1. These submissions have been prepared on behalf of Ms Marilyn Minister (“Ms Minister”) for the Royal Commission into Institutional Responses to Child Sexual Abuse (“the Royal Commission”) following the public hearing at Melbourne held between 17 August 2015 and 28 August 2015.

2. The submissions respond to the submissions of Counsel Assisting the Royal Commission provided on 2 September 2015. Ms Minister does not take issue with most of the findings proposed by Counsel Assisting the Royal Commission. However, it is submitted that the findings and
recommendations should take account of the below matters, and particular issue is taken with proposed findings F23, F36 and F37.

3. The submissions will consider:

(1) Ms Minister’s Evidence;

(2) Dr Slack’s Evidence;

(3) Attitudes Towards Intrafamilial Sexual Abuse and Obstacles to Reporting to Police;

(4) The Failure of the Department to Provide Training; and

(5) Decisions Made Concerning the Case Management of Katherine X.

4. The legal principles to be applied when making factual findings and recommendations are well known, and in particular the application of *Briginshaw v Briginshaw*.\(^1\) In short, the degree of persuasion felt by the fact finder must be commensurate with the gravity of the factual finding and the potential seriousness of its consequences.

**Ms Minister’s Evidence**

5. When called to evidence before the Royal Commission on 24 August 2015, Ms Minister was frank and credible. She willingly and forthrightly assisted the Royal Commission to the best of her ability.

6. Ms Minister worked at Winlaton Youth Training Centre (“Winlaton”) from May 1974\(^2\) to 1992. She was initially an Assistant Superintendent, which was a training role, for about 18 to 24 months.\(^3\) Her primary function in that role was to assist residents to find employment.\(^4\) Ms Minister then worked as a

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\(^1\) (1938) 60 CLR 336, 362 (Dixon J).
\(^2\) C9472.13.
\(^3\) C9472.15-20.
\(^4\) C9472.23-28.
Deputy Superintendent at Winlaton until 1992. Accordingly, she was at Winlaton for about 18 years.

7. Ms Minister described Winlaton as being in a state of “mayhem” when she arrived in 1974, with problems with aggression and a lack of treatment programs.\(^5\) That situation improved under the direction of Dr Eileen Slack.\(^6\)

8. Ms Minister properly acknowledged that the experiences of the survivors as presented to the Royal Commission were shocking and terrible.\(^7\) Ms Minister gave evidence that the evidence of the survivors was upsetting\(^8\) and made her feel sick.\(^9\)

9. Ms Minister acknowledged that she had made errors during her time at Winlaton, particularly with regard to the case management of the resident Katherine X.\(^10\) Ms Minister apologised for the decision to allow Katherine X’s father to visit her at Winlaton,\(^11\) and was cognisant of the impact that decision had on Katherine X.\(^12\) Ms Minister acknowledged that the management of Winlaton failed to keep Katherine X safe.\(^13\) This will be considered in more depth below.

10. Ms Minister gave evidence that, in her estimation, there would have been hundreds of residents at Winlaton who it was suspected were the victims of intrafamilial sexual abuse.\(^14\) After further questioning Ms Minister stated that it was possible that more than one hundred residents had disclosed intrafamilial sexual abuse.\(^15\)

11. It is important that the evidence of Ms Minister in that regard is dealt with carefully. Contrary to the Submissions of Counsel Assisting the Royal

\(^5\) C9390.10-20.  
\(^6\) C9390.38-44.  
\(^7\) C9444.16-17.  
\(^8\) C9420.38, C9421.33.  
\(^9\) C9444.17.  
\(^10\) C9429.2-6.  
\(^11\) C9429.5-6.  
\(^12\) C9482.34.  
\(^13\) C9444.19-22.  
\(^14\) C9437.23-39.  
\(^15\) C9438.10-11.
Commission, it was not the case that “Ms Minister was aware that there were hundreds of residents of Winlaton who had been the victim of sexual abuse perpetrated by a family member”.16

12. Ms Minister’s evidence demonstrated that she was aware that the residents at Winlaton comprised a particularly vulnerable cohort, and that over her eighteen years at Winlaton there would have been a significant proportion of residents who had experienced sexual abuse by a family member.

13. Dr Owen gave evidence that he was not surprised by Ms Minister’s evidence given that Winlaton had about 1,000 admissions per year and that Ms Minister would have dealt with many residents during her time at Winlaton.17

14. Assistant Commissioner Fontana gave evidence that the given that a significant proportion of residents were wards of the state and were placed at Winlaton for their own protection, and given that it was over an extended period of time, the figure provided by Ms Minister did not surprise him.18

15. It is clear that Ms Minister was held in high regard by her colleagues at Winlaton. She was regarded by Dr Slack as being very thorough.19 Unlike some other staff at Winlaton who were authoritarian and of the “old school”, there was no complaint about the manner in which Ms Minister interacted with residents. If the Royal Commission makes proposed finding F17, it should be made clear that Ms Minister was not alleged to have engaged in conduct that was cruel, dehumanising or degrading.

16. Ms Minister had taken issue with the examination of residents by police doctors in sexual assault matters, and accordingly had taken issue with procedures that were regarded as potentially humiliating and invasive.20

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16 Submissions of Counsel Assisting the Royal Commission, [682].
17 C9502.20-28.
18 C9844.31-39.
19 C9685.21-22.
20 C9473.12-43.
That was reflective of Ms Minister’s empathy for the residents of Winlaton and her concern for their welfare.

17. It should be noted that Ms Minister had no significant involvement in the Triad therapy program, nor with the prescription of Depo Provera to residents, and she deferred to Dr Slack and the medical doctors respectively.

18. With regard to proposed finding F28 and the internal examination of residents at the venereal disease clinic in Fitzroy, that occurred in the 1960s and early 1970s, and it appears before Ms Minister commenced at Winlaton. Ms Minister had no recollection of any such clinic.21

Dr Slack’s Evidence

19. It is submitted that Dr Slack’s evidence that she was only ever aware of one resident at Winlaton who was a victim of intrafamilial sexual abuse should not be accepted.22 That evidence is plainly inconsistent with the clear evidence of Ms Minister, Dr Owen, and Assistant Commissioner Fontana.

20. At best that evidence reveals a willful blindness as to the reality of the difficult familial circumstances faced by many of the residents at Winlaton.

21. It was put to Dr Slack that she must have appreciated that a significant proportion of Winlaton residents had been the victims of sexual abuse.23 Dr Slack’s denial of that proposition was inconsistent with: 24

(1) the vulnerability of the residents of Winlaton, including many as wards of the state;

(2) the referral of some residents to the Children’s Court Clinic for psychological and psychiatric treatment;

21 C9472.36-39.
22 C9686.11 – C9688.6.
23 C9686.11 - C9688.6.
24 C9686.11 – C9688.6.
(3) Dr Slack’s documented experience during “Triad therapy” in around 1977, and therefore at an early stage during her time at Winlaton, made her aware of a resident being a victim of sexual abuse at the hands of her father;

(4) The development of policies and procedures at Winlaton concerning allegations of sexual abuse which demonstrated the vulnerability of the residents to such abuse;

(5) The significant documentation and case records at Winlaton that demonstrated that some residents had experienced intrafamilial sexual abuse; and

(6) Dr Slack’s practice to keep “an ear to the ground” by walking around the grounds of Winlaton and her practice in speaking with residents, both socially and in the context of providing counseling.

22. Dr Slack gave evidence that she did not ask the right questions with regard to the sexual abuse of residents, and that she did “not put finger of blame to anyone except myself”.26

23. However, it is submitted that by giving evidence that during her whole time at Winlaton she was only aware of a single resident who had experienced intrafamilial sexual abuse, and by claiming that had she been made aware of other incidents then she would have made different case management decisions and reported matters to police, Dr Slack sought to minimise her responsibility as Superintendent of the institution and elude responsibility for decisions with regard to the management of residents.

24. Accordingly, Ms Minister takes issue with proposed finding F23 with regard to the internal communication, management and reporting procedures not being effective at ensuring that the Superintendent was aware of reports of sexual abuse. Simply put, in light of the evidence of Ms Minister, Dr Owen

25 C9636.16-17.
26 C9687.5-6, C9688.4-5.
27 C9650.14 – C9654.7.
and Assistant Commissioner Fontana, it would be simply staggering for the Royal Commission to accept that Dr Slack was only ever aware of a single episode of intrafamilial sexual abuse during her entire time at Winlaton, and one that happened to be recorded in 1977 during Triad therapy.

25. At minimum, there was no obstacle to Dr Slack, with ultimate responsibility as Superintendent of Winlaton, discussing such matters with staff and examining case management documents where the occurrence of such episodes would have been plain.

**Attitudes Towards Intrafamilial Sexual Abuse and Obstacles to Reporting to Police**

26. Ms Minister gave firm evidence that in her view intrafamilial sexual abuse was very harmful to a child, and no less harmful than rape by a stranger.\(^{28}\) She gave evidence that one of the difficulties with intrafamilial sexual abuse was that there were emotional entanglements between the child and the perpetrator.\(^{29}\)

27. Ms Minister stated that in her view a child victim was in no way responsible for sexual abuse, and a significant focus at Winlaton was to try to stop the child from thinking that she was in some way responsible for the abuse.\(^{30}\)

28. However, Ms Minister gave evidence that during the majority of her time at Winlaton intrafamilial sexual abuse was dealt with as a family matter rather than as a criminal matter.\(^{31}\) Ms Minister stated that “...the focus was on trying to engage the family in a therapeutic sense of intervention to try to change the damaging dynamics that we knew were going on in that family”.\(^{32}\)

29. Ms Minister’s evidence is consistent with the fact that mandatory reporting of allegations of sexual abuse was only introduced after her time at Winlaton.

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\(^{28}\) C9432.32-34.
\(^{29}\) C9432.36-38.
\(^{30}\) C9432.40-47.
\(^{31}\) C9452.15-21.
\(^{32}\) C9483.18-21.
That itself demonstrates that societal attitudes towards such conduct, and the proper response to allegations of such conduct, had changed over time.

30. Assistant Commissioner Fontana acknowledged that there were two main obstacles over the relevant period for the prosecution of sexual offences – the requirement for corroboration, and an attitude of disbelief towards vulnerable persons such as residents. Assistant Commissioner Fontana accepted those issues probably provided a disincentive for such matters to be reported to police.

31. The experiences of Katherine X and her involvement with police in 1979 and 2002 provide a powerful example of such obstacles and how such attitudes have persisted over time. When considering the failures by those at Winlaton to report allegations of sexual abuse to police it is important not to lose sight as to how those obstacles provided a real barrier to reporting at the time.

The Failure of the Department to Provide Training

32. Importantly, in response to questions from Commissioner Fitzgerald, Ms Minister gave evidence she was not given training or guidance by the Department of Health and Human Services in relation to the impacts of child sexual abuse. Further, Ms Minister stated that she was not given encouragement by the Department to increase her knowledge or personal development in that area.

33. Ms Minister gave evidence that she regarded that as a failure of the Department and the system.

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33 C9867.41 – C9868.11.
34 C9868.13-15.
35 Submissions of Counsel Assisting the Royal Commission, [567]-[570], [715]-[718].
36 C9484.44 – C9485.13.
37 C9485.5-10.
34. In that regard, Ms Minister supports proposed finding F20 with regard to her failure of the Department to provide adequate training.

**Decisions Made Concerning the Case Management of Katherine X**

35. Ms Minister acknowledged that she made errors in the case management of Katherine X. In particular, she acknowledged that it was an error to allow Katherine X’s father to visit her at Winlaton.\(^{39}\)

36. While acknowledging the error, Ms Minister stated that she would have only granted permission for such a visit if there was close supervision.\(^{40}\) It is clear that the visit was supervised\(^{41}\), but that did not prevent Katherine X’s father from threatening her.

37. Mr Varughese Phillip, Secretary of the Department of Health and Human Services, in his third statement dated 26 August 2015 (made in response to matters raised in oral evidence) stated:

> “Today, a child subject to a child protection order or custodial order is not to be exposed to a family member known to have sexually abused them, without very careful and close management and supervision.”\(^{42}\)

38. That demonstrates that, even by contemporary standards, there is no blanket prohibition of contact between a child and an adult offender, however there is an expectation of very careful and close management and supervision.

39. In that context, the Royal Commission should not conclude that, as envisaged by proposed finding F36, Ms Minister’s decision to allow the visit, which was supposed to be properly supervised, exposed Katherine X to a serious risk of future harm. It is submitted that is too baldly stated – while it is accepted that there were a range of failings that resulted in Katherine X being exposed

\(^{39}\) C9429.2-6, C9430.27-28, C9435.32-35.


\(^{41}\) C9146.19-21.

\(^{42}\) [37].
to a serious risk of harm, it should not be attributed to the approval of a supervised visit.

40. Ms Minister was not able to say whether, when she granted permission for the visit, she was aware of the circumstances of a previous visit that had been described as “sensual”. It is submitted that on the evidence the Royal Commission could not be satisfied to the requisite standard that Ms Minister was aware of the circumstances of the previous visit when she granted permission for Katherine X’s father to visit Winlaton.

41. Ms Minister gave evidence that her expectation was that if the resident expressed fear about the visit then the visit would be stopped. Despite Ms Minister’s expectation, it is clear that did not occur.

42. Ms Minister gave evidence that she was reliant on the advice of then Children Court’s Clinic psychiatric nurse Mr Groome (now Dr Groome) when making decisions about the management of Katherine X.

43. Ms Minister gave evidence that she would have discussed the suitability of the visit with Dr Groome and that it would have been extraordinary for her not to consult with Dr Groome given his ongoing treatment of Katherine X.

44. It is clear on the face of the memorandum dated 13 June 1979 that Ms Minister envisaged that Dr Groome was to be made aware of the pending visit from Katherine X’s father to Winlaton because it was envisaged that Dr Groome would have discussions with Katherine X’s father as part of the therapeutic intervention in the case.

45. In his evidence Dr Groome accepted that he made recommendations in terms of contact with Katherine X’s family. He further accepted that he was

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43 C9437.6.
44 C9435.11-16.
45 C9438.31-34.
46 C9449.21 – C9450.8.
47 Exhibit BGD-15.
48 C9431.34-45.
49 C9322.35-37.
consulted because of his particular expertise and that his recommendations were usually followed.\textsuperscript{50}

46. While Dr Groome denied that he would have granted permission for the visit between Katherine X and her father, he ultimately accepted that it was possible that the appropriateness of such contact was discussed prior to the memorandum.\textsuperscript{51} He further acknowledged that he did not state in the progress report made subsequent to the visit that it was inappropriate.\textsuperscript{52} There is simply no record that indicates that Dr Groome took issue with the visit having occurred.

47. It is clear that Dr Groome had significant difficulties with his memory and that he had no independent recollection of the events.\textsuperscript{53} To the extent that there is an inconsistency between Ms Minister and Dr Groome with regard to whether he was consulted about the appropriateness of visitation, Ms Minister’s evidence should be preferred.

48. Ms Minister gave firm evidence that had she known that Katherine X had contact with her father during home visits to her mother on weekend leave from Winlaton, then such leave would not have been allowed.\textsuperscript{54} Ms Minister stated:

“Well, [Katherine X] would never have been allowed to go on weekend leave to any place that we thought the father would be. So when she had weekend leave to her mother, as I read in the documents, it would have been on the basis that the mother and the father lived in separate places, and that the mother wouldn’t allow the father to have access to her.”\textsuperscript{55}

\textsuperscript{50} C9322.29-46.  
\textsuperscript{51} C9324.25-37.  
\textsuperscript{52} C9325.36-40.  
\textsuperscript{53} C9252.18-40, C9323.7-30.  
\textsuperscript{54} C9439.17.  
\textsuperscript{55} C9428.15-20.
49. It is submitted that evidence should be accepted. It was never put to Ms
Minister that she was aware that there was any contact between Katherine X
and her father during weekend leave.

50. It is submitted that proposed finding F37 with regard to the failure of
ensuring that Katherine X did not have contact with her father during leave
fails to give sufficient weight to the fact that the staff at Winlaton were of the
firm understanding that Katherine X was staying with her mother who would
not allow contact between Katherine X and her father. Ms Minister had to
rely on the quality of the information she was provided with to that end.

51. Ms Minister was not privy to the case notes taken by Dr Groome.56
Accordingly, Ms Minister had to place significant reliance on the advice and
recommendations of Dr Groome with regard to issues of visitation and leave.

52. Ms Minister accepted that the letter written to Katherine X’s father in 1979
was inadequate and inappropriate.57 She accepted that she would have
approved the letter being sent but was probably not aware of its precise
contents.58

53. For completeness, Mr Minister should not be regarded as having been aware
of the “first term review” document prepared by Ms Hodges.59 It appears
that document was prepared by the Department at a regional level externally
from Winlaton.60 That document appears to place responsibility for the
sexual abuse upon Katherine X. Such an approach is inconsistent with Ms
Minister’s unequivocal evidence that in her view children are in no way
responsible for sexual abuse.61

54. Ms Minister also gave evidence that, when Katherine X was transferred from
Winlaton to Hillview, Hillview was made aware of the situation with regard to
Katherine X’s father. 62 The transfer report noted that “…current contact with [Katherine X’s] father is conducted in the controlled environment at Winlaton”. That supports that proposition that the staff at Winlaton understood that Katherine X did not have contact with her father during leave.

**Conclusion**

55. Ms Minister dedicated a significant proportion of her life to try to assist vulnerable residents at Winlaton. Over her eighteen years of service at Winlaton she would have dealt with well over ten thousand residents.

56. Ms Minister gave evidence that was frank and credible regarding the significant proportion of residents at Winlaton who she estimated would have experienced intrafamilial sexual abuse.

57. The failures by those at Winlaton to report such matters to police need to be seen in the context of the societal attitudes at the time towards such conduct and the realities of how police dealt with such complaints. When members of Victoria Police did not deal with Katherine X’s complaints properly in 1979 (and again in 2002) that was symptomatic of an attitude that provided a real obstacle to reporting.

58. Further, Ms Minister’s conduct needs to be seen in light of the failure of the Department to provide education and training with regard to child sexual abuse.

59. The introduction of mandatory reporting provided another important development in ensuring that such matters were dealt with appropriately.

60. In making findings and recommendations it is important that the Royal Commission does not lose sight of the fact that Ms Minister dedicated her professional life to assisting some of the most vulnerable members of our community.

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62 C9443.21-24.
community in incredibly challenging circumstances. The reality of such an environment was that, every day, difficult decisions had to be made with regard to the case management and treatment of residents.

61. Ms Minister frankly acknowledged that she made serious errors of judgment during her time at Winlaton, particularly with regard to the case management of Katherine X. Ms Minister accepted responsibility for those decisions, apologised for her errors and plainly had insight into how those decisions had affected Katherine X. Those errors need to be seen in the context of large-scale systemic failures by the Department, Victoria Police, and others tasked with Katherine X’s care.

62. It is hoped that the findings and recommendations made by the Royal Commission will help to ensure that such failings are not repeated.

M.D. STANTON
Coldrey Chambers
6 November 2015