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 ON BEHALF OF KENNETH STAGG, KEVIN STAGG AND VERONICA JOHNS

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INTRODUCTION

“I have to live with the fact that I was brought into this world to be somebody’s sexual plaything and, as a result, I have gone out into the world and been involved in sex, drugs and violence”.

- Evidence of Kevin Stagg

A. EXPERIENCES OF FORMER RESIDENTS

i. Kenneth Thomas Stagg (“KTS”) 

1. KTS was born in 1959. He was 2 years old when he was placed in the Retta Dixon Homes (“RDH”) with his siblings, Veronica Johns and Kevin Stagg. KTS remained at RDH until his mother’s death in 1972. He described a residential environment where physical chastisement of children was rife and where children were routinely humiliated for minor infringements by the adults entrusted with their care.

2. KTS described an environment at RDH that was highly sexualised. He was about 10 years old when sexually interfered with by 15 year old girl. He was also pursued by an older boy, AJD, who resided next door in cottage 2, run by house-parent Donald Henderson (“Henderson”). The older boy “was always trying to root the other boys”. KTS witnessed AJD trying to have sex with other boys from his cottage, including with AJO and AJB. KTS also described how he would hear boys prowling around at night for the girls.

3. KTS gave evidence that when he was approximately 9 or 10 years old, he was sexually abused by Henderson in the chook shed. Henderson grabbed him and fondled his genitals.

4. According to KTS it was common knowledge amongst the children that Henderson was doing “terrible things” to the children.

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1 C4953
2 Transcript 22/9/14 C4868-C4889 Sworn 22/9/14; Statement Tendered Exhibit 17-5
5. KTS described the general culture at RDH as one where children were seen but not heard; where the adults were perceived as disciplinarians who would take the side of the house-parents rather than the children. KTS did not make any reports to house-parents or Mr Pattemore because he did not know how to report it.

6. KTS was not visited or approached by any welfare officer, nor saw any such person visiting the home. He believes that if welfare officers had come to the home and asked what it was like there, he would have told them about the abuse. He was not approached by police officers investigating Henderson. He said that he would have been willing to attend court as a prosecution witness had he been asked.

7. When KTS was about 12 years, he was released from RDH into care of his uncle Jamesy and aunt Nanette. He joined them in an overcrowded house, with 7 children living with the adults. KTS’ uncle was an alcoholic. When he was 14 he was told to leave and look for his own place to live. No one from the welfare department discussed the move with him, nor did they ever check on him following his release from RDH.

8. KTS believes that the impact of the sexual abuse upon him included causing or contributing to the following:
   a. General misbehaviour, trouble with authority figures and rebelliousness;
   b. Relocation to St John’s Boarding school for misbehaviour. KTS was later expelled from St John’s for confronting a brother he witnessed behaving inappropriately towards another boarder. KTS did not complete schooling after he was expelled;
   c. Drinking alcohol from the time he was in year 9;
   d. Depression and other psychological problems;
   e. Substance abuse (including tobacco, cannabis and alcohol). KTS believes that he used substances to block out the pain and shame of what happened to him, and to assist him cope with life.

ii. Veronica Joan Johns (Nee Stagg) (“VJJ”) 3

9. Veronica Joan Johns (“VJJ”) was placed in RDH when she was 3 years old. She described her time there from 1961 to 1974 as a place where she just existed, living in fear, scared of what

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3 Transcript p. 4913, Affirmed 23/9/14; Statement tendered Exhibit 17-8; Supplementary statement: “Impacts of the Sexual Abuse” Exhibit 17-9
the older boys might do. VJJ described a prevailing culture of sexual abuse at RDH, happening to nearly every child who grew up in the home. She was 7 when she was twice raped by an older boy at the home. The older boy (who raped VJJ) lived in Cottage 5. VJJ was 12 when she was threatened with sexual and provocative advances by four 17 year old boys during a reception.

10. VJJ described being always aware that sexual assaults were happening regularly at the home. AJR, an older boy who lived in Cottage 3 with VJJ and her brothers, regularly pursued VJJ. AJR would hide under VJJ’s bed at night, placing her hand on his penis. VJJ described how she would call out to house-parents, with AJR running back to his bed when a house-parent would respond.

11. VJJ said she told RDH Superintendent Mervyn Pattemore (“Pattemore”) about the assaults by AJR, approximately half-a-dozen times. Pattemore responded by challenging her to explain how she knew that it was AJR. Pattemore did not act on her complaints. AJR continued to live in the same cottage and continued to molest her.

12. VJJ recounted numerous incidents of boys molesting girls at the home and said that Pattemore never took any action. She recalled how each month, during film night, 3 to 5 boys would come into the room and have sex with another girl. She was terrified that they would force themselves upon her.

13. In about 1963, VJJ saw AJQ (an older boy) have sex with AJA, who was about 7 years old at the time. She also saw AJR spying on the girls through the bathroom curtains; threatening other girls with a feather duster; staring at and intimidating her and others. VJJ witnessed AJR take girls into the toilets.

14. Whilst VJJ never saw any sexual abuse by Henderson, she said that all the children knew and talked about it. She described an environment where the children were alone in dealing with sexual, physical and emotional abuse and did not have a trusting relationship with the cottage parents or with the superintendent. She described how the children were not safe or protected, where no one ever enquired about her welfare.
15. Although the sexual assaults by AJR stopped, the climate of sexual fear did not. VJJ described the persisting pain, terror and disgust she felt, making her ever alert and wary. She did not divulge her experiences to anyone until she was 25 years old.

16. VJJ described how her younger brother Kevin would bang his head on the bars of his bed at night, rocking himself violently. Whilst she did not know it at the time, VJJ now attributes this to the sexual abuse Kevin was suffering. She remains consumed by guilt, feeling that she failed to protect her younger brother.

17. VJJ described further impacts of the sexual abuse at RDH as including:
   a. Feeling bad as a person, and that she would go to hell;
   b. Effects on her intimate relationship with her husband, her relationship with men in general, and her sense of self-worth;
   c. A fear of being alone in public spaces at night time; and
   d. Being consumed by guilt for letting her brothers down because they were subjected to sexual abuse, and didn’t take care of them.

iii. Kevin James Stagg (“KJS”)

18. KJS described a difficult environment where he was regularly subjected to physical and sexual abuse. The environment was highly sexualised among the children, involving games and conversations with sexual connotations.

19. KJS described children, including himself, being chained up to a water tap by a house-parent, Mr George Pounder, for minor infringements. He described being frequently caned by Pattemore.

20. KJS described being sexually abused by Henderson, commencing from when he was about 7 years old. He said he was anally raped by Henderson when he was 7, whilst he was collecting eggs from the chook house.

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4 Transcript p.4926, Sworn 23/9/14; Statement tendered Exhibit17-10
21. KJS recalled being taken to hospital with a bleeding anus after being abused by Henderson. He said Henderson stood next to him at the hospital and told the nurses that the bleeding was caused as a result of “the boys playing with each other”.

22. KJS also described being indecently assaulted by 3 older children (AJQ, AJR and AJD), and becoming the property of an older boy, AJD, who raped him 3 times. He described being sexually molested on average about twice a week until he was 10 years old, and set up for punishment if he refused.

23. KJS told the Commission how the children referred to Henderson as “joombadge” - an Aboriginal language word for “fuck”. He witnessed other children being abused by Henderson including whilst sitting on Henderson’s lap in the RDH truck. KJS knew of other children who were taken to hospital with bleeding anuses, and of children wearing nappies to school so that the blood did not come through on to the school uniforms.

24. KJS stated that some of the children who had been sexually abused by Henderson in the truck would avoid the truck on excursions, preferring to walk back to RDH. Henderson would tell Pattemore that they had run away, and the children would then be caned by Pattemore as punishment.

25. KJS stated that he tried to tell Pattemore about Henderson numerous times, but that Pattemore would instead accuse him of lying and cane him until KJS said it was the other boys who were responsible. KJS also said that Henderson, in order to defuse attention, would tell Pattemore that he had caught the boys playing with their own genitals. KJS said that he could not tell the truth to Mr Pattemore as he would be called a liar and caned until he falsely admitted that it was the children who were sexually abusing each other.

26. KJS said that he did not go to the police to report the abuse because the police were the authority and, in his experience, the authorities were the people that abused him. However, he stated, “If I had the chance to talk to a welfare officer in private I think I would have spoken up.”

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5 C4936
27. KJS also told the Commission that he did not contact police because he believed he just had to live with it. He said he was not contacted by investigating police at any time.

28. KJS described the profound impact of the sexual abuse at RDH on him as including:
   a. engaging in criminal behaviour and being institutionalised in juvenile homes;
   b. a general distrust of authority;
   c. alcohol and drug abuse;
   d. depression;
   e. sexual dysfunction;
   f. perceived failings as a father; and
   g. on-going trauma experienced with recollection of events.

iv. Victim Specific Redress

29. The passage quoted at the beginning of these submissions highlights the unfortunate, and all too common impact that sexual abuse is known to have upon its victims. Whilst appropriate redress cannot undo that which was done, it can nevertheless go a long way towards ameliorating the harm caused. Such a system of redress needs to be implemented as quickly as possible particularly now that many victim survivors have, with great courage, come forward to tell their stories. The issue of redress is dealt with later in these submissions. The following paragraph sets out, in the main, what our clients stated in evidence they would like to see as redress.

30. KTS, VJJ and KJS consider that any redress scheme should include the following:
   a. A personal apology from the Commonwealth government, AIM and Mr Pattemore;
   b. Counselling with appropriate counsellors who have an understanding of sexual abuse;
   c. A compensation scheme that is speedy and which minimises the trauma associated with civil litigation;
   d. Preservation of the RDH sites as a memorial to those that suffered;
   e. Measures to prevent similar situations from occurring again including:
      i. better monitoring of children and carers;
      ii. compliance with the Aboriginal Child Placement principle;
iii. culturally appropriate tools for checking, monitoring, and evaluating children in protection;
iv. child protection officers to listen to children;
v. child protection officers and/or other agencies to attend the out of home care facilities where children in care are living, and to engage children in conversation away from the adults responsible for their care; and
vi. Henderson to be made to feel responsible for stealing their innocence, and for all the lost adults he has created.

B. RESPONSE OF THE AUSTRALIAN INDIGENOUS MINISTRIES (FORMERLY THE ABORIGINAL INLAND MISSIONS (“AIM”) TO ALLEGATIONS OF CHILD SEXUAL ABUSE AT THE RETTA DIXON HOME (“RDH”)

31. From the accounts of all the victim survivors who gave evidence at the Royal Commission hearing it is clear that there were numerous instances of physical and sexual abuse of children occurring at the RDH.

32. The response of AIM to the allegations of sexual abuse, it is submitted, was completely unsatisfactory, both when the allegations first came to light, and to this day.

33. As is apparent from the evidence given by our clients, sexual abuse was occurring at the RDH on a regular basis under the noses of those charged with the responsibility for the care and protection of the child residents – whether placed there as wards or otherwise.

34. Kenneth Stagg gave evidence that “there was a lot of sexual activity at Retta Dixon between all the kids. Everything I learnt about sex I learnt from the older children”.6

35. Concerns which should have put authorities on notice were clearly raised in the following tender bundle documents:

a. RDH.0010.001.0071- Report of Visit to RDH dated 7 December 1962. At page 3 of that report is a reference to a 13 year old girl receiving 12 strokes of the cane

6 C4874.6
on the legs for sex play with a little boy. The author also stated that the 
Headmaster of Nightcliff reported that the children from RDF “generally knew 
too much about sex”.

b. NT.0018.001.0290- Proceedings against Reginald Powell for 3 acts of indecent 
assault committed on young children at RDH in early 1966. He pleaded guilty on 
16 May 1966 and was placed on a recognizance to be of good behaviour.

regarding the behaviour of 6 year old boy. The author noted that “Recently (the 
boy) pulled a little girl down and was lying on top of her at school. Mr Pattamore 
sic went on to say that (the boy) had always been playing with other children’s 
and his own genitals”.

36. Added to those concerns are:

a. A report by Norman and Lola Wall to Mr Pattemore in early 1973 concerning 
complaints of Donald Henderson sexually interfering with children;

b. Attempts by some children (Kevin Stagg and Veronica Johns) to alert Mr Pattemore 
to what was occurring;

c. The offending by Donald Henderson, over many years, until his conduct was finally 
reported by AKR in September 1975, in circumstances where other house parents 
were suspicious and “all the children knew”.

37. Mr Pattemore was the superintendent at the time of each of the above matters. They were 
each sufficient to put him and, through him AIM, on notice that there were serious problems 
concerning sexual conduct at RDH.

38. There is no suggestion in the documentation, or in the evidence called, that there was any 
attempt to investigate or understand what lay behind the behaviours of the 13 year old girl, 
or the 6 year old boy, or why the school headmaster was of the view that the RDH children
knew too much about sex. Such behaviours are often learnt and are often suggestive of sexual abuse.

39. The failure of Pattemore and AIM to enquire into these matters suggests a culture of ignorance at best or, at worst, wilful blindness.

40. Kevin Stagg said in evidence “If I tried to tell Mr Pattemore that Henderson was trying to tell us to sit on his lap, Mr Pattemore would tell me ‘Kevin, stop talking like that’ and then cane me”. He also stated, “I tried to tell Mr Pattemore a number of times that Henderson was sexually abusing me, but he would tell me ‘Stop lying’ and then he would give me the cane. If I told any of the other house parents about sexual abuse, they would send me straight to Mr Pattemore”.

41. The failure of Pattemore and AIM to investigate the observed behaviours of the RDH children, and the complaints of the children is alarming and inexplicable.

42. It is submitted that Mr Pattemore and AIM failed to:

   a. Inquire into why the 13 year old girl was behaving in such a manner;
   b. Inquire into why the 6 year old boy was behaving in such a manner;
   c. Inquire into the sexualized behaviours of RDH children and discuss with the Nightcliff headmaster what he/she knew;
   d. Listen to and take seriously the complaints of KJS and VJJ;
   e. Report such behaviours and complaints to the relevant government department and seek their advice and guidance;
   f. Report the information received from Mr and Mrs Wall concerning Henderson to police.

i. Complaints of Mr & Mrs Wall

43. Mrs Lola Wall provided a statement (Ex 17-13) to the Commission and gave evidence. She and her husband, Norman Wall, arrived at RDH in March 1973 along with their 3 children. Within 6 weeks of their arrival Mrs Wall heard from the children that Henderson was behaving inappropriately with some of the boys. By this she meant sexually interfering with
young boys. She also learned that some of the boys had spoken to her husband about the same issue. They both reported what they heard to Pattemore.

44. A short time after their complaint to Pattemore, Arthur Collins, Secretary of AIM, arrived at RDH.

45. The salient and most concerning aspects of Mrs Wall’s evidence are as follows:
   a. she was unaware if the children were spoken to by Pattemore, Collins or anyone else in relation to their complaints;
   b. Collins told her there was not enough evidence against Don Henderson to take any action;
   c. she did not know if the police were notified;
   d. Henderson was allowed to continue his work as a house parent;
   e. she became more protective of the children in her own care (cottage 5) as a result of concerns for their safety in the company of Henderson but did nothing in relation to the other children;
   f. the police were not notified by Pattemore or Collins.

46. There is no evidence that Henderson was spoken to in relation to the allegations by either Pattemore or Collins. There is no evidence as to what, if any, investigation Collins and Pattemore conducted. It is unlikely that either was sufficiently trained or skilled to conduct such investigations. The most prudent course, even in the 1970s, was to report the allegations to police and let them investigate. This clearly was not done following the 1973 disclosures.

47. The potential of a cover up in order to protect the name and reputation of AIM and RDH can not be excluded. This possibility could not be tested, as Pattemore did not give evidence. There is no record of this matter in any of the AIM documents disclosed.

48. It is noted that Pattemore failed to assist Detective Roger Newman when he was contacted in March 1999. This is further discussed below.

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9 CS003.7
49. Mrs Wall conceded that had it been her own children that complained of being sexually abused by Henderson she would have confronted Henderson and probably would have reported the matter to the police. This response provides a good indicator of what, at the least, should have happened in the case of these 1973 allegations. If she would have taken those steps to protect her own children, she should also have done so in respect of the RDH children.

50. Further, there was no evidence or suggestion that the concerns of the Walls were passed on to the other house-parents, so that they too might be more protective of the children in their care. Indeed, it may be inferred that the concerns were not passed on at all. In her statement, Mrs Wall refers to her husband telling AKR that AKR’s planned trip to Tortilla Flat with Henderson and their house children wasn’t a “good idea”. There was no elaboration on why Mr Wall thought it was not a good idea. This was the fateful trip in 1975 that led to a complaint to police that Henderson had been sexually interfering with the children.

51. As a result of the 1973 complaints protective measures should have been introduced to protect the children. They weren’t. For example, added precautions or restrictions could have been placed on trips away so as to minimize the opportunity for sexual abuse to occur. Children should not have been left in Henderson’s sole care, such as when his wife went out.

ii. Complaints of AKR

52. In 1975, AKR advised Pattemore that some boys had told her that Henderson had been sexually abusing some of the children.

53. On this occasion, and unlike two years earlier, Pattemore did contact the police. Henderson was stood down and he and his wife left AIM. It is of concern they left with their two adopted children. Whether the safety of those children was investigated is unclear but doubtful given the lack of any record.

54. Henderson was charged but in 1976, following being committed for trial, a nolle prosequi was entered by the DPP.

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10 CS012/13
11 Par. 23 of her statement, Exh 17-12.
12 Pars. 24 to 27
55. AKR behaved entirely appropriately. She informed Pattemore of the allegations raised by the children. She spoke to the children in her care. Police were called. She gave evidence at Henderson’s committal.

56. AKR stated that until the allegations were raised with her she was not aware that abuse was taking place. The allegations helped, she said, shed light on the behaviour of some of her children who had begged her not to go out and thus be left in the care of Henderson. With proper training she might have recognised that as a warning bell that something was wrong.

57. AKR also stated that another house-parent, Margaret Clark, in relation to Henderson’s sexual abuse of the children, told her “We knew about that, it was going on for years”. This response of Ms Clark is alarming and speaks volumes as to the disturbing culture operating at RDH.

58. It is very likely that Henderson was able to get away with the sexual abuse of children for years because staff at RDH, in the main:

   a. had no training in their role as house-parents;
   b. were not trained in or able to recognize signs that child sexual abuse may be occurring;
   c. even on being made aware of, or suspecting, child sexual abuse did not know how to respond appropriately;
   d. were given no guidelines or directions on how to deal with such suspicions or allegations of child sexual abuse;
   e. operated under a hierarchical system where important decisions were left to management who may not always have been motivated by what was in the best interests of the children, or who themselves had no training to deal with such matters (e.g. Collins’ and Pattemore’s failure to inform the police in 1973);
   f. failed to communicate with each other concerns that sexual abuse might be occurring (e.g. the Wall’s failure to advise AKR; Clark’s failure to advise AKR),
   g. following the disclosure of allegations in 1973, failed to report the matter to police or welfare, and

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13 Par. 34
14 Par. 35
15 As another example, AKR was aware of one couple who wanted the 1975 complaint handled internally and not reported to police. [At par. 36]
h. did not take steps to reduce the prospects of Henderson being left alone with children.

iii. **Evidence of Reverend Trevor Leggott**

59. Reverend Trevor Leggott has been the General Director of AIM for 18 years. He was in that position at least two years before the police investigation into Henderson began in 1998.

60. The latest AIM Field Practice and Procedure book (February 2014), at tab 122, suggests a significant continuing role of the AIM Council and its supervision of the churches. Given that relationship, it is submitted that it is an extraordinary proposition that Rev. Leggott was not aware of sexual abuse occurring at RDH until he received the various witness statements from the Royal Commission. If this is correct it bespeaks a serious failure with respect to the supervision and control of those engaged by AIM to conduct its activities. Even the earliest Mission Manual emphasized a requirement for reporting and record keeping. Despite AIM having a presence in Darwin, Rev. Leggott maintained he was unaware of the Henderson allegations and prosecution in 2002.

61. Although it was before Rev. Leggott’s time with AIM, the 1975 disclosures of Henderson’s behaviour do not appear to have caused AIM to change its practices until changes were made to the AIM Mission Manual in 2004. These changes included responses to allegations of child sexual abuse.

62. It is submitted that AIM has failed to acknowledge and accept fully its responsibility for past failures to respond appropriately to child sexual abuse.

63. In relation to Rev. Leggott’s response, the following matters are noted:

   a. A belated apology (appearing for the first time only in his second statement provided to the Royal Commission);
   
   b. No effort to acquaint himself with the past practices of AIM to better understand and answer matters currently under investigation;
   
   c. A failure to consider the issue of financial compensation to the victims of RDH;

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16 See for example ts C5558-5563; 5569-5570
17 C5576
d. A failure to consider realizing some of its assets to make available financial compensation to the victims of sexual abuse at RDH;

e. Ambivalence in the course of his evidence in accepting, as the Director of AIM, moral responsibility for past happenings at RDH and a failure to find out more as to what then happened;\[^{18}\]

f. A failure to consider matters of redress beyond an offer of counselling by AIM counsellors.

64. Rev. Leggott did, however, accept that AIM -

a. had a duty of care towards the young children in AIM’s care which included a protection from harm;\[^{19}\] and

b. that AIM failed in that responsibility.\[^{20}\]

C. RESPONSE OF COMMONWEALTH TO ALLEGATIONS OF CHILD SEXUAL ABUSE AT THE RETTA DIXON HOMES

65. The submissions of senior counsel assisting the Royal Commission set out, at paragraphs 113 to 119, the Commonwealth government’s supervisory role in respect of the children housed at RDH. We agree with what is there stated and with the proposition that the “Commonwealth Government actively supervised activities at the Home”.

66. Counsel for the Commonwealth informed the Royal Commission that the Commonwealth accepted that it was guardian of the children at RDH and that it had a general responsibility to all children in the home, including for their care, welfare, education and advancement, until the time of self government in 1978.\[^{21}\]

67. Document AG.RDH.02.0008.0013 is a letter, dated 31 October 1957, addressed to the Secretary, Department of the Treasury, from C.R. Lambert, (Secretary of Department of Territories). In it Mr Lambert states:

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\[^{18}\] See for example answers at pp 5582-5583
\[^{19}\] CS623-24
\[^{20}\] CS624
\[^{21}\] C4994
“The responsibility for the care, welfare, education and advancement of natives, part coloured children and State children, rests with the Commonwealth Government, but it has been found both convenient and economic to utilise the services of the Mission for this work.”

The letter also noted the existence of problems at Retta Dixon Homes.

68. It is submitted that the Commonwealth (through its various departments responsible for the Welfare of the children during the relevant period) failed in its duty of care to the RDH children in at least the following respects relevant to this Inquiry:

a. Not ensuring closer monitoring and supervision of the staff and children at Retta Dixon in circumstances where concerns of sexualized behaviour were raised in documents RDH.0010.0010071 dated 7.12.1962, and NT.0018.001.0290 dated 30.6.1967 (both of which are referred to above);

b. Not investigating for itself the causes for the sexualized behaviour of the children therein mentioned;

c. Not speaking to the children concerned;

d. Not ensuring that Mr Pattemore and staff at Retta Dixon were given advice and guidance as to how to deal with the issue of sexualized behaviour; and

e. Not visiting the children on a regular basis.

69. In RDH.0010.001.0071, written on the 7th December 1962, the author states:

“It is felt that the attitude of staff at Retta Dixon Homes towards modern child care is woefully lacking and that we, for the sake of the children, should feed information to the Superintendent.”

70. The above quote reveals knowledge on the part of the relevant authority that because of the attitude of those at RDH toward modern child care, education and training were required. It is not clear whether or not the ‘feeding of information to the Superintendent’ occurred. From the little we know of later events it seems unlikely.

71. In NT.0018.001.0290, Mr Tomlinson reported that on the 29 June 1967 he visited RDH. He did not see the children because “it has been seven months since they were seen and I felt that

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22 Similar expression is found in Mr Lambert’s letter to the Administrator of the NT dated 21.3.1958 and which was distributed to the parties by the Solicitor-General during the proceedings. Archives Service 1545, M47.
until some more up to date material was available it would be pointless”. Just what “more up to date material” Mr Tomlinson was awaiting is unclear. However, it is submitted that the excuse proffered by Tomlinson cannot be justified in view of the concerns expressed elsewhere in that report.

72. AKR, who arrived at RDH after Christmas in 1972 and remained there until 1978, had no recollection of any Welfare Officers coming to RDH to check on the children.23

73. It is submitted that the level of supervision by the Commonwealth Government was totally inadequate. It is not unreasonable to submit that had the children been spoken to by welfare officers on a regular and frequent basis, Henderson may not have got away with his sexual abuse of the children for so long, and that the extreme sexualised behaviour of the children may have been noted and addressed.

D. RESPONSE OF NORTHERN TERRITORY POLICE FORCE AND DEPARTMENT OF PUBLIC PROSECUTIONS TO ALLEGATIONS OF CHILD SEXUAL ABUSE AT THE RETTA DIXON HOME.

74. Senior Counsel assisting the Royal Commission has set out in detail the response of the Northern Territory Police and of the Northern Territory Office of the Director of Public Prosecutions upon a complaint of sexual abuse by Henderson being received in May 1998. The matters set out in paragraphs 133 to 205 are gratefully adopted.

i. Northern Territory Police Response

75. It is submitted that former Detective, Roger Newman, failed to make sufficient inquiries into the allegations against Henderson.

76. In particular, Mr Newman failed to -
   a. contact AIM headquarters to ascertain whether any records existed that would disclose who worked at RDH during the relevant period;
   b. speak to and investigate all house parents employed at RDH during the relevant period; and

23 Par. 24
c. interview the children who were the subject of the 1975 prosecution of Henderson.

77. It is also submitted that Mr Newman failed to obtain clarifying statements from AJE and AKU, particularly when he collected them on the 4 February 2002, just before the committal.

78. No issue is taken with the sincerity of Mr Newman’s efforts. It is also accepted that there were investigative challenges given the delay and reluctance of witnesses to assist. Mr Newman operated in an environment where there were no policies or guidelines in respect of dealing with aboriginal persons alleging sexual abuse, particularly historical sexual abuse. Further, there was no specific training in relation to the investigation of sexual offences. Resources were also an issue.

79. A person who was important to Mr Newman’s investigation was Mr Pattemore. Mr Newman attempted to speak with him on 2 March 1999. Mr Pattemore refused to assist. He told Mr Newman that “he did not have any knowledge of Henderson committing offences against children whilst he was Superintendent at RDH, nor was he aware of any complaint against Henderson”. That statement by Mr Pattemore was not accepted by Mr Newman. In his statement, he records Mr Pattemore as being “confused and vague”. This is not a description recorded anywhere, other than his 2014 statement, by Mr Newman.

80. In May 2001 Mr Newman made a note (Tab 109) recording –

“Mr Pattemore became emotional during my conversation with him and he would not provide a statement in relation to his knowledge of any offences or to his duties in relation to Mr Henderson at the time.”

81. It is not possible to know whether Pattemore was being deliberately obstructive or whether he was genuinely unable to assist by reason of his emotional state. There is insufficient evidence on this matter. It is not clear why Newman did not seek to speak to him again. He should have.

24 C5071
25 C5081
26 Statement of Roger Newman Exh 17-15, at Par. 51
ii. Office of the Department of Public Prosecutions ("ODPP") Response

82. Given the passage of time, failed memories and, it is submitted, insufficient record keeping within the ODPP, it is difficult to know precisely what occurred in the ODPP that led ultimately to the decision to enter a nolle prosequi on the 12th November 2002.

83. For instance:

a. The then Deputy Director of the ODPP, Mr Jack Karczewski QC, (now the DPP), has no independent recollection of the matter. He was unable to assist with the passage appearing in the Mr Michael Carey’s memorandum to the Director (Annexure JK11) - “I have discussed the matter at some length with the Deputy Director and he is full agreement with the proposed course”.

b. There is no record that assists to know why the nolle was considered with such urgency by Mr Carey. He cannot recall why that occurred.

c. There is no record of what transpired between Mr Carey and Glenn Dooley consequent upon the then Director’s hand-written annotation on JK11 wanting “input from Glen” and a “joint meeting” before a nolle was to be entered.

84. Further, the correctness of the decision to enter the nolle is now difficult to know because the memorandum prepared by Mr Carey, as acknowledge by him, was insufficient. It did not comply with the ODPP Guidelines (Annexure JK13). Counsel Assisting’s submissions at paragraphs 187 to 196 set out those deficiencies.

85. The important process of examining the correctness of the decision must, of necessity, involve a process of reconstruction. This task was undertaken by Mr Karczewski QC and was closely examined during the course of the public hearing.

86. We agree with Mr Karczewski QC’s reasons and conclusion that charges 1, 3, 5, 6, 11 and 15 should have proceeded to trial. We agree also with Counsel Assisting’s submission that count 1 should have been charged as two separate counts.27

27 Par. 200
87. One matter of concern, given Mr Carey’s memorandum’s obvious lack of compliance with the Guidelines, is why the then Director signed off on the nolle. Mr Carey accepted that his memorandum to the Director did not contain a summary of the facts of the case sufficient to permit a proper consideration of the application or request. This should have been obvious to the Director. In those circumstances, it is difficult to understand, if the then Director did not seek a summary, why it was not sought. Because of a lack of records, the passage of time, and failed memories, the answer to this concern cannot now be known.

88. Mr Karczewski QC agreed that Guideline 7.1, although expressed to apply to “Discontinuing Court of Summary Jurisdiction Prosecutions”, applied equally to discontinuance of trial in the Supreme Court.

89. Guideline 7.1, inter alia, reads:

- The prosecutor with carriage of a matter must advise the police officer-in-charge and the victim whenever the ODPP is considering whether or not to discontinue a charge; and

- One purpose of this consultation is to provide an opportunity for the police officer-in-charge and the victim to furnish additional information which may affect the decision.

90. In the circumstances of the case then under consideration, and particularly Mr Carey’s main reason for recommending a nolle (the S v R latent ambiguity problem), an opportunity should have been provided to Mr Newman to discuss the matter. He might then have pointed out that not all of the charges suffered from the problem of latent ambiguity. He might have sought an opportunity to obtain further statements. The wisdom of Guideline 7.1 is obvious and it should be explicitly stated under the heading “Discontinuance of Trials” in the Guidelines.

91. A most unfortunate aspect in the way the case was handled by the ODPP was the failure on its part (whether it be Mr Carey, or Mr Dooley, or some other person) to inform Mr Newman and the victims of the decision to discontinue the proceedings in a consultative and timely manner. They attended the ODPP on the 27 November 2002 expecting to discuss the
imminent trial. Instead, they heard for the first time, that the prosecution was not proceeding. The nolle had in fact been entered some 16 days earlier.

92. Victims of sexual abuse are generally the most reluctant of all victims to report offending. The process undertaken by the ODPP and failure to communicate by the ODPP could only add to the reasons for victims’ reluctance. It can only be hoped that the procedures that now operate at the ODPP will be sufficient to ensure:
   a. strict compliance with the guidelines;
   b. better record keeping; and
   c. proper consultation with the police officer-in-charge of an investigation and victims.

E. OUT OF HOME CARE IN THE NORTHERN TERRITORY

93. This hearing has exposed a child welfare system marked by a systemic lack of protections, limited scrutiny by those in authority, and a lack of opportunity for children to raise serious concerns and have someone in authority take them seriously.

94. We note paragraphs 206-263 of Counsel Assisting’s submissions, which deal with out of home care in the Northern Territory. We adopt what is there set out.

95. Despite significant changes in the Northern Territory’s child protection system, further improvements can be made, including:
   a. Ensuring that all carers, whether from the Department of Children and Families (“DCF“), or independent, are registered and have undertaken appropriate and uniform training;
   b. Providing carers with greater professional development, education in child sexual development and indicators of sexual abuse and grooming behaviours of perpetrators. Carers need comprehensive information sessions and regular training regarding abuse, neglect and trauma responses of children;
   c. Adopting a broader focus to screening and selection, that would not exclude carer eligibility over convictions for minor or irrelevant offences;

30 A/Prof Bamblett, Report, p. 11
31 A/Prof Bamblett, Report, p. 11
d. Providing young people with multiple adults and safe people with whom to talk by implementing a community visitors program and/or a community champion scheme;

e. Ensuring caseworkers meet with children at least once per month;

f. Referring all investigations into allegations of sexual abuse to the Children’s Commissioner. This would involve the Children’s Commissioner being informed and receiving a report of the allegations at the outset. This would mean that the Commissioner will become aware of all matters, not just those “substantiated” or those which in other ways he, by chance, becomes aware;

g. Removing the power of investigation from the DCF to the Children’s Commissioner and NT Police;

h. Empowering the Children’s Commissioner to conduct routine inspections of out of home care placements, including residential care facilities;

i. Establishing an advocate to speak on behalf of children in care;

j. Develop and incorporate into training best practices such as the Qld Government’s Department of Communities, Child Safety and Disability Service (2013) Practice Resource: Participation of Children and young people in decision making;

k. Better utilising Aboriginal health workers on communities to screen and monitor children;

l. Providing better ongoing support to children leaving care arrangements.

96. The NT has the lowest resourced service system in the country, with service delivery in remote communities remaining a problem. The standard of care being provided to aboriginal children in kinship care is markedly lower than that provided for other children in the care system.
97. Whilst selection and screening of kinship carers and placements needs to be sufficient to ensure appropriate standards of care, it may perhaps be too onerous, particularly if irrelevant prior convictions preclude persons from registration.

98. Greater support for kinship carers more broadly within the community is also required to ensure that remote and rural carers get the training, support, supervision, and visits that all other carers get in the NT.

99. There is an increasing rate of Indigenous children in child protection, and relatively low ratios of kinship care placements, Aboriginal caseworkers, and Aboriginal staff within DCF. As Adjunct Professor Muriel Bamblett told the Commission: “the child protection system has failed Aboriginal children, families and communities. The government system is failing our children. Case plans, reunification plans, timely decisions and adherence to the Aboriginal Child Placement Principle are all required and yet all too often do not happen. There have been systemic failures and the overburdened system cannot address the need.” It is hoped that measures are put in place to address this important issue.

100. We note that a big problem in the NT is a lack of focused family support and family preservation services for those families most in need. We submit that the best way to protect children is to support families and communities to reduce the chances of their placement in out-of-home care to begin with.

F. COMMENTS ON REDRESS

i Redress schemes presently available

101. Given the decision in *Cubillo & Gunner (No.2) (2000) 103 FCR 149* (“Cubillo”), victims face significant legal obstacles securing common law damages as against the Commonwealth and AIM. It is highly unlikely that the Commonwealth will be held liable in tort, nor that an extension of time will be granted under the *Limitations Act 1982* (NT), since the court in

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42 A/Prof. Bamblett, Report, p. 11
43 A/Prof. Bamblett, CS469
44 Dr Bath, Transcript, CS521-5522
45 A/Prof Bamblett, Report, p. 5
46 A/Prof Bamblett, Report, p. 25
47 Dr Bath, Transcript, CS539
48 A/Prof Bamblett, Transcript C 5463
49 Confirmed on appeal in *Cubillo v The Commonwealth* (2001) 112 FCR 455
Cubillo found that the passage of time, the death of relevant witnesses, failed memories and the loss and destruction of relevant documents, had irreparably prejudiced the Commonwealth’s chances of receiving a fair trial.

102. Leaving aside limitation issues, the decision in Cubillo does not preclude common law claims being made directly against AIM or former staff of the RDH. However, the civil litigation process is adversarial, time consuming, uncertain and costly, meaning that it may be years before claims are resolved (if they are resolved at all). Also, AIM has limited assets and resources to pay monetary compensation as disclosed in AIM’s most recent financial statement as at December 2013.\textsuperscript{50} We further note that there may be no legal entity to sue, since AIM’s corporate structure may avail it of the protection afforded to religious organisations by the \textit{Ellis} defence.\textsuperscript{51}

103. Whilst our clients may seek compensation under the Victims of Crime Assistance Act (NT), we note a number of obstacles to such claims, including:
   a. Limitation period of 2 years has expired.
   b. The scheme requires individuals to report a complaint to the police.
   c. The maximum sum awarded is $40,000 (the lowest maximum payment in Australia). The quantum of compensation is low and often does not take onto account the range of relevant factors in historic child sexual abuses cases, including the impact that the abuse has had on the survivor.
   d. The legislation precludes multiple applications for compensation for separate acts on the same victim.
   e. The legislation does not cover the legal costs associated with filing the application with supporting material and any subsequent/on-going advocacy with the relevant decision maker.
   f. The scheme operates under and is funded by the NT, linking responsibility to an offender rather than to the systemic failures in their respective duty of care by the Commonwealth government and AIM, which may lead to perceptions by survivors of

\textsuperscript{50} Exhibit 17-36

\textsuperscript{51} In the case of \textit{Trustees of the Roman Catholic Church v. Ellis & Anor} [2007] NSWCA 117, the NSW Court of Appeal, held that an unincorporated association, such as the Roman Catholic Church Archdiocese of Sydney, cannot, at common law, sue or be sued in its own name because it does not exist as a juridical entity.
a lack of accountability on the part of the responsible entities and a lack of any
incentive especially on the part of AIM to enact reform.52

ii Suggestions for a national redress schemes

104. There have been a number of public responses to the Royal Commission’s call for papers on
the issue of “Redress”.53 We agree with proposals for a national redress scheme through an
independent statutory authority, funded by State, Territory and Federal governments, and
by those institutions responsible for sexual abuse. This would result in fairness and
consistency between applicants, as they would receive entitlements regardless of the
capacity or status of the institution.54

105. A national redress scheme for victims across states and territories would ensure that all
victims have access to the same benefits, whereas currently options offered by victims’
compensation schemes vary across jurisdictions.55

106. A national redress scheme should comprise the following:
   a. Written, and in person (in circumstances where the victim requests a face-to-face
      meeting) individual acknowledgement and apology from the Commonwealth and
      AIM;
   b. Measures for rehabilitation;
   c. Financial compensation for pain and suffering and all other demonstrated financial
      loss;
   d. Reimbursement of out of pocket medical and attendant care costs;
   e. Non-monetary forms of redress including -
      i. Education supports;
      ii. Assistance to family reunion services;
      iii. An opportunity to have the survivor’s story placed on the record; and
      iv. Commitments and undertakings that the institutions will in the future
         prevent child abuse.

52 knowmore, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Issues Paper 6:
Redress Schemes, 20/6/14, p.8
54 Geraldton Community Legal Centre, Issues Paper- Redress Schemes, 30/5/14, at p,9
55 Kingsford Legal Centre, Issues Paper 6-Redress Schemes, 2/6/14, p. 4
107. The redress scheme should be well publicised, accessible over a reasonable period of time, and have a reasonable allocation of funds given the numbers of potential claimants.

108. Furthermore, any redress scheme should:

   a. Develop processes that minimise the likelihood of re-traumatisation for the victim-survivors as a result of undergoing the redress process. One way to minimise harm to the victims-survivors is to employ the rule of plausibility, rather than proof;\textsuperscript{56}

   b. Recognise that the traumatic impact of sexual abuse is well established so that proof of damage should not be necessary. The focus should be on what has been done to the person and monetary awards linked to the severity of the perpetrator’s behaviour;\textsuperscript{57}

   c. Provide culturally appropriate counselling and legal advice and representation during the redress process. On-going counselling should be provided to survivors who wish to access it through a service provider of their choice and that this counselling is funded by a national redress scheme.\textsuperscript{58}

109. The proposed redress scheme should be optional, and claimants should retain the ability to pursue civil litigation if they wish. Limitations legislation should be radically modified to overcome limitation issues for these types of claims, which often come to light many years after the relevant conduct and cause of action arose.\textsuperscript{59}

110. There should be a fair, equitable and easily accessible means of assessing harm and calculating payments of awards, with clarity and easy to use guidelines for the calculation of awards.\textsuperscript{60}

111. The right to monetary compensation should survive the death of the claimant. We submit that this acknowledges and goes towards addressing the generational impact that childhood sexual abuse has on the family, particularly in those situations when abuse was not acknowledged and dealt with appropriately at the time it occurred.\textsuperscript{61}

\textsuperscript{56} Australian Psychological Society, Submission to the Royal Commission Issues Paper 6: Redress Schemes, 27/5/14, p. 2

\textsuperscript{57} Geraldton Community Legal Centre, Issues Paper-Redress Schemes, 30/5/14, at p.10.

\textsuperscript{58} knowmore, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Issues Paper 6: Redress Schemes, 20/6/14, p.5

\textsuperscript{59} Maddens Lawyers, Submission in respect of Redress Schemes, 30/5/14, p. 20

\textsuperscript{60} Uniting Church in Australia, Uniting Church in Australia’s Response to Issues Paper 6-Redress Schemes, 2/6/14, at p. 6

\textsuperscript{61} Geraldton Community Legal Centre, Issues Paper-Redress Schemes, 30/5/14, at p.5
112. Compensation should be provided to individuals who have suffered physical, sexual or emotional abuse while residing in institutions.\textsuperscript{62} It should be open to all former residents of RDH, where abuse was widespread, because even if an individual in an institution wasn’t directly abused, such person may still have been affected by the abuse of those around them. This will recognise the trauma that is suffered by children who are inside an institution-wide setting of abuse.

113. Further, in relation to all the victims, a permanent and prominent structure, such as a cultural and community centre at Karu Park (the former RDH site on Bagot Road),\textsuperscript{63} would provide public recognition of their harrowing experiences at RDH, which they so bravely shared with the Commission.

G. A. Georgiou SC and K. Roussos

Counsel for Kenneth Stagg, Veronica Johns and Kevin Stagg

10 November 2014

\textsuperscript{62} knowmore, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Issues Paper 6: Redress Schemes, 20/6/14, p. 6.

\textsuperscript{63} Kenneth Stagg, 22/9/14, at p. C4888; see also B Cummings, Submission to Royal Commission into Institutional Responses to Child Sexual Abuse, Issues Paper 6, Redress Schemes, p. 2