters in Sydney. AIM did not remove Mr Henderson from the home and did not notify the police.

4. The Superintendent of the Home, Mr Pattemore was advised by Mrs Kitching of allegations of sexual assault by Mr Pounder. Mr Pattemore did not remove Mr Pounder from the home and did not notify the police.

\textsuperscript{174} Transcript of AKR, C4963 (Day 46).
\textsuperscript{175} Transcript of L Wall, C4972 (Day 46).
\textsuperscript{176} Exhibit 17-0006, AIM.0001.001.0001.
\textsuperscript{177} Transcript of T Leggott, C5561 (Day 51).
\textsuperscript{178} Ibid at C5562.
D     RESPONSE OF COMMONWEALTH TO ALLEGATIONS OF CHILD
SEXUAL ABUSE BY RESIDENTS

130. The documents which were produced did not indicate that the Welfare Division of the
Commonwealth Government was aware of the sexual offending by Mr Powell against
three boys at the home for which he was convicted in 1966.

131. The documents which were produced did not indicate that the Department of Aboriginal
Affairs within the Commonwealth Government had any knowledge of the allegations or
charges brought against Mr Henderson in 1975.

132. The documents which were produced did not indicate that the Commonwealth
Government had any knowledge of the allegations of child sexual abuse.

E     POLICE INVESTIGATION AND PROSECUTION OF DONALD
HENDERSON

POLICE RESPONSE

THE INITIAL INVESTIGATION

133. In 1998, a police investigation commenced into allegations Mr 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 A JB, which was made on 12 May 1998.179 The complaint related
to events which had taken place in the 1960’s when he lived at the home.

134. Detective Roger Newman assumed conduct of the investigation. He gave evidence at
the public hearing of his involvement in the investigation and prosecution of Mr
Henderson.

179 Exhibit 17-0-015, Statement of Roger Newman, STAT.0336.001.0001_R at [3].
135. Detective Newman said that in 1998 there were no policies, guidelines or general police orders which specifically dealt with the investigation of historical sexual offences.¹⁸⁰ Nor were there any courses or training on how to liaise and deal with indigenous witnesses.¹⁸¹ He agreed such courses would have assisted him and other officers at the sexual assault unit in the investigation of cases such as Mr Henderson.¹⁸²

136. Detective Newman gave evidence he was guided by a General Order dealing with sexual assaults.¹³ He also liaised with the Office of the Director of Public Prosecutions throughout the investigation and charging process.¹⁸⁴

137. He said the investigation was a difficult one partly because there was a marked reluctance on the part of many former residents of the home to speak about Mr Henderson. Many were frightened of Mr Henderson and others felt shame when speaking of the sexual allegations against Mr Henderson. Detective Newman spent much time building a rapport with the alleged victims. The matter was complicated by the historical nature of the allegations.

138. Detective Newman’s involvement commenced with an internal memorandum from Detective Senior Lockhart.¹⁸⁵ The memorandum referred to a list of children who may have been the subject of sexual abuse by Mr Henderson.¹⁸⁶

139. Detective Newman made enquiries of those persons on the list. Kevin Stagg’s name was on the list, yet he did not speak with Kevin Stagg as he could not find a contact number or address for him.¹⁸⁷ Nor could he make contact with Kenneth Stagg.¹⁸⁸

140. Detective Newman also made inquiries of the Stolen Generation Litigation Unit, but was unable to discover any further names or persons with whom he should speak.¹⁸⁹

¹⁸⁰ Ibid at [32].
¹⁸¹ Transcript of R Newman, CS197 (Day 48).
¹⁸² Ibid at CS197.
¹⁸³ Exhibit 17-0015, Statement of Roger Newman, STAT.0336.001.0001_R at [33].
¹⁸⁴ Ibid at [40].
¹⁸⁵ Exhibit 17-0006, NT.0014.001.0332_R.
¹⁸⁶ Ibid at 0333_R.
¹⁸⁷ Transcript of R Newman, CS031 (Day 47).
¹⁸⁸ Ibid at CS032.
¹⁸⁹ Ibid at CS030-CS031.
141. On 2 March 1999, Detective Newman interviewed Mr Mervyn Pattemore, the former Superintendent of the Home. Mr Pattemore told Detective Newman that he had no recollection of any allegations of sexual abuse. Detective Newman did not at the time, and does not now, accept that explanation. Detective Newman was aware that Mr Pattemore had given evidence at the earlier committal of sexual charges against Mr Henderson in 1975 and it was Mr Pattemore who had made the initial complaint to police in that case. Detective Newman said that Mr Pattemore at the time appeared genuinely confused and vague, and Mr Pattemore’s wife said that her husband would have a nervous breakdown. For that reason, Detective Newman did not take a witness statement from Mr Pattemore.

142. Detective Newman conceded that he noted at the time that Mr Pattemore in fact said ‘he did not suspect anything happening with Henderson’. There is no reference in the note or any other document (apart from Detective Newman’s statement to the Royal Commission) about him being vague and confused.

143. During the course of the investigation, Detective Newman took statements from AJD, AJE, AJC, and AKU all of whom alleged they had been sexual abused by Mr Henderson.

AJE

144. Detective Newman first made contact with AJE on 10 March 1999. However, he was not able to obtain a statement from him until 15 September 1999. The statement

---

190 Ibid at [53].
191 Ibid at [54].
192 Transcript of R Newman, CS034 (Day 47); Exhibit 17-0006, NT.0014.001.0090_R; NT.0014.001.0006_R.
193 Ibid at [56]-[57].
194 Transcript of R Newman, CS125 (Day 48).
195 Exhibit 17-0006, RDH.0008.001.0481_R.
196 Exhibit 17-0006, RDH.0008.001.0500_R.
197 Exhibit 17-0006, RDH.0008.001.0512_R.
198 Exhibit 17-0006, RDH.0008.001.0506_R.
199 Exhibit 17-0015, Statement of Roger Newman, STAT.0336.001.0001_R at [59].
200 Ibid at [66].
disclosed that Mr Henderson placed his penis on AJE’s feet and tickled his feet.201 Detective Newman said this was an unusual allegation of sexual abuse which he had not heard before in his time at the sexual assault unit.202 However, it was an allegation that was made by numerous residents of the Home against Mr Henderson.

AJC

145. Detective Newman also obtained a statement from AJC in which he said he saw Mr Henderson in the community store with his shorts around his knees and his penis out.203 He saw AJE follow Mr Henderson out of the store pulling his shorts up.204 AJE did not describe this incident.

146. Detective Newman agreed the statement of AJC provided evidence of Mr Henderson’s sexual interest in AJE.205 Detective Newman said he could not recall whether he asked AJE if any such incident (as described by AJC) had occurred. He accepted he should have done so.206

AKU

147. Detective Newman next took a statement from AKU on 7 December 1999.207

148. In her statement, AKU described Mr Henderson placing her feet on his penis to cause him to become aroused.208 She alleged Mr Henderson sexually touched her in his bedroom, in the pool and at Berry Springs and Howard Springs.209 She also described an occasion when Mr Henderson broke her nose.210 Detective Newman agreed he obtained

201 Exhibit 17-0006, RDH.0008.001.0500_R at 0502_R, 0503_R, 0504_R.
202 Transcript of R Newman, CS037-C5-38 (Day 47).
203 Exhibit 17-0006, RDH.0008.001.0512_R at 0514_R.
204 Ibid.
205 Transcript of R Newman, CS039 (Day 47).
206 Ibid.
207 Exhibit 17-0006, RDH.0008.001.0506_R.
208 Ibid at 0508_R.
209 Ibid at 0508_R and 0509_R.
210 Ibid at 0509_R.
medical evidence of an x-ray from the Darwin Hospital which supported that allegation.\textsuperscript{211}

AJD

149. Detective Newman took a statement from AJD on 8 February 2001.\textsuperscript{212} Detective Newman first made contact with him on 13 December 1999, however he declined to give a statement.\textsuperscript{213} The matter was complicated by the fact AJD alleged AJH had committed sexual offences upon him.\textsuperscript{214} Detective Newman sought advice from the DPP. Mr Karczewski QC advised him to first obtain a statement from AJD about Mr Henderson and then consider the allegations made by AJD.\textsuperscript{215} Detective Newman spoke with AJD on 25 January 2001.\textsuperscript{216} From there arrangements were made to take his statement.

150. AJD alleged in his statement that Mr Henderson had sexually touched him in the swimming pool at the Home and at Howard Springs and Berry Springs.\textsuperscript{217} He also described an occasion in the storeroom when Mr Henderson inflicted two acts of anal penetration upon him. AJD alleged Mr Henderson anally and digitally penetrated him during the incident.\textsuperscript{218} This was the only occasion he alleged Mr Henderson sexually abused him in the storeroom and the only act of anal penetration said to have been inflicted upon him by Mr Henderson.

151. During the course of the investigation, Detective Newman became aware of the previous prosecution of Mr Henderson in 1975. In a memorandum dated 2 March 2000, he described the ‘ineptitude of the prosecutor at the time’.\textsuperscript{219} He could not recall to what he was referring, however he agreed he had read the transcript of the committal proceedings. Again, in May 2001 in a note to the prosecutor, he referred to the 1975

\textsuperscript{211} Exhibit 17-0015, Statement of Roger Newman, STAT.0336.001.0001_R at [75].
\textsuperscript{212} Exhibit 17-0006, RDH.0008.001.0481_R.
\textsuperscript{213} Exhibit 17-0015, Statement of Roger Newman, STAT.0336.001.0001_R at [78].
\textsuperscript{214} Ibid at [79].
\textsuperscript{215} Ibid.
\textsuperscript{216} Ibid at [98].
\textsuperscript{217} Exhibit 17-0006, RDH.0008.001.0481_R at 0487_R, 0488_R.
\textsuperscript{218} Ibid at 0488_R, 0489_R.
\textsuperscript{219} Transcript of R Newman, CS045 (Day 48); Exhibit 17-0006, NT.0008.007.0056_R.
charges and said that the substance of the allegations are of an identical nature to those alleged by the current complainants.\textsuperscript{220}

152. He did not try and re-interview any of the complainants from 1975 and can now provide no explanation as to why he did not do so.\textsuperscript{221}

153. Detective Newman agreed he did not interview Ms Wall, a former house-parent at the Home.\textsuperscript{222} He spoke with AKR, another house-parent but did not obtain a statement from her because she was reluctant to talk about the matter.\textsuperscript{223} He said he did not make inquiries of AIM as to the names of the relevant house parents of the day.\textsuperscript{224}

154. Detective Newman also became aware Mr Henderson had pleaded guilty to two counts of aggravated assault on a male child of a sexual nature on 4 January 1984.\textsuperscript{225}

155. Detective Newman interviewed Mr 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.\textsuperscript{226}

156. On 20 April 2001, Detective Newman created a police apprehension report.\textsuperscript{227}

157. In mid May 2001, Detective Newman submitted a brief of evidence to be considered by the Office of the Director of Public Prosecutions. Detective Newman gave evidence that he consulted with the Office of the Director of Public Prosecutions before laying any charges against Henderson.\textsuperscript{228}

\begin{small}
\textsuperscript{220} Transcript of R Newman, CS119 (Day 47); Exhibit 17-0006, RDH.0008.001.0428\_R.
\textsuperscript{221} Transcript of R Newman, CS046 (Day 47).
\textsuperscript{222} Transcript of R Newman, CS162 (Day 48).
\textsuperscript{223} Ibid at CS165, 5171 (Day 48).
\textsuperscript{224} Ibid at CS172-CS173 (Day 48).
\textsuperscript{225} Exhibit 17-0020, NT.0005.001.0001\_R.
\textsuperscript{226} Transcript of R Newman, CS048-CS049 (Day 47).
\textsuperscript{227} Exhibit 17-0006, RDH.0008.001.0432\_R.
\textsuperscript{228} Transcript of R Newman, T 5050 (Day 47).
\end{small}
CHARGES ARE LAID IN THE MAGISTRATES COURT

158. 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 AJB, AJD, AJE and AKU, all former residents of the Retta Dixon Home.

159. The Office of the Director of Public Prosecutions assumed conduct of the prosecution in the lead up to the committal proceedings. Detective Newman continued as the Officer in Charge of the investigation throughout the subsequent prosecution.

160. On 3 September 2001 the victim support services attached to the DPP wrote to the complainants and advised them of the committal proceedings. Additional correspondence was sent to the complainants by Michael Carey on 12 September 2001.

161. On 11 October 2001, Mr Elliott of the DPP wrote to Detective Newman and foreshadowed difficulties with the latent ambiguity of many of the charged counts on the Information. Mr Elliott requested Detective Newman to obtain further statements to particularise the charges. As a result of the request, Detective Newman took a further statement from AJD on 3 February 2002. AJD was able to describe a further incident of touching at Howard Springs. Detective Newman did not obtain any further statements from AJE and AKU. He believed they failed to keep an appointment to do so. He said he collected them on 4 February 2002 to take them to the DPP in preparation for the committal proceedings. At that time, he did not take a further statement. He cannot say why he did not do so.

229 Exhibit 17-0023, STAT.0335.001.0029_R.
230 Exhibit 17-0022, NT.0022.001.0026_R; NT.0022.001.0028_R; NT.0022.001.0030_R; NT.0022.001.0032_R.
231 Exhibit 17-0022, NT.0022.001.0034_R; NT.0022.001.0035_R; NT.0022.001.0038_R; NT.0022.001.004_R.
232 Exhibit 17-0015, STAT.0336.001.0103_R.
233 Exhibit 17-0015, STAT.-336.001.0110_R.
234 Transcript of R Newman, T 5070 (Day 47).
235 Transcript of R Newman, CS188-CS189 (Day 48).
236 Transcript of R Newman, CS071-CS072 (Day 47).
162. On 21 January 2002, Mr Elliott again requested Detective Newman take further statements from AKE and AKU to further particularise the charges.\textsuperscript{237}

COMMITTAL PROCEEDINGS

163. The committal proceedings were heard in the Darwin Magistrates Court before Mr Gilles SM on 5, 6 & 7 of February 2002.\textsuperscript{238} Mr Dooley appeared for the Office of the Director of Public Prosecutions, NT.

164. At the commencement of the proceedings, the Office of the Director of Public Prosecutions elected to proceed with nine counts only.\textsuperscript{239} The charges relating to AJB were discontinued as he had died. The DPP elected not to proceed with the other charges because of the latent ambiguity of the charges, that is, each complainant could not give evidence about a particular occasion in respect of each charge: \textit{S v The Queen}.\textsuperscript{240} Detective Newman gave evidence that the reason that were conveyed to him for this decision was that those charges were the ‘best charges’ with the best evidence.\textsuperscript{241}

165. 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 charged on the Information, along with a further six charges which were added by the magistrate to the original Information. The remaining charges were dismissed.

166. After the committal, Detective Newman received an email from Mr Dooley that he had been contacted by an associate of AKT. She advised him that AKV had been sexually assaulted by Mr Henderson.\textsuperscript{242}

167. Detective Newman contacted AKV. He believed he spoke with him by telephone, rather than having met him in person. However, he says he can simply now not recall whether

\textsuperscript{237} Exhibit 17-0006, STAT.0336.001.0107_R.
\textsuperscript{238} Exhibit 17-0006, RDH.0008.001.0159_R; RDH.0008.001.0218_R; RDH.0008.001.0307_R.
\textsuperscript{239} Transcript of R Newman, CS073 (Day 47).
\textsuperscript{240} (1989) 168 CLR 266.
\textsuperscript{241} Transcript of R Newman, CS074 (Day 47).
\textsuperscript{242} Exhibit 17-0017, NT.0005.001.0225_R.
or not he did meet him in person.  He made a note of his conversation with him. AKV described an incident in the swimming pool when Mr Henderson rubbed him against his body, and a second incident at Berry Springs when Mr Henderson sexually touched him. He also described seeing Mr Henderson using a feather duster to tickle a boy around the anus. He provided the name of the boy. He also gave him the name of another boy that he believed had been sexually assaulted by Mr Henderson.

168. Detective Newman gave evidence he tried to contact both boys now men unsuccessfully.

169. Detective Newman said he did not take a statement from AKV either over the phone or by typing up his case note into statement form and asking him to sign it. He did not follow up the conversation with a further phone call to AKV or AKT. He said he was waiting for AKV to contact him. He said had AKV wanted to make a statement at the time he would have taken a statement, or if AKV was in a position to make a statement at the time he would have taken one. He agreed it would have been of assistance to the prosecution had he obtained a statement from AKV. AKV said in the hearing he would have given evidence at any trial of Mr Henderson.

SUPREME COURT TRIAL

170. A Supreme Court Indictment was presented by the Office of the Director of Public Prosecutions which charged Mr Henderson with the 15 counts upon which he had been committed. Mr Henderson was arraigned in the Supreme Court on 22 March 2002.

---

243 Transcript of R Newman, CS084 (Day 47).
244 Exhibit 17-0016, NT.0005.001.0227_R.
245 Transcript of R Newman, CS080-CS081 (Day 47).
246 Ibid at CS085.
247 Transcript of R Newman, CS195 (Day 48).
248 Transcript of R Newman, CS086 (Day 47).
249 Transcript of AKV, C4883 (Day 46).
250 Transcript of R Newman, CS246 (Day 48).
A Supreme Court trial was listed to commence on 11 December 2002. The matter was subsequently brought forward to 9 December 2002.

On 3 June 2002, Mr Dooley sent an email to Detective Newman which advised him of the trial date ‘to make sure the victims are kept up to date’. The victim support service sent letters to the complainants on 5 June 2002 advising them of the trial dates.

On 24 September 2002, Mr Dooley sent an email to the Director of Public Prosecutions, Mr Wild QC, the Deputy Director, Mr Karczewski QC and senior prosecutors, Mr Carey and Mr Noble advising them of the trial date and asking to be led on the matter. He concluded the email by saying ‘My view is that an experienced trial lawyer should be drafted in here. At least then we can give these matters the best possible chance. A decent go, even if not culminating in convictions should satisfy the locals.’

On 29 October 2002, Mr Dooley sent an email to Detective Newman advising him of a separate trial application listed for 7 November 2002.

On 7 November 2002, Mr Carey, a senior prosecutor at the DPP, wrote a memorandum to the Director of Public Prosecutions, Mr Wilde QC recommending the charges against Mr Henderson be withdrawn. Mr Carey had conduct of the file for one day before making the recommendation. The Director sought the input of Mr Dooley who had conducted the committal proceedings. Mr Dooley agreed with the recommendation. The Director of Public Prosecutions agreed to discontinue the charges on the basis there was no reasonable prospect of conviction as provided by the guidelines issued by the Office of the Director of Public Prosecutions pursuant to section 25 of the Director of Public Prosecutions Act (NT).

On 12 November 2002, nolle prosequis were entered on all charges.

On 27 November 2002, Detective Newman and the complainants AJE and AKU were informed of the decision to discontinue the prosecution. On that date, Detective

---

251 Transcript of R Newman, CS095 (Day 47); Exhibit 17-0018, NT.0022.001.0047_R.
252 Transcript of R Newman, CS238 (Day 48).
253 Exhibit 17-0023, STAT.0335.001.0082_R.
254 Exhibit 17-0023, STAT.0335.001.0085.
255 Transcript of W Karczewski, CS249 (Day 48).
Newman, AJE and AKU met with prosecutors at the Office of the Director of Public Prosecutions. Detective Newman made a case note of the meeting.\(^{256}\) He has no independent recollection of the day.\(^{257}\) By reference to the case note, he gave evidence that he met with Mr Carey who advised him the matter would not succeed in the Supreme Court. He said the chances of success were diminished by the application for separate trials. No other reason was noted by him for the DPP’s decision to enter nolle prosequis. Detective Newman said there had been any other reason given, he would expect it to appear in that case note.\(^{258}\)

178. Detective Newman gave evidence that prior to the meeting on 27 November 2002, he could not recall any discussions with the DPP about the charges not proceeding to trial.\(^{259}\) There was some discussion about separate trials, although Detective Newman never recalled seeing an application and there was never any suggestion to him from the DPP that this was a reason for the matter to be discontinued. His opinion on it was not sought, and he was never asked for that of the victims.\(^{260}\) Indeed on 14 November 2002, after the charges had already been discontinued, Detective Newman was still liaising with AJD about arrangements for his appearance at the trial.\(^{261}\) He was never informed that the nolle prosequis had been entered before the meeting of 27 November 2002. He did not know this until the public hearing.\(^{262}\)

179. Detective Newman gave evidence that had he been given the opportunity he would have resisted the DPP discontinuing the charges.\(^{263}\) Detective Newman gave evidence it was never suggested to him by the DPP that further inquiries could lead to the charges being re-instated.\(^{264}\)

180. Detective Newman disagreed with the following statements made by Mr Carey in his memo of 11 November 2002: that ‘the police understand the predicament and do not

---
\(^{256}\) Exhibit 17-0006, NT.0005.001.0237_R.
\(^{257}\) Transcript of R Newman, CS132 (Day 48).
\(^{258}\) Ibid at CS128.
\(^{259}\) Transcript of R Newman, CS087 (Day 47).
\(^{260}\) Ibid at CS091.
\(^{261}\) Ibid at CS098; Exhibit 17-0019, NT.0022.001.0051_R.
\(^{262}\) Transcript of R Newman, CS133 (Day 48).
\(^{263}\) Transcript of R Newman, CS117 (Day 47).
\(^{264}\) Transcript of R Newman, CS131 (Day 48).
have a problem with the matter not proceeding'; that 'the victims been informed of the
decision' and the 'victims were simply pleased to have the matter committed for trial
and that fact made them feel very vindicated'. He gave evidence those statements did
not reflect his views or his understanding of the views of the victims at the time.

181. Detective Newman thought then and now that the prosecution needed to be pursued,
because of the 'similar fact evidence' and the plain fact that the victims' stories needed
to be told. He believed they were credible complainants. Detective Newman
accepted that there were difficulties with the case, but believed they could be
overcome. Detective Newman felt he had let the complainants down in circumstances
where they had shown tremendous courage in coming forward and making statements
to the police.

AVAILABLE FINDINGS

5. Detective Newman investigated the allegations against Mr Henderson. He did not:

a. take addendum statements from AJE and AKU, to particularise the charges and
   from AJE in respect of the incident described by AJC;

b. attempt to re-interview the complainants from the 1975 charges;

c. contact or make efforts to contact AKV again (either through his sister or directly)
   and take a statement from him;

  d. contact AIM to find out the names of house parents who may have been of
     assistance to the investigation; and

e. take a statement from Mrs Lola Wall.

265 Transcript of R Newman, CS108 [Day 47].
266 Ibid at CS057.
267 Ibid at CS111.
6. Prior to 2003, there were no policies, guidelines or general police orders which specifically dealt with the investigation of historical sexual offences, or issues peculiar to indigenous witnesses. Nor were there any courses or training on how to most effectively liaise and deal with indigenous witnesses.

DPP RESPONSE

ADMINISTRATIVE PROCESS

182. 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.268 However, by reference to the materials, the file of the Office of the Director of Public Prosecutions and the DPP Guidelines, he gave evidence about the DPP’s decision to enter nolle prosequis and discontinue the charges against Mr Henderson.

183. In 2002, there was no formal memorandum of understanding as to the division of labour between the DPP and police in respect of the prosecution of major indictable offences. There is currently a draft memorandum as to the respective role of each agency which is yet to be implemented.269 A victim support service (VSS) was located within the Office of the DPP.270 A DPP officer would refer a matter to the VSS after a matter was listed for committal. The VSS would then make contact with the victim and provide support services.271

184. The VSS became involved in this matter before committal proceedings. They advised the complainants of the committal proceedings and trial dates. There is no evidence of any contact by the VSS after the nolle prosequis were entered and the charges discontinued.

268 Transcript of W Karczewski, CS201 (Day 48).
269 Ibid at CS208.
270 Ibid at CS205.
271 Ibid at CS206.
185. Mr Karczewski QC gave evidence that the present DPP Guidelines are the same as those which applied in 2002.\textsuperscript{272}

186. A memorandum of Mr Michael Carey, a Senior Prosecutor at the DPP dated 11 November 2002 to the DPP, Mr Wild QC purports to set out the basis for the recommendation to discontinue the charges against Mr Henderson.\textsuperscript{273}

187. Mr Carey gave evidence he has no independent recollection of the prosecution of Mr Henderson, or writing the memorandum of 7 November 2002 in which he recommended the charges against Mr Henderson be discontinued.\textsuperscript{274} Mr Carey agreed the memorandum did not comply with the DPP Guidelines in material ways. He could provide no reason why he failed to do so.\textsuperscript{275}

188. In particular, Mr Carey agreed that he did not speak with the complainants or investigating officer directly before making the recommendation.\textsuperscript{276} He does not set out in the memorandum to whom he spoke to ascertain the police and complainants’ views.\textsuperscript{277} Mr Carey said he believed that he obtained this information from Mr Dooley. However, an email from Mr Dooley to Mr Carey days after the memorandum is inconsistent with Mr Carey’s evidence. The email shows Mr Dooley had not yet consulted the police or complainants, so he was not in a position to share their views with Mr Carey.\textsuperscript{278}

189. He also agreed that unless there was a reason for urgency, a case of this complexity and seriousness required more time than 24 hours to properly consider and prepare a memorandum to discontinue the charges. He could provide no reason for the urgency.\textsuperscript{279}

190. Mr Karczewski QC, also considered the memorandum of 7 November 2002. He concluded Mr Carey did not comply with the DPP’s guidelines, in particular, with

\textsuperscript{272} Ibid at CS201-2; Exhibit 17-0023, STAT.0335.001.0094.
\textsuperscript{273} Transcript of W Karczewski, CS254 (Day 49).
\textsuperscript{274} Transcript of M Carey, CS649 (Day 51).
\textsuperscript{275} Ibid at CS665.
\textsuperscript{276} Ibid at CS649.
\textsuperscript{277} Ibid at CS666.
\textsuperscript{278} Ibid at CS688; Exhibit 17-0019, NT.0022.001.0051_R.
\textsuperscript{279} Ibid at CS674, CS676.
paragraph 7.11 on the discontinuance of proceedings. Mr Karczewski QC said that the memorandum was insufficient in its brevity and fell short of what was required by the Guidelines.  

191. In particular, the memorandum provided no summary of the charges and no analysis of the evidence in respect of each charge. It contained no precis or analysis of any pre-trial applications foreshadowed by defence such as an application for separate trials or a stay of proceedings. No reference to the defendant’s criminal history was made in the memorandum. Nor was there any reference to the previous prosecution of him in 1975. There was an inaccurate statement of the views ascribed to the police and victims about the charges being withdrawn. Mr Karczewski QC gave evidence the guidelines envisage a positive assertion as to the views of the police and victims. He considered the memorandum insufficient in that respect.

192. Overall, Mr Karczewski considered the memorandum was insufficient in its brevity. It failed to address the matters required by the guidelines for discontinuance reports.

193. Guideline 7.13 also makes clear that after a decision to discontinue proceedings has been made by the Director, the prosecutor must notify the police officer in charge, the victim, the offender and the court of the decision as soon as practicable. The investigating officer Detective Newman gave evidence he and the complainants, AKU and AIE were first advised of the decision to discontinue the proceedings on 27 November 2002.

194. Mr Karczewski QC gave evidence that a delay of 16 days in informing the police and complainants did not meet the criteria provided for by the guidelines. Further, at that time (or indeed at any time after the meeting), the DPP did not inform Detective Newman or the victims that a nolle prosequii had already been entered. Detective

---

280 Transcript of W Karczewski, CS254 (Day 49).
281 Ibid at CS256-CS257.
282 Ibid at CS257-CS258.
283 Ibid at CS258.
284 Ibid at CS259.
285 Ibid at CS254.
286 Ibid at 5260.
Newman gave evidence he first discovered the date the nolle prosequi was entered during this public hearing.

195. Mr Karczewski QC agreed that the delay, and the failure to communicate the fact of the nolle prosequis with the complainants and the investigating officer, was wholly lamentable.\textsuperscript{287}

196. Mr Karczewski QC agreed the memorandum by Mr Carey and the documents disclosed a serious failure by the Office of the DPP to observe the appropriate procedures.\textsuperscript{288}

DECISION TO DISCONTINUE THE PROCEEDINGS

197. The DPP Guidelines\textsuperscript{289} provide a two-fold test to be applied in making a decision to discontinue proceedings: first, whether there is a reasonable prospect of conviction and second, whether it is in the public interest to prosecute.\textsuperscript{290} Whether there is a public interest in prosecuting the charges is determined by three criteria: whether the admissible evidence is capable of establishing each element of the offence; whether it can be said there is a reasonable prospect of conviction by a reasonable jury (or tribunal of fact) properly instructed as to the law; and a series of discretionary factors which dictate whether the matter should or should not proceed.\textsuperscript{291} The relevant discretionary matters are itemised in the guidelines.\textsuperscript{292}

198. In 2002, on the basis of the advice of Mr Carey, the Director of Public Prosecutions concluded there was no reasonable prospect of conviction primarily because of the latent ambiguity in the charges. Effectively, the evidence was said to reveal 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 DPP concluded that the charges offended against the principle enunciated in \textit{S v The Queen}.\textsuperscript{293} There was also a

\textsuperscript{287} Ibid at CS321.

\textsuperscript{288} Ibid at CS265.

\textsuperscript{289} Exhibit 17-0023, STAT.0335.001.0094.

\textsuperscript{290} Guideline 2.1, Ibid at 0101.

\textsuperscript{291} Guideline 2.2, Ibid.

\textsuperscript{292} Guideline 2.5, Ibid at 0102.

\textsuperscript{293} (1989) 168 CLR 266.
reference in the memorandum of 7 November 2002 to the staleness of the offences and
the inconsistency between the witnesses and within the testimony of each particular
witness. Further, Detective Newman in his case note of 27 November 2002 wrote that
'part of his decision was based on a separate trial application by Henderson which Carey
believed would be successful, thus diminishing the chances of a successful
prosecution'.

199. In evidence, Mr Karczewski QC conceded the issue of the latent ambiguity of the charges
did not apply to all the counts and that, at least, the DPP should not have entered a nolle
prosequi with respect to five (5) counts on the indictment.

200. Ultimately, Mr Karczewski QC concluded that counts 1, 3, 5, 6, 11 and 15 on the
Indictment could have and should have proceeded to trial. Further, count 1 could have
and should have been charged as two separate counts – one for penile-anal intercourse
and one for digital-anal intercourse.

201. Mr Karczewski QC said that the fact the charges related to events occurring 30 or 40
years ago was not in itself a reason to discontinue the charges; it needed to be shown
that the accused was at a positive disadvantage or there was actual prejudice. There was
no evidence or discussion of such prejudice in this case. Also, the fact there were
inconsistencies in the evidence was not a reason of itself to discontinue the charges.

202. Mr Karczewski QC agreed that the potential for a separate trial application, even if it was
thought it might be successful, should not have formed the basis of a decision to enter
nolle prosequi.

203. Mr Karczewski QC agreed that there was evidence of uncharged acts which was arguably
admissible and should have been considered or discussed in the memorandum of 7
November 2002. Evidence of uncharged acts would have further strengthened the
prosecution case.

---

294 Exhibit 17-0006, NT.0005.001.0237.
295 Transcript of W Karczewski, CS266-CS267 (Day 49).
296 Ibid at CS267.
297 Ibid at CS335.
298 Ibid at CS277-CS278.
204. Significantly, Mr Karczewski QC gave evidence that if the same case was presented to him today, he would proceed on the nominated 'stand-alone' charges and that there was no reason not to proceed.²⁹⁹ It was 'crystal clear' that there was sufficient evidence to charge and to proceed with those charges.³⁰⁰

205. Mr Karczewski QC said that since 2002, there have been significant changes to the handling of sexual cases within his Office. First there is a sexual assault prosecutor who is a senior prosecutor and has particular experience in the area. Second, Indictments can only be signed by a Senior Crown Prosecutor. Senior prosecutors are instructed not to sign an Indictment in the absence of briefing notes.³⁰¹ Thirdly, as Director he will not sign a nolle prosequi until such time as the author of the memorandum has spoken to the complainants.³⁰²

AVAILABLE FINDINGS

7. The memorandum of recommendation by Mr Carey to discontinue the proceedings against Mr Henderson did not comply with the DPP Guidelines in that it did not provide:

   a. a summary of the charges;

   b. an analysis of the evidence in respect of each charge;

   c. any reference to pre-trial applications foreshadowed by defence, such as an application for separate trials or a stay of proceedings;

   d. any reference to the defendant's criminal history and the previous prosecution of him in 1975; and

   e. an accurate statement of the views of the investigating officer and victims about the charges being withdrawn.

²⁹⁹ Ibid at CS282-CS283.
³⁰⁰ Ibid at CS242.
³⁰¹ Ibid at CS284.
³⁰² Ibid at CS323.
8. The DPP did not notify the police officer in charge and the victims of the decision to discontinue the proceedings as soon as practicable after the decision was made as required by the DPP guidelines.

9. The DPP's decision to enter nolle prosequis on counts 1, 3, 6, 11 and 15 on the Supreme Court Indictment on the basis there was no reasonable prospect of conviction and it was not in the public interest to proceed was not supported by the evidence or any other discretionary factor.

F OUT OF HOME CARE IN THE NORTHERN TERRITORY

206. 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.

207. The hearing considered 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 experiences had at the Retta Dixon Home. The Royal Commission heard evidence about what is considered good practice in this area, with a particular emphasis on the needs of Aboriginal children.

i. Current laws policies and procedures in NT

208. Mrs Simone Jackson, Executive Director of the Out-of-Home Care Division of the Northern Territory Department of Children and Families, gave evidence at the hearing.

209. 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.

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.  

211. Between 2005 and 2011, there were two significant reviews of child protection and child sexual abuse in the Northern Territory.

212. 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.  

213. 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.

214. In December 2007, the Community Welfare Act 1983 (NT) was replaced by the Care and Protection of Children Act 2007 (NT).

215. The second review commenced in November 2009, when an independent Board of Inquiry into the Northern Territory Child Protection System (BOI) was announced. The BOI 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.

---

303 Section 69.
216. 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.

217. Currently, the Care and Protection of Children Act 2007 (the Act) 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.\textsuperscript{306} It prescribes that an Aboriginal child should, as far as practicable, be placed in close proximity to their family and community.\textsuperscript{307}

218. Under the Care and Protection of Children (Placement Arrangement) Regulations 2010 (NT), 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.\textsuperscript{308} 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.\textsuperscript{309}

219. 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.\textsuperscript{310} Caseworkers are required as a matter of policy to meet with children in care at least once every month.

220. 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.

221. 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

\textsuperscript{306} Section 12(1).
\textsuperscript{307} Section 12(3).
\textsuperscript{308} Section 3.
\textsuperscript{309} Section 3(e).
\textsuperscript{310} Section 68A(6).
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.

222. 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.

223. The Out of Home Care Division is also responsible for therapeutic services or in-care support which is a team of psychologists, therapists, counsellors and social workers.  

224. There are also some mechanisms in place for exit care after a child turns 18 which includes being placed on a priority housing list, involvement with Anglicare for support for the child and the government to ensure financial arrangements are in place for the child. Until the child is 25, they have a case manager from whom the can obtain support and access services.  

Recruitment, training and monitoring of carers

225. Mrs Jackson accepted that the Australian Institute of Health statistics show that the percentage of Indigenous children in the Northern Territory who are placed with kinship carers or indigenous carers is lower than any other state or territory.

226. Ms Jackson gave 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.

---

311 Transcript of S Jackson, C5386 (Day 50).
312 Ibid at C5459-C5460.
313 Ibid at C5458; Exhibit 17-0029, EXH.017.029.0001.
227. Mrs Jackson gave evidence of the particular challenges for the recruitment of out of home carers for Indigenous children in the NT, including the geographical constraints and the time it takes to check potential kinship carers and their households or contacts.

228. Mrs Jackson said that the number of Indigenous children being placed with Indigenous carers could be improved by a targeted recruitment campaign which addressed the stigma of being associated with the child protection system. There needs to be more education about the role of kinship carers within the community. Mrs Jackson said she does not support reducing the checks and balances on kinship carers to increase their number.\textsuperscript{314} She said that once recruited there is a good rate of retention of kinship carers.\textsuperscript{315}

229. Carers are required to have training before a child is placed in their care as part of the placement agreement. However, this does not always occur such as with an emergency placement.\textsuperscript{316} Carers are encouraged to revisit the training every 12 months. However, the training does not include protective behaviours in respect of child sexual assault or indicators of grooming behaviours.\textsuperscript{317} Ms Jackson considered this was an area of the training which required improvement.\textsuperscript{318}

230. There is a monthly meeting between the carer and a staff member of the Out of Home Care Division. A monthly face-to-face meeting should also occur between a child protection case manager and the child. Regular placement meetings are had which bring all the parties together.\textsuperscript{319} Mrs Jackson expressed the view that the new standalone out of home care division increases the opportunity for a child to have a voice in the decision making. This fact combined with greater face to face contact with the child, has reduced the amount of placement movement of children.\textsuperscript{320}

231. While case managers are required to meet with children on a monthly basis, this only occurs between 40% and 60% of the time because in part of geographical limitations.

\textsuperscript{314} Transcript of S Jackson, C5389-C5390 (Day 50).
\textsuperscript{315} Ibid at C5418.
\textsuperscript{316} Ibid at C5394.
\textsuperscript{317} Ibid at C5395-C5396.
\textsuperscript{318} Ibid at C5396.
\textsuperscript{319} Ibid at C5398.
\textsuperscript{320} Ibid at C5398-C5399.
Mrs Jackson agreed monthly visits are optimal. She said the rate is improving. She has remote teams to assist with the geographical difficulties and also rely on other agencies such as schools, police and health services. She agreed the involvement of other agencies was an important aspect to develop in the future.

232. Mrs Jackson is not aware of consideration having been given to a community visitor program despite the fact it was a recommendation of the BOI in 2010.

233. In terms of children housed in residential facilities, there is no external monitoring of those facilities apart from government, although the Children's Commissioner has the power to respond to any allegations.

Response to allegations of child sexual abuse

234. Ms Jackson also gave evidence about the current procedures for responding to allegations of sexual abuse.

235. 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.

236. 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 be 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.
237. 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 the Department’s response and actions are appropriate.

238. Mrs Jackson expressed the view that it would not strengthen the child protection system if the Children’s Commissioner was also vested with the power to investigate the allegations themselves, because the police and the Department of Children and Families already have sufficient powers of investigation. 327

239. Mrs Jackson considered the most important issues for the child protection system in terms of a response to allegations of child sexual abuse is to have adequate and appropriate training and policies and procedures which give adults the skill to identify and respond to abuse. Children also require opportunities and a supportive environment to disclose allegations of abuse. 328

240. With Indigenous children, there needs to be an emphasis on appropriate housing so a child feels like it is their home. Carers also have to understand where the child comes from and the importance of their culture. 329

241. Mrs Jackson also indicated that the support for families once a child has been removed is very poor and this is an area which needs to be improved. She said there is a level of support given through therapeutic services but it is not great. 330

ii Dr Bath’s evidence

242. Dr Howard Bath, the Northern Territory Children’s Commissioner, also gave evidence at the hearing.

243. He explained the role and powers of the Northern Territory Children’s Commissioner. He said the overall role of the Children’s Commissioner is to ensure the wellbeing of vulnerable children. 331 The primary role is to investigate complaints. They also monitor

---

327 Ibid at CS414-CS415.
328 Ibid at CS416.
329 Ibid.
330 Ibid at CS419.
331 Transcript of H Bath, C5510 (Day 51).
the administration of the Child Protection Act, convene the child death review. The Children’s Commissioner also has a policy role.\textsuperscript{332}

244. The Children’s 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’s role is to examine 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 Children’s 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.

245. The Office of the Children’s 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.

246. Dr Bath, as the Children’s 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.

247. He gave 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.\textsuperscript{333} Dr Bath believed that this could be improved by the Department taking an ‘enabling approach’ to finding kinship care.

\textsuperscript{332} Ibid at C5510.
\textsuperscript{333} Ibid at C5519.
placements, for example by investing further resources in support and housing for kinship carers.

248. Dr Bath believed 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. He said 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.334

249. Dr Bath thought it was very important that case workers meet with children once per month. Last year 52% of children had been visited once per month. 69% of children were visited within 2 months. He did not think these figures were satisfactory.335 He believed there had been an improvement in those figures over the past year.336 In the absence of a community visitor program, Dr Bath believed the need for children to meet with case workers once per month was enhanced.337 In the past, he has suggested a classification system where children who are more vulnerable are given priority in terms of visits by a case worker. He is not aware whether this suggestion has been adopted by the Department.338 He also gave evidence of remote teams in communities. He does not accept the remoteness of some communities as an excuse for the failure of the Department to meet with children in care in those communities once per month.339

250. Dr Bath also gave evidence that the services for children who have been in out of home care after they turn 18 are limited and it is critical they have appropriate support.340

251. Dr Bath also considered that it is important that there is an independent body which reviews allegations of abuse in care (not simply a review of the Department’s response to the allegations) because of the perceived conflict of interest if the Department is investigating its own workers.341

334 Ibid at CS514-CS516.
335 Ibid at CS517.
336 Ibid at CS516.
337 Ibid at CS520-CS521.
338 Ibid at CS525.
339 Ibid at CS526.
340 Ibid at CS522.
341 Ibid at CS512.
Further, at the moment the Children’s Commissioner only reviews completed investigations where abuse has been found to occur. Dr Bath believes it would strengthen the child protection system if his Office could also review the Department’s response to allegations which were found to be unsubstantiated or not proved. Dr Bath also said that it would be helpful if he was advised of the allegations at the outset rather than after the Department’s investigation was completed.  

iii Professor Bamblett’s evidence

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. She provided a statement to the Royal Commission dated 20 September 2014.

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 with Dr Bath of the Board of Inquiry in 2010 into the Northern Territory child protection system.

Professor Bamblett gave 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 are critical. There should also be an emphasis on re-unification of the family, along with the early involvement of the family in decision making about the child.

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

Professor Bamblett expressed the view that kinship care is the most culturally appropriate placement option for Aboriginal children. Further, she said that to allow

---

342 Ibid at C5512-C5513.
343 Transcript of M Bamblett, C5463-C5464 (Day 50).
344 Exhibit 17-0030, EXP.0002.001.0001 at [50]-[51].
345 Transcript of M Bamblett, C5465 (Day 50).
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. However, she agreed that the selection and screening of kinship carers and placements still needs to be sufficient to ensure appropriate standards of care.

258. When not placed with Aboriginal carers, cultural support plans are critical. In the NT cultural support plans are not a legislative requirement and are only covered by policy. Mrs Jackson indicated that they are part of the overall parenting plan rather than a standalone document. Professor Bamblett stressed the importance of cultural support plans.

259. Professor Bamblett gave evidence that she believed the NT needs to further engage the community rather than take an office based approach. Child protection needs to be built into the community rather than rely on a visiting service. She believed funding needs to be structured across various agencies, such as health, housing and schools but with one particular plan.

260. Professor Bamblett stressed the need for sufficient support for the carers and increased levels of engagement with children. She said it was important to meet with children in care more often than once per month. She also emphasised the importance of persons other than a carer having contact with the child such as through the community visitor scheme. She said it was important to have community champions to engage with children in care. Professor Bamblett believed such contact gave a child in care multiple opportunities to speak of any abuse which might have taken place.

---

346 Exhibit 17-0030, Report of Professor Muriel Bamblett, EXP.0002.001.0001 at [34].
347 Ibid at [39].
348 Ibid at [54].
349 Transcript of M Bamblett, C5467 (Day 50).
350 Ibid at C5475.
351 Ibid at C5478-C5479.
352 Ibid at C5471.
353 Ibid at C5473.
354 Ibid at C5471-C5472.
261. 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.\footnote{Exhibit 17-0030, Report of Professor Muriel Bamblett, EXP.0002.001.0031_R at [110]-[111].}

Response to allegations of child sexual abuse

262. Professor Bamblett expressed the view that the Children's Commissioner or another independent body should have the power to investigate allegations of sexual abuse made by children in out of home care, not simply powers to investigate the response of the Department to the allegations. She believed the independence of the investigation was compromised if the Department was in effect investigating itself.\footnote{Transcript of M Bamblett, C5481 (Day 50).}

263. Importantly, while the response to allegations of child sexual abuse needs to have the safety of the child as its focus, Professor Bamblett considered 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.\footnote{Exhibit 17-0030, Report of Professor Muriel Bamblett, EXP.0002.001.0031_R at [42].}

F REDRESS

i. **Australian Indigenous Ministries**

264. Reverend Trevor Leggott is Australian Indigenous Ministries (AIM) current General Director and has been since 1996. He gave evidence at the hearing. At the outset of his
evidence, he apologised on behalf of himself and AIM for the hurt that was caused to the children of the Retta Dixon Home.\footnote{Transcript of T Leggott, C5556 (Day 51).}

265. Australian Indigenous Ministries continues to operate today. 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.

266. AIM is an incorporated association and registered charity. AIM is registered as a religious institution for the advancement of religion.\footnote{Ibid at C5558.}

267. Reverend Leggott gave evidence that AIM’s current organisational structure and policies are set out in the AIM Practice and Procedure Manual.\footnote{Exhibit 17-0006, AIM.0001.001.0001.} The manual refers to criteria for a person to work as a missionary, including a police check, and a working with children clearance if they are to come into contact with children.\footnote{Transcript of T Leggott, C5561 (Day 51).} There are also procedures for handling allegations of child sexual abuse and sexual misconduct which have been in place since 2013.\footnote{Ibid at C5562.}

268. Reverend Leggott gave evidence that the AIM Manual does not set out the requirements in respect of each state on mandatory reporting.\footnote{Ibid at C5564.} Nor does AIM provide any training on those requirements above that training required for a working with children clearance check.\footnote{Ibid at C5565.}
269. In respect of redress, Reverend Leggott gave evidence that AIM is willing to provide ‘care and counsel’ service to victims of abuse which occurred at the Retta Dixon Home.\textsuperscript{365}

270. He said that AIM has no financial capacity to provide monetary compensation. He produced AIM’s financial statement as of December 2013\textsuperscript{366}. He conceded that AIM owns property not all of which is held in trust for the churches.\textsuperscript{367} However, AIM has not yet considered whether to sell any of those assets to provide compensation to the victims of Retta Dixon Home. He did not know whether AIM had any insurance policy at the time it operated the Retta Dixon Home.

271. Reverend Leggott gave evidence that prior to the Royal Commission announcing a public hearing into Retta Dixon Home, he was not aware of any claim at all in relation to abuse at the home.\textsuperscript{368}

272. In the earliest mission manual\textsuperscript{369}, there is a requirement that records are kept. He said he would expect to see a written record of allegations of child sexual abuse, such as the allegations and conviction of Mr Powell in 1966 and the allegations against Mr Henderson in 1975 and 2002.\textsuperscript{370} Yet, he was aware of no material containing allegations of sexual abuse by AIM workers at the Retta Dixon Home. Nor was he or the AIM Council aware of any allegations of child sexual abuse at the Home before the Royal Commission.\textsuperscript{371}

273. Reverend Leggott conceded that he had heard ‘third-hand’ there had been a report of child sexual abuse to the police in the 1970’s or earlier. He said he did not make any inquiries about these allegations or consider redress at the time.\textsuperscript{372} He also conceded he was aware of the Federal Court action by Mrs Cubillo against the Commonwealth Government.\textsuperscript{373}

\textsuperscript{365} Transcript of T Leggott, CS574 (Day 51).
\textsuperscript{366} Exhibit 17-0036, EXH.017.036.0001.
\textsuperscript{367} Transcript of T Leggott, CS574-5 (Day 51).
\textsuperscript{368} Ibid at CS576.
\textsuperscript{369} Exhibit 17-0006, AG.RDH.01.0061.0001 at 3.2.4.
\textsuperscript{370} Transcript of T Leggott, CS576-8 (Day 51).
\textsuperscript{371} Ibid at CS578.
\textsuperscript{372} Transcript of T Leggott, CS579 (Day 51).
\textsuperscript{373} Ibid at CS582.
AVAILABLE FINDING

10. Except for the public apology given during Reverend Leggott’s evidence, AIM has not provided any form of redress to any of the former residents at the Retta Dixon Home.

ii. Redress available in the NT

274. Mr Gregory Shanahan, the Chief Executive of the NT Department of Attorney General and Justice gave evidence about redress available to victims of child sexual abuse in the Northern Territory. Most of the victims and survivors of the Retta Dixon Home have not sought any form of financial compensation. Many have expressed a desire to do so and also 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.

275. 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.

276. 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.
277. The Supreme Court of the Northern Territory has not had occasion to rule on the limitation question in the context of an historical sexual abuse case.\textsuperscript{374}

278. The NT legal Aid Commission is funded to represent persons in bringing claims under the common law.\textsuperscript{375}

279. Secondly, the Northern Territory has a statutory criminal injuries assistance scheme established by the \textit{Victims of Crime Assistance Act 2006} (NT) and the \textit{Victims of Crime Rights and Services Act 2006} (NT) which commenced on 1 May 2007.

280. Mr Shanahan gave evidence about the operation of the scheme. The scheme provides financial assistance and counselling services to victims of criminal offences. The maximum amount of compensation for a category 3 compensable violent act (within which child sexual abuse usually falls) is $40,000.\textsuperscript{376}

281. There is a time limit for submitting an application for compensation of two years from the date of the violent act. However, applications may be accepted following the expiry of that time period. Section 31(3) of the Act sets out the considerations that must be taken into account in making that decision. They relevantly include whether the injury or death occurred as a result of sexual assault, domestic violence or child sexual abuse; the age of the applicant at the time of the violent act; and whether the offender was in a position of power, influence or trust in relation to the applicant. The above considerations reflect the experiences of many victims of child sexual abuse that there is often a delay in their reporting of allegations of abuse.

282. The Act prescribes two types of financial assistance. First, for economic loss up to $10,000. Second, financial assistance for compensable violent acts or compensable injuries, paid in a lump sum according to a schedule of category of compensable violent acts or compensable injuries. Compensable violent acts may be described as sexual offences against different stipulated provisions of the Criminal Code (NT). There are 3 categories of act depending on the seriousness of the offence. Under this system, to qualify for an order of financial assistance the victim does not need to prove a specific

\textsuperscript{374} Exhibit 17-0037, STAT.0337.001.0001 at [11].
\textsuperscript{375} Transcript of G Shanahan, T 5700 (Day 52).
\textsuperscript{376} Exhibit 17-0037, STAT.0337.001.0001 at [18].
injury. The system is designed to reduce the stress on victims by removing this requirement of proof. Alternatively, the victim can make a claim for a compensable injury and provide evidence to the assessor of the injury.

283. At least one complainant of sexual abuse at the Retta Dixon Home has made a successful claim for compensation under the scheme. The claim was accepted notwithstanding the expiry of the time period.377

284. The Victims of Crime Assistance Act 2006 (NT) also establishes a counselling scheme. All victims are eligible for counselling. Whatever the outcome of an application for financial assistance, the victims are advised about Anglicare’s free counselling services. Anglicare is contracted by the NT Government to provide up to 8 free counselling services for a victim of crime and to make referrals where appropriate. The counselling service is also available to a victim’s family and support persons.

285. Some of the issues raised in respect of the NT legislative scheme for compensation included the limited amount of financial compensation; the discretionary nature of the extension of the time period, particularly where the alleged offending is very old (such as at the Retta Dixon Home) and there is little prospect of any supporting evidence; and the fact counselling is provided by one agency only, Anglicare.

AVAILABLE FINDINGS

11. No redress has been offered by the Commonwealth Government or the Northern Territory Government to the victims of Retta Dixon Home other than through the Northern Territory legislative scheme provided for by the Victims of Crime Assistance Act 2006 (NT) and the Victims of Crime Rights and Services Act 2006 (NT).

377 Exhibit 17-0006, NT.0008.008.0011_R, NT.0008.008.0032_R and NT.0008.008.0037_R.
SUMMARY OF AVAILABLE FINDINGS

Supervisory role of the Commonwealth Government over Retta Dixon Home

1. The Commonwealth Government actively supervised activities at the Home. This is evident from:
   a. participating in the appointment of the Superintendent at the Home;
   b. visiting and reporting on the activities of AIM at the Home; and
   c. considering and developing a policy in respect of corporal punishment at the Home.

Response of AIM to allegations of child sexual abuse

2. Prior to 2013, the Australian Indigenous Ministries did not have any guidelines or procedures on how to respond to allegations of child sexual abuse for persons working at the Retta Dixon Home.

3. The Superintendent of the Home, Mr Pattemore, in 1973 was informed of allegations that Mr Henderson had sexually assaulted children at the home. He notified AIM headquarters in Sydney. AIM did not remove Mr Henderson from the home and did not notify the police.

4. The Superintendent of the Home, Mr Pattemore was advised by Mrs Kitching of allegations of sexual assault by Mr Pounder. Mr Pattemore did not remove Mr Pounder from the home and did not notify the police.

Response by NT Police to allegations of child sexual abuse

5. Detective Newman investigated the allegations against Mr Henderson. However, he did not:
   a. take addendum statements from AJE and AKU, to particularise the charges and from AJE in respect of the incident described by AJC;
b. attempt to re-interview the complainants from the 1975 charges;

c. contact or make efforts to contact AKV again (either through his sister or directly) and take a statement from him;

d. contact AIM to find out the names of house parents who may have been of assistance to the investigation; and

e. take a statement from Mrs Lola Wall.

6. Prior to 2003, there were no policies, guidelines or general police orders which specifically dealt with the investigation of historical sexual offences, or issues peculiar to indigenous witnesses. Nor were there any courses or training on how to most effectively liaise and deal with indigenous witnesses.

Response by the DPP (NT)

7. The memorandum of recommendation by Mr Carey to discontinue the proceedings against Mr Henderson did not comply with the DPP Guidelines in that it did not provide:

   a. a summary of the charges;

   b. an analysis of the evidence in respect of each charge;

   c. any reference to pre-trial applications foreshadowed by defence, such as an application for separate trials or a stay of proceedings;

   d. any reference to the defendant’s criminal history and the previous prosecution of him in 1975; and

   e. an accurate statement of the views of the investigating officer and victims about the charges being withdrawn.

8. The DPP did not notify the police officer in charge and the victims of the decision to discontinue the proceedings as soon as practicable after the decision was made as required by the DPP guidelines.
9. The DPP’s decision to enter nolle prosequis on counts 1, 3, 6, 11 and 15 on the Supreme Court Indictment, on the basis there was no reasonable prospect of conviction and it was not in the public interest to proceed, was not supported by the evidence or any other discretionary factor.

Redress

10. Except for the public apology given during Reverend Leggott’s evidence, AIM has not provided any form of redress to any of the former residents at the Retta Dixon Home.

11. Redress has not been offered by the Commonwealth Government or the Northern Territory Government to the victims of Retta Dixon Home other than through the Northern Territory legislative scheme provided for by the Victims of Crime Assistance Act 2006 (NT) and the Victims of Crime Rights and Services Act 2006 (NT).
SUMMARY OF SYSTEMIC ISSUES

Systemic issues are:

- The investigation by police of child sexual abuse allegations.
- The processes of prosecution of historical child sexual abuse allegations including communication with police and victims.
- Current procedures and practices in out of home care in relation to the prevention of child sexual abuse and response to allegations of child sexual abuse.
- Availability of redress and responsibility for funding a redress scheme.

Sophie David SC

Counsel Assisting

27 October 2014