



**ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES
TO CHILD SEXUAL ABUSE
AT SYDNEY**

COMMONWEALTH OF AUSTRALIA

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**PUBLIC HEARING INTO
CRIMINAL JUSTICE ISSUES
CASE STUDY 38**

OPENING ADDRESS BY COUNSEL ASSISTING – WEEK 2

INTRODUCTION

1. This week we continue the Royal Commission's thirty-eighth case study inquiring into criminal justice issues relating to child sexual abuse in an institutional context.
2. Last week, attention was focussed on how the criminal justice system deals with allegations against an individual of sexual offending against more than one child.
3. This week, the focus will be on the challenges for the criminal justice system when a very young child, or a person with disabilities that impact on their ability to communicate, complains of being sexually assaulted.
4. This part of the hearing will inquire into:
 - (a) The experiences of survivors, particularly young children and people with disability, in reporting child sexual abuse in an institutional context to police and in being complainants in prosecutions.

- (b) How the requirements of the criminal justice system, including in relation to oral evidence and cross examination, affect the investigation and prosecution of allegations of child sexual abuse in an institutional context, particularly where the complainant is a young child or a person with disability.
 - (c) Any related matters.
- 5. In circumstances where the only evidence of sexual abuse is often the complainant's account of what happened, many complainants of child sexual abuse may face difficulties in giving an account of the abuse sufficient for the purposes of the criminal justice system. These difficulties may be particularly acute where the complainant is a very young child or a person with disability. These two groups are amongst the most vulnerable in the community by reason of their limited ability to communicate.

PROVING CHILD SEXUAL ABUSE OFFENCES

- 6. As I said in opening last week, child sexual abuse offences are generally committed in private. Typically, there are no eyewitnesses to child sexual abuse offences. Often there will be no medical or scientific evidence capable of confirming the abuse. Often a child will not complain for a long time, sometimes not for many years.
- 7. Even when the abuse is disclosed quickly, there may be no physical evidence to confirm it. Unless the perpetrator has retained recorded images of the abuse, or unless the perpetrator admits the abuse, typically the only direct evidence of the abuse is the evidence the complainant gives about what occurred.
- 8. In order for the police to charge a person with a child sexual abuse offence, they generally require at least: an allegation of conduct that constitutes an offence; information sufficient to identify the offender; and the identification, with some degree of particularity, of one or more occasions when the conduct took place. In order for a prosecution to proceed, there needs to be evidence, in admissible form, of each of these minimum requirements for charging. In child sexual abuse cases, this evidence

will usually be the evidence given by the complainant. If the complainant is a young child or a person with disability that affects their capacity to understand and answer questions, their competence to give sworn evidence may need to be tested.

Complainants and other witnesses must also be available to be cross-examined on their evidence, and they must have the capacity to undergo cross-examination.

9. For young children and people with disability, these requirements can be particularly difficult to meet. They may find it difficult to recognise and disclose abuse, and they may not have language to use to describe what happened. They may be unable to disclose abuse to people they do not know or in unfamiliar settings or circumstances. Many victims of child sexual abuse find it difficult to provide sufficient particularity in disclosing the abuse, but this may be an even greater problem for young children and people with disability. Young children and people with disability may face particular difficulties in understanding and responding to questions they are asked in language beyond their current linguistic and cognitive abilities. They may also face prejudicial assessments of their competence, reliability and credibility throughout the criminal justice system.

SPECIAL MEASURES AND OTHER REFORMS

10. The difficulties faced by complainants of sexual abuse, including child sexual abuse, have been recognised for many years. New South Wales began to introduce measures to assist complainants to give evidence in the early 1990s. Since that time, all Australian jurisdictions have introduced a range of measures – often termed ‘special measures’ – to assist complainants through modifying usual procedures for giving evidence.
11. A number of special measures are now commonly available, although their use varies across jurisdictions. Special measures may allow the use of a pre-recorded investigative interview, often conducted by police, as some or all of the complainant’s

evidence-in-chief. In some jurisdictions, pre-recording all of the complainant's evidence, including cross-examination and re-examination, has become common, particularly for complainants who are children. This ensures that the complainant does not have to attend and give evidence during the trial and any re-trials, and in some cases it enables the child to give evidence earlier, while the events are more recent in their memory.

12. Closed circuit television may be used in some cases, so that the complainant is able to give evidence from a room away from the courtroom, without having to be in the presence of the accused, or the jury and others in court. If the complainant is giving evidence in court, screens may be used so that the complainant cannot see the accused while giving evidence. Further, the public gallery of a courtroom may be cleared during the complainant's evidence so that the complainant does not have to give evidence of the abuse in front of persons who are not directly involved in the proceedings. In some cases, particularly while young children are giving evidence, the judge and counsel may remove their wigs and gowns
13. There have also been a number of reforms to procedural rules and rules of evidence. These include: provisions restricting the scope of questions that can be asked in cross-examination; provisions requiring the court to disallow improper questions in cross-examination; provisions allowing evidence of early disclosure of the abuse to be given even if the disclosure was not made immediately after the abuse occurred; and provisions allowing expert evidence to be given about child development and child behaviour, including in relation to the impact of sexual abuse on children.
14. Police have also adopted a number of approaches designed to assist in the reporting and investigation of child sexual abuse allegations. These include: the introduction of specialist squads and taskforces; specialist training; pre-recording investigative interviews for use as the complainant's evidence-in-chief; and participating in multi-

disciplinary approaches that combine policing, child protection, and health expertise and facilitate access to support services.

DIFFICULTIES REMAIN

15. In spite of the introduction of special measures and other reforms, many difficulties remain for complainants, particularly children and people with disability.
16. Some of these difficulties stem from problems with the use of special measures and other reforms. These problems include: technical difficulties with electronic equipment that prevent the use of special measures in particular cases; physical limitations of courthouses, particularly older courthouses, that prevent the physical separation of the complainant from the accused; the breadth of questioning in complainants' interviews going beyond matters necessary to support a prosecution; quality issues in recording and editing complainant's interviews; and delays in pre-recording complainant's evidence. There is also concern that some participants in the criminal justice system may not support some of the special measures or may be concerned that they will adversely affect the jury's view of the complainant's credibility and evidence.
17. The Royal Commission has commissioned a major research project on the use of special measures for complainants' evidence. This research project is assessing the use and effectiveness of special measures, and the attitudes of participants in the criminal justice system to special measures. The complainants' evidence research is due to be completed in the middle of this year. It is expected to make a substantial contribution to the Royal Commission's consideration of further reforms that might be needed in this area.
18. Children with disability are a particular concern for the Royal Commission. High levels of contact with institutions and dependency on professionals for medical treatment and other support, often places children with disability in institutional

contexts where they may be at higher risk of sexual abuse. The Australian Institute of Health and Welfare reported in 2015 that there were some 171,000 children under 15 years of age in Australia who live with severe or profound disability. Research shows that children with disability – especially those with intellectual disability, cognitive disability, or additional communication needs – are at significantly increased risk of all forms of abuse, including sexual abuse. The Royal Commission has also heard how, as a result of specialised care and support needs, children with disability are often segregated from mainstream society. They may be in institutions that separate them from the general population effectively for all parts of their lives, including residential care, health care, schooling, respite care and holiday and recreational activities. This segregation can create isolation and additional vulnerability.

19. The Royal Commission's consultations to date in relation to people with disability suggest that children with disability face particular difficulties in disclosing sexual abuse. Children with disability are often not included in mainstream education on protective behaviours and sexuality so they may not be equipped with the necessary understanding and language to speak out about abuse. Physical and behavioural indicators of abuse by children with disability may be misinterpreted as bad behaviour or as a part of the child's disability and so may be overlooked or dismissed. Children or their carers may also be inhibited in reporting abuse for fear that they may lose critical support services if they complain.
20. I anticipate that the New South Wales Deputy Ombudsman will give evidence later this week in relation to notifications made under the New South Wales reportable conduct scheme. The Ombudsman's data is expected to show that there is a disproportionate number of notifications of reportable conduct in relation to children with disability in out of home care and in government schools, compared to their total numbers in these sectors. Notifications under the reportable conduct scheme include

forms of abuse other than sexual abuse and sexual misconduct. That disproportionality is particularly significant given the difficulties that children with disability may have in identifying and reporting abuse.

21. But this higher level of notifications is not reflected in what occurs in the criminal justice system. At the Ombudsman's recent forum, "16 years of Reportable Conduct – What have we learnt and where are we heading?", the Deputy Ombudsman also presented data in relation to children with disability. This data suggests that disproportionately few notifications involving children with disability result in criminal proceedings. Administrative investigations resulted in similar proportions of notifications being found to be 'sustained', regardless of whether the children involved were children with disability or not. However, criminal proceedings were considerably less likely to occur where the children were children with disability.

CURRENT AND POTENTIAL REFORMS

22. Australian jurisdictions are continuing to introduce additional measures designed to improve the ability of children and people with disability to participate in the criminal justice system, including as complainants in proceedings involving child sexual abuse offences.
23. In 2015, New South Wales enacted the *Criminal Procedure Amendment (Child Sexual Offence Evidence Pilot) Act 2015*. The Act commenced in November. The Child Sexual Offence Evidence Pilot requires the pre-recording of evidence of children under 16 years of age, and permits pre-recording for children who are 16 or 17 years of age. It also provides for the appointment of witness intermediaries – also called 'children's champions' – to assist the prosecution, defence and the Court to communicate with child complainants and to explain questions to the child and to explain the child's answers to the person who asked the question. The pilot is to

operate in the Downing Centre and Newcastle District Courts. We expect to hear evidence about the pilot later this week.

24. Also in 2015, South Australia enacted the *Statutes Amendment (Vulnerable Witnesses) Act 2015*, which has not yet commenced. The Act is part of the implementation of South Australia's "Disability Justice Plan 2014-2017". The purpose of the Disability Justice Plan is stated to be to make the criminal justice system more accessible and responsive to the needs of people with disability. When the amending Act commences, which is expected to be in June this year, it will introduce a number of reforms, including giving people with complex communication needs a general entitlement to have communication assistance, including through a communication partner, and providing for the use of pre-recorded evidence. The South Australian Government has also released a publication entitled "Supporting vulnerable witnesses in the giving of evidence: Guidelines for securing best evidence". We expect to hear evidence about the South Australian reforms later this week.
25. The provision for persons to assist children and people with disability in the criminal justice process is considerably more developed in England and Wales. England and Wales introduced a Registered Intermediary scheme under the *Youth Justice and Criminal Evidence Act 1999*. The scheme commenced in 2004. Registered intermediaries may become involved at the instigation of police, prosecutors, other lawyers or the court. Their role is to provide impartial assistance to facilitate more effective communication with the child or person with disability during the investigative or prosecution process. The Department of Justice has also developed 'Achieving Best Evidence' guidance for the evidence of vulnerable witnesses and the courts. We expect to hear evidence about the Registered Intermediary scheme in England and Wales, and accompanying measures such as 'ground rules' hearings later this week.

LIMITATIONS OF THE CRIMINAL JUSTICE SYSTEM

26. As I outlined earlier, the requirements to charge and prosecute a person for a child sexual abuse offence will usually necessitate that the victim can give a reasonably clear and coherent account of what occurred, and can give reliable evidence as the complainant in court. Reforms are therefore designed to assist vulnerable witnesses to give their best evidence, including by facilitating comprehension and clear communication. The purpose of special measures is not to secure convictions of all those accused of child sexual abuse offences; rather, it is to ensure that the best evidence is put before a jury and that the complainant's evidence is not rendered unreliable or incredible by requirements or established practices of the criminal justice system which are not truly necessary.
27. In spite of adopting special measures and other reforms, it is likely that the criminal justice system will remain particularly difficult for complainants of child sexual abuse offences who are young children or people with disability. Some difficulties faced by young children may be overcome by waiting until the child is older and possibly able to give a clearer account of what occurred. Regrettably, it is possible that some people with disability will face insurmountable communication barriers and may never be able to be a complainant in relation to the investigation and prosecution of child sexual abuse offences.
28. In either case, the ability of the regulatory system to implement child protection measures in the absence of a conviction through the criminal justice system requires consideration. A prosecution may not be able to be pursued because, despite the police and prosecutor being satisfied that disclosures by the child or person with disability indicate that abuse occurred, the child or person with disability is assessed as being unable to give evidence as a complainant as required by the criminal justice system. In these circumstances, the child protection concern remains, and may be

greater if the person alleged to have committed the abuse continues to have access to young children or people with disability, particularly through institutional contexts.

29. Most of the particular cases we will examine in this part of the hearing *did not* result in prosecutions. We expect to hear evidence later this week about some of the regulatory systems that may enable child protection measures to be implemented irrespective of the outcome of any criminal justice process.

STRUCTURE OF THE SECOND PART OF THE HEARING

30. We will examine the issues raised in this second part of Case Study 38 by, first, illustrating some of the difficulties for victims and their families, and for the criminal justice system, through four particular cases involving disclosures of child sexual abuse by young children and people with disability. I will say more about the detail of the cases shortly. They illustrate difficulties encountered when young children disclose abuse and when children with disability are victims or potential witnesses of abuse. In each case, we expect to hear evidence from family members of young children or people with disability about the abuse and their experiences in reporting to police and, in some cases, their involvement with prosecutors and other parties. We also expect to hear evidence from the police, prosecutors and other parties involved as to the steps that were taken to obtain disclosures, investigate and pursue allegations made by young children and people with disability.
31. Secondly, we will consider a particular case of allegations of child sexual abuse made when the complainant was an adult. This case, which proceeded to a conviction, illustrates the difficulties that all victims and survivors may have in reporting to police, even when they are no longer children and when they do not have any particular communication needs. This case also illustrates the contribution this survivor is making to improve the police response to survivors by assisting in police training.

32. Thirdly, we expect to hear expert evidence about the current position in Australian jurisdictions from Ms Terese Henning, Director of the Tasmanian Law Reform Institute and a Senior Lecturer in the Faculty of Law at the University of Tasmania. It is anticipated that Ms Henning will give evidence about: the requirements in order to be a complainant witness in the investigation and prosecution of a child sexual abuse matter; the common challenges for children and people with disability in meeting these requirements; the current provisions in Australian evidence law designed to assist children and people with disability give evidence and their use; and possible reforms that might assist children and people with disability to participate in criminal justice prosecutions.
33. Fourthly, we expect to hear expert evidence in relation to the Registered Intermediary scheme and related reforms in England and Wales. Ms Mary Woodward has been a speech pathologist since 2003 and was a Registered Intermediary for the Ministry of Justice in England and Wales from 2009 to 2011. Since then, she has worked in Australia with a range of children and adults, including many who have had contact with the justice system. Ms Woodward is expected to give evidence regarding her experience as an intermediary in the scheme operating in England and Wales, and the challenges children and people with disability face as complainants in a jurisdiction without an intermediary scheme.
34. We also expect to hear concurrent expert evidence from Professor Penny Cooper and Dr Michelle Mattison, both of whom are currently in Australia providing training for the New South Wales pilot intermediary scheme.
35. Professor Cooper was a barrister, practising primarily in the area of child protection, from 1990 to 2002; she then became a professor of law at City University London. She designed the first training for registered intermediaries in England and Wales in 2002, and she chairs The Advocates Gateway, an on-line hub for best practice advice, law, and research and training materials on adapting the court environment to

meet the communication needs of vulnerable people. Professor Cooper is expected to give evidence about the development of the intermediary schemes in England and Wales, and Northern Ireland, the legislative basis for the schemes and how the schemes have been received by the legal profession, including judges, prosecutors and defence counsel.

36. Dr Mattison is a lecturer in psychology at the University of Chester, and a registered intermediary in England and Wales. She is expected to give evidence regarding the role an intermediary can play in assisting police and the courts to obtain evidence from children and people with disability and the limits to which an intermediary can assist.
37. Fifthly, we expect to hear evidence from South Australia and New South Wales as to their recent reforms. Mr David Plater, Senior Legal Officer with Legislative Services at the South Australian Attorney General's Department is expected to give evidence about the development of the South Australian Disability Justice Plan 2014-2017, and the implementation of a range of reforms designed to assist vulnerable witnesses in providing evidence in criminal justice proceedings. Mr Brendan Thomas, Deputy Secretary, Justice Strategy and Policy in the New South Wales Department of Justice is expected to give evidence about the development and implementation of the New South Wales Child Sexual Assault Evidence Pilot.
38. Finally, we expect to hear evidence from Mr Steve Kinmond, the New South Wales Deputy Ombudsman and Community and Disability Services Commissioner. Mr Kinmond is expected to give evidence about the Ombudsman's involvement in one of the particular cases to be considered earlier in the week. He is also expected to give evidence about the reportable conduct scheme operating in New South Wales and the extent to which it can assist in achieving child protection outcomes in an institutional context even where there is no determination on the merits of allegations of child sexual abuse through the criminal justice system.

PARTICULAR CASES

39. I will now outline the particular cases to be considered through evidence from survivors and family members, and from police and prosecutors.

The case of CDE – Australian Capital Territory

40. CDE is the youngest of three boys. One of his brother's, CDD, has autism and is mostly non-verbal. While he used to use a speech device, he now usually communicates by writing things down, using gestures or sending messages with a mobile phone. The other brother, CDC, has Asperger's Syndrome and will not talk with people he does not know. Sometimes he uses his mobile phone to send messages to communicate with his parents.
41. In 2008, CDE's parents began using a local respite care service to provide respite care by caring for their three children. In early 2011, the service assigned CDA as their respite carer.
42. On 13 August 2011, CDE, then aged six, disclosed to his mother that CDA had abused him while providing respite care that evening in the family home. His brother CDD had been in the room at the time, but his other brother CDC was in another room. CDE's parents immediately reported the abuse to the respite care service and the police. CDE was interviewed by police the next day.
43. The prosecution of CDA illustrates the difficulties faced by victims and their families, and police and prosecutors, when sexual abuse is disclosed by a young child and when potential witnesses are both young children and people with disability.
44. We expect to hear evidence about the police interview of CDE, which was conducted by the adult sexual assault team as the child sexual assault team was not available on a Sunday. We also expect to hear evidence about police attempts to take statements from CDD and CDC. In relation to CDD, police did not attempt a formal

interview after they were unable to communicate with CDD, either through his mother or directly.

45. On 23 August 2011, CDA was charged with committing an act of indecency on a person under the age of 10 in relation to CDE.
46. During 2011, ACT Police received a number of other allegations that CDA had sexually abused other children with disability for whom he was providing care. We expect to hear evidence that the ACT Police took steps to investigate these matters but the information they obtained from the affected children was insufficient to support any charge.
47. An initial ruling that CDE was not competent to give evidence was overturned on appeal. In 2013, in the first trial of CDA, both CDE and CDC gave pre-recorded evidence. CDD did not give evidence. This trial was aborted when CDE's mother, CDB, gave evidence of a prior occasion of sexual abuse by CDA against CDE which was not the subject of any charge.
48. A second trial was held in 2014. CDA was acquitted of the charge.
49. We expect to hear evidence from CDE's mother, CDB. CDB is expected to give evidence about her experience with police and prosecutors in reporting the abuse of CDE and participating in the prosecution of CDA. She is also expected to give evidence about the impact of the criminal justice process on her and her family.
50. We also expect to hear evidence from Mr David Crowe, a team leader of a Sexual Assault and Child Abuse Team in ACT Policing, about the steps taken by ACT Policing in investigating the allegations against CDA, and the protocols ACT Policing have for communicating with children and people with disability.
51. We also expect to hear evidence from Mr Jonathan White SC, the Director of Public Prosecutions for the ACT, about the prosecution of CDA, and the special measures available for child complainants and witnesses in the ACT.

The case of CDI – South Australia

52. CDI has a generalised intellectual disability characterised by lower than average intellectual functioning. In 2010, aged 6, he was attending a Special Education Class at a primary school in Adelaide.
53. On 20 August 2010, a teacher noted that CDI was crying as he got off the school bus, and, after being questioned about why, CDI indicated that the school bus driver, CDF, had hurt him in the groin and bottom area. Police were called and CDF was charged with unlawful sexual intercourse with a child under 14 and aggravated indecent assault. Other children who caught the bus also made disclosures against CDF.
54. The investigation of CDF illustrates the difficulties faced by victims and their families, and police and prosecutors, when sexual abuse is disclosed by young children with disability.
55. Given their young age, investigative interviews with the children were conducted by the child protection service, following consultation with police. On 2 September 2010, CDF was charged with indecent assault involving another child who caught the bus with CDI, and who also had an intellectual disability. Over the following months, the Child Protection Service and the Office of the Director of Public Prosecutions interviewed five other children, each of whom had intellectual disabilities, who also caught the bus.
56. On 17 June 2011, the South Australian Office of the Director of Public Prosecutions advised the parents that there was insufficient evidence to support the existing charges against CDF, given inconsistencies in the children's evidence, and the likelihood that the children would struggle to give evidence in court.

57. On 26 July 2011, the existing charges were dropped, including those relating to CDI. However, two new charges were laid in relation to abuse of CEN, one of the other children who had previously been interviewed.
58. On 20 December 2011, the charges relating to CEN were dismissed for want of prosecution, as the Office of the Director of Public Prosecutions had determined that CEN and another child witness, CEH, would not be able to be cross-examined.
59. We expect to hear evidence from CDG, who is the mother of CDI. CDG is expected to give evidence about her experiences dealing with the police and prosecutors, and the impact of the criminal proceedings on CDI and other members of her family.
60. We also expect to hear evidence from Detective Superintendent Mark Wieszyk, who is the Officer in Charge of the Special Crimes Investigation Branch in South Australia Police. Detective Superintendent Wieszyk is expected to give evidence about the police involvement in the investigation and charging of CDF, the protocols South Australia Police have regarding the interviewing of children and people with disability, including specialist training, and the role police have in sharing information about criminal charges for child protection and employment screening purposes.
61. We also expect to hear evidence from Mr Adam Kimber SC, the Director of Public Prosecutions for South Australia. Mr Kimber is expected to give evidence about the challenges his Office faced in obtaining evidence to support the charges against CDF to the required standard of proof. He is also expected to give evidence about the Office's protocols regarding communicating with children, people with disability, and their families, and the provision of witness assistance services to children, people with disability, and their families.

62. Mr Kimber is expect to give evidence that the challenges in proceeding with the charges against CDF:

“stemmed from the requirement of proving a specific incident, as distinct from some generic wrongdoing, in circumstances where the children’s ability to recount detail consistently was seriously compromised.

Throughout the consideration of the matter, the prosecutors involved approached the matter on the basis that the allegations were such that illegal conduct had likely taken place. The difficulties lay in particularising a charge or charges and being able to establish them to the criminal standard.” (At [26]-[27]).

63. As I noted earlier, later in the week, we also expect to hear evidence from Mr David Plater of the South Australian Attorney General’s Department, in relation to the South Australian Disability Justice Plan and its implementation.

The case of CDL – Victoria

64. CDL has autism, Tourette’s syndrome, and a moderate intellectual disability. He has been under the permanent care of the Victorian Department of Health Services since he was 11 years old.
65. In 1999, when he was 13 years of age, CDL disclosed to his father that he had been sexually abused by CDJ, who was a disability support worker at a residential facility run by the Department in Melbourne. CDL disclosed the abuse to his father during the week following the abuse, when his father was visiting him. CDL’s father reported the abuse to the Department’s Cluster Manager. Police were notified 11 days later.
66. The investigation of CDJ illustrates the challenges facing complainants and their families and police when child sexual abuse is disclosed by a person with disability.

67. Before interviewing CDL, police discussed with CDL's parents their proposed approach to the interview. Interviewing CDL presented risks, particularly the risk of CDL harming himself if he became upset. After the first police interview, it was agreed between police, staff at CDL's residential facility and CDL's parents that a videotaped interview would not be possible.
68. A second interview was held on 9 June 1999, in which police recorded that CDL was not able to give a free narrative, nor understand the difference between truth and lies. This adversely affected the value of CDL's identification of CDJ as the offender. The investigation was put on hold at this point, with the agreement of CDL's parents.
69. In 2006, the Department commissioned a private investigation into the Department's handling of CDL's allegations and other incidents of abuse, following repeated requests from CDL's family. The investigation reported that there was no legal obligation for the Department to have investigated the allegations, and, although CDL had identified CDJ as the alleged abuser, there was insufficient information to conclude that the abuse had occurred.
70. In 2008, police reopened their investigation at the request of the Department, following continued disclosure by CDL of the abuse. Prior to interviewing CDL, Police obtained advice from his psychologist and psychiatrist regarding his ability to disclose, and suitable interview techniques. Both advised that CDL would be able to recall certain facts, but was limited in his communication ability, prone to become anxious, and would struggle to demonstrate the difference between truth and lies.
71. Following an initial interview, CDL participated in a videotaped interview, which produced reasonable grounds to believe that an offence had been committed, although CDL was unable to provide great detail, or dates or times. A brief of evidence was prepared to charge CDJ. However, it was not proceeded with, in particular because it was considered unlikely that CDL would be able to provide any

meaningful answers under cross-examination, thus rendering any proceedings possibly unfair to CDJ as the accused.

72. We expect to hear evidence from CDK, who is CDL's mother. CDK is expected to give evidence about her experience in dealing with the police who investigated CDL's allegations, and the impact of the criminal justice process on her and her family.
73. We also expect to hear evidence from Mr Stephen Fontana, Assistant Commissioner Crime Command of Victoria Police. Mr Fontana is expected to give evidence regarding the investigation of CDL's allegations, the efforts police made to obtain a statement from CDL, the decision not to charge CDJ, and the protocols Victoria Police have regarding communicating with people with a disability.

The cases of CDO and CDQ – New South Wales

74. In late 2010, CDQ and CDO were attending a child care centre in southern Sydney. Both were three years of age.
75. In November 2010, another child, CEW, at the centre disclosed that she had been sexually abused by CDM. CDM worked at the centre, apparently as a volunteer. He was the father of the centre's director and a part-owner of the centre. CDM was charged with indecent assault and aggravated indecent assault in relation to CEW.
76. After CDM was charged, the parents of CDQ and CDO had concerns about whether their girls might have been abused by CDM. They requested the girls be interviewed by the local Joint Investigation Response Team, or JIRT.
77. The investigation and discontinued prosecution of CDM illustrates the difficulties faced by young children and their families, and by police and prosecutors, when child sexual abuse is disclosed by very young children.
78. During this period, the licensing of child care centres was regulated by the Children's Services Directorate within the Department of Community Services (as it was then

named). On 15 November 2010, the Director General of the Department of Community Services issued a notice of exclusion to CDM directing him to refrain from entering the premises of the child care centre, informing him that his continued presence at the centre would constitute an unacceptable risk to the safety, welfare or wellbeing of a child or children enrolled with the centre and informing him that it was a criminal offence for him to enter the centre.

79. In December 2010, CDM was charged with indecent assault in relation to another child at the centre, CEY. On 24 December 2010, the Children's Services Directorate placed licence conditions on the child care centre, such that the child care centre was itself required to prevent CDM from entering or remaining on the premises.
80. In February 2011, CDQ was interviewed by JIRT but did not make any disclosures in this interview. CDO was also interviewed by JIRT and she made disclosures. In May 2011, CDM was charged with aggravated indecent assault in relation to CDO.
81. In June 2011, CDM was committed to stand trial on four counts of aggravated indecent assault against three children.
82. In November 2011, the Crown Prosecutor with carriage of the prosecution formed the view that the evidence given by CEW and CEY could not support sufficient particularisation of the charged offences; that is, the girls could not describe a particular occasion, as opposed to stating that certain behaviour had occurred at some undetermined time. With respect to CDO, the Crown Prosecutor was concerned that although CDO could identify a specific incident, the detail of that incident was not clear, and she had given inconsistent evidence about whether the incident had occurred. The Crown Prosecutor recommended that the three girls be re-interviewed.

83. In January 2012, officers of the Joint Investigation Response Team conducted further interviews of the three girls, including CDO. The interviews did not produce any additional evidence in relation to the issues identified by the Crown Prosecutor.
84. In April 2012, the Crown Prosecutor met with the girls' parents to explain the results of the further interviews and to discuss the prospects of success of the prosecution, and to seek the parents views regarding whether they wished the prosecution to proceed or not.
85. In May 2012, on the recommendation of the Crown Prosecutor, the Deputy Director of Public Prosecutions directed that there be no further proceedings, on the basis that the prosecutions were likely to fail given the inability of the children to give sufficient detail about the charged incidents.
86. In December 2010, after the initial allegations against CDM were made, the owner of the child care centre reported the allegations to the New South Wales Ombudsman as required under the reportable conduct scheme operating in New South Wales. The Ombudsman advised her to defer any investigation until after the criminal proceedings were concluded.
87. Following the discontinuance of the criminal proceedings in May 2012, the owner of the child care centre commissioned a review of CDM's conduct. The review recommended findings of 'not sustained' in relation to the allegations of sexual offences. In December 2012, the Ombudsman received a copy of the review.
88. In February 2013, the Ombudsman wrote to the owner of the centre advising her to make a notification to the Commission for Children and Young People, which was then responsible for operating the Working With Children Check scheme in New South Wales. In July 2013, the owner of the centre advised the Ombudsman that she had sold the centre and that CDM had retired.

89. Later in 2013, the parents of the four girls who had disclosed abuse by CDM made a complaint to the Ombudsman about how the owner of the centre had responded to the allegations and other matters. The Ombudsman released information about the police and reportable conduct investigations of CDM to the Office of the Children's Guardian. As a result of concerns raised by the parents about limitations on the information the Ombudsman could give them about the reportable conduct investigation, the Ombudsman sought legislative reform. In 2015, the legislation was amended to allow disclosure of information about reportable conduct investigations to victims, their parents and carers.

90. We expect to hear evidence from CDN, who is the mother of CDO, and CDP, who is the mother of CDQ. CDN and CDP will give evidence regarding their own experiences and the experiences of their daughters in the investigation, the impact that this experience has had on their families, and their contact with the NSW Ombudsman in making complaints about the conduct of the child care centre in responding to the allegations.

91. CDN is expected to give evidence that:

“The biggest issue for me is that the criminal justice system wasn't set up to allow my daughter to share her story. She was so little that she was denied a voice.” (At [57].)

CDN is expect to tell us that it is really important for her to be her daughter's voice in this hearing.

92. CDP is expect to give evidence that:

“The present criminal justice system forces parents of child abuse victims to decide between two options. Parent can either expose their children to the trauma of participating in the criminal justice system in order to achieve justice by putting paedophiles in jail to prevent harm to further children.

Alternatively, parents can allow paedophiles to remain free in order to prevent the criminal justice system from causing further harm to their own child. In my mind, that will never be a fair and just system.” (At [50].)

93. CDP is also expect to tell us that:

“Paedophiles know that if they target young children, they have the greatest chance of escaping legal retribution. Our youngest children are the most vulnerable. It is incumbent upon the criminal justice system to implement proper processes to hear the voices of young children.” (At [59].)

94. We expect to hear evidence from Detective Sergeant Kelly Donaghy, who was a detective in the JIRT unit at Kogarah and who was the original officer in charge of the investigation into CDM. Detective Sergeant Donaghy is expected to give evidence about the police involvement in the investigation and charging of CDM, and the protocols NSW Police have regarding the interviewing of children and supporting children and their families in an investigation. Detective Sergeant Donaghy is also expected to give evidence about the limited information that should be given during an investigation, including to parents, because of the risk of compromising the investigation or prosecution.

95. We also expect to hear evidence from Detective Chief Inspector Peter Yeomans of the Child Abuse Squad in State Crime Command. Detective Chief Inspector Yeomans is expected to give evidence in relation to the role, structure and functions of JIRT; New South Wales Police policies and procedures for interviewing young children; training in communicating with young children; and support services and assistance provided to young children and their families.

96. Mr Huw Baker, the Crown Prosecutor briefed to appear in the prosecution of CDM – and from whom the Commission heard evidence last week in relation to another matter – will also give evidence. Mr Baker is expected to give evidence about the

conduct of the prosecution, including the steps taken to try to obtain evidence to support the charges against CDM to the required standard of proof, and the requirements for particularising charges.

97. Ms Rhonda Dodd, a Witness Assistance Officer in the Witness Assistance Service in the Office of the Director of Public Prosecutions who had carriage of assisting the complainants in the prosecution of CDM, is expected to give evidence about how the young girls, including CDO, were prepared for the prosecution and information and assistance provided to the children and their families during the prosecution.
98. We expect to hear evidence from Tracy Mackey, Executive Director of the Early Childhood Education and Care Directorate in the New South Wales Department of Education. The Directorate now regulates the operation of early childhood education and care services in New South Wales under the *Children (Education and Care Services) National Law (NSW)*. As I mentioned previously, at the time the allegations against CDM were made, licensing of child care centres was regulated by the Children's Services Directorate within the Department of Community Services.
99. Ms Mackey is expected to give evidence about the grant of a licence to the child care centre in 2008; how the allegations against CDM came to the attention of the Children's Services Directorate in November 2010; the issuing of the notice of exclusion to CDM; and the imposition of conditions on the child care centre's licence.
100. Ms Mackey's evidence goes to the regulatory actions that were taken in response to the allegations against CDM, independently of the steps taken in the criminal investigation and prosecution. Ms Mackey is expected to give evidence of the Directorate's consultation with JIRT and its member agencies, and liaison with the New South Wales Ombudsman and the National Childcare Accreditation Council.
101. Towards the end of the hearing, we expect to hear evidence from Mr Steve Kinmond, the New South Wales Deputy Ombudsman and Community and Disability Services

Commissioner. Mr Kinmond is expected to give evidence about the notification the Ombudsman received in relation to CDM, the Ombudsman's role in relation to the investigation of the allegations against CDM, and the response to the parents' complaints about the centre's response to the allegations and other matters. As I noted earlier, Mr Kinmond is also expected to give evidence about the reportable conduct scheme operating in New South Wales and the extent to which it can assist in achieving child protection outcomes in an institutional context even where there is no determination on the merits of allegations of child sexual abuse through the criminal justice system.

The case of Mr Sascha Chandler – New South Wales

102. Mr Sascha Chandler was abused as a teenager by Andrew McIntosh while Mr Chandler was a student at Barker College in the early 1990s. McIntosh was a cadet leader at Barker College.
103. McIntosh had been convicted of five counts of indecent assault in 1988, and he was on parole when he commenced working at Barker College.
104. Mr Chandler reported the offences to police in 2006. He is expected to give evidence that it was not until then that he felt able to report to police. He found the experience of reporting to police particularly difficult, and felt like he had little support at a time of extreme vulnerability. Over the next few years, his case was handled by a number of different detectives, and Mr Chandler felt frustrated at having to re-tell his story to each detective.
105. In October 2007, McIntosh was arrested in Cairns and extradited to New South Wales. He was charged with a number of offences relating to Mr Chandler and other child sexual abuse offences relating to other children.

106. In January 2009, McIntosh failed to report to police as required by his bail conditions. In February 2009, he was again arrested in Queensland and extradited to New South Wales.
107. In July 2009, McIntosh was convicted on 24 counts relating to Mr Chandler. Sentencing was delayed for McIntosh's trial on the child sexual abuse offences in relation to other children. In May 2011, he was convicted of 18 counts, in addition to the 24 counts relating to Mr Chandler. He was sentenced to 32 years imprisonment, with a non-parole period of 20 years.
108. McIntosh appealed against his sentence. In 2015, his sentence was reduced on appeal to 24 years imprisonment, with a non-parole period of 18 years.
109. Mr Chandler now participates in police training by giving presentations to detectives to provide a victim's perspective of child sexual abuse. He also provides support to survivors of sexual abuse who are preparing for trials. Mr Chandler's experiences were featured on an episode of Australian Story.
110. Mr Chandler's experiences in reporting the abuse he suffered to police illustrate the difficulties that adult survivors of child sexual abuse face in reporting and in pursuing a prosecution. Mr Chandler's subsequent participation in police training illustrates the importance of police understanding the difficulties survivors face in coming forward.
111. We expect to hear evidence from Mr Chandler regarding the abuse inflicted by McIntosh, and his experiences in reporting the abuse to police and participating in the prosecution of McIntosh. We will also hear about Mr Chandler's current contributions to police training, and his role as a mentor to other survivors of child sexual abuse.
112. Mr Chandler is expected to give evidence about a number of improvements he recommends, drawn from his experience in supporting a number of other survivors. Amongst other issues, Mr Chandler is expected to recommend that survivors should be included more centrally in the criminal justice process "so they do not feel simply

like a bystander to the process” (at [12d] in Mr Chandler’s second statement) and that there be greater support for survivors throughout the whole criminal justice process.

113. We also expect to hear evidence from Detective Sergeant Matt Davey of the Detectives Training Unit in the New South Wales Police Force, who is expected to give evidence about relevant police training and Mr Chandler’s role in presenting during the “Investigation and Management of Adult Sexual Assault” course.

NEXT STEPS FOR THE ROYAL COMMISSION

114. It is anticipated that the evidence in the second part of this case study will make a significant contribution to the Royal Commission’s work in relation to vulnerable witnesses, particularly children and people with disability who disclose child sexual abuse. Together with the other work the Royal Commission is conducting, including the research project on special measures for complainants’ evidence, this part of the case study is intended to inform any recommendations the Royal Commission wishes to make in this area.

115. The main issues to bear in mind throughout this part of the hearing are these.
- (a) What are the minimum requirements of the criminal justice system for charging and prosecution and what is the nature of the difficulties children and people with disability face in meeting them?
 - (b) To what extent do current methods to obtain the best information and evidence from children and people with disability overcome these difficulties?
To what extent are the current methods used adequately?
 - (c) Are there any further reforms that could be made to support children and people with disability to give their best evidence?
 - (d) To what extent can child protection measures be implemented through regulatory action where allegations of child sexual abuse cannot proceed

through the criminal justice system because of an inability to meet its evidential requirements?

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21 March 2016