18. The legal environment prior to 1990

"child sexual abuse is publicly deplored while the criminal law seems designed to make it almost impossible to prosecute, or at least seems to ensure that the child is damaged in the process".[1]

18.1 The legal system generally

In 1975, when Dennis John McKenna was first employed at St Andrew's Hostel, Katanning, there were more than 25 charges available under the *Criminal Code* to prosecute child sexual abuse (excluding offences relating to prostitution and pornography).[2] The offences included any sexual abuse of male or female children or any attempts to do so. Many offences, particularly for younger victims, did not require any proof of lack of consent by the victim. The maximum sentence for all of these offences was a term of imprisonment which in some instances was "with or without whipping".[3] The maximum terms ranged up to life with hard labour, and generally increased in proportion to the youth of the child and the physical invasiveness of the abuse. Offences which carried a maximum term of life imprisonment (known as "capital crimes"), were heard in the Supreme Court of Western Australia, the highest court of the State. Section 206 of the *Criminal Code* confirmed that the additional punishment of whipping could be imposed on offenders aged 16 and older - even though whipping was already a specified option for particular offences.

Although there were heavy penalties for sexual offending against children, the many legal impediments to prosecution (as detailed below) caused them to lack practical effect. These impediments included:

- defamation laws
- the absence of any obligation to report suspected child abuse;
- limited police capacity to deal with sexual offending (particularly in regional communities)
- inflexible court processes which were not child-appropriate

[1] Smart, C 1989, *Feminism and the power of the law*, Routledge, London, p. 51 quoted in Eastwood, C and Patton, W 2002, *The Experiences of Child Complainants of Sexual Abuse in the Criminal Justice System,* Queensland University of Technology, p. 4.

[2] See Appendix 5

[3] The last sentence of whipping imposed was in 1964, for the offence of unlawful carnal knowledge, but was not carried out (Supreme Court of WA 2011, *Supreme Court of WA Open Day 2011 - Brochure).* This was because the canes prescribed by regulation for inflicting whippings fell apart. The last whipping imposed was in 1943, when the prisoner underwent 17 lashes out of the 25 imposed before a doctor ruled he had been punished enough (Bolton, G and Byrne, G 2005, *May it Please Your Honour: A History of the Supreme Court in Western Australia 1861-2005*, Supreme Court of WA, Perth, p. 185). Whipping nevertheless remained on the statute books until 1992 (*Criminal Law Amendment Act (No. 2) 1992*).

- rules of evidence which assumed that sexual allegations by children might be unreliable
- the limited number of sexual offences in respect of male victims prescribed in the *Criminal Code* at that time.

There is a vast difference between the present legal environment and that which existed throughout the extended time that McKenna was committing offences at the Hostel. Furthermore, the public attitudes towards child sexual abuse 35 years ago were very different to now. Even allowing for these differences (as documented in this report) there were some individuals who clearly failed to respond to allegations appropriately. But an understanding of the legal environment at that time does help explain why abusive behaviour at the Hostel was able to continue for so long. It also helps to explain the reluctance of some to report - let alone pursue - allegations of child sexual abuse through the legal system.

Over the past few decades a number of farsighted people have achieved significant reforms in the way that the legal system deals with sexual offending against children. The successful prosecution of McKenna in 1991 was itself testament to the positive reforms to the legal system that already had been achieved at that time. It was also a testament to five young men (Michael Hilder, Todd Jefferis, John Jolley, Raymond Anderson (deceased) and another who did not wish to be named) who had the courage to persist with the legal process despite the legal and social barriers which faced them. By doing so they brought an end to McKenna's reign of abuse at the Hostel, and prevented a similar fate befalling future victims.

18.2 "Watch what you say" – The problem with defamation laws

In late 1986, Alan Parks, the Chairman of the Hostel Board, learned that a family with twin boys at the Hostel (identified for the purposes of the Inquiry as the "P" family) were concerned about "something" but did not precisely know what their concerns were. Mr Parks asked McKenna if he had heard anything, and McKenna responded: "No … all was fine". It is Mr Parks' evidence that as a result of that simple query to McKenna he was telephoned the next day by the Chairman of the Isolated Children's Parents' Association (ICPA), a national parent group dedicated to ensuring equitable access to education for rural and remote students.[4] According to Mr Parks the Chairman of the ICPA[5] told him that "he was thinking of taking me to court for what I had said and done, and … wouldn't tell me what

[4] ICPA 2012, Isolated Children's Parents' Association of Australia, viewed 15 June 2012, www.icpa.com.au/.

[5] Mr Parks identified Mr Barry Walsh as the person who telephoned him. Mr Parks advised the Inquiry that he believed the Barry Walsh he spoke to was a farmer in a south-west location (Inquiry Investigator 2012, 'Barry Walsh' email, 2:21 pm 8 June).The limited records available to the Inquiry indicate that a Mr Barry Walsh from the Lakes District Branch of the ICPA was on its Federal Executive (ICPA 2012, ICPA Branches - Esperance, WA – ICPA, viewed 15 June 2012, www.icpa.com.au/branches/view/70/esperance-wa).
Mr Barry Walsh, from the relevant location and a former Vice President of the Federal ICPA, made a statement to the Inquiry denying that he had made such a phone call to Mr Parks. He also denied anything other than casual links to McKenna (*Inquiry Transcript of Evidence*, pp. 3956-3959). As a result, while Mr Parks' account of the incident is generally accepted, I have not been able to make any findings as to who telephoned Mr Parks. It is possible that Mr Parks was either mistaken in his recollection or that the person who telephoned him was untruthful about his identity.

it was ... [other than] what I'd said about the "P" family." The caller "ended the conversation by saying … just watch what I said in the future or did in the future, and hung up."[6]

Although I accept Mr Parks' evidence of this conversation, it would be difficult to give credence to such an account in today's legal environment. Clearly Mr Parks had a responsibility for the well-being of students at the hostel. It is therefore quite extraordinary that his simple question to McKenna should have prompted such a response.

However, Mr Parks' evidence is consistent with the evidence of many other witnesses who say they were threatened with defamation proceedings when they raised queries, concerns or complaints about McKenna's treatment of students (including Keith Stephens,[7] Johnette Brown,[8] David and Coral Trezise,[9] William McPharlin and Glenis Flanigan,[10] Todd Jefferis,[11] Karen Davies,[12] Kylie Haddow[13] and Dale and Catherine Jefferis[14]). Documentary evidence of four of these threats survives; and two of them were made even after McKenna was charged with offences.

Ms Haddow's evidence highlights how defamation laws, in particular the laws on criminal defamation, were used to McKenna's advantage. At the time she was threatened, Ms Haddow was a student who had been identified as the author of a note detailing some of McKenna's misconduct with boys in the Hostel. She was called into a meeting with a school official[15] and McKenna. She was then told "This is slander. You cannot write this about people" and was further threatened that:

> *"my parents will have to be told, "This is possible grounds of expulsion from school", that the police will be called, I could be arrested and charged for slander, that I could be taken down [to] the police station, that what I've done is terrible, and I should never write things like that and I should be very careful about what I say and what I do and what I have done is a terrible thing to a very nice man who has done nothing."*[16]

At all times (then and now) the *Criminal Code* has contained an offence of publishing defamatory material which is punishable by imprisonment and a fine.[17] Interestingly, the

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[6] *Inquiry Transcript of Evidence,* pp. 1451-1454.

[7] *Inquiry Transcript of Evidence*, p. 2855.

[8] *Inquiry Transcript of Evidence*, p. 3696. The witness states:

> *"I remember in 1985 another student … told me that she had seen Dennis McKenna in bed with a male student. Not long after that Dennis got up in the dining room and said that he had heard that students had been calling him a paedophile. Dennis told us all that any student saying this would have to provide it with details, such as times and dates, or he would take us to court and sue us."*

[9] Taylor, Nott & Murray 1986, Letter to Mr and Mrs Trezise, 8 October (Exhibit 11.3).

[10] Taylor, Nott & Murray 1986, Letter to Mr McPharlin and Mrs Flanigan, 8 October (Exhibit 9).

[11] *Inquiry Transcript of Evidence*, pp. 724, 737.

[12] Marks Healy Sands 1990, Letter to Mr Ron Sherriff, 26 November (Exhibit 18.2).

[13] *Inquiry Transcript of Evidence,* p. 369.

[14] Corser & Corser 1990, Letter to Mrs K L Jefferis [sic], 20 November (Exhibit 17).

[15] See Chapter 11.16

[16] *Inquiry Transcript of Evidence*, p. 369.

[17] At the relevant time, section 346 of the *Criminal Code* defines "defamatory matter" as:

school official who threatened Ms Haddow seemed to be well briefed about this aspect of the State's criminal laws, an aspect of law with which few people would have been familiar. (It is reasonable to infer that McKenna provided him with that briefing). However regardless of how the official came to know of this provision in the criminal law it was being used as a weapon rather than a defence. It was a very effective weapon because Ms Haddow's evidence is that she felt she had no choice but to comply with McKenna's demand that she apologise. Subsequently she did not take her concerns about McKenna's conduct to any other authority figure.[18]

In Chapter 11.1 I have also referred to Peter Potter's evidence that, in 1976, he was informed by two Hostel students from his scout troop that they were being sexually abused by McKenna. When he raised these allegations with three different ministers of religion he was warned about the legal risks of making allegations against McKenna without any direct evidence. When he tried unsuccessfully to take up his concerns with a police officer, he was told he was "putting his neck on the line". Mr Potter felt there was nowhere else for him to go: "I couldn't get any back-up, I couldn't get the boys to talk". [19] Clearly the outcome for many of McKenna's later victims could have been vastly different if there had there been a better response to Mr Potters' allegations.

18.3 The responsibility of public officials to report suspected child sexual abuse

The evidence shows that numerous public officials including teachers, doctors, members of statutory boards and Hostel workers had concerns about possible sexual abuse at the Hostel, but either did not respond effectively or were unclear about what they could do.[20] Therefore it is important to determine whether or not public officials had a legal responsibility to report suspected child sexual abuse.

Prior to 1990 there was no legislated requirement for public officials to report suspected child sexual abuse as there is today ("mandatory reporting"). In the absence of mandatory

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> *"Any imputation concerning any person, or any member of his family, whether living or dead, by which the reputation of that person is likely to be injured, or by which he is likely to be injured in his profession or trade, or by which other persons are likely to be induced to shun or avoid or ridicule or despise him, is called defamatory, and the matter of the imputation is called defamatory matter. An imputation may be expressed either directly or by insinuation or irony."*

Section 360 created an offence of unlawfully publishing "any defamatory matter concerning another" that was punishable by imprisonment for 12 months and a fine; if the offender knew the defamatory matter was false, the offender was liable to imprisonment with hard labour for 2 years, and to a fine.

The *Criminal Code* provisions on criminal defamation were amended in 2005. It is now only available when an accused knows, or does not care, that the information is false, and intends, or does not care, that serious harm will be caused to the victim (Section 345 – see *Defamation Act 2005*, s. 47).

[18] *Inquiry Transcript of Evidence*, pp. 370-371. Ms Haddow's evidence was that she apologised to McKenna by saying ""I am sorry if what I wrote offended you".

[19] *Inquiry Transcript of Evidence*, pp. 3599-3604.

[20] See, for example, the evidence of Mrs Livia Bentley (*Inquiry Transcript of Evidence*, pp. 38-58), Mr Ken Perris (*Inquiry Transcript of Evidence*, pp. 484-497), Mr Ken Reddington (*Inquiry Transcript of Evidence*, pp. 807, 808 - in relation to his daughter's doctor), Ms Sue Cox (*Inquiry Transcript of Evidence*, pp. 3618-3622 - in relation to her mother Mrs Maud Bruce) and Mr John Peacock (*Inquiry Transcript of Evidence*, pp. 1124-1193).

reporting it was not entirely clear what obligations were imposed on public officials during the 1970s and 1980s to report suspicions of such abuse. For example:

- In relation to teachers, the Department of Education has highlighted that there were no relevant provisions in the *Education Act 1928* nor was there any reference to such an obligation in the documentation which still survives from the 1970s. The need for students to have a safe environment at school was recognised as an important precondition for learning only towards the end of the 1980s. Until then the management responsibilities of principals were focussed on efficient resource management and maintaining order in schools. Teachers' responsibilities were focussed on the delivery of education and on issues directly related to that delivery.[21] Accordingly the issue of how to appropriately deal with allegations of child sexual abuse was not at the forefront of the minds of any teaching professionals.
- In relation to health professionals, the Department of Health (DOH) has suggested that the duty to preserve patient confidentiality was probably a factor considered by health professionals when responding to allegations or suspicions of sexual abuse. Health professionals were able to report concerns of child sexual abuse to the then department responsible for community welfare, or to the police, but only if they had the consent of the patient. In respect of adolescents, depending on the level of capacity and maturity of the child, there would have been some uncertainty as to whether it was the consent of the child and/or a parent which was required before such a report could be made.[22]
- In relation to child welfare officers in the 1970s, the then Department for Community Welfare (DCW) did not provide any specific guidance as to how to deal with child sexual abuse.[23] (This might seem amazing in hindsight.) When the DCW first established a Child Sexual Abuse Unit in the early 1980s it concentrated only on intra-familial child sexual abuse involving children 6-18 years.[24] Abuse of the type which was occurring at the Hostel did not fall within its scope.

The late 1970s saw the beginning of what was to become a contentious and protracted process of reform in official responses to child sexual abuse. This process was to culminate in the system of mandatory reporting brought about by legislative amendment to the *Children and Community Services Act 2004*. Since January 2009, identified public officials have been required by law to report suspected child sexual abuse to the Department for Child Protection (DCP). The DOH notes that these nominated professionals "now have certainty that they can (and must) report suspected child sexual abuse without fear of criticism or reprisal". However for the reasons outlined above the obligations of public officials to report suspected child sexual abuse prior to 1990 were far from clear.

Keith Maine, a former Director of the DCW, established an Advisory and Consultative Committee on Child Abuse (ACCCA) in 1976. Initially the focus of child protection initiatives

[21] Department of Education 2012, *Submission to the Inquiry*, 16 March, pp. 3-4.

[22] DOH 2012, *Submission to the Inquiry*, 2 May, p. 5.

[23] DCP 2012, *Submission to the Inquiry*, 19 April, p. 1.

[24] DCW 1983, *Annual Report 1982-1983,* DCW, Western Australia, p. 34.

had been on physical abuse,[25] and ACCCA aimed to facilitate the coordination of child protective services, communication between departments and agencies, as well as policy development. In March 1983, ACCCA appointed a sub-committee to examine systems of interagency management of serious child abuse (including mandated and voluntary reporting systems) with a view to devising a new system for Western Australia. However, the sub-committee could not reach agreement and the issue was referred back to ACCCA.[26]

In 1984 a meeting of the Ministers for Police, Health, Youth and Community Services and senior officers for each agency established an inter-agency "Child Abuse Referral Panel".[27] A particular issue considered by the Panel was the appropriate course of action for teachers and school health nurses confronted with suspected child abuse. In that regard there had been inordinate delays in making referrals because of fear of making unfounded accusations.[28]

The Panel completed its report in July 1985[29] and recommended that there be structured guidelines for the reporting of suspected child abuse as well as joint intervention processes.[30] These recommendations were opposed by the Police Commissioner who wanted allegations to be referred to Police for investigation on a case by case basis. The Panel's guidelines were said to be inconsistent with Police independence in such matters[31] and resulted in a "stalemate".

These differences were overcome in 1985 when the issue of child abuse (particularly sexual abuse) became a priority for government. With an election due in early 1986, the state government developed two election policy initiatives in this area:

- To "institute a major community education program on parenting, child protection and the prevention of abuse to children".
- To "develop a program to assist teachers to recognise child sexual abuse and deal with its effects".[32]

Following the election a consensus was reached on the role of police in child protection, and a further report was published by the Panel at the end of 1986. [33] It included recommended guidelines on the action expected of professionals (health, community services, police and

[25] Child Abuse Review Panel 1986, *Report of Child Abuse Review Panel*, Child Abuse Review Panel, Western Australia, pp.27-30; Maine, K A, *Transcript of Evidence*, pp. 998, 1001, 1002.

[26] Department of Education, op. cit., pp. 8, 11. An Inquiry witness, Maggie Dawkins, who raised concerns about McKenna's conduct in 1985 (*Inquiry Transcript of Evidence*, pp. 230-320) was referred to as the Programs Officer on ACCCA in 1993, working on the Children at Risk Conference, the Statistics Information System and the ACCCA newsletter (The Advisory and Co-ordinating Committee on Child Abuse August 2003, News from ACCCA, *ACCCA Newsletter*, p.6).

[27] Conole, P 2012, *Comments on Police File RMS 04993 85 F6*, p. 1.

[28] Department of Education op. cit., p. 11.

[29] Conole, P, op. cit., p. 1.

[30] Department of Education op. cit., p. 11.

[31] Conole, P, op. cit., p. 1.

[32] Department of Education op. cit., p. 12.

[33] ibid, p. 11; Child Abuse Review Panel 1986, *Report of Child Abuse Review Panel*, Child Abuse Review Panel, Western Australia.

education) in relation to suspected child abuse.[34] Police understood this arrangement to mean that Community Services and Education would provide Police with information on child abuse from external sources; however Police also expected resistance from some quarters, in particular from health professionals. Scepticism about cooperation in reporting allegations on a reciprocal basis was such that Police did not seek further resourcing at that time.[35] (It seems this scepticism was warranted because no agreement was reached between WA Police and the Department of Community Services for reciprocal reporting of child abuse until 1988. According to a retired senior child protection worker, prior to the 1988 agreement, only more extreme matters involving physical and/or sexual abuse of children were relayed to police.[36])

Running parallel to the negotiations over the Child Abuse Review Panel's Report, a Child Sexual Abuse Task Force chaired by Dr Carmen Lawrence, MLA commenced in 1986. It was to inquire into child sexual abuse and recommend a whole of government response. The Task Force presented its final report in December 1987 and its wide-ranging recommendations included amendments to the *Criminal Code* and *Evidence Act 1906*;[37] an expansion of child sexual abuse services; specialised training of personnel within health, education, welfare, police and legal systems; development of policies and procedures on child abuse and neglect; in-service training for staff; the inclusion of protective behaviours in the Education curriculum; and the dissemination of information to parents to raise awareness of child sexual abuse.[38]

The Department of Education responded in 1987 by producing its *Guidelines for the Identification and Notification of Child Abuse and Neglect*. These *Guidelines* were intended to provide assistance to school staff in the reporting of abuse (as a part of their responsibility) and promoted inter-agency co-ordination when a report had been made.[39]

The *Guidelines* stated:

> *"In general, where there is a disclosure of child abuse or strong concerns about the well-being of a child, the teacher, after consultation as described [with a member of the school support staff, such as the school nurse, the guidance officer or the social worker], must report the matter to the school principal. On receipt of this report the*

[34] Department of Education op. cit., p. 11.

[35] Conole, P, op. cit., p. 2.

[36] WA Police 2012, *Submission to the Inquiry*, 20 March, p. 3.

[37] Many recommendations for legislative change concerned issues identified in the following sections of this chapter. The Task Force report was followed by a Law Reform Commission of WA report in 1991 on the evidence of children and other vulnerable witnesses. Former President of the Children's Court the Hon Hal Jackson identified those two reports as supporting "the creation of the Child Witness Service and its Reference Group, the introduction into courts across the State of appropriate technology for the pre-recording of children's evidence, the giving of evidence by closed circuit television and long range video conferencing linkups, and by other supportive measures including judicial and legal professional education, and judicial guidelines on the taking of children's evidence". (Jackson, H 2003, *Child Witnesses in the Western Australian Criminal Courts*, paper presented at the Child Sexual Abuse: Justice Response or Alternative Resolution Conference convened by the Australian Institute of Criminology, Adelaide, 1-2 May, p. 2).

[38] Child Sexual Abuse Task Force 1987*, A Report to the Government of Western Australia*, Child Sexual Abuse Task Force, Western Australia.

[39] Department of Education, op. cit., pp. 12-15.

> *principal should report the matter immediately to either the Department for Community Services or the Child Care Unit of the Police Department."*[40]

Unfortunately, the evidence I have heard indicates this potentially useful resource was not distributed effectively to teachers and a number of those who gave evidence to the Inquiry were not aware of it.[41] The Department of Education has supplied correspondence that indicates a copy of the *Guidelines* was mailed to each school in November 1987[42] and two articles referring to the *Guidelines* which were published by the Department in the *WA Education News* on 5 and 19 November 1987.[43] There does not appear to be any reference to the *Guidelines* in the more formal Departmental publication, the *Education Gazette*,[44] and nor does there appear to have been any training program for teachers associated with the distribution of the *Guidelines*.

While many teachers were not aware of the *Guidelines*, the fact that they were issued does show that some beneficial changes to the legal environment were being made at the time.

Given the failure of the teaching professionals to respond to reported suspicions of sexual abuse at the Hostel it is very significant that the 1987 Guidelines also stated:

> *"Teachers may be reluctant to report suspected cases of child abuse and/ or neglect because they are afraid of the effect this may have on their relationship with the peers or family of the child involved. There have been instances of hostility toward teachers for reporting cases of suspected child abuse and/ or neglect, including threats of legal action for defamation, particularly where no action has been taken by the authorities as a result of a report and investigation. It is, of course, impossible to prevent parents and others from making - or indeed carrying out - threats of this kind, even though both the Department for Community Services and the Police Department attempt to keep the origin of all reports confidential. On the other hand, if teachers make reports through the proper channels and with the best interests of the child in mind, they are protected in the event of legal action being taken against them: they are entitled to invoke the defence of qualified privilege…*
>
> *Amendments to the Child Welfare Act are being drafted to give teachers and other professionals legislative as well as common law protection in these circumstances."*[45]

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[40] Ministry of Education (Western Australia), 1987, *Guidelines for Identification and Notification of Child Abuse and Neglect,* pp. 5, 7.

[41] Bourke, A J *Inquiry Transcript of Evidence*, pp. 1987, 1988; Murray, I W *Inquiry Transcript of Evidence*, pp. 2107, 2141, 2143; Young, G H *Inquiry Transcript of Evidence*, pp. 2640, 2641; Clayton, B J *Inquiry Transcript of Evidence*, pp. 3167, 3168.

[42] Director General of Education 1987, Letter to Commissioner of Police, 15 December; Director Programs (Department of Community Services) 1987, Letter to Mr B Coutney, Ministry of Education, 2 December.

[43] Ministry of Education (Western Australia) 1987, 'Attack on incest', *WA Education News*, 5 November, p. 2; Ministry of Education (Western Australia) 1987, 'Schools get guide to identifying child abuse', *WA Education News,* 19 November, p. 1.

[44] Ministry of Education (Western Australia) 1993, *The Education Circular Index 1986-1992*.

[45] Ministry of Education (Western Australia), 1987, *Guidelines for Identification and Notification of Child Abuse and Neglect,* pp. 9.

It was not until 2002 when section 10C was inserted into the *Child Welfare Act 1947* that public officials reporting suspected child abuse were provided with limited protection. This section provided protection from potential disciplinary or legal action when the Director General of the then Department of Community Development requested specified information from a public authority. The information that was supplied in response would no longer constitute a breach of confidentiality or of any professional standard. However, no protection was afforded to any person reporting suspected child abuse who had not been requested to do so.[46]

Notwithstanding these reforms there continued to be strong divergences amongst various professional groups as to the action which could appropriately be taken in response to child abuse. A letter from the Australian Medical Association (AMA) to the Minister for Health in 1990 revealed the medical profession's attitude at that time. The AMA expressed the view that, in cases of suspected child sexual abuse, the focus must be on safeguarding the welfare of the child, ideally by maintaining the family unit through treatment rather than punishment. To that end, the AMA recommended that notification of such concerns should be to child welfare authorities rather than to Police. That letter had been prompted by a raid by the Police Child Abuse Unit on Princess Margaret Hospital (PMH) when medical records were seized.[47]

18.3.1 The policing of child sexual abuse

For nearly two centuries, the initial contact for people wanting to pursue the prosecution of criminal acts through the legal system always has been a police officer. In that sense police have the critical role of being "gate keepers" for the criminal justice system. The Inquiry has asked WA Police about the manner in which police officers (particularly at regional stations) dealt with allegations of a sexual nature involving minors during the period 1970-1990.

WA Police responded that:

> *"The situation prior to 1979 is not overly clear due to the limited availability of historical records. What is known is that in the 1960s and 1970s the then Criminal Investigation Branch (CIB) maintained a large book titled, "Office Orders" which contained circulars and general instructions to staff regarding a range of matters. Whilst a search of that book failed to locate specific instructions relating to child sexual abuse, it did contain a reference to the interviewing of victims for sexual matters…*
>
> *General instruction, issued November 1975 - Requirements for Policewomen to interview complainants for matters of rape, alleged rape, unlawful carnal knowledge and similar offences."*[48]

This instruction that policewomen should interview complainants in sexual assault cases was a significant development for policing at that time. Women were first introduced into the ranks of the Police Force in WA in 1917. Two women were appointed with "the object of

[46] DOH, op. cit., p. 5.

[47] DOH 2012, *Submission to the Inquiry* (Attachment G), 2 May.

[48] WA Police op. cit., p. 1.

safekeeping the moral welfare of women and children, particularly of girls between the ages of 15 and 21 years". Although their duties widened over the years, female officers remained a single unit, were required to be trained nurses until 1957, and if they became married were discharged from the Force.[49]

It was only in 1975–76 that the requirement for female police officers to be unmarried was lifted, and that women for the first time went into uniform and were trained in conjunction with male applicants. Three women were appointed as detectives during this same period.[50]

The instruction in 1975 to include female officers in sexual assault investigations almost certainly made the police service more accessible to women and children.[51] However it does raise the issue of the gendered way in which sexual assault was conceptualised at that time. It would seem that no consideration was given to the difficulties that a teenage male complainant in a sexual assault case might have in being interviewed by a policewoman.

Apart from the above, little light has been shed on how the police responded to complaints of sexual offences during the 1970's and 1980's with WA Police also stating that "It is not clear if there were any guidelines relating to suspected child sexual abuse in the Police Manuals in the 1970s".[52] Although WA Police understand that Routine Orders were in existence in the 1960s and 1970s, it was only with a new edition in 1979 that the procedures for dealing with Offences Against Children and the Reporting of Child Abuse were issued.[53] The DOH has indicated that in that same year (1979) it formally established the Childhood Sexual Assault Unit (CSAU) at PMH. The CSAU involved the co-ordination of PMH, WA Police and the then Department for Community Services.[54]

The Police Child Abuse Unit (originally the "Child Care Unit") only came into existence in 1982. The original Unit was staffed with eight Police Officers and one unsworn person who conducted all interviews and investigations in relation to child complainants. Initially, the charter of the Unit was limited to offences within families (intra-familiar). The Unit also only dealt with metropolitan cases, which meant that country detectives had the responsibility of investigating child sexual offences within their own areas.

At some stage the remit of the Police Child Abuse Unit was extended to those country matters which were high profile, required a prolonged investigation or were complex. The Unit's charter was also extended to include extra-familiar offences.[55] These developments were in place by the time that Operation Paradox was conducted by the Police Child Abuse Unit on 22 August 1990.[56] Operation Paradox was part of a nationwide operation which

[49] WA Police 2006, *Episodes in Western Australia's Policing History*, p. 10.

[50] Ibid.

[51] Eastwood, C, Patton, W & Stacy, H 1999, *Surviving Child Sexual Abuse and the Criminal Justice System*, Paper presented at the Children and Crime: Victims and Offenders Conference convened by the Australian Institute of Criminology, Brisbane, 17-18 June, p. 6.

[52] WA Police 2012, op. cit., p. 2.

[53] ibid.

[54] DOH 2012, *Submission to the Inquiry* (Attachment A), 2 May, p. 3.

[55] WA Police advise that it is not clear when the expanded role of the Child Abuse Unit to deal with offences other than those occurring within the family occurred. (WA Police 2012, op. cit., p. 2).

[56] The date was selected by the Victorian authorities to coincide with National Child Protection Week (August 19-25).

encouraged phone-ins relating to sexual abuse of children and it had a particular focus on paedophile activities.

An article in *The West Australian* at that time, 'Police Plan Hotline on Child Abuse', reported that:

> *"Perth Detectives hope a 12 hour phone in, named Operation Paradox, will help curb a flourishing paedophile network in WA and identify those responsible for the physical or sexual assault of children."*[57]

Operation Paradox was assisted by various welfare organisations, the then Department for Community Services and Education Department, local media and by telephone services which installed a toll-free line for country residents. A total of three hundred calls were received at the Unit on the first day and further calls were received over the next two to three days. The inquiries conducted into these complaints over the following months resulted in numerous prosecutions for physical and sexual abuse.[58]

Significantly it was Operation Paradox which resulted in the successful prosecution of McKenna in 1991 and brought to an end his 15 year reign of abuse at the Hostel.[59] This increased capacity of the WA Police to target and respond appropriately to sexual offences and in particular child sexual abuse was a significant contributing factor to the charging of McKenna.

Of greater significance, perhaps, was the opportunity and encouragement that this provided to complainants seeking assistance beyond the confines of what had become the "closed" environment of Katanning and its surrounds.

18.4 Court processes and child sexual abuse

18.4.1 General Observations

> *"For the child, the adversarial nature of lengthy cross-examination in a hostile and intimidating courtroom environment in the presence of their abuser, appears impeccably designed to reinforce feelings of powerlessness and blame. Indeed, in terms of child psychology and development, it would be difficult to come up with circumstances more inappropriate for the child who has been sexually abused… Dynamics which operate in the experience of childhood sexual abuse are replicated in the justice system, particularly during cross-examination. In sexual abuse, the right of the child to exercise ownership and control of their own bodies is overridden. The child loses control of their sexuality and their identity. In cross examination, the child is forced to be physically present in the same room as the abuser, and also in the presence of a number of (usually) male adults. The sexually assaulted child has no choice in being present, nor is the child permitted any control over who is in the courtroom. In addition, they are forced to describe intimate intrusions to their body in*

[57] WA Police 2012, *Response to Summons No. 62* (Attachment 3), 27 April.

[58] WA Police 2012, *Submission to the Inquiry* (Attachment 5) 20 March, p. 1.

[59] WA Police 2012, *Response to Summons No. 2* (Investigation files).

> *great detail, usually a number of times. The child has no control over the questions, nor over how they can respond. As a child who has been sexually assaulted they are not permitted to tell their story in their own words, nor are they permitted to defend themselves against accusations of lying in any way whatsoever. The child must do as they are told. The child must answer every question. The child has no right to challenge offensive treatment, or try to defend themselves. These are the precise terms in which the initial sexual abuse took place. In other words, the sexually abused child is abused all over again, though this time with the sanction of the State."*[60]

An understanding of the way in which the justice system operated between 1975 and 1990 helps to explain the reluctance of many people to engage with it concerning allegations of child sexual abuse. In an interview with Inquiry investigators, Robert Hendry stated:

> *"…I did meet a bloke a while ago… whose child did go to the hostel and wasn't interfered with but he said to me, 'Bob, if it had of happened to my kid, I'm not sure I wouldn't have swept it … under the table'. And you think - - but they're protecting their kids I suppose, you know."*[61]

Without doubt any child who complained of sexual abuse prior to 1990 had to confront a seemingly hostile justice system.

18.4.2 Cross-examination

Although many aspects of court proceedings were problematic, cross-examination was frequently identified as the most traumatic aspect for complainants in child abuse cases. In a 1999 study of child abuse complainants aged 12 to 17 years old, the researchers concluded:

> *"The young complainants identified a number of difficulties in the court process including hours and days of waiting in sub-standard witness rooms, lack of support in court, the presence of the jury and other personnel, difficulties with legal language, the attitudes and behaviour of the judiciary, the corroboration warning and the verdict and sentencing. However, by far the greatest trauma resulted from the cross-examination experience."*[62]

An example cited in this study was:

> *"After two days of cross-examination I had explained every incident twice. He was going through it a third time. He just kept going through it over and over and over again. He was repeating things all the time... There should be a law against it – they shouldn't be able to question you for that long - two and a half days is beyond a joke.*

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[60] Eastwood, C and Patton, W 2002, *The Experiences of Child Complainants of Sexual Abuse in the Criminal Justice System,* Queensland University of Technology, pp. 127, 128.

[61] Hendry, R 2012, *Inquiry Interview*, in possession of the Inquiry, 6 April, p. 40. Note similarly the comments made by the father of the boy at Swanleigh Hostel – Chapter 13.

[62] Eastwood, C, Patton, W & Stacy, H, op. cit., p. 8.

> *(After vomiting in the witness box a number of times on the afternoon of the third day she could not continue)... I couldn't do it... I couldn't even have done another hour... that is when I withdrew."*[63]

Other difficulties with cross-examination, as identified by the researchers, included:

- Defence barristers who initially presented themselves as smiling, friendly and caring, only later to turn against the complainants and accuse them of "wanting it" and of lying.
- Endeavours to confuse the young witnesses through a variety of tactics, including repetitive questioning, rapid questioning, and repeated interruptions to responses offered by the child.
- The use of questioning which demanded particulars of time, dates and other details. Many of these questions were impossible for the complainant to answer, as in the case of one child (abused for more than four years) who could not recall when asked, what she wearing on March 12. The inability to answer was then construed as the witness lying.
- Being directly accused of lying on many occasions during cross-examination. The effect on the complainants was psychologically destructive and they described feeling as though the abuse was their fault, that they had done something wrong, and most importantly, "like no-one believed you." The failure of judges or prosecution counsel to intervene was also interpreted by the complainants as a belief by other adults that they were lying.
- The sexual history of the complainant becoming an issue – either by direct questioning concerning matters of sexual history or by questioning which implied sexually inappropriate behaviour. The latter was more difficult for the witness to respond to because it relied upon insinuations and rhetorical comments made during cross-examination.
- Although consent is an irrelevant issue in most cases of child sexual abuse, complainants were told that they "wanted it".
- Much of the questioning was perceived by complainants to be eliciting information that was totally irrelevant to the abuse experience, and which they believed was specifically intended to upset them: one participant was questioned concerning her mothers' schizophrenia and was told that her mother had put the abuse into her head; one child was asked if she knew that she was illegitimate, and another if she knew her mother was having an affair.[64]

An extract from a court transcript of the cross-examination of a child complainant in a sexual abuse case is available at Appendix 6. Although relatively recent, it is a Queensland case and many of the reforms that now apply in WA were still to be implemented in that state. However it reflects the procedures that applied in the WA courts at the time of McKenna's offending.

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[63] ibid, p 9.

[64] Eastwood, C, Patton, W & Stacy, H, op. cit., pp. 8-12.

18.4.3 Support services

A critical issue impacting on child complainants is their lack of legal knowledge, resulting in a misunderstanding and a fear of the unknown.

In its review on the evidence of children and other vulnerable witnesses, the Law Reform Commission of Western Australia (LRCWA) cited a 1988 study of child witnesses interviewed in court waiting-rooms. The children:

> *"frequently expressed anxiety about their forthcoming appearance in court. Their anxiety arose partly from ignorance: "They did not know what would happen in the courtroom, they did not comprehend the role of the various professionals involved in the trial and they did not always understand their own role in the proceedings." The majority of children had not been briefed or prepared for court and a significant number of parents reported having great difficulty in explaining to their child what would happen in the courtroom due to their own lack of knowledge."*[65]

In WA a child witness support service was not established until 1995. The Department of the Attorney General advises that a high proportion of children seen by the Child Witness Service need help with services in relation to sexual assault or physical abuse either as victims or witnesses.[66]

18.4.4 Delays

During the 1970's and 1980's there were usually substantial delays between reporting an offence and the trial. At the time of the LRCWA report in 1991, it noted:

> *"In Western Australia there is at present normally a lapse of approximately 6-8 weeks between the initial court appearance of a person charged with a criminal offence and the "election date" when the accused may elect either committal proceedings or that committal proceedings be dispensed with. In most cases the accused opts for committal proceedings, which usually do not take place for a further 16 weeks. Thus, 6 months generally elapses between the laying of a charge and committal proceedings. If after the committal proceedings the accused is committed for trial there is a further 2-3 months' delay before trial in the Supreme Court and 4-6 months in the District Court."*[67]

In 2002, after the implementation of measures which gave priority to child abuse trials, the average delay in WA between the reporting of an offence and trial remained almost 18 months.[68] The researchers reported one child complainant's comments:

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[65] LRCWA 1991, *Evidence of Children and other Vulnerable Witnesses – Report*, LRCWA, Western Australia, p. 79.

[66] Department of Attorney General 2012, *Submission to the Inquiry*, 31 May, p. 7.

[67] LRCWA, op. cit., p. 45.

[68] Note, however, that by this time pre-recoding of children's evidence was allowed in Western Australia. This would have addressed many, but not all, of the difficulties for child complainants associated with protracted legal proceedings.

> *Because of the hearing I was really emotional until the trial. When every day came closer I was getting more tense and all that. Then I started having nightmares which were telling me to kill myself… Everyone was saying that it (the trial) is bigger than the [committal] hearing and they'll be yelling at me more, and that kind of scared me because I don't like getting yelled at.*[69]

Researchers identified other issues arising from the long delay between committal proceedings and the trial. These included harassment from perpetrators during this period, the impact on the child's education (sometimes with long-term consequences), the need to remember and recall details of abuse during the waiting period, and the inability to discuss the abuse with close relatives (even sometimes their parents) due to fear of contamination of the child's evidence.[70]

18.4.5 Other procedural and related impediments

During the 1970's and 1980's there were many other procedural and related impediments to participation in the legal process by child complainants alleging sexual offences:

- An unrepresented accused person was able to personally cross-examine the complainant.[71]
- Complainants in sexual offence cases, including children, had no access to special witness status allowing them to give evidence by CCTV or while screened.[72]
- Complainants in sexual offence cases, including children, were usually required to give evidence at a committal hearing before being re-called to give evidence at the trial.[73]
- Written statements or audio and visual records of children's evidence were not generally admitted as evidence.[74]
- Children were not permitted to have a support person sitting near them while testifying.[75]
- Individual sexual offences had to be identified by a precise date, or some other event or surrounding circumstance, even if there had been a series of offences of a similar nature, perpetrated by the same offender over an extended time.[76]

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[69] Eastwood, C and Patton, W, op. cit., p. 51.

[70] ibid, pp. 114-116.

[71] LRCWA, op. cit., p. 92.

[72] ibid, pp. 60-75 .

[73] Eastwood, C and Patton, W, op. cit., p. 128.

[74] LRCWA, op. cit., pp. 32-33. This was a particularly significant issue for child witnesses given delays in the legal process.

[75] LRCWA, op. cit., p. 89.

[76] Ibid, pp. 99-103. In 1990 the Chief Justice of WA commented in *Podirski v R* ((Unreported) Court of Criminal Appeal, 28 February 1990, Nos 221 and 222 of 1989, 13) that: *". . .unless the law is changed there is a possibility that the more acts of intercourse or other acts of sexual abuse and the greater the length of time over which they occur, the more difficult it may be to establish that any one of a series of multiple offences has been committed."* (Quoted in LRCWA, op. cit., p. 103).

- Even for "any offence of an indecent character" against a person under 18 years of age there was no requirement that the court be closed to the public; the judicial officer could elect whether to do so or not.[77]

18.5 Evidentiary rules in child sexual abuse cases prior to 1990

The following extract from a 1984 legal text book reflects the prevailing attitudes towards child complainants alleging sexual abuse at that time:

> *"First, a child's powers of observation and memory are less reliable than an adult's. Secondly, children are prone to live in a make-believe world, so that they magnify incidents which happen to them or invent them completely. Thirdly, they are also very egocentric, so that details seemingly unrelated to their own world are quickly forgotten by them. Fourthly, because of their immaturity they are very suggestible and can easily be influenced by adults and other children. One lying child may influence others to lie; anxious parents may take a child through a story again and again so that it becomes drilled in untruths. Most dangerously, a policeman taking a statement from a child may without ill will use leading questions so that the child tends to confuse what actually happened with the answer suggested implicitly by the question. A fifth danger is that children often have little notion of the duty to speak the truth, and they may fail to realize how important their evidence is in a case and how important it is for it to be accurate. Finally, children sometimes behave in a way evil beyond their years. They may consent to sexual offences against themselves and then deny consent. They may completely invent sexual offences. Some children know that the adult world regards such matters in a serious and peculiar way, and they enjoy investigating this mystery or revenging themselves by making false accusations."*[78]

It was this kind of thinking which imbued the legal environment at the time of McKenna's offending, and it helps to explain the very negative experiences of many child complainants with the justice system back then.

18.5.1 Corroboration

There never has been any general legal requirement that the testimony of a witness must be corroborated: "One witness to a key fact, if believed, can provide sufficient proof of that fact".[79] However, for certain categories of witnesses prior to 1990, judges were required,

[77] Child Sexual Abuse Task Force, op. cit., p. 108.

[78] Heydon, J D 1984, *Evidence: Cases and* Materials, 2nd edn, Butterworths, London, p. 84 quoted in LRCWA , op. cit., p. 19.

[79] Mack, K 1998, You should scrutinise her evidence with great care: Corroboration of women's testimony about sexual assault. In Easteal, P (Ed.) *Balancing the Scales: Rape law reform and Australian culture*, The Federation Press, Sydney, p. 59 quoted in Eastwood, C and Patton, W, op. cit., p. 34.

either by legislation[80] or common law, to caution juries that it was unsafe to convict an accused unless the witness' testimony was corroborated by other, independent evidence. (In other words the jury was warned that it would be dangerous to convict an accused on the complainant's word alone. It was highly desirable that there be additional evidence confirming the accused's guilt.)

One category of witnesses to which the requirement of a corroboration warning applied was complainants in sexual offence cases. The basis for this requirement originated with the opinion of Chief Justice Hale in a case in 1729:

> *"It is true rape is a most detestable crime, and therefore ought severely to be punished with death; but it must be remembered that it is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent."*[81]

Accordingly (and up until 1986) a corroboration warning to the jury was mandatory in the prosecution of any sexual offence in Western Australia.[82]

Although the necessity for a corroboration warning in sexual offences was removed in 1986, there was a continuing requirement until 1988 for judges to warn juries against convicting on the uncorroborated evidence of a child who gave sworn evidence.[83]

18.5.2 Discrediting complainants in sexual offence cases

Until the *Evidence Act 1906* was amended in 1986 there were a raft of factors which could be used to discredit a complainant in sexual offence cases.

For sexual offences generally, but particularly in relation to offences against children, the absence of an immediate complaint was seen to undermine the credibility of the complainant. The simple failure to make an immediate complaint was commonly used by defence counsel to argue that the defendant had been falsely accused.[84] It was not until 1986 that judges in WA were required to:

> *"(a) give a warning to the jury to the effect that absence of complaint or delay in complaining does not necessarily indicate that the allegation that the offence was committed is false; and*

[80] See Appendix 5, Table 1, ss. 185, 187, 188 for a legislative requirement for corroboration that was incorporated as part of the offence.

[81] Hale, M 1713, *Hale's pleas of the crown*, Vol. 1, p 634 quoted in Eastwood, C and Patton, W, op. cit., p. 33.

[82] *Evidence Act 1906,* s. 36BE.

[83] LRCWA, op. cit., pp. 22-24; *Criminal Law Amendment Act 1988,* s. 42. Children under 12 years of age continued to have very little opportunity to have their version of events considered by a jury at this time (LRCWA, op. cit., pp. 7-18, 30, 31).

[84] Australian Law Reform Commission 2010, *Family Violence - A National Legal Response*, Australian Law Reform Commission, Sydney, paragraphs 27.281-282.

> *(b) inform the jury that there may be good reasons why a victim of an offence such as that alleged may hesitate in making or may refrain from making a complaint of that offence."*[85]

For complainants other than young children, a further deterrent to pursuing an accused through the criminal courts was that, although the sexual history of the accused could not be raised in evidence at the trial (due to its prejudicial nature), the defence was entitled to adduce evidence about the sexual reputation of the complainant, the disposition of the complainant in sexual matters and the sexual experiences of the complainant.[86]

18.6 "What's the difference?" – The law on paedophilia and homosexuality

The following exchange during the cross-examination of a witness concerning McKenna's sexual proclivities during the 1980's provided an insight into some commonly held attitudes at the time:

> *"Q. When you made allegations or referred to Mr McKenna around the place, did you refer to him as a "paedophile" or a "poofter"?*
> *A. Both.*
>
> *Q. In the same sentence, or --*
> *A. What's the difference? I don't know..."*[87]

Although by contemporary standards this statement is regarded as offensive and discriminatory, it in fact accurately represents the law as it was at the time of McKenna's offending. The law did not just prohibit homosexuality, it treated male homosexuality and paedophilia as falling into the same category of crime. This was very much to the detriment of boys such as those at the Hostel who were subjected to homosexual offending.

While most sexual offences under the *Criminal Code* in 1975 were predominantly concerned with offences against females, only seven such offences applied to males (Appendix 5). Penalties for these crimes provided for up to 14 years imprisonment "with or without whipping" and some did not require proof of a lack of consent by the victim as an element of the offence. (The mere fact of the homosexual act happening constituted the offence.)

Accordingly it is clear that these offences were not formulated for the purpose of protecting adult males from coerced sexual relations nor indeed of protecting male children from sexual exploitation. In fact with one of the offences which carried the highest penalty of 14 years imprisonment ("carnal knowledge against the order of nature"), the issues of both the consent and the age of the victim were irrelevant to its illegality. The intent of this and the other offences against males where age and lack of consent were not relevant (viz. "gross misconduct" and "indecent acts in public or with intent to offend") was to proscribe homosexuality without regard to the varying circumstances in which such acts might occur.

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[85] *Evidence Act 1906,* s. 36BD.

[86] See *Evidence Act 1906*, ss. 36B, 36BA and 36BC enacted in 1986.

[87] Parkin, N E *Inquiry Transcript of Evidence*, p. 605.

The failure of the law at that time to distinguish homosexuality from paedophilia was further demonstrated by the following extract from a criminal text book published in 1982 which was used as a standard guide in Australian states with a Criminal Code such as Western Australia:

> *"A boy under 14 years of age upon whom the offence [of sodomy] was committed and who, in fact, has knowledge of guilt, may be an accomplice…"* [88]

In 1975 there was only one offence proscribing sexual conduct between males which was specifically formulated to protect male children – the offence of indecent dealing with a child under 14.

Strikingly, in the absence of any "age of consent" for males at that time, the law tolerated sexual conduct by an adult with a boy who was 14 or older, unless it could be proven to have occurred without the boy's consent (this being indecent assault).[89] Accordingly the law paid little regard to the relative power of an adult over a male child. Similarly and inconsistently with the offences protecting female children, there was no offence which recognised the power which could be exercised over a male child by a guardian, employer, teacher, or schoolmaster.[90] Accordingly if any male boarder aged 14 years or more at the Hostel engaged in any form of sexual conduct with McKenna without any obvious coercion or incapacity to consent (e.g. being asleep), they were at risk of being prosecuted for the same offence of which they complained. Although the prosecution of sexual offences has always been a fraught process for any complainant, this was a particular deterrent to complaints by boys aged 14 and more who were subjected to sexual abuse by men.

This was also the context in which Roy Wenlock sexually abused boys at St Christopher's Hostel, Northam. Wenlock generally (but not always) confined his dealings with the boys to non-penetrative sexual conduct, often initiated on their 14th birthday.[91] If such a boy had wanted to take the matter to court at that time he would have been required to prove his lack of consent in circumstances where there was no presumptive inequality with a person in authority such as Wenlock, and in the face of all of the legal impediments that applied to child complainants as described earlier in this chapter.

A submission to the Inquiry from former Hostel student Ian Parker, makes the stark point in relation to McKenna's sexual abuse that:

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[88] Carter, F C 1982, *Criminal Law of Queensland,* 6th edn, Butterworths, Brisbane, p. 171.

[89] An example of the application of the law in circumstances that were not related to a Country High School Hostels Authority hostel, came to the attention of the Inquiry. The Police running sheet (Incident Report - 300909 0815 86367 – Sex Crime Divisional Office) records:

> *"POI* [Person of Interest] *not spoken to due to the fact that it was not in the public's interest to pursue this matter. As both parties are deemed responsible for the relationship and all were consenting and willing participants. The POI was not going to be charged with any offences despite any comments that he would have made as the victim would also have to be charged. No legislation in 1965 - 1970 regarding sexual relationship between Priest and child. Unless the child is under the age of 14 years, which this victim was not."*

[90] See Appendix 5 It is of note that the protection afforded to female children under that provision was in any event very limited, as seen in the recent prosecution of Neil McKenna for offences against female students at St Andrew's Hostel (*The State of Western Australia –v- McKenna* [2012] WADC 50).

[91] See Chapter 12

> *"Child abuse was not considered a crime in boarding institutions…*
>
> *… a variety of euphemisms to describe child abuse [were referred to in evidence before the Inquiry] such as*
>
> - *Mucking about*[92]
> - *Tiddling*[93]
> - *[Fiddling with].*[94]
>
> *However the only real outrage is caused by the association with homosexuality created by anal sex, until that charge was proved, Warden McKenna had a multitude of supporters and typically those in authority were reticent to weigh reputation against action."*[95]

18.6.1 Impact on homosexual men

The legal preoccupation with criminalising homosexual sex did not only leave young males vulnerable to conduct such as that of McKenna and Wenlock. It also left adult homosexual males vulnerable to blackmail.

McKenna was a person who engaged in threats and manipulation and he was very capable of exploiting this legal environment to his own advantage. In particular, if, as many suspected, McKenna was a homosexual and engaged in homosexual relations with adult men, this would have provided him with enormous power to control men who engaged in sex with him or were part of what, of necessity, would have been a clandestine network. Although there is no evidence to prove that this happened, I consider it entirely possible that male adults connected with the Hostel may have desisted from complaining about McKenna's sexual abuse of boarders because of their vulnerability to prosecution for what would now be lawful behaviour.

A Royal Commission established in 1974 to report on matters relating to homosexuality, sought evidence of discrimination, physical assault and blackmail:

> *"Evidence was given to the Commission that all the categories listed above were in fact suffered by some, if not all, homosexuals…*
>
> *Certainly not one case of blackmail had been brought to the notice of the police...*
>
> *The fear that the victims have of reprisals is well known, no matter what the offence, and with the thought of 14 years imprisonment and/or a whipping as a possibility, one cannot but agree that persons would be reluctant to come forward...*

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[92] Peacock, S J *Inquiry Transcript of Evidence*, p. 1173.

[93] Stephens L O K *Inquiry Transcript of Evidence*, p. 2870.

[94] Moore, R K *Inquiry Transcript of Evidence*, p. 429; Trezise, D L *Inquiry Transcript of Evidence*, p. 541; Gill, P A *Inquiry Transcript of Evidence*, p. 1372; "M" *Inquiry Transcript of Evidence,* p. 3685.

[95] Parker, I 2012, *Submission to the Inquiry*, 29 May, pp. 4-5; Parker I 2012, Email to Inquiry Investigator, 6:47 pm, 3 July.

> *Because homosexuality is repugnant to some members of the population, and because of their lack of understanding of homosexual practices as such, many employers have reacted when one of their employees was readily identified as a homosexual. Evidence was given of one dismissal by a Public Service Department of a convicted homosexual, although he was only put on a good behaviour bond and the offence itself did not occur in the pursuit of his profession...*
>
> *On the question of physical assault against homosexuals, there was abundant and sickening proof that this did occur. The assaults can only be described as vicious and brutal and as one witness put it, it was regarded as the sport of "pooftah bashing". In nearly every case teenage groups were identified as being the persons who committed these offences…*
>
> *One witness quoted as an example a person of his acquaintance who refused - despite a savage beating - to go to the police, because his assailants could well report to the police that they had been importuned for immoral purposes and that the police would be forced to act upon receipt of the complaint and in turn prosecute him."*[96]

Not only would men who engaged in homosexual sexual activities have been vulnerable to blackmail and threats, they would have been further restricted in their capacity to respond appropriately should they become aware of the abuse of young males. According to the law their conduct was effectively indistinguishable from that of child abusers - paedophiles.

18.6.2 Impact on male victims of abuse

A study of male victims/survivors of sexual abuse notes:

> *"Increased risk of stigmatisation for admitting being a victim and/ or fears of being named a homosexual can inhibit disclosure. While the majority of perpetrators of sexual assault against boys are male, this does not mean perpetration or victimisation is related to homosexuality."*[97]

Stigmatising homosexuality, as occurred through the legal system at the relevant time, not only impeded the reporting of sexual abuse against male victims but also caused additional stress to those victims.

As one of victims of abuse by Wenlock has explained to the Inquiry:

> *"… The boys within our cells [sic] spoke to one another about it but because of the homophobic nature of it … - it was only ever wrestling. That's how we spoke … about it, but I just automatically assumed that all of the other boys that were going to his*

[96] Honorary Royal Commission to Inquire into matters relating to Homosexuality 1974, *Report of the Honorary Royal Commission to Inquire into matters relating to Homosexuality,* government printer, Western Australia, pp. 36-39.

[97] Quadara, A No. 6 of 2008, Responding to young people disclosing sexual assault: A resource for schools. *ACSSA Wrap*, p. 4.

place were experiencing the same thing as me and that stayed with us even until recently. That's exactly how we spoke about it and how we dealt with it…

Q. Looking back to when this was happening to you and you knew it was wrong, why didn't you complain?
A. …I hate the word but I had this "V" stamped in the middle of my forehead that I in actual fact was a victim of child sexual abuse. I denied it and denied it and yet I was talking openly with boys that had been through exactly the same incident, you know. It's a self-denial, self-protection mechanism.

Q. So you [felt] branded as a victim?
A. That's exactly right, and the homophobia side of it, it certainly played a big part with me and I - I'm open and, you know, more than tolerable. It's not an issue with me anymore or anything like that but it certainly was then."[98]

Clinical psychologist Rosemary Cant's evidence to the Inquiry identified seven factors that contributed to children, and males in particular, not disclosing sexual abuse or delaying its disclosure. One factor was "Fear among male victims of being taunted as gay or effeminate". Mrs Cant's evidence on this point continued:

"Q. Could that have a bearing of particular significance in Australian culture, and I'm talking about going back to the 70s and the 80s?
A. I would - I would think so, yes.

HIS HONOUR: Q. And I think especially in a rural community?
A. In the rural community. Certainly Briggs's work was done in New Zealand, which I think would be … fairly allied to the Australian culture and certainly her work found that being taunted as gay would have impacted --

Q. In fact, in those days I don't think the word "gay" was used in this connection?
A. Probably not.

Q. "Gay" is a terminology which has arisen since then, I think?
A. Yes, you're quite right. Being taunted as a poofter or whatever would have happened, yes.

Q. And, of course, back in the 70s homosexuality [was] illegal?
A. It was illegal. That's the other element, of course. So all sorts of taunts that could be made would certainly impact on a young boy's willingness to tell anybody, I think, and again it's not just Briggs. The literature is actually quite clear, that is a concern and why … boys don't tell."[99]

[98] "C" *Inquiry Transcript of Evidence*, pp. 3249, 3251.
[99] *Inquiry Transcript of Evidence*, p. 888.

Evidence about the treatment of Todd Jefferis after he first made allegations against McKenna in August 1990 provides a clear example of the kind of harassment inflicted on young males reporting, in this case attempted, sexual abuse by a male. Dean McKenna, a teacher at Katanning Senior High School at the time, gave the following evidence:

> *"Q. Can you say whether it was around about the time of a complaint [by Todd Jefferis] subsequently coming to the attention of the public?*
> *A. Yes. I'm sure that at the time at which this discussion and bullying was occurring the complaint happened probably within that week.*
>
> *Q. Can you recall what this low-level bullying was about?*
> *A. It was - I mean a 16, 17-year-old boy has been silly - 16, 17-year-old boys, they had obviously been picking on one another out in the playground area. It was, "You're a faggot", "You're being gay", "You're gay", "You all take it"; that sort of discussion. Just stupid schoolboy stuff.*
>
> *…*
>
> *Q. And as best you can remember, what was the nature of what you heard said in that regard?*
> *A. There was just suggestions that the staff were involved in these sexual behaviours…*
>
> *Q. Sexual behaviours with Todd, was that the substance of it?*
> *A. From memory - again, it's very hazy because it is a long time ago - there was an implication of everybody being lumped in, you know, like it was widespread.*
>
> *Q. Widespread amongst staff or students, or what?*
> *A. "You're all into it over there" sort of thing was my interpretation of those discussions."*[100]

Other victims of McKenna experienced concerns about their sexuality after their abuse. One of them:

> *"… always had problems dealing with my sexuality and didn't know if [I was] gay or bisexual I thought I was the only person that Dennis McKenna had sexually abused and always wondered why he had chosen me. Just never knew why he had tried having sex with me."*[101]

The involuntary and automatic male bodily responses to sexual stimulation can also make it very difficult for boys to deal with the aftermath of their abuse, and can create stress about their sexuality. Researchers have identified that:

[100] *Inquiry Transcript of Evidence*, pp. 1061, 1062.

[101] [Name withheld] 2012, Letter to the Inquiry, 13 March, p. 2. See also the evidence of Margaret Anne Taylor, Education Support Teacher at KSHS (*Inquiry Transcript of Evidence*, p. 789).

> *"If at that time of the assault a man developed an erection or became aroused in some way, this can make him even more reluctant to speak about sexual abuse.*
>
> *These physical responses do not mean that a man wanted to be sexually abused in any way. Some people who sexually abuse others will deliberately manipulate the boy or man to develop an erection, then use this as false evidence to say the abuse was 'wanted'."*[102]

The following example is a stark account of how such techniques are used to silence and undermine victims. It is taken from a submission made to the Inquiry by a man (not a Hostel boarder) who had been drugged and abused as a 17 year old by a priest (who had been a board member of a Country High School Hostel Authority hostel).

> *"A few days later I was contacted by someone called [PA] who was a priest... He said that he had been told about what happened with [the accused Reverend] the previous Saturday and that the Bishop had asked him to investigate... He told me words to effect that I was not to tell anyone about his investigation and arranged to meet me at the Church on Saturday. I attended the Church and met with him, he was in civilian clothes. He asked me at length what happened and asked numerous times to go over the sexual elements of what happened. He also asked me if I was in the habit of masturbating and how I did so. He then asked me did I get an erection during what [the accused Reverend] did to me. I told him that I did at one point. He then informed me I needed to seek forgiveness and absolution for what I had done. My next memory is of me and [the accused Reverend] kneeling at the alter rail in front of [PA] who was wearing a very narrow and short stole that was unironed. He then gave us absolution and anointed both of us with oil."*[103]

When asked to write about the impact that this incident had had on his life, the witness wrote:

> *"This is something that I have thought long and hard about over many years and the simple answer is I do not know what impact his actions of 25 years ago have had on my life.*
>
> *I do not know how much keeping this dirty and disgusting secret has defined who I am as a person or as a man.*
>
> *I do not know what sort of a person I would have been had it not been for his actions.*
>
> *I do not know what sort of a person I would be if I had of had the courage to tell the world when it happened.*

[102] Living Well 2011, *Living Well: A Guide for Men*, p. 29 (available at: http://www.livingwell.org.au/)
[103] [Name withheld] 2012, *Inquiry Statement*, 22 June, pp. 5, 6.

I do not know what sort of a person I would be if I didn't carry this guilt with me every day.

I do not know if I would still hate the person who looks back at me in the mirror."[104]

18.6.3 Law reform

It was not until December 1989, and after a number of unsuccessful attempts,[105] that the Western Australian Parliament passed legislation which changed the law relating to sexual acts between males.

Although decriminalising consensual anal sex between adult males, the *Law Reform (Decriminalization of Sodomy) Act 1989* (the Act) also established 21 years as the age of consent for homosexual conduct. This compared to the age of 16 years for heterosexuals, and the Act created a new crime which made it an offence "... to promote or encourage homosexual behaviour as part of the teaching in any primary or secondary educational institution."[106] The preamble to the Act also portrayed a continuing hostility towards sexual relations between people of the same sex.

Nevertheless, the Act to decriminalise "sodomy", which came into effect on 23 March 1990,[107] had beneficial consequences for young male victims of sexual abuse. The legislative amendments, amongst other things, had the effect of protecting younger males from abuse by:

- removing the offence of "carnal knowledge against the order of nature" (previously in s.181 (1) and (3)) and redefining offences of sexual penetration to include anal sex (s 6)
- making a number of offences, which were previously restricted to only female children, apply to children generally (sections 185, 187, 189)
- removing consent as a defence to certain sexual offences involving male complainants under the age of 21 (s 202).

[104] [Name withheld] 2012, *'Impact Statement'*, 22 June, p. 1.

[105] Royal Commission established "to Inquire into matters relating to Homosexuality" in 1974 following the first attempt to legislate reform in 1973; further unsuccessful attempts to legislate reform were initiated in 1977, 1984 and 1987 (Honorary Royal Commission to Inquire into matters relating to Homosexuality, op. cit., pp. 1-2; Carbery, G 2010, *Towards Homosexual Equality in Australian Criminal Law: A Brief History*, 2nd edn, Australian Lesbian and Gay Archives Inc., Victoria, p.16).

[106] Section 24.

[107] Attorney General 1990, *Government Gazette WA*, 23 March, p. 1469.

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19. What has changed since 1990

As indicated in Chapter 18 relating to the legal environment, a significant shift has occurred with regard to the understanding and reporting of child abuse, the handling and processing of complaints of such abuse, and the legal obligations of persons responsible for the care of children.

In line with changing community awareness, the Western Australian Public Sector has continued to develop a strong and comprehensive framework, particularly in relation to recruitment and employment guidelines, staff codes of conduct, training and professional development, complaint handling, reporting processes and other measures in relation to the roles and responsibilities of agencies and staff.

This Chapter provides specific information on the changes in government agency policy, procedures or operations since 1990 relating to those areas where deficits have been identified throughout this report. This information is based on agency submissions and evidence to this Inquiry.

Important specific developments include:

- Improvements in the education of children, parents and staff relating to child abuse, including protective behaviours and identifying inappropriate touching and behaviour.
- Ensuring skilled and trained staff are recruited for positions within the Hostels, and that they are provided with clear directions regarding their roles and responsibilities.
- A complaints management process that is known to students, parents and Country High School Hostels Authority (Authority) staff to ensure that complaints can be lodged, and are then managed appropriately and fairly, in a timely manner.
- The establishment of clear roles and responsibilities for the CHSHA and local Boards of Management, with supporting guidelines, policies and procedures.
- The growth of Western Australia Police (WA Police) into an approachable and proactive police service that has child focused initiatives.
- Developments in other areas including defamation laws, mandatory reporting and Working with Children Checks (WWC Checks).

19.1 Protective behaviours education

To overcome the difficulty that children have in identifying inappropriate touching and grooming behaviour, which was a major factor in the St Andrew's Hostel case, the Department of Education (Department) has developed protective behaviours programs which address the health and physical education component of the Curriculum Council's *Curriculum Framework 1998.*[1] In response to the Gordon Inquiry's[2] recommendation

[1] Curriculum Council 1998, *Curriculum Framework, Health and Physical Education Learning Area Statement,* Western Australia, p.120.

regarding the provision of education in protective behaviours, the Department also amended their *Child Protection*[3] policy to require all principals to implement a preventative curriculum for all students.[4] The protective behaviours programs developed by the Department provide options for school principals, and each school decides which program it will adopt to educate its students.[5]

One of these options is the Department's *Protective Behaviours Program*, which is a whole of school approach focussed on child abuse prevention, and designed to be taught over time across the curriculum through "ten developmentally appropriate and structured lessons which encourage the learning and development of personal safety skills… to assist children to recognise a potentially unsafe situation, keep themselves safe and minimise risk of harm."[6] The Program aims to empower students from kindergarten to Year 10 to recognise abuse and identify people they can disclose abuse to by teaching them that they have a right to feel safe and to seek help.[7] Students are taught a range of concepts, including "understanding emotions, safety, public and private, personal space, safe and unsafe touches, safe versus unsafe secrets, problem solving, communication, assertiveness and help seeking behaviour."[8] The Program was developed to counter "children's natural reticence in making a disclosure; the normalising of abnormal sexual behaviours which may occur when a child has been subjected to abuse; and grooming strategies of potential perpetrators of child sexual abuse."[9]

The Department have developed a range of resources to assist with the delivery of the Program, including:

- "an online protective behaviours professional learning program for teachers with supporting resource packages available through the Department portal
- face-to-face professional learning protective behaviours workshops for teachers which includes a 'train the trainer' component, delivered to coincide with WA Police child protection operations in regional and remote areas
- protective Behaviours Teacher Resources consisting of four comprehensive packages across the phases of learning that are linked to the curriculum framework
- two customised resource packages for teaching protective behaviours to children with disabilities and Aboriginal children to be released mid 2012
- the 'Constable Care' puppet show involving the WA Police and delivering the protective behaviours message."[10]

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[2] Gordon, S Hallahan, K, Henry, D (2002) *Putting the picture together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities,* Department of Premier and Cabinet, Western Australia.

[3] Department of Education (Western Australia), 2009, *Child Protection*, p. 20.

[4] Department of Education (Western Australia) 2012, *Submission to the Inquiry,* 16 March, pp.29-30.

[5] Department of Education (Western Australia) 2012, *Submission to the Inquiry,* 6 June, p.6.

[6] Department of Education (Western Australia) 2012, *Submission to the Inquiry,* 16 March, p.30.

[7] ibid

[8] ibid

[9] Department of Education (Western Australia) 2012, *Submission to the Inquiry,* 6 June, p.6.

[10] Department of Education (Western Australia) 2012, *Submission to the Inquiry,* 16 March, p.30.

In addition to the protective behaviours education boarders receive at school, the Authority has introduced protective behaviour sessions for hostels, or residential colleges as they are now known, which are run by protective behaviour specialists[11]. The Authority is currently reviewing student and parent handbooks to include information regarding protective behaviours education provided by residential colleges and their partner schools,[12] and intends to incorporate into the induction process a protective behaviours presentation for all students.[13] The provision of education in protective behaviours at the residential college works to reinforce and support the education a boarder receives at their partner school, and will aid them to understand that the application of protective behaviours extends to outside the school environment. In addition, the Authority has recently introduced face to face protective behaviours training which is mandatory for all new and existing staff.[14]

19.2 Employment and conduct of Authority staff

To prevent a repeat of the events that occurred at the Hostel, the Authority has addressed deficiencies in recruitment and employment practices in relation to Authority staff by implementing a range of reforms[15]:

- Central approval to fill a supervisory position at a residential college is required.[16]
- All new staff are required to obtain a Police Clearance Certificate and to disclose any criminal charges on their job application form.[17]
- All new staff are required to provide a Records of Convictions Clearance Certificate from all Australian and overseas jurisdictions in which they have resided.
- Pre-employment background checks must include checks with previous employers as well as nominated referees.
- New residential college staff are required to complete a formal induction process.
- All new staff are required to undergo DoE's Crimtrac criminal screening process, and Department for Child Protection's (DCP) WWC Check.
- The probationary period for supervisory staff has increased to 6 months with an optional 6 month extension.

A Code of Conduct designed to help Authority staff to "understand [their] responsibilities and obligations, and provide guidance if [they] are faced with an ethical dilemma or conflict of interest"[18] was launched in 1998, and has had ongoing revision in 2004, 2005 and 2009.[19] Residential college staff are required by the Authority's *Child Protection and Reporting* policy

[11] Country High School Hostels Authority 2012, *Submission to the Inquiry*, 19 March, p.4.schedule 1

[12] Country High School Hostels Authority 2012, *Submission to the Inquiry*, 29 June, p.1.

[13] ibid, p.4.

[14] ibid, p.3.

[15] Country High School Hostels Authority 2012, *Submission to the Inquiry*, 19 March, pp.5-6.

[16] Country High School Hostels Authority, 1991, *Circular to all Chairpersons No. 48 of 1991.*

[17] Country High School Hostels Authority, 1992, *Circular to all Chairpersons No. 6 of 1992.*

[18] Country High School Hostels Authority, 2009, *Code of Conduct*, p. 1.

[19] Country High School Hostels Authority 2012, *Submission to the Inquiry*, 19 March, p.7.

to report concerns relating to child abuse or neglect to the Manager of the residential college or Director of the Authority, and although not subject to mandatory reporting legislation, they are required to report concerns relating to sexual abuse directly to WA Police.[20]

In addition, the *Human Resource Policy Manual which* outlines the "policies and practices instituted to satisfactorily manage the Human Resource operations of the Authority's residential colleges" [21] was launched in 1996 to ensure operational efficiency and the achievement of Authority objectives. An example of a policy contained in the Manual relates to the non-entry of students into staff accommodation which is directly relevant to preventing a reoccurrence of the events which transpired at St Andrew's Hostel:

> *"[s]tudents are not allowed to enter supervisor's flats unless prior written approval has been obtained from the College Board of Management Chairperson. In the event of an emergency, the College Manager must be notified at the earliest opportunity why a student or students have entered a supervisor's flat. Depending upon the circumstances, failure to comply with this policy can result in an employee's instant suspension without pay and subsequent dismissal."22*

To assist residential college staff, *Student Welfare Guidelines* were launched in January 1997, and following ongoing reviews and revisions were replaced in July 2000 with the *Supervisors' Manual for Student Residential Care and Development* in July 2000.[23] Student care and supervision standards were also developed in 2001, adopted in 2002, and following ongoing reviews were revised in 2005.[24]

Residential college staff are required to attend compulsory training and professional development seminars covering a range of issues, including student care and protection, complaint handling, critical incident management and duty of care.[25] In addition, a number of staff have completed or are completing the *Community Services Work Certificate IV (Residential Student Care)* course which the Authority is bearing the cost for, and is "the first Australian Qualification Training Framework certified qualification for boarding staff and ensures that boarding staff are well educated about child care and protection policies and processes, mandatory reporting, [and] complaint handling processes across Australia."[26]

The Authority also acknowledges the critical role of Wardens, now known as Managers, of residential colleges and places strong emphasis on ensuring that they "fully understand their responsibilities, [have] ongoing professional development with other residential college managers and [are] accountable to them in addition to being accountable to their staff, students, boards of management and their line-manager in maintaining a high standard service across all residential colleges."[27] Managers are expected to participate in "continuous improvement planning, formal performance management processes and

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[20] Country High School Hostels Authority, 2011, *Child Protection and Reporting,* p.5.

[21] Country High School Hostels Authority, 4th edition 2002, *Human Resource Policy Manual*, Section 1.

[22] Ibid section 7.2, 3.6.

[23] Country High School Hostels Authority 2012, *Submission to the Inquiry*, 19 March, p.7.

[24] ibid

[25] ibid

[26] Country High School Hostels Authority 2012, *Submission to the Inquiry*, 29 June, p.4.

[27] Country High School Hostels Authority 2012, *Submission to the Inquiry*, 29 June, p.5.

regular meetings between residential college managers and their line-manager, other central office staff and service delivery professionals to ensure that they are fully aware of system-wide standards, policies and practice expectations."[28]

19.3 Complaints management

Currently, information on how to lodge a complaint or report a concern regarding the operations of a residential college is provided through the parent handbook, the Authority's and residential colleges' websites and the student induction process.[29] Since December 1991, the Authority has continued to improve its complaints processes:[30]

- A *Sex Abuse*[31] policy was developed in consultation with the Police Sex Abuse Unit, which requires the Chairperson of a residential college Board to refer to the Police all complaints or allegations of sexual abuse.
- A confidential survey is conducted every two years, which allows parents to anonymously rate and/or raise concerns regarding the care, services and operations of a residential college.
- A *Customer Service Charter* was developed in 1995, and includes a complaint handling commitment.
- A *Complaints* policy was developed and launched in 2002, and revised in 2006 and 2010.
- *Critical Incident Reports* which deal with a range of issues, including accidents, safety concerns and serious misconduct by students or staff, are also now required to be provided to the Director of the Authority.
- Each residential college and its partner school work closely, with regular communication between them, and centrally between the Authority and the Department, in regards to a range of a matters including "the management of critical incidents, misconduct, student complaints, and student physical and emotional health matters."[32]

19.4 Role and responsibilities of the Authority

Members are appointed to the Authority in accordance with the Country High School Hostels Authority Act 1960 (the CHSHA Act), and consist of seven members "appointed by the Minister [for Education] on the basis of their association with the conduct of residential colleges, their suitability to represent parents of children accommodated in residential colleges, or their general capacity for community service." The functions of the Authority are

[28] ibid

[29] ibid, p.1.

[30] Country High School Hostels Authority 2012, *Submission to the Inquiry*, 19 March, pp.8-9.

[31] Country High School Hostels Authority, 1991, *Circular to all Chairpersons No. 45 of 1991.*

[32] Country High School Hostels Authority 2012, *Submission to the Inquiry*, 29 June, p.3

set out in s 7 of the CHSHA Act and include providing accommodation in hostels, and to supervise, maintain and manage those hostels.

When filling a vacancy on the Board, discussions are held with the Minister regarding the "knowledge and skill profile of the Authority and [then] persons are identified who can add to the Authority's governance and administration capacity and who meet the requirement of the Act."[33] Nomination documentation is then presented to Cabinet for endorsement and subsequently presented to the Governor for consideration and approval.[34]

New Board members meet with the Director to discuss their role and responsibilities, and they are provided with an induction file which contains a range of important documents, including the CHSHA Act and Regulations, organisational structure, Code of Conduct, guidelines, policies and relevant contact details.[35] The Director also provides ongoing advice in the form of briefings and information as part of Board meeting papers, and to ensure that Board members are informed of ethical and accountability issues on an ongoing basis. The CEO and Director also attend Board meetings.[36] Some Board members have completed Accountable and Ethical Decision Making, Public Interest Disclosure and Conflict of Interest training.[37]

Each Board member has one or more residential colleges in their portfolio, and they occasionally attend College Board meetings with the Director to provide advice to the Board, as well as "make contact each month and report at each Authority meeting on issues and operational matters being dealt with by College Boards."[38]

Since 1991 the Authority has worked towards centralised oversight and direction of residential colleges.[39] A Manager of Authority Operations was appointed to become the executive officer of the Authority's Board responsible for "central office operations, and the development of administrative, financial and human resource management policies for hostels"[40] and focussing upon "liaison with hostels and advice for hostel boards of management and wardens."[41] The functions of the Manager of Authority Operations have since been revised, and the Authority Director position is now ostensibly responsible for performing those functions.[42]

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[33] Country High School Hostels Authority 2012, *Submission to the Inquiry*, 19 July, p.1.
[34] ibid
[35] ibid
[36] ibid, pp.1-2.
[37] ibid, p.2.
[38] ibid, p.3.
[39] ibid, p.9.
[40] ibid
[41] ibid
[42] Country High School Hostels Authority 2012, *Submission to the Inquiry*, 19 March, p.9.

19.5 Role and responsibilities of local Boards of Management

Each residential college has a local Board of Management consisting of parents, members of the local community and the partner school principal.[43] The College Board has a number of functions, and:

- "sets a high standard for the conduct of both the staff and the students
- provides both parents and students with information about boarding life, the level of care provided, and how students can contribute
- oversees the way in which students who misbehave are treated and deals with any concerns that parents may have
- looks after the interests of the student body and will, if necessary, terminate the residency of a student whose behaviour is unacceptable."[44]

To ensure that board members are fully informed of their role and responsibilities, a *Constitution for Residential College Boards of Management* for each residential college was developed and signed, and came into force from June 1997 to replace the previous *Letter of Arrangement.*[45] Each Constitution sets out the powers and functions delegated by the Authority,[46] which are in "similar terms and incorporate ethical and professional conduct guidelines to be observed by board members"[47]

The appointment of members to College Boards has been undertaken by the Authority since December 1996.[48] The College Board identifies persons for nomination after considering the requirements and guidelines contained in their Constitution, and forwards the nomination, including background information on the nominee, to the Authority Board for consideration and approval.[49] A letter of appointment is sent to the College Board Chairperson, and the new member is provided with their letter of appointment and an induction file containing important documents, including the CHSHA Act and Regulations, organisational structure, College Board Constitution, Code of Conduct, guidelines, policies and relevant contact details.[50]

Similar to the role of the Authority Director, the College Manager meets with new members to discuss their role and responsibilities, and he/she also provides ongoing advice in the form of briefings and information as part of Board meeting papers.[51] New members can also meet

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[43] Country Boarding, Country High School Hostels Authority, Western Australia, views 19 July 2012, http://www.det.wa.edu.au/boarding/country/detcms/navigation/about-us/?oid=MultiPartArticle-id-11285820#toc7

[44] ibid

[45] Country High School Hostels Authority 2012, *Submission to the Inquiry*, 19 March, pp.9-10.

[46] Country Boarding, Country High School Hostels Authority, Western Australia, views 19 July 2012, http://www.det.wa.edu.au/boarding/country/detcms/navigation/about-us/?oid=MultiPartArticle-id-11285820#toc7

[47] Country High School Hostels Authority 2012, *Submission to the Inquiry*, 19 March, p.10.

[48] ibid, p.9.

[49] ibid, p.2.

[50] ibid, p.2.

[51] ibid

with the Director to discuss their role and responsibilities, whenever he is visiting a residential college (typically three times a year).[52] Meeting agendas are drafted in consultation with the Chairperson to address residential college matters, but can also include "new public sector management requirements, feedback from the Parent Survey implemented by the Authority, financial audit reports implemented by the Authority, and the review of all complaints and critical incident reports."[53]

The Constitutions of the Hostel boards include meeting procedures. In particular, it makes provision for the Manager to be in attendance at board meetings, except as otherwise determined by the Board. Noting that the Manager is not a voting member, this vests the board with the power to determine the attendance of the Manager at a meeting. This is important for the board to enable them to assess the performance of a Manager or if there are matters of concern relating to the Manager.

College Board members are also invited to attend meetings and seminars with Authority Board members, as well as with the Director and College Managers, which involve "presentations on public sector management ethics, standards, policies and processes, duty of care and accountability… [which includes] presentations on new development in addition to existing requirements and how these apply to residential college operations.[54]

19.6 A more approachable and proactive police service

WA Police have undergone a number of changes that have significantly improved their service delivery and focus in respect of child abuse, particularly in regional WA. These changes include:[55]

1. The establishment of the WA Police Specialist Crime Portfolio's Sex Crime Division, which consists of the:
    - Child Abuse Squad (CAS) which is responsible for the investigation and management of:
        - "sexual abuse of all children in an intra-familial setting
        - sexual abuse of a child under 13 years of age in an extra-familial setting
        - physical abuse of all children in an intra-familial setting that results in serious injury, and
        - sexual abuse or physical abuse where the alleged offender is a person in authority."[56]
    - Child Assessment and Interview Team (CAIT) which was established on 1 March 2009 and is the first point of contact for both victims of child sexual abuse and mandatory reporters.

[52] ibid, p.3.
[53] ibid, pp.2-3.
[54] ibid, p.3.
[55] Western Australia Police 2012, *Submission to the Inquiry*, 20 March, p.4-5.
[56] ibid, p.4.

- Sexual Assault Squad which undertakes investigations into:
  - "all child sexual offences where the victim is under the age of 13 years and the offender is unknown
  - sexual penetration of children aged 13 to 16 years committed by a known offender (extra-familiar)
  - sexual offences committed against incapable children over the age of 13 years in an extra-familiar setting, and
  - various other sexual offences committed against adults."[57]
- Online Child Exploitation Squad
- Family and Domestic Violence Coordination Unit
- Sex Offender Management Squad.

2. The formation of metropolitan based Regional Response Teams to assist Regional Police Districts who are "responsible for the investigation and management of child abuse offences within their respective Districts"[58] by attending to "difficult, potentially prolonged and complex investigations."[59]
3. The execution of proactive interventions jointly undertaken by DCP, CAIT and CAS which are "aimed at building capacity within government agencies in country areas and to enhance community trust…[through] protective behaviours training to children, community education to adults about offending against children, and mandatory reporting training to government agencies."[60] As a result of these interventions, WA Police have seen an "increase in reporting of sexual abuse against children in communities where there has traditionally been under-reporting."[61] An example of these interventions is Operation Reset, which is a regional deployment model utilised in the Mid-West Gascoyne, Pilbara and Goldfields-Esperance Districts, and which won the 2010 Premiers Award in the category of Improving Government, as well as the 2011 Australian Crime and Violence Prevention Award.[62]
4. The utilisation of partnerships and a range of programs to support the investigation of child abuse, including the Princess Margaret Hospital Child Protection Unit, DPC's Working with Children Screening Unit, Constable Care Child Safety Foundation, Department of Attorney-General's Child Witness Service, and a number of 24/7 support and referral hotlines such as Crime Stoppers and Kids Helpline.[63]

[57] Western Australia Police 2012, *Submission to the Inquiry*, 20 March, p.5.
[58] ibid
[59] ibid
[60] ibid
[61] ibid
[62] ibid
[63] ibid, pp.5-7.

19.7 Other developments

19.7.1 Defamation laws

Earlier in this report, it is noted that threats of defamation proceedings were a common response to any suggestion that something untoward was happening at the Hostel. The Inquiry requested a submission on this issue from Professor Michael Gillooly who is a leading academic and expert on the subject of defamation law reform. The report from Professor Gillooly[64] highlights the difficulties that people reporting sexual abuse have always faced in relation to defamation law and explains why offenders could use it as a tool to discourage complaints being made.

However in respect of matters relating to children, there are now statutory provisions allowing voluntary reporting of abuse, neglect or concerns about a child's wellbeing, with protection from liability for the informant. These are contained in the *Children and Community Services Act 2004* (CCS Act).[65] Section 129 of the CCS Act provides that a person acting in good faith who gives information regarding the wellbeing of a child is protected from "any civil or criminal liability, any breach of duty of confidentiality or secrecy and any breach of professional ethics or standards or principles of conduct."[66] The protection provided by s 129 is a significant improvement on the previous equivalent in the superseded *Child Welfare Act 1947.*[67]

I commend the statutory amendments recommended by Professor Gillooly which if adopted would provide much greater confidence to potential informants. However, whilst these suggested amendments would provide additional protection they are not strictly necessary if the current provisions and protections are better communicated to the community and stakeholders (I have more to say on this subject in Chapter 20 of this report).

19.7.2 Mandatory reporting

As mentioned in Chapter 18, a system of mandatory reporting which legally requires doctors, nurses, midwives, teachers and police officers in Western Australia to "report all reasonable beliefs of child sexual abuse to the Department for Child Protection"[68] was introduced into the CCS Act on 1 January 2009. The CCS Act is currently under statutory review, and DCP are currently "reviewing the categories of mandatory reporters of child sexual abuse…[which] will include the consideration of any implications for extending mandatory reporters to include staff employed by the Country High School Hostels Authority and/or professional groups that work directly with children."[69]

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[64] Appendix 5

[65] Department for Child Protection 2012, *Submission to the Inquiry*, 13 July, p.2.

[66] ibid

[67] ibid

[68] Mandatory Reporting in Western Australia, Department for Child Protection, Western Australia, viewed 18 July 2012, http://www.mandatoryreporting.dcp.wa.gov.au/Pages/Home.aspx.

[69] ibid

19.7.3 Working with Children Check

The Working with Children (Criminal Record Checking) Act 2004 (the WWC Act) aims to protect children by "providing a high standard of compulsory national criminal record checking for people wishing to do paid, unpaid or volunteer child-related work in Western Australia."[70] The WWC Act is part of a range of strategies designed to protect children, and "[i]ts scope has therefore been purposely restricted to apply to specific categories where work involves contact with a child."

The WWC Act was intended to "'capture' those people who are in positions of trust and have substantial contact with children", and therefore the WWC Check only applies to child-related employment and businesses. [71] As mentioned previously, all new CHSHA employees are required to undergo a WWC Check.

19.8 Is it enough?

The new policies, procedures and operations of government agencies have resulted in much earlier identification and management of child abuse allegations. These changes have also improved the sector's ability to prevent unsuitable candidates being placed in positions of direct responsibility or engagement with children, and ensured that those in positions of responsibility have a clear awareness of their role.

The significant developments and improvements in some of these areas go far beyond the very inadequate arrangements in place at the time of the sexual abuse the subject of this Report. However there are still some aspects where the sector can continue to grow and become more child safe and friendly. These continuing deficits relate to:

- the Authority's complaints system for boarders
- the scope of mandatory reporting, in terms of categories of mandatory reporters
- training for Hostel Board members.

I have examined these possibilities for growth and improvement, and as a consequence of my findings have made some specific recommendations in Chapter 20.

The abuse of children, particularly sexual abuse, often causes lifetime detriments to the victims and is never acceptable. It is the responsibility of all institutions that have a role in their care (like the Authority) to continually develop and review their policies, procedures and operations to ensure they maintain best practices in the protection and empowerment of the children in their care.

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[70] Department for Children Protection 2011*, Factsheet 6: Information for Employees and Volunteers*, viewed 18 July2012,http://www.checkwwc.wa.gov.au/NR/rdonlyres/D0FDBCA5-BDDB-496F-BE72-B6EE9343B340/0/Factsheet6InformationforEmployeesandVolunteers062011.pdf.

[71] Working with Children Screening 2012, *Submission to the Inquiry,* 29 May, p.1.

Home

20. Further improvement - Recommendations

The earlier chapters of this report have identified significant deficiencies and inaction within the public sector prior to 1990 in response to allegations of sexual abuse at school hostels. The fact that the sexual abuse at St Andrew's Hostel was able to continue for 15 years was in itself an indictment of the systems then in place for dealing with such matters. However as noted in the previous Chapter, there has been a significant shift since then in community attitudes towards child abuse, as well as in the responses of government agencies to such offending.

Under my Terms of Reference, I am asked to recommend any changes to the current policies, procedures and operations of government agencies which might be desirable as a consequence of my findings. In considering this aspect of the Inquiry, I have consulted with relevant and affected agencies and individuals, and have also sought submissions from other experts in particular fields. Although I am not making a large number of recommendations, I believe the adoption of those listed below will ensure that the public sector continues to evolve and operate with primary consideration being given to children and their protection. I therefore recommend and detail below:

- A robust child focussed complaints system for the Country High School Hostels Authority (the Authority).
- The development of a central child focused complaints function to encourage and protect disclosure.
- The inclusion of hostel staff employed by the Authority as legislated mandatory reporters.
- A review of the Department of Education's preventative curriculum.
- The expansion of training for Authority hostel board members.

20.1 Child focused complaints system

It is important that all public sector agencies should have appropriate complaint systems that meet the needs of their stakeholders and recognise their diverse needs. The *Are you listening? – Complaints process guidelines* which were recently developed by the Commissioner for Children and Young People provide agencies with a better understanding of the improvements that can be made to their processes to meet the needs of children and young people.

This Inquiry is obviously interested in the current complaint systems of the Authority and its individual hostels given the lack of any appropriate system between 1975 and 1990. During that period there was no clear direction or guidance for those who had complaints, and when they did raise a complaint the recipient did not know how it should be managed or appropriately addressed.

This Inquiry's review of the Authority's current system of complaint handling confirms that they do now have processes in place. In my opinion this current complaint system is appropriate for parents and adults but has the following deficiencies:

1. It is not adequately tailored to the needs of children and young people so as to make the system 'child-friendly'.
2. It is not particularly robust in respect of sensitive or serious matters.
3. It does not give sufficient consideration to potential conflicts of interest.

Given the environment in which hostels operate: providing day and night care for extended periods with a small staff cohort, as well as a large number of young students, I believe that the Authority should have one of the most robust, child focused complaints processes in the sector if it is to meet the needs of its residents.

Accordingly I consider that if the Authority's complaints system is to provide adequate support to the children and young people who reside in each of its hostels, that system needs to:

1. Be children and young people focussed.
2. Provide appropriate and multiple avenues for raising complaints.
3. Have the ability to receive a complaint externally so that it can be dealt with independently.
4. Provide the complainant with a support mechanism throughout the process and aftermath once the complaint has been made.

By changing the focus of and improving the Authority's complaints processes, the Authority can develop a system that:

- Educates and promotes children in making complaints.
- Ensures multiple avenues for raising a complaint by utilising a variety of modern technologies including mobile phone, texting, email and web presence.
- Provides interaction and a 'face to a name' for any complaint by means of a visitor program, so that the complainant can have confidence in the process.
- In recognition of the regional localities of hostels, ensures that when necessary there is a self-nominated or approved person who can support the child during what could become a protracted, fraught and complex process. (This might include the involvement of parents, guardians, teachers or any other person known to the child).
- In managing the complaint, provides the child with regular information and updates via one contact person.
- Ensures that the Hostel community, including staff and parents of students understand and promote the complaint process and encourage students to interact with it.

A comprehensive and appropriate complaint system, particularly for a small agency like the Authority (both in numbers of staff as a whole but also within each hostel) needs to have an

element of externality and independence. This is necessary so that all potential complainants feel they are able to come forward, without the fear of any actual or perceived risk that the person the subject of the complaint can influence the way in which it is dealt with. It is also important that initial decisions on the management and resolution of that complaint are not subject to any perceived or actual conflicts of interest.

I believe that the Department of Education, which is within the shared portfolio of child education and support, and already has appropriate services available, is well adapted to play a pivotal role in the external and independent role of such a complaint system (most beneficially through the skills of the Standards and Integrity Unit). Further examination of this proposal would be required at an agency level, and it also would be necessary that a formal service level agreement be effected.

This proposed complaint model is not intended to restrict the means by which a child, young person, parent or guardian can make a complaint. The model is one which would add to the avenues available. No doubt the hostels themselves would still receive complaints that are hostel level matters and would manage them appropriately. The critical element of the proposed new system is that, when a child or guardian does not feel comfortable or is concerned about a proposed complaint, they know that there is an avenue separate from the Hostel, where the recipient will not be conflicted and will see the complaint through. The development of a comprehensive model along these lines will ensure that the complaint mechanisms at all levels within the hostel and Authority are as robust and child friendly as possible, and will also provide a holistic approach to complaint management and resolution with its priority being the child.

Following discussions of these proposed improvements to the Authority's current complaint system with central oversight bodies and others who have expertise in complaints management, there would appear to be a significant level of support for this proposal.

I recognise that by building a robust system for the Authority with engagement of the Department of Education through a formal service level agreement, there inevitably will be some resource implications. However I do not envisage that these will be significant.

Recommendation 1

That the Authority develops a comprehensive, child focussed complaint system which provides a multiple avenue complaints model including support for the child or young person. A critical element of the model which will ensure a robust and approachable system is that it should facilitate complaints being made externally.

20.2 Independent whole of government child abuse complaints system ('one stop shop')

Based on the evidence and submissions I have heard as well as the consultations I have held with government agencies, I believe that there currently exists an opportunity for a whole of government approach to developing a 'child-friendly' system for handling complaints from children and young people or their guardians in relation to child abuse (both physical and sexual).

The development of this opportunity would aim for a *'one stop shop'* that is promoted and provided as an avenue for any complaint independent of the agency which is the subject of the complaint.

Such a role within an existing agency or in conjunction with other appropriate central bodies must:

- Promote disclosure of complaints by providing appropriate and diverse avenues. This would include use of technology, ensuring multiple mechanisms for complaints, and promoting an open and approachable avenue for all individuals.
- Recognise the potentially different needs and access levels for children and young people in regional areas with consideration of regular visitor programs that enable the building of relationships and confidence in the system.
- Be able to receive complaints of child abuse related to public sector programs and services run or contracted by public sector agencies. This would include facilities contracted by any agency which provides services on behalf of Government to children and young people.
- Provide independence from the agency the subject of a complaint and enable determination of the initial response to the complaint independently of that agency.
- Facilitate referral of the complaint to an appropriate existing agency and oversee this referral as well as the outcome of the process.
- Provide or facilitate support for the individual making the complaint (throughout the complaint process and its immediate aftermath) and allow self-identification of their needs.
- Ensure when a complaint is made in the belief that it is or may be true that the person making the complaint is protected from civil or criminal liability in respect of the same (similar to voluntary reporting provisions of the *Children and Community Services Act 2004).*

This proposed function of a *'one stop shop'* would not remove or replace the responsibility of any agency to ensure that their own complaint mechanisms are focussed on and accessible by children and young people.

It is important that there be a strong relationship with the agencies responsible for the care of children and young people for this proposed function to ensure a system of complaints management that is responsive and expedient.

I recognise that there are already in existence independent and central agencies that have either mandated roles for complaints, or a role in advocacy on behalf of children and young people. Consideration should be given to expanding an existing role within one of these agencies to encompass a central oversight role in respect of all complaints by children and young people in relation to child abuse.

I recognise that the development of a *'one stop shop'* will have an impact on resourcing for one or more agencies which take on this function. However, I believe that assigning this role to a current central agency with aligned responsibilities will minimise the amount of resourcing required.

The development of this model should take account of the need of potential complainants to feel protected from civil and criminal liability for making the complaint. (In my view there is currently a widespread lack of public awareness of such procedures). In this regard I commend with the following exception the recommendations of Professor Gillooly in Appendix 7 to this report. (Although the Public Sector Commission has considerable experience in overseeing public bodies it is not well adapted to handling individual complaints from members of the public. In my opinion the Ombudsman would be a more suitable candidate for development of a *'one stop shop'* role in the area of child abuse).

Whether or not Professor Gillooly's recommendations are adopted there is a need for better education of the public to ensure that they are well aware that bona fide complaints or concerns about child abuse can be reported without fear of proceedings.

Recommendation 2

That the State Government develop a function and role within or across central and independent agencies to fulfil a robust child focussed central complaints system that is a *'one stop shop'* for any complaint concerning child abuse regardless of the public sector agency that the matter relates to.

A central agency taskforce should be established to consider and recommend the most appropriate agency or agencies to be responsible for fulfilling this function, and to recommend the steps necessary for ensuring that complainants/informants utilising such a system do not fear legal liability as a result of contacting the agency.

20.3 Obligations on Hostel staff to report

Staff of the Authority, specifically those staff located in each of the regional hostels, have an important role and responsibility for the wellbeing of student residents. The managers and supervisors have a very intensive role with the students and act 'in loco parentis'. In this role I believe that they are attuned to the emotional wellbeing of each of the students and would be able to readily identify when something is astray with a child.

In relation to reporting any concerns relating to the sexual abuse of a student, the Authority's *Child Protection and Reporting Policy* presently requires all Hostel staff to report such concerns to the Police.

I recognise that the current legislative provisions for mandatory reporting of sexual abuse under the *Children and Community Services Act 2004* (CCS Act) are confined to the occupations of teachers, nurses, doctors, Police and midwives. As a result of the evidence and submissions I have received and heard I believe there is justification for an extension of these occupations of mandatory sexual abuse reporters to include hostel staff. I note that similar legislation in other jurisdictions (whilst conferring obligations in respect of other forms of abuse) also includes boarding staff as mandatory reporters.

I understand from the Department for Child Protection's submission that a statutory review of the CCS Act is currently being conducted which includes a review of the mandatory reporting requirement in the legislation. I understand that in consultation with stakeholders, this review will be giving consideration to submissions which relate to the occupational groups of mandatory reporters and to any implications for the expansion of current categories.

Recommendation 3

That, as part of the statutory review of the *Children and Community Services Act 2004* (CCS Act) and of any further consideration by Government of the provisions of the CCS Act, consideration be given to including staff of the Authority as mandatory reporters for the purposes of the CCS Act.

20.4 Protective behaviours education

In 2002 the report of the Gordon Inquiry (*Putting the Picture Together: Inquiry into the response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*) recommended "the provision of basic education in 'Protective Behaviours' to students in all schools through existing curriculum frameworks in the Department of Education"[1]

In addition, the Gordon Inquiry supported the "Department of Education seeking the services of other agencies, including non-Government agencies, to provide assistance in providing education in 'Protective Behaviours'"[2]

In their submission to the Inquiry, the Department of Education has advised that in response to this recommendation the Department amended their *Child Protection* policy, and required principals to implement a preventative curriculum for all students.[3]

In support of this requirement, the Department of Education developed their own Protective Behaviours program which is a child abuse prevention program and teaches the concepts of understanding emotions, safety, public and private, personal space, safe and unsafe touches, safe versus unsafe secrets, assertiveness and help seeking behaviour.[4]

[1] Gordon, S Hallahan K, Henry, D (2002) Putting the picture together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities, Department of Premier and Cabinet, Western Australia. Rec 116
[2] ibid, Rec 117
[3] Department of Education 2012, Submission to the Inquiry, 16 March, p. 29-30
[4] ibid p.30

The resources provided by the Department for the Protective Behaviours program are comprehensive and deliver a very specific and targeted program. However the program is not mandated and principals can adopt other mechanisms to fulfil this requirement.

The Department reports that approximately 20% of their schools currently use the Protective Behaviours program (which complies with the recommended requirement of the Gordon inquiry and the Department's Child Protection policy). Whilst it may be that the other 80% of Department of Education schools have developed their own mechanisms to deliver a preventative curriculum to their students, the robustness of the Protective Behaviour program needs to be more widely utilised to ensure that school aged children have an appropriate awareness of potentially predatory or inappropriate behaviour around them. Hostel students are also school students and for that reason I make the following recommendation.

Recommendation 4

That the Department of Education undertake a review of how their schools deliver the preventative curriculum to ensure that it meets the need as identified in the Gordon Inquiry and that it assess whether there is any need for a more prescriptive requirement (in line with the Protective Behaviours program that the Department has already developed).

20.5 Training for Hostel Board members

Hostel boards are required to deal with matters at both hostel and Authority level, including receiving disclosures of conflict of interest from staff,[5] setting standards of conduct for students and staff, overseeing the Hostel's response to student misbehaviour, and handling parents' concerns.[6] The Authority currently organises seminars and presentations on a range of issues, including public sector management ethics, standards, polices, and processes, duty of care and accountability, which Hostel board members can attend along with Authority Board members, the Authority Director and College managers.[7]

In submissions to the Inquiry, the Authority has stated that Hostel staff must attend training courses relating to a range of issues, including duty of care, protective behaviours and complaint handling.[8] Authority board members attend training in the areas of accountable and ethical decision making, public interest disclosure and conflict of interest.[9]

In line with the Authority's resolution to review the roles and responsibilities of College Boards of Management and their relevant Constitutions,[10] and to ensure that hostel boards continue to adapt and evolve in line with the Authority, I see benefit in the establishment of

[5] Country High School Hostels Authority, 2009, *Code of Conduct*, p. 6.
[6] Country Boarding, Country High School Hostels Authority, Western Australia, views 19 July 2012, http://www.det.wa.edu.au/boarding/country/detcms/navigation/about-us/?oid=MultiPartArticle-id-11285820#toc7
[7] Country High School Hostels Authority 2012, *Submission to the Inquiry*, 19 July, p.3.
[8] Country High School Hostels Authority 2012, *Submission to the Inquiry*, 19 March, p.7.
[9] Country High School Hostels Authority 2012, op sit. 19 July, p.2.
[10] ibid, p.2.

a program of training and development covering a range of areas for hostel board members, particularly:

- Accountable and Ethical Decision Making (AEDM)
- complaint handling
- duty of care
- protective behaviours.

I acknowledge the work that the Authority already does in terms of seminars and presentations for Hostel Boards, but envisage a more comprehensive training program, possibly delivered in the form of an annual conference held at an appropriate time of year to accommodate all hostel board members.

Recommendation 5

That, as part of the Authority's review of the roles and responsibilities of College Boards of Management and their relevant Constitutions, the Authority consider developing a comprehensive training program for Board members covering a range of areas, particularly AEDM, complaint handling, duty of care and protective behaviours, to be possibly delivered in the form of an annual conference for hostel board members.

21. Conclusion

The sexual abuse of children by adults who are responsible for their care is an evil and terrible thing. It often causes long-lasting harm to its young victims by taking away their self-esteem, their joy in life, as well as the ability to develop their sexuality at their own pace and in their own particular ways.

Unfortunately there are a small number of predatory individuals in our society who have no compunction in repeatedly inflicting this harm on young people in order to gain momentary sexual gratification. Some of these individuals are also adept at infiltrating themselves into organisations or institutions which care for children so that they may have access to new victims.

The St Andrew's Hostel at Katanning was one such institution to suffer this calamity, and the damage wreaked by Dennis McKenna still reverberates today. The intention of this Report is not to relieve Dennis McKenna (or any other offender) from any culpability for his evil deeds but to establish the circumstances which allowed this offending to continue for so long.

Regrettably these circumstances have revealed that a number of public officials did not adequately respond to information or complaints about sexual misconduct at St Andrew's. These failures were not deliberate but were the result of errors of judgment or careless attitudes to responsibilities by mostly well intentioned people who perhaps found the allegations very hard to believe.

I am aware that some of these former officials will feel aggrieved at being publicly identified in an adverse way. I suggest that they should temper that sense of grievance by giving some thought to the victims and to the effects of their own inactions so many years ago. Those victims have had to endure far worse consequences than any that might result from the adverse remarks in this Report.

This Report also reveals many shortcomings in the ways in which government agencies (and the law and society generally) dealt with sexual complaints by children more than twenty years ago. Most of those shortcomings have since been addressed, but there will always be room for improvement. To that end this Report recommends particular changes which if adopted will fill in the remaining gaps.

Although many people who read this Report will find it depressing, there are some significant shafts of sunlight to be found within. The actions of good and decent people such as Maude Bruce, Peter Potter, Noel Parkin, Maggie Dawkins, Todd Jefferis, Michael Hilder and the barmaid "M" are uplifting to the human spirit and make the world a better place in which to live. Hopefully the lessons learned from what happened at St Andrew's will help ensure that such a tragedy can never happen again.