



ST ANDREW'S HOSTEL KATANNING:

HOW THE SYSTEM AND SOCIETY FAILED OUR CHILDREN

A Special Inquiry into the response of
government agencies and officials to
allegations of sexual abuse

**Message from
Inquirer**

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The Hon Peter Blaxell

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Message from the Inquirer

This Inquiry addresses two essential questions: Firstly, why there were so few complaints made about Dennis McKenna's offending at St Andrew's Hostel during the 15 years while it was happening. Secondly, why it was that those few complaints that were made were not acted upon.

The evidence generally shows that there were many occasions when public officials heard allegations or rumours about sexual misconduct at the Hostel but decided to ignore them. Too many people suspected what was happening at the Hostel but did nothing to stop it. In some instances the people who heard allegations not only refused to believe them, but actively rejected them (even to the extent of threatening legal proceedings for defamation).

Fortunately, a few brave individuals were willing to swim against the tide of community opinion to persist with their concerns and complaints even though they were not listened to. In the end they were listened to and Dennis McKenna's offending was brought to an end.

A similar situation existed at St Christopher's Hostel in Northam during the 1970s, and complaints and allegations about the Warden's misconduct towards students were not properly responded to. Ultimately steps were taken to remove the Warden, but this action was not taken soon enough and was still inadequate.

The simple task undertaken by the Inquiry in examining these matters has been to establish the truth of what happened in relation to each hostel. In my view this task has been largely accomplished, and although a few small areas of speculation remain, a very clear picture has emerged. (However, it is of course for others to judge whether or not this is so).

I acknowledge the support given by the Premier of Western Australia and the Public Sector Commissioner who established this Special Inquiry under the *Public Sector Management Act 1994*. The Western Australian Public Sector generally has also provided its support via the numerous agencies that have released staff to the Inquiry, and the many individual public officials who have carried out searches, compiled records, and made submissions.

The Inquiry would not have been able to make the headway that it has without the assistance of many members of the public who came forward with information pertinent to my terms of reference. I also acknowledge all of those people still deeply affected by the unimaginable events that this Inquiry has had to examine, and express my gratitude for their support.



Hon Peter Blaxell
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1. Introduction

Until 2009, the St Andrew's Hostel at Katanning offered residential care to students from outlying areas who were attending the Katanning Senior High School. The Hostel opened in 1964 and with increasing student numbers, Katanning soon became "a booming, busy town with parents from the surrounding areas who had kids at the hostel coming into town on Fridays and Mondays to collect and drop off their children."¹

Between 1975 and 1990 the warden of the Hostel was Dennis John McKenna ("Dennis"), and for the last five years of that period, the senior male supervisor was his brother Neil Vincent McKenna ("Neil").²

These two men held very high level responsibilities for the wellbeing of the students who were entrusted to their care. However, they each breached those responsibilities as well as the trust placed in them by parents, by committing serious offences of sexual abuse against some students.

In that regard, Dennis was convicted of a total of 29 offences of a serious sexual nature committed on 11 male students between 1977 and 1990. In 2012, Neil was convicted of three offences committed on a female student in 1991. Dennis was first convicted of 19 offences following a District Court trial in 1991, and it was not until 2011 when he pleaded guilty to a further 10 offences that the full picture started to emerge.³

Following Dennis' pleas of "guilty" in August 2011 there was extensive media coverage which raised the question of why his vast offending had been able to continue for a lengthy period. Questions were asked in Parliament, and a number of concerned people came forward to allege that certain public officials had been made aware of the suspected criminal behaviour by Dennis at various times during the 15 year period it was occurring.

Consequently, the Premier, the Hon. Colin Barnett MLA directed the Public Sector Commissioner to arrange for a Special Inquiry under s.24H(2) of the *Public Sector Management Act 1994* ("the PSM Act"). This in turn resulted in my appointment on 22 November 2011 as Special Inquirer to conduct an Inquiry into "the response of government agencies and officials in regard to allegations of sexual abuse at St Andrew's Hostel in Katanning".

My terms of reference for the Inquiry were as follows:

1. *Examine when any allegations were made, who they were made to, what action was taken in response to those allegations, and the appropriateness of any action taken.*
2. *Consider any evidence of allegations of sexual abuse by any person at or connected with the hostel or related organisations.*
3. *Report with:*

¹ Potter, P 2012, *Inquiry Statement*, in possession of the Inquiry, 12 June, p.4.

² The McKennas are referred to by their first names in order to distinguish between them, and not as any sign of familiarity or informality.

³ See Chapter 6.

- *Findings about why the behaviour of staff the subject of allegations at St Andrews Hostel was able to continue for an extended period; and*
- *Recommendations on:*
 - *any disciplinary action that should be taken against any public official as a consequence of the findings; and*
 - *any changes that should be made to the policies, procedures or operations of relevant government agencies as a consequence of the findings.*

Any issues which go to criminal behaviour that arise in the course of the inquiry will be referred to the WA Police.

This report makes a number of findings in respect of some individual public officers and government agencies. Before making these findings, the Inquiry received information from the public, sourced agency records, undertook extensive investigations, and had evidence presented by way of statements or under oath (or affirmation). Importantly, in reaching my findings, I have taken reasonable measures to achieve procedural fairness towards all agencies and individuals that are adversely affected by them.⁴

As a consequence of my findings, I have also examined the many changes to policies, procedures and operations of government agencies that have occurred since 1990. I also have made a number of recommendations where I believe there is still a need for change or for further change.

In addition to setting out my findings and recommendations this Report summarises further information which has been adduced at the public hearings of the Inquiry or which is pertinent to my terms of reference, including:

- how the Inquiry was conducted, specifically in relation to gathering information, records and conducting public hearings (Chapter 3)
- the extent of alleged abuse at St Andrew's Hostel (Chapter 7)
- the characteristics of grooming for the purposes of abusing a child and the ways in which Dennis was able to groom the community of Katanning (Chapters 8 & 9)
- what has changed within government agencies and the legal environment since 1990 to bring about greater safety for children (Chapters 18 & 19)
- where there are still opportunities for improvements (Chapter 20).

Importantly the Inquiry has analysed factors to do with the then prevailing legal and cultural environment, conditions within St Andrew's Hostel, as well as its system of governance which enabled Dennis McKenna's offending to continue for 15 years.

In this regard I acknowledge the excellent work of the Inquiry's Principal Research Officer Dr Jeannine Purdy who has authored Chapter 18 *The Legal environment prior to 1990* as well as the very extensive review of relevant information contained in Appendix 1 *Accolades and Amateurs: Hostel Governance 1975 – 1990* to this report.

⁴ See Chapter 3.

2. The ambit of the Inquiry

The PSM Act vests a Special Inquirer with powers which are appropriate to the conduct of an investigation as well as a hearing of the matters the subject of the terms of reference. Accordingly, the Public Sector Commissioner has provided me with a wide range of resources and personnel necessary to complete both of these tasks, including a team of investigators, a team of researchers, an Instructing Solicitor and an Assisting Counsel.

As Special Inquirer, I have been responsible for the proper conduct of the investigation and for the gathering of evidence relevant to the Terms of Reference. While supervising and monitoring these investigative aspects of the Inquiry I also have had to keep an open mind about my ultimate findings of fact based upon the evidence which has been gathered.

Under the first Term of Reference I am required to determine the 'appropriateness' of any action that was taken by a public official in response to allegations of sexual abuse at St Andrew's Hostel. The evidence will show that on most such occasions, public officials took no action in response to the allegations. In these instances, it is obviously implicit in the first Term of Reference that I should also decide whether inaction was an appropriate response.

The 'appropriateness' of the official conduct in any instance (whether action or inaction) turns upon whether or not it was a suitable or befitting way to respond to an allegation in the particular circumstances which presented themselves at the time. That issue must be determined in accordance with the standards of appropriate conduct which prevailed, and could reasonably have been expected of public officers at the relevant time. The issue should not be judged by the standards of official conduct today, which are mostly governed by written guidelines and standard procedures which did not exist at the material time.

The appropriateness of any particular conduct must also be determined in accordance with the circumstances that were known to the public official at the time and not in accordance with what has become known since. With the wisdom of hindsight virtually all official failures to act would seem to be inappropriate, and it is very important to bear in mind that the public officials did not have the benefit of that hindsight when making their decisions.

It is important to note that my Terms of Reference do not require any investigation into the full extent of the sexual abuse committed at St Andrew's Hostel. The focus of the Inquiry is into the actions (or inactions) of public officials who are said to have been made aware of sexual abuse at the time that it was occurring. This focus on the behaviour of public officials is consistent with the Inquiry's fundamental purpose of assisting the Public Sector Commissioner in his management and administration of the public sector.

The role of any Inquiry under s.24H(2) of the PSM Act is to promote the efficiency and/or effectiveness of the Public Sector by identifying any failure by public officials to meet proper standards, and recommending any improvements to the way in which they conduct official business in the future.

Nevertheless, the implementation of this Inquiry has resulted in numerous former hostel students coming forward to give plausible accounts of alleged acts of sexual abuse which are not yet the subject of any convictions. The Inquiry has also received evidence which indicates that further acts of sexual abuse may have been committed against other former students who have not come forward. Under my Terms of Reference it is not my role to

decide whether or not these further alleged acts of sexual abuse did in fact occur. I am required to refer these new allegations to the police, and ultimately it will be for the courts to determine whether or not this further sexual abuse occurred.

As the scope of the Inquiry is limited to the conduct of public officials it obviously does not extend to the actions of people who were not public officials. The term “public official” is not defined in the PSM Act, but must be construed consistently with the provisions of that legislation. It follows that the term “public official” necessarily encompasses all of those public sector personnel who are subject to instructions from the Public Sector Commissioner under Division 2 of part 3A of the PSM Act.

At an early stage of the Inquiry I requested specific advice from the then Acting Solicitor General as to the scope of the phrase “public official”, and the advice which he then forwarded to me is Appendix 2 to this Report. Having considered that advice I am satisfied that it is correct. (The Acting Solicitor General’s advice was also circulated to all counsel appearing at the Inquiry, and none of them have taken any issue with it).

Accordingly, I have decided that the public officials in respect of whom I may make adverse findings or recommendations for disciplinary action include any of the following:

1. The chairman and board members of the Authority appointed from time to time under s.4 the Country High School Hostels Authority Act 1960 (W.A.) (“the CHSHA Act”).
2. Officers and employees of the Authority as appointed under s.10(1) of the CHSHA Act.
3. The secretary or any other officers of the Authority, whose services were co-opted under s.10 of the CHSHA Act.
4. Any member of a hostel board appointed by the Authority under s.7(1) (ba)(iv) of the CHSHA Act.
5. Any staff member at a hostel engaged under s.7(1)(ba)(iii) of the CHSHA Act.
6. School teachers, nurses, and other staff members employed in the Department of Education or its predecessors.

It is clear that police officers and local government councillors are not ‘public officials’ within the meaning of the PSM Act. Accordingly, they do not directly fall within the scope of my Terms of Reference and cannot be the subject of any recommendations for disciplinary action. Nevertheless, I may make findings in relation to any allegation of sexual abuse which was made to the police or to local government officials if what happened in that regard had a bearing on the response by any public official to that same allegation (It is in this context that I have made adverse findings against one police officer and one local government councillor).

Under my third Term of Reference I am also required to make findings as to why the offending behaviour was able to continue for as long as it did. This requires me to determine the causes of that state of affairs, which in turn involves findings as to the actions or inactions of some individuals who were not public officials.

The third Term of Reference includes a requirement for recommendations in relation to any disciplinary action that should be taken against any public official. There is very little scope

for me to make such a recommendation because all but three public officials who might have been subject to disciplinary action under Part 5 of the PSM Act are now deceased or retired (It is not possible for the Public Sector Commissioner to take retrospective disciplinary action against a retired official in respect of any conduct which occurred prior to 1 October 1994).¹

My third Term of Reference also requires me to recommend *“any changes that should be made to the policies, procedures or operations of relevant government agencies as a consequence of the findings”*. During a public hearing on Friday 29 June 2012, Mr John Hammond, Counsel representing a number of victims of McKenna, requested that I specifically consider a recommendation that there should be monetary compensation to victims of McKenna. I invited the State Solicitor's Office to seek instructions in respect of that request and was later informed that the response was in the negative. As my Terms of Reference cannot be reasonably construed to encompass such a recommendation I am not in a position to make it.

The Terms of Reference did not require any investigation into the full extent of sexual abuse at St Andrew's Hostel in Katanning. If any issues arose during the course of the Inquiry which went to criminal behaviour, I was required to refer these matters to the Western Australia Police (WA Police).

During the course of its investigations, the Inquiry was made aware of a number of matters of alleged criminal behaviour and as a result they were referred as soon as practicable and on an ongoing basis to the WA Police.

If it was unclear whether any disclosure had been made to WA Police about a particular matter or if it was known that it had not been made, then I referred it formally to the Western Australia Police Commissioner. Once a matter was referred to the WA Police it was not investigated by the Inquiry unless there were aspects that related specifically to the Inquiry's terms of reference. A total of 11 such matters were referred in this way to the WA Police. These included:

- Nine individuals who disclosed allegations of sexual abuse at a Hostel operated by the Country High Schools Hostel Authority.
- One individual who disclosed allegations of sexual abuse involving a non-Government organisation.
- Evidence of an inappropriate relationship by a person in authority.

I acknowledge the valued assistance of the WA Police to the Special Inquiry. I also commend the level of interaction and co-operation between the Child Abuse Squad and the Inquiry's Investigation Unit and recognise that this relationship has contributed to the high level of support provided to individuals who came forward and made disclosures.

¹ *Public Sector Management Act 1994* commenced on 1 October 1994

3. Conducting the Inquiry

3.1 Announcement of the Inquiry

When the Special Inquiry was announced on 17 November 2011¹ a very lengthy period had elapsed since the events in question. For this reason it was important to move quickly to identify as many key elements as possible and to encourage anyone with information to contact the Inquiry.

The Inquiry implemented the following means of gathering information:

- Public notices (partnered with media coverage) in regional and metropolitan newspapers inviting submissions.²
- A freecall 1800 Hotline³ in conjunction with Western Australia Police (WA Police) and the Department for Child Protection's *Crisis Care*.⁴
- An Inquiry specific email address which was complementary to the hotline for providing information.
- A webpage available via the Public Sector Commission's website.
- The development of strong working relationships with relevant public sector agencies, specifically the Country High School Hostels Authority, the Department of Education and the State Records Office.⁵

3.2 Hotline: A holistic approach to those contacting the Inquiry

The options available on the 1800 hotline were developed to meet the primary needs of people coming forward to the Inquiry. Individuals disclosing criminal matters were provided with the option of speaking directly to the WA Police. (In addition, all disclosures to the Inquiry which revealed criminal behaviour were referred appropriately to the Police⁶).

A further paramount consideration was the need to ensure support for individuals coming forward with personal matters that they previously may not have disclosed to anyone. The Inquiry was also conscious that there would be individuals coming forward who were not primary victims, but who nevertheless may have been impacted by sexual offending as family members or partners. Accordingly people calling the 1800 hotline also had the option of accessing confidential counselling which was provided through Crisis Care.

¹ Department of the Premier and Cabinet 2011, Premier's media release, Western Australia, viewed 25 July 2012 <http://www.mediastatements.wa.gov.au>

² Public notices were published in the Great Southern Herald, Bunbury Mail and the West Australian 30 November 2011; Albany Advertiser 1 December 2011 and Great Southern Herald 18 January 2012.

³ See Chapter 4.

⁴ Crisis Care is a telephone information and counselling service for people in crisis that operates 24 hours a day, 7 days a week and is free of charge <http://www.dcp.wa.gov.au/crisisandemergency/pages/crisiscare.aspx>

⁵ Refer to Chapter 4 for detailed overview of information invited and sourced by the Inquiry and the importance of records being available.

⁶ See Chapter 2.

3.3 Providing support throughout the Inquiry

Complementing the link to Crisis Care via the hotline, the Department for Child Protection also provided direct support by making Crisis Care personnel available for the duration of the Inquiry. Significant use was made of these services, particularly following the announcement of the Inquiry and during the public hearings. Crisis Care made itself available to anyone associated with the Inquiry, including all victims, all witnesses, their families and other people who had contacted the Inquiry with information.

The provision of counselling and support services evolved as required and at the commencement of the Inquiry, Crisis Care arranged the following:

- Counselling services were made available within Katanning and the surrounding region upon commencement.
- There was broad dissemination of relevant information including electronic and print distribution points over the 19 Shires in the Great Southern District.
- Met with key stakeholders across the community.
- Conducted informal meetings in Tambellup (26 people in attendance), Nyabing (9 people in attendance) and Katanning (8 people in attendance).
- Counselling, guidance and support services were provided.
- Facilitated an agreement with Southern Ag Care to provide services on an ongoing basis.

After the public hearings commenced in February 2012, Crisis Care continued to assist the Inquiry with the following:

- A counsellor was present for the duration of the Hearings and available to provide pre and post evidence counselling to all witnesses as well as informal and formal support to their loved ones. This service was extended to Hearings held in Katanning as well as to those who were giving evidence by videolink from interstate or regionally. Support was provided face-to-face, via phone, via email, one to one or in groups.
- A total of 63 individuals were supported through the Inquiry and had ongoing communication with Crisis Care's representative and a further 26 contacts were made through the Crisis Care counselling line.
- Providing counselling options to persons seeking ongoing support.
- Crisis Care also provided the same support and telephone counselling for people participating and connected with the criminal trial of Neil McKenna (held concurrently with the Inquiry in May 2012).

3.4 Staff supporting the Special Inquirer

As Special Inquirer I have been fortunate to enjoy the support of an experienced, talented and diverse team. I have also benefited from the expertise of the Inquiry's Assisting Counsel and Instructing Solicitor. The staff were in two units: the Investigation Unit and the Research

and Administration Unit. While supporting me, these Units also supported the Assisting Counsel and Instructing Solicitor in their respective roles.

The main task of the Assisting Counsel was to adduce and present evidence which would assist me in my deliberations and particularly in relation to the first Term of Reference to *“examine when allegations were made, who they were made to, what action was taken in response to those allegations, and the appropriateness of any action taken”*.

The Research and Administration Unit included the expertise of a Principal Research Officer and my Associate, and was assisted further by an Investigation Analyst, Graduate Research Officer and a Business Officer. Its task included the planning and management of the public hearings, research and identification of critical information, seeking submissions, and analysing information throughout the Inquiry.

The Investigation Unit comprised at least four officers at any one time throughout the duration of the Inquiry. This collectively diverse unit provided varied skills and experience which made them an expert team. The Investigation Unit was responsible for identifying witnesses, obtaining statements and following through on all leads and new information as the Inquiry progressed. By the completion of the Inquiry, the Investigation Unit had made contact with 319 people, obtained 127 signed statements, recorded 146 file notes and conducted 25 formal interviews. The support of the WA Police under a Memorandum of Understanding greatly assisted the investigators, and approximately 180 police searches were made relating to addresses, criminal offences and vehicle record checks.

Individual members of the staff of the Inquiry were seconded from the Corruption and Crime Commission, Department for Child Protection, Office of the Auditor General, Public Sector Commission, WA Police and Working with Children. I thank all of those agencies for providing this assistance, and for their generosity in making do without some of the key members of their staff.

3.5 Location and support of the Inquiry

There was early recognition that the location of the Inquiry's staff would be important in ensuring accessibility and in facilitating the need to hold public hearings. The Western Australian Industrial Relations Commission (WAIRC) played an important role in accommodating the Inquiry within their offices at 111 St Georges Terrace. These facilities included office space and hearing facilities which were publicly accessible and enabled the Inquiry to conduct its hearings. The WAIRC also provided a high level of support for the Inquiry, with information technology and corporate information services. I extend my sincere appreciation to the staff of the WAIRC for all that they have done in making the Inquiry welcome in their premises.

3.6 The challenges faced in gathering oral evidence

The Inquiry faced a considerable task in gathering evidence about events which had occurred many years ago. In some instances nearly 37 years had elapsed since the events in question. It was quite understandable that potential witnesses experienced a great deal of difficulty in remembering all relevant details.

It was therefore most important to unearth whatever contemporaneous and relevant records still existed.⁷ These records offered the prospect of not only establishing what had in fact happened, but also assisting witnesses with their recollections.

The lapse of time also impacted on the availability of potential witnesses. This was not so much an issue with witnesses who were children at the material time and now mostly have a high level of recall. However, many of those who were middle-aged in the 1970s and 80s, are now deceased or in their dotage. Some of those potential witnesses also had medically diagnosed conditions which significantly affected their memories and in some instances, their ability to testify. For these reasons, it was not possible to call all of the oral testimony that might have been available if the Inquiry had taken place a decade or so earlier.

Another hurdle to be overcome was the reluctance of some witnesses to be publicly identified or to be subjected to the full glare of publicity. This was particularly evident with some child abuse victims who only agreed to assist the Inquiry if they were guaranteed anonymity. For this reason, in appropriate circumstances some witnesses were permitted to make anonymous written statements which were then read into evidence without them being named. For others who gave evidence in person, the use of a pseudonym was introduced and the anonymity of the person's name remains. Nevertheless, I am quite certain that there are other potential witnesses in the position to provide relevant evidence who chose not to come forward because of the fear of publicity.

I am grateful for the respect that members of the media have shown for the Inquiry's protocol⁸ particularly in respect of victims who did not want to be identified. This cooperation was very much appreciated and resulted in a degree of comfort for some witnesses, particularly for some of the witnesses who agreed to participate in the first phase of the Inquiry.⁹

A further factor which has hindered witnesses from coming forward is the psychological trauma that they experience when remembering (and reliving) the relevant events. This is particularly so with former victims, and the Inquiry has been reluctant to press such witnesses for information which would add to their trauma. In a few instances the Inquiry has also had to bear in mind the warnings from counsellors or medical practitioners of possible suicide risks (and not only in respect of former victims).

3.7 Summons and witness assistance

All witnesses appearing before the Inquiry were summonsed to attend in accordance with the PSM Act.¹⁰

Appropriate measures were put in place to ensure that witnesses, who were summonsed to give evidence, would not incur significant costs in attending, and the Inquiry provided reimbursement of expenses for travel and necessary accommodation by means of formal

⁷ See Chapter 4.

⁸ Inquiry Media Protocol, available www.publicsector.wa.gov.au

⁹ See 3.8 in this Chapter; For further information in relation to "phase 1" (and "phase 2") please see the Counsel Assisting Opening Address, Inquiry Transcript of Evidence, pp. 4-8.

¹⁰ See s. 24I, Schedule 3

guidelines.¹¹ This was important given the number of people summonsed as witnesses who resided outside Perth. All efforts were made to facilitate the convenience of witnesses, including three hearing days held in Katanning, and the use of video link facilities.

The power to subpoena the production of documents was utilised frequently to obtain documents from individuals and agencies. For the most part this was not used to compel production because of any unwillingness to assist but as a means of obtaining information free of any concerns about the confidentiality and protection of documents.

3.8 Public hearings

Section 24J of the PSM Act stipulates that I am not bound by the rules of evidence and I can inform myself as I think fit when making findings of fact.¹² However, I must act in accordance with equity and good conscience and the substantial merits of the case.¹³ I must also act without regard to technicalities and legal forms.¹⁴ To the extent that the practice and procedure of the Inquiry is not prescribed by or under the PSM Act, it is as I determine.

Given that I am permitted to inform myself as I think fit, it has been open for me to do so by way of either public or private hearings, or simply by reference to other relevant materials. In respect of most non-controversial or “background” facts I have considered it sufficient to inform myself by reference to contemporaneous government records, or to written statements of witnesses (which statements have been read into evidence). However, in respect of more substantial matters going to the heart of my Terms of Reference, I have (to the maximum extent possible) heard oral evidence in public.

It is a well-established principle that the hearings of an inquiry into matters of substantial public interest and controversy should be held in public. This principle recognises the desirability that members of the public be able to scrutinise an Inquiry’s findings against the evidence on which those findings are based. It is only if an Inquiry’s hearings are conducted openly and transparently in this way that the public can have confidence that everything possible has been done to arrive at the truth of the matters being inquired into.¹⁵

Nevertheless, some of the evidence on which my findings are based would not have come to light without the offer of confidentiality to the witnesses who provided it. In nearly every instance where such evidence has been received it came from a person who claimed to be a victim of either Dennis or Neil McKenna, and there were good reasons why the witness desired to keep his or her identity confidential. This being so, I considered that it was appropriate and in the public interest that the evidence of these witnesses be received (whether orally or by way of written statements) without their identities being disclosed.

In one single instance I heard evidence in private from a witness who did not claim to be a victim of either of the McKennas. That witness was Keith Stephens, and my decision to hear

¹¹ At the commencement of the Inquiry, *Guidelines for Reimbursement* were developed by the Inquiry for this purpose, which included the Inquiry providing reasonable accommodation and a reimbursement form for other associated reasonable costs.

¹² See specifically s. 24J(3)(a).

¹³ S. 24J(3)(b).

¹⁴ S. 24J(3)(b).

¹⁵ *Independent Commission Against Corruption v Chaffey* (1993) 30 NSW LR 21,30).

his evidence privately was based upon a specialist medical report advising that this step was necessary for reasons to do with his health. Notwithstanding my decision to conduct that hearing in private, the transcript of Mr Stephens' evidence was made available to the public.

3.9 Procedural fairness

The public hearings of the Inquiry were conducted in two main phases. The first phase involved witnesses who were either victims or who claimed to have made disclosures to public officials at various times between 1976 and 1990 concerning the criminal behaviour of Dennis or Neil McKenna. Most of the witnesses who testified during the second phase of the hearings were persons alleged to have been the recipients of such information.

It followed that most of the witnesses in phase two were potentially subject to adverse findings by the Inquiry. Irrespective of this possibility they were also at risk of unfair reputational damage simply as a result of the evidence of their alleged conduct being given in public and being subject to media commentary. Accordingly, it was necessary for the Inquiry to implement measures which would ensure procedural fairness for phase two witnesses and also minimise the risk of unnecessary or unfair damage to their reputations. To this end, the following steps were taken:

1. As far as possible, phase two witnesses were given advance written notice of the names of phase one witnesses who might give evidence which could be adverse to them, as well as a summary of that anticipated evidence.
2. Prior to the phase one hearings, phase two witnesses were informed of their entitlement to legal representation and of their right to cross-examine the relevant witnesses.
3. Phase two witnesses had access to the transcripts of all phase one evidence.
4. Phase two witnesses were provided with the opportunity (at their choice) of being interviewed by the Inquiry's investigators. The witnesses were also advised of their entitlement to have a legal representative present during the interview.
5. Prior to giving their evidence, the phase two witnesses were provided with copies of documents which were relevant to any allegations against them. (It was also important for them to have access to such documents in order to refresh their memories about events which had occurred between 20 and 35 years ago).
6. After being examined by Counsel Assisting the Inquiry, all phase two witnesses were entitled to be examined by their own counsel, and to call any other material evidence.
7. Following the completion of all evidence relating to any particular phase two witness, an assessment was made by Counsel Assisting as to the likelihood of any adverse finding against them. When Counsel Assisting determined not to press for an adverse finding the phase two witness was immediately advised of that decision.
8. When determining whether he should recommend adverse findings against any person, Counsel Assisting came to that conclusion independently of myself. However Counsel Assisting did consult with me before advising any phase two witness that he

would not be recommending adverse findings. (Procedural fairness required that there be some certainty about the outcome of such a recommendation).

9. Phase two witnesses were provided with written notice of submissions by Counsel Assisting the Inquiry concerning any proposed adverse findings against them. They also had the opportunity of presenting their own written and oral submissions in response to those of Counsel Assisting.
10. The phase two witnesses were also given subsequent notice of any adverse finding that I proposed to make which had not been the subject of submissions by Counsel Assisting, and again allowed the opportunity to respond.

The Inquiry's public hearings were guided by the Special Inquiry's Practice Directions that were publicly available and provided to each witness summoned to attend a hearing.

By the conclusion of the Inquiry, there had been 40 days of hearings, 85 witnesses had appeared and 64 statements were read in. All transcripts of the Inquiry's hearings were published within one working day of the hearing being held and were made available on the Public Sector Commission website.

3.10 Dennis McKenna's evidence

After the Inquiry had obtained much of the evidence and submissions on which this report is based it decided to interview Dennis McKenna in an attempt to clarify some of the issues that had arisen.

In making this decision the Inquiry recognised that any information that McKenna would provide might not be truthful or consistent with other evidence and information, given that truthful answers could possibly incriminate him in further offences.

The Inquiry put considerable effort into conducting a number of interviews with McKenna at Acacia Prison and when these were completed also decided that he would be required to give evidence at a public hearing.

In those instances where McKenna's evidence was of any value it is referred to in this Report.

3.11 Standard of proof

In reaching my findings I have applied the civil standard of proof which requires my "reasonable satisfaction" as to the particular fact in question. The materials and evidence that have been sufficient to bring about that degree of persuasion have varied depending upon the nature of the particular issue which was being determined. As Dixon J said in *Briginshaw v Briginshaw* (1938)¹⁶:

"...it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood

¹⁶ *Briginshaw v Briginshaw* (1938) 60 CLR at 336 362-3

of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal...the nature of the issue necessarily affects the process by which reasonable satisfaction is attained."

In other words the more serious the allegation, the higher the degree of probability that is required before I can be reasonably satisfied as to the truth of that allegation¹⁷.

In those instances where a former public official the subject of potential adverse findings is now deceased, I have had regard to that circumstance when determining whether or not I am reasonably satisfied as to the truth of the relevant allegation. This has been a significant consideration to be taken into account because there is no way of knowing whether or not there might have been contradictory evidence. It follows that the evidence in support of an adverse finding against a deceased person needs to be fairly compelling before that finding can be made.

¹⁷ See also *Hornal v Neuberger Products Pty Ltd* (1956) 3 All ER 970)

4. Information received and the importance of government records

It was mainly as a result of information from members of the public that my investigators were able to identify persons of interest and lines of inquiry. Through these leads my research officers were able to work with the investigators to identify the vital records required to clarify and test the information that had been received. In addition, the valuable information provided by members of the public assisted the Inquiry to uncover abuse that had occurred in other relevant hostels within similar timeframes.

Because of the time that had elapsed since the abuse occurred, the memories of public informants were fallible, and their recollections of relevant events often differed. This made the work of the Inquiry's research officers (who located relevant records) extremely important.

Locating and examining pertinent documentary evidence was critical in identifying lines of inquiry, and in supporting, clarifying or challenging the evidence and recollections of witnesses. These records also provided context in relation to the environment at various hostels, community values and attitudes, and the government policies and processes which applied at the material time.

4.1 Information from the public

The Inquiry received information and submissions via the Inquiry hotline and email, as well as by post¹. All potential leads that were generated in these ways were followed up by my investigators. At times these leads came to dead ends, but sometimes the leads produced significant evidence. I am grateful for the public's cooperation in this information gathering process, and am astounded by the level of interaction and effort by some people in assisting the Inquiry with information, such as names and contact details of relevant persons, documents, or their own research into relevant issues.

4.2 Inquiry Hotline and Email

A free call Inquiry hotline provided members of the public with the ability to easily:

- report a criminal matter to the Western Australia Police (WA Police)
- speak privately with a Crisis Care counsellor (free, government run, 24 hour counselling service)
- provide information to the Inquiry.

¹ See Appendix 3.

Members of the public were also invited to e-mail information to the Inquiry at a general email address which was monitored by all Inquiry staff.

A total of 160 individuals made initial contacts with the Inquiry by means of the hotline, email or post. These individuals included:

- 69 former students of St Andrew's Hostel
- 25 parents of former St Andrew's Hostel students
- 38 persons with information regarding St Christopher's Hostel
- 11 persons with information related to other hostels under the Country High School Hostel Authority
- 17 relating to other matters and general enquiries.

4.3 Submissions from organisations and experts

As part of the investigation and evaluation process, I invited submissions from a range of government and non-government organisations, as well as academics and professionals. The submissions covered a range of issues including government agencies' past and present policies, current deficiencies in legislation, processes or policies, and recommendations for improvements. The expert information gathered via these submissions has been crucial in informing the Inquiry and facilitating discussion regarding final recommendations.

The submissions received were from the following government and non-government organisations:

- Care Leavers of Australia Network
- Commissioner for Children and Young People
- Country High School Hostels Authority (Authority)
- Corruption and Crime Commission
- CREATE Foundation
- Department for Child Protection (DCP)
- DCP's Working with Children Screening Unit
- Department of Education
- Department of Health
- Department of the Attorney General
- Disability Services Commission
- Ombudsman
- Public Sector Commission
- WA Police.

The Inquiry also received submissions from the following experts:

- Mrs Rosemary Cant (Consultant and Director of Social Systems and Evaluation)
 - Submission regarding the characteristics of grooming in relation to child sexual abuse; the reasons why children and adolescents (particularly males) tend not to make complaints; and increased suicide rates of sex abuse victims.
- Professor Michael Gillooly (Professorial Fellow/Associate Dean (Research) at the University of Western Australia)
 - Submission in relation to defamation and protection laws, as well as appropriate reforms.
- Professor John Sutton (Deputy Director, Department of Cognitive Science at Macquarie University)
 - Identification of resources regarding cognitive sciences, particularly memory recall.

4.4 Records

4.4.1 Parliamentary records

The Inquiry's research officers obtained a copy of the Twentieth Report of the Legislative Council's Standing Committee on Government Agencies concerning its *Review of the Country High School Hostels Authority* (which was published in 1988). The Report revealed the existence of transcripts and submissions which had not been made public and were likely to assist the Inquiry. On 7 February 2012, I requested the Legislative Council to grant me and my staff access to these records.

On Thursday 8 March 2012, the Legislative Council passed a Resolution authorising access to the requested records for the purpose of taking notes, but not publishing that material. As these records are subject to the *Parliamentary Privileges Act 1891*, their contents cannot be publicly disclosed. However they proved to be very useful in identifying new leads for investigation.

I am grateful to the Legislative Council for authorising access to these parliamentary records, and particularly thank Mr Malcolm Peacock, the Clerk of the Legislative Council, who after a thorough search identified additional relevant materials to which the Legislative Council also granted access on 27 March 2012.²

4.4.2 Government and non-government records

The Inquiry sought assistance from a large number of government and non-government organisations in locating and producing records relevant to the Terms of Reference. Nearly

² See Appendix 2.

all of these organisations fully cooperated in producing these records. Where necessary a summons was served to protect organisations from potential breaches of confidentiality.

The Inquiry received a large volume of files and other documents. Regrettably, due to tight timeframes, only those records relevant to specific lines of inquiry could be examined in great detail. Due to the age of the requested materials the Inquiry did not always receive complete records and it was common for pages to be missing from files.

4.4.2.1 The State Records Office

The State Records Office (SRO) was of great assistance by providing critical records, including police occurrence books and the Country High Schools Hostel Authority (Authority) Board meeting minutes, agendas and papers (Appendix 3). SRO also assisted by holding aside the requested records for access by the Inquiry's research officers. I thank the SRO for its support and cooperation, which significantly contributed to the efficiency of the investigation and hearing process.

4.4.2.2 Other organisational records

The Department of Education and the Authority were both very forthcoming in providing requested departmental and personnel records, and in volunteering other information and records which they considered to be potentially relevant. The Department of Education and the Authority always responded to requests in a timely manner, and went to great lengths in identifying all relevant records. As the custodian of Authority's historical records, Department of Education also assisted with the production of old Hostel Board minutes and Wardens' reports, working documents, policies and publications, which were required to corroborate witnesses' evidence and identify new lines of inquiry. I commend the Department of Education and the Authority for their consistent and very vital assistance to the Inquiry.

The WA Police was also of great assistance by providing large volumes of materials and conducting wide ranging and time consuming searches. Amongst other things, WA Police identified the contact details for persons of interest, provided crucial records in relation to police operations pertinent to the Inquiry³ and identified contemporaneous complaints of sexual abuse at Hostels other than St Andrews.

My research officers made full and extensive use of records held at the State Library of Western Australia, including Hansard and the microfilms of newspapers at the Battye Library (Appendix 3). The microfilms of the Great Southern Herald newspaper were particularly valuable. These public records filled significant gaps where government records had not been located, or had been damaged or destroyed.

Another valuable source of information came from trial and hearing transcripts and case files held by the Director of Public Prosecutions and the Western Australian Industrial Relations Commission, the minutes of meetings of the Shire of Katanning, and records of interview from media outlets, (particularly from the Australian Broadcasting Corporation).

³ See Chapter 18.3.1

4.5 Deficits

Given the lapse of time since the relevant events it is not surprising that there were difficulties in locating particular records. Some government records of interest to the Inquiry had been destroyed as authorised by the *State Records Act 2000* and in accordance with the official Retention and Disposal Schedule. The only known instance of unauthorised destruction of potentially vital records was undertaken by the then Department of Employment and Training (now the Department of Training and Workforce Development) in the early 1990's in respect of files relating to the Westrek program.⁴ The absence of these records hampered the Inquiry's investigation of the Westrek affair⁵ and proved to be a significant hurdle standing in the way of establishing the facts of that matter.

In some instances where records were successfully located, they were incomplete or damaged. For example the files from one hostel were found in a former board Chairman's garage. The Chairman had become custodian of the files following the hostel's closure, and the records were water damaged, mouldy and infested with insects. This situation was a reflection on some record keeping practices at the time. Ironically however, if these records had been correctly managed according to government record keeping practices it is likely that they would have been destroyed and would never have become available to the Inquiry.

The search for records to assist the Inquiry provided an insight into some of the specific issues affecting individual agencies' record keeping, and also public sector-wide difficulties. Because historical police records have been so critical to much of the Inquiry's work, the destruction of these records has been particularly significant. The loss of police records that may have been of assistance to the Inquiry has been the result of both sector-wide and agency-specific record keeping rulings, for example:

- The 1971 Public Service Board direction that personnel files were to be destroyed after two years.⁶
- The 1977 WA Police policy of destroying occurrence books after five years (with clearance from the State Archivist) and destroying offence reports after three years if finalised.⁷
- The destruction in 1974 of CIB (Criminal Investigation Branch) files going back to 1945. These files had been held in the loft above the old Police stables but were destroyed when the CIB Transport Section moved to a new building.⁸

A submission from WA Police provides further information:

"[T]here are records issues to consider and the WA Police is not an 'orphan organisation' in terms of problems that have arisen. There have always been sector-wide factors at work:

⁴ State Records Office 2012, *Advice on retention and disposal of specific records of former Training Department*, 14 June.

⁵ See Chapter 11.13.

⁶ Public Service Board 1971, Circular to Permanent Heads No. 22/71, 29 October.

⁷ Acting Assistant Commissioner (Admin) 1977, Letter to Senior Inspector, Police District Office Broome, 22 September.

⁸ Superintendent CIB Perth 1974, Memorandum to Commissioner of Police, 8 May.

1. *The State Archives were established in 1945, after a long period of lobbying and argument – the Police Secretary of the day and former WA Police clerical staff played leading roles in achieving this milestone.*
2. *Records management across the sector had already been badly affected by Depression Era (1929-1939) and Wartime (1939-1945) paper shortages – gaps in major police records because of paper recycling issues can be detected.*
3. *In the 1950s many public agencies began a period of expansion, including the WA Police. This put pressure on the State Archives because of storage space issues. In 1955 the State Archivist wrote to the Police Commissioner about certain records ‘dating from 1900 to recent years’, indicating there ‘was no objection to their destruction’. There are now numerous black holes in police station records from the 1930s up to the 1980s, notably the metropolitan area and the south-west - Northam, Albany, Bunbury, Narrogin, Katanning, etc.*
4. *In 1960 the Public Service Commissioner indicated to the Police Commissioner that he would prefer personal files ‘to be retained for a period’ and then ‘destroyed in lieu of transferring them to the proposed Records Repository’. Only a basic record of service was required for retention. The request resulted in the loss of much data right up until the 1980s, although police personnel managed to save a good many files and get them archived from 1960 onwards. The loss of the files of CIB detectives had implications as their career summary sheets did not include any data on transfers within the CIB.*
5. *From 1960 until 1976 arguments can be detected within the WA Police about records loss... The loss of data included major crime files.*
6. *The arrival of the computer era for the WA Police in about 1983 generated further records management problems and other gaps opened up, including another one affecting personnel records in 1989...*
7. *As mentioned earlier, these are sector wide issues... Reports on the Dept. of Employment and Training and other public service departments were created and kept by the Public Service Commission... But then the Commission itself was closed down another serious loss of records seems to have occurred.⁹*
8. *In 2001 the State Records Office announced that it could no longer receive records from public sector agencies, including the WA Police. They had/have no more storage room. Until new archives holding centres are established,*

⁹ SRO has conducted a search of its records and confirmed that it does not hold archival materials such as the early Public Service Commission minutes (Deputy Director of State Recordkeeping (SRO) 2012, Email to Inquiry Principal Research Officer, 25 July). However, as referred to in the Police submission, SRO has been unable to accept archival material for the past decade and such records may be stored by a relevant agency. SRO have confirmed that following enquiries with relevant agencies, the minutes have not currently been located (Deputy Director of State Recordkeeping (SRO) 2012, Email to Inquiry Principal Research Officer, 27 July).

*public agencies must simply endeavour to manage their records as best they can.*¹⁰

The Department of Commerce's Labour Relations Division also highlighted difficulties in locating records due to changes from physical to electronic record keeping practices in the early 1990's. Labour Relations informed the inquiry that at this time an electronic storage system was introduced. All physical files would have been catalogued into the system, but electronic versions of the documents located within the files were not necessarily created in the system. In addition, given that the record keeping process changed 20 years ago, Labour Relations could only assume that correct procedures had been followed when cataloguing the physical files. Labour Relations also believes that all records had been successfully migrated when new systems have been introduced over the last two decades.¹¹

Further to the difficulties in relation to record keeping practices, there was one instance where a file relevant to the Inquiry was not identified by the government department. It was only through a search of the records at the SRO by one of my research officers in the last week of the Inquiry, that the file belonging to this former department was identified.

The above record keeping difficulties have had some impact upon the Inquiry. Despite these difficulties and the destruction or deterioration of some records, the Inquiry was nonetheless able to locate and examine a large volume of records from a range of organisations which contributed greatly to the Inquiry's investigation process (Appendix 3).

4.6 Special thanks

I am grateful to all individuals, government and non-government organisations who have provided information and records to the Inquiry. Without the insight of members of the public and access to the records of various organisations, the Inquiry would not have been able to complete a thorough investigative process. I also thank all organisations that made staff available to respond to requests from the Inquiry, and to conduct extensive record searches.

I particularly extend my sincere thanks to the following individuals and organisations that went beyond the call of duty in searching tirelessly for vital records and information which would assist the Inquiry:

- Mr Peter Rose, Senior Policy Analyst, Legal Services Branch, Department of Education
- Ms Marion Seboa, Principal Consultant, Legal Services Branch, Department of Education
- Mr Gary Good, Customer Support and Training Officer, Corporate Information Services, DoE
- Mr Jim Hopkins, Director, Country High School Hostels Authority
- Ms Sarah Pritchard, Administrative Assistant, Country High School Hostels Authority
- Mr Kevin Askew, Information Officer, Crime File Coordination Team, WA Police

¹⁰ Police Historian (Western Australia Police) 2012, *Submission to the Inquiry*, 19 July.

¹¹ Principal Industrial Advocate (Department of Commerce) 2012, *Email to Inquiry Graduate Officer*, 4:36pm 16 July.

- Mr Peter Conole, Police Historian, WA Police
- Ms Peta Ifould, A/Compliance Officer (Electronic Document Records Management System), WA Police
- Mr Peter Meyerkort, Executive Manager, Records Management Centre, WA Police.
- Mr Hamish Milne, Registrar, Anglican Diocese of Perth
- Reverend Lindy Rookyard – Rector of St Andrew’s, Katanning
- Ms Liz Guidera, ex-councillor and President, Shire of Katanning
- National Archives of Australia.

5. Background matters

5.1 General History

For many years some country senior high schools in Western Australia have benefited from an associated hostel which accommodates students who ordinarily live too far from the school for daily travel. For most of these students the only alternative would be to attend a boarding school in Perth which is usually a much more expensive option. Accordingly, for many students, the availability of a regional school hostel is the key to their secondary education.

From the early 1900s, the churches (particularly the Anglican Church) and the Country Women's Association (CWA) took up the responsibility of establishing and managing individual hostels so that country students could attend schools within their regional areas. The towns at which these hostels were originally established included Albany, Geraldton, Merredin and Northam.¹ In most instances it was a local group in each town which seized the opportunity to acquire a suitable underutilised building near their high school, and the Anglican Church and CWA featured prominently in this activity.² The management of each hostel was generally undertaken by a volunteer committee comprising Church or CWA representatives, local people involved in community affairs, and school principals.³

5.2 The creation of the Country High School Hostels Authority

The opening up of new farming land in the 1950s and 1960s resulted in new demands for hostel accommodation as well as an increasing need for government funding of hostel infrastructure.⁴ The need for a better system of funding improvements and expansion of hostel facilities was recognised with the enactment of the *Country High School Hostels Authority Act 1960* (the "CHSHA Act") which created the Country High School Hostels Authority (the Authority). The Authority had the statutory duty of providing hostel accommodation for isolated students enrolled in secondary schools throughout Western Australia.⁵

Over the decade which followed there was an uneasy relationship between the Authority and the various bodies which had been operating the existing hostels. However in return for the funding of much needed facilities at these hostels the Authority gradually gained control until it was responsible for the operation of all country hostels associated with state government high schools.

¹ Country High School Hostels Authority 2012, *Submission to the Inquiry*, 19 March 2012, p. 2.

² Country High School Hostels Authority 2012, *Submission to the Inquiry*, 19 March 2012, Attachment 1/File No. 30: *Corporate Planning CHSHA 1986*, p. 7.

³ Country High School Hostels Authority 2012, *Submission to the Inquiry*, 19 March 2012, p. 3.

⁴ See Appendix 1.

⁵ Country High School Hostels Authority 2012, *Submission to the Inquiry*, 19 March 2012, Attachment 1/File No. 30: *Corporate Planning CHSHA 1986*, p. 7.

By the end of the 1970s the management of each of these hostels was subject to a “letter of arrangement” with the Authority. This letter specified the responsibilities of each local board in the day-to-day management of its hostel but also recognised that the Authority had ultimate control.⁶

In this regard the CHSHA Act conferred on the Authority the power to appoint a local committee (vis board) in respect of any hostel and to delegate to that committee all or any of its powers.⁷ In the event of any such delegation of powers the local board was able to exercise those powers as if they had been directly conferred by the Act.⁸

5.3 The History of St Andrew’s Hostel

The St Andrew’s Hostel in Katanning was established by the Anglican Diocese of Bunbury in 1964 with funding provided by the Authority. The Hostel was built on land leased from the Authority and it was managed in accordance with the Diocese of Bunbury’s Church Hostels Statute 1961. This statute provided for a hostel board which comprised a mix of ex-officio, elected and appointed members. At least three of its members were clergymen and the headmaster of the Katanning Senior High School was also an ex-officio member.⁹

St Andrew’s Hostel remained under church administration until 1970, and throughout that period its day-to-day management was in the hands of a “warden” assisted by a “matron”(which positions were usually held by a married couple).

In the late 1960s there was a dispute between the Authority and the Bunbury Diocesan Council over the relatively minor matter of whether or not an honorarium should be paid for the services of the Parish Rector as Chairman of the Board. This dispute was not resolved and as a result the church withdrew from the administration of the Hostel from the end of 1970.

From 1971 onwards a board was established under a “letter of arrangement” with the Authority.¹⁰ Nevertheless the church continued to be represented on the board up until 1974 when the local Rector, Reverend Michael Harford (who was its Chairman) retired.¹¹

During 1974 and 1975 there was some instability on the Board which had a succession of three different chairmen. The last of these chairmen was a relatively young farmer, Keith Stephens, who had had only a few months experience on the Board when he took up that position. He accepted the position reluctantly because there was no other candidate.¹² Mr Stephens was nevertheless anxious for the hostel to succeed because he had five children (who had either entered or were approaching their high school years) who would be in need of accommodation for their schooling.

⁶ Exhibit 88.

⁷ CHSHA Act, s. 7(ba)(iv).

⁸ CHSHA Act, s. 7(ba)(iv), and s. 9(2).

⁹ The Church Hostels Statute, 1961-1967, s. 7.

¹⁰ Exhibit 88.

¹¹ Stephens, LOK, 2012, *Inquiry Transcript of Evidence*, p. 2826-7.

¹² *ibid*, p. 2827.

When St Andrew's Hostel commenced in 1964 it had a capacity for 48 students (divided evenly between the sexes). The Hostel was fully occupied by the following year, and in 1968 new buildings were constructed with funding from the Authority which increased its capacity to 96 students.

By 1970 the Hostel was fully booked with 100 students in residence.¹³ However following the Hostel's transfer from church administration it went into a gradual decline. In 1974 there were only 69 students in residence and by the following year this number had fallen to 50.¹⁴ This may well have been due to the fact that there had been a succession of at least five different wardens in as many years, and that the Hostel had also encountered financial difficulties. The Board members as well as parents who had students at the hostel were very concerned that it might be forced to close.¹⁵

5.4 The Hostel staff

At all times, the employment and dismissal of Hostel staff was the responsibility of the local hostel board. Hostel employees were paid by the local board from the revenue received from student fees and fundraising. The conditions on which staff were engaged varied considerably. Up until 1980 many part-time staff were teachers from local schools who were provided with board and lodging in exchange for their services in supervising students and providing tutoring.¹⁶ However, all of these casual arrangements ceased as a result of Industrial Agreements in 1979 which applied to all hostels.

The Authority was the only signatory to the Industrial Agreements even though local boards continued to handle the employment and other matters relating to hostel staff. The staffing of the Authority itself was very minimal and there was a good deal of confusion as to industrial arrangements.¹⁷ This may well have been a factor which contributed to Dennis McKenna gaining control over the employment of staff at St Andrew's Hostel.

5.5 Dennis McKenna's appointment as Warden

During 1975 there was a continuing turnover of staff at St Andrew's Hostel and in the last half of that year the Board advertised a position of "housemaster". At that time, Dennis McKenna was 29 years of age and working temporarily as an Assistant Manager at the Freecorns store in Narrogin. Regrettably, (given the fate of many young students in later years) McKenna saw the advertisement in the local newspaper and decided to apply for the position. His written application provided fairly minimal information and in response to a request for details of "experience applicable to position" he inserted simply "NIL".¹⁸ He also provided the names of a Priest and a Nun as referees.

¹³ Unknown newspaper 1982 St Andrews: They're proud of their happy home, 22 September, page unknown.

¹⁴ Department of Education, 1974, Annual Report – Country High School Hostels Authority

¹⁵ See Chapter 9.

¹⁶ Bentley, L 2012, *Transcript of Evidence*, p. 40; Perris, K C 2012, *Transcript of Evidence*, p. 485.

¹⁷ Country High School Hostels Authority 2012, *Submission to the Inquiry*, 19 March 2012, p. 4.

¹⁸ Exhibit 78, p. 1.

McKenna was interviewed for the position by three Board members, Messrs Stephens, Renk and Laffer.¹⁹ McKenna told the interviewing panel that his fiancée had recently died and that he enjoyed working with children because of the time he had spent working with a Catholic youth group. After the interview Mr Laffer contacted the Catholic youth group and was given a “glowing reference” for McKenna.²⁰ Out of a number of applicants interviewed McKenna was considered to be “by far the best” and he was appointed to the position of housemaster.²¹ He commenced his duties supervising the boys’ dormitory on 9 September 1975.²²

Over the following two or three months there were successive resignations of the warden and the matron and on 6 December 1975 the Board advertised for applicants for both of these positions.²³ Pending the appointment of a replacement warden, the Board Chairman Mr Stephens appointed Dennis McKenna as Acting Warden.²⁴

There were a number of applicants for the vacant positions including a married couple with experience working with children who were described by Mr Laffer at the time as “quite impressive”. Dennis McKenna applied for the warden’s position with a written application which contained only a few lines.²⁵ Despite his relative lack of experience a Board meeting in February 1976 appointed him as warden. At least one Board member dissented from this decision, and it is the evidence of that former Board member Ms Elaine Brown that:

*“I was asking questions about his suitability as I had some concerns that he was a single man and wondered how appropriate he would be for the job. I was concerned that other than the Board, there would be no-one to support him in his role as warden.”*²⁶

5.6 Dennis McKenna’s accommodation arrangements

Prior to his appointment as warden McKenna occupied the quarters which had always been set aside for the “housemaster” supervising the boys’ dormitory. These quarters were a small flat comprising a lounge-dining area, bedroom and bathroom, situated off the corridor which led to the boys’ dormitory.

Significantly, at the end of the corridor which was furthest from the boys’ dormitory there were doors separating the rest of the hostel which were always locked at night. What this meant was that McKenna was locked into the same area as the hostel boys overnight, and no other person could gain entry without him unlocking the doors.

¹⁹ This was disputed by Mr Stephens during his evidence to the Inquiry, *in camera*; Stephens, LOK 2012, *Inquiry Transcript of Evidence*, p. 2830.

²⁰ Laffer, J B 2012, *Inquiry Transcript of Evidence*, p. 3200.

²¹ *ibid*, p. 3199.

²² McKenna D J 2012, *Inquiry Transcript of Evidence*, p. 1201.

²³ Exhibit 35.

²⁴ *The Queen v Dennis John McKenna* 1991 Trial Transcript, p. 176; McKenna D J 2012, *Inquiry Transcript of Evidence*, p. 1203; Stephens, LOK 2012, *Inquiry Transcript of Evidence*, p. 2830; *The Queen v Dennis John McKenna* 1991 Trial Transcript, p. 176.

²⁵ Exhibit 35.

²⁶ Brown, E 2012, *Inquiry Transcript of Evidence*, p. 1048.

As warden, McKenna was entitled to occupy a house separate from the main buildings which had been specially set aside for the person who held that position. However, McKenna elected to stay in his small flat adjacent to the boys' dormitory and he remained in those quarters until his arrest in 1990.²⁷

5.7 The employment of McKenna's family members as staff

Dennis McKenna's parents (Doug and Mary McKenna) had six sons, of which he was the eldest. Over his time as warden two of his brothers (Wayne and Neil), and four of his brothers' wives (Robyn, Wendy, Christine and Gunda) were appointed to fill vacant staff positions at the hostel.²⁸

With the exception of Christine McKenna (for part of her time at the hostel) all of these appointments were to supervisory positions. This required them to supervise students by monitoring the hostel routine, actively supervising study periods, and assisting with sporting and social activities. They were also required to assist with any administrative duties as directed by the warden. Wayne and Neil McKenna were generally responsible for the supervision of the boys' at the hostel, whereas the female McKenna family members were responsible for the girls.²⁹

The first of these appointments was in 1976 when Dennis McKenna offered Wayne and Robyn positions as housemaster and female supervisor respectively. They moved into the warden's house at the end of 1976 and commenced their employment at the beginning of the 1977 school year.³⁰ Robyn ceased to be employed by St Andrew's Hostel in December 1983 and Wayne finished in February 1985.

Wendy McKenna was a student boarder at St Andrew's Hostel from 1975 until 1979.³¹ She first met Neil McKenna in 1976 when Dennis took her on a trip to Perth and visited his parents' house. Wendy became a supervisor at St Andrew's Hostel in 1982 and she married Neil in that same year. In 1985 Neil was also appointed a supervisor and they both remained at the hostel until October 1991. Neil became acting warden of the hostel following Dennis' arrest in September 1990.

Christine McKenna (the wife of Dennis McKenna's brother Graham) was employed as a laundry / kitchen hand at the Hostel from November 1985 until May 1989. She was then appointed to a supervisory position and remained at the hostel until 1992. She did not apply for those positions but was recruited to them by Dennis McKenna.³²

Gunda McKenna (a former wife of Dennis McKenna's brother Brian) was employed by Dennis as a senior supervisor at the hostel after she separated from Brian in 1988. She

²⁷ See Chapter 8.

²⁸ Exhibit 36; endorsed by McKenna, D J 2012, *Inquiry Transcript of Evidence*, p. 1237-1244.

²⁹ *The State of Western Australia v Neil Vincent McKenna* [2012] WADC 50, p. 9.

³⁰ McKenna, R L 2012, *Inquiry Transcript of Evidence*, p. 2892; McKenna, W L 2012, *Inquiry Transcript of Evidence*, p. 2927.

³¹ McKenna, W 2012, *Inquiry Transcript of Evidence*, p. 2985.

³² McKenna, C M 2012, *Inquiry Transcript of Evidence*, p. 3020; McKenna, G 2012, *Inquiry Transcript of Evidence*, p. 3034.

remained at the hostel for two years and throughout that period carried out her duties at Reidy House (which was a separate annex to the hostel).

None of the McKenna family members employed by Dennis had previous experience working with children or of supervising children in a similar environment.³³ With the exception of the position offered to Gunda McKenna, none of the vacancies were formally advertised³⁴ and none of them were interviewed by Hostel board members prior to being appointed.³⁵

During his evidence to the Inquiry on 28 March 2012 Dennis McKenna confirmed that he had “simply employed” his family relatives without any formalities.³⁶ He also agreed on one of the reasons why he had appointed his family members to fill supervisory positions at the hostel:

Q: See, wasn't one of the reasons, Mr McKenna, this: that a child who had been sexually abused by you in the hostel environment would find it difficult to confide in a person who is a relative of the abuser?

A: I would agree with that, yes.

³³ McKenna, R L 2012, *Inquiry Transcript of Evidence*, p. 2894; McKenna, W L 2012, *Inquiry Transcript of Evidence*, p. 2927; McKenna, G 2012, *Inquiry Transcript of Evidence*, p. 3035; In evidence, Dennis McKenna admitted that he employed his family members mainly because they were relations and not because they had any qualifications, stating that he “knew they were good” (McKenna, D J 2012, *Inquiry Transcript of Evidence*, p. 1243).

³⁴ McKenna, D J 2012, *Inquiry Transcript of Evidence*, p. 1244.

³⁵ McKenna, R L 2012, *Inquiry Transcript of Evidence*, p. 2893; McKenna, W 2012, *Inquiry Transcript of Evidence*, p. 2987-2988; McKenna, G 2012, *Inquiry Transcript of Evidence*, p. 3034.

³⁶ McKenna, D J 2012, *Inquiry Transcript of Evidence*, p. 1244.

6. The convictions relating to St Andrew's Hostel

"You occupied a position of authority. You acted in loco parentis. In fact you were more than a father figure you were intimately involved with the growing up of these youths. You abused your position of trust. You took advantage of your special relationship. For your own gratification you took advantage of these youths' inexperience, their vulnerability and you preyed on the young and the innocent."

Judge O'Dea, Dennis McKenna's 1991 Sentencing, 26 July 1991

6.1 Dennis McKenna – 1991 and 2011 convictions

Dennis McKenna has been convicted twice for offences that were committed against numerous male Hostel students during the period between 1975 and 1990. The first set of convictions for 19 offences committed against five victims followed a trial by a judge and jury in the District Court in Albany in 1991.¹ McKenna was sentenced to a total of seven years imprisonment with parole, and after serving the non-parole period was released back into the community (in April 1993).

By 2010 six further victims of sexual abuse committed prior to 1990 had come forward, and as a result McKenna appeared in the Perth District Court on 4 August 2011 and pleaded guilty to 10 additional offences.² He is currently serving a term of six years and four months imprisonment in respect of these most recent convictions

Altogether Dennis McKenna has been convicted of a total of 29 offences committed against 11 complainants who were all aged between 14 and 16 years at the time. It is important to note that some of these convictions were for "representative" offences, each of which was representative of a course of conduct over a period of time.³ The total of 29 offences the subject of convictions comprised the following:

- Three offences of unlawful and indecent assault
- 21 offences of gross indecency
- Five offences of carnal knowledge against the order of nature.

6.2 A general summary of the facts of these 29 offences

All but one of these offences were committed in Dennis McKenna's flat adjacent to the boys' dormitory in the Hostel. The victim typically was one of a small group of boys invited to the

¹ *The Queen v Dennis John McKenna*

² *The State of Western Australia v Dennis John McKenna*

³ In sex abuse cases involving numerous offences of a very similar nature which were repeatedly committed over a period of time it is common for the Prosecution to lay a single "representative charge" in respect of them all. The court sentencing an offender for such an offence takes account of the fact that it is representative of a course of conduct and was not an isolated offence on its own.

flat after lights out to watch movies or television. Quite often McKenna would ply the group with alcohol, and he also sometimes showed them pornographic movies so that they would become sexually aroused. The chosen victim would then be asked to stay behind while the other boys went off to bed. On other occasions McKenna would invite an individual boy to his flat after going to him in the dormitory after lights out and making some gesture such as tapping him on the leg.

Once the victim was on his own in the flat he would be persuaded by various stratagems to remove his clothing and join McKenna in bed. McKenna would then fondle the boy's penis which would often lead to mutual masturbation and sometimes to oral sex. With some boys this sexual activity culminated in anal penetration (sometimes by the boy, and sometimes by McKenna).

6.3 Charges currently pending against Dennis McKenna

On 20 April 2012 McKenna was charged with an additional 66 sexual abuse offences allegedly committed prior to 1990 against 16 former Hostel students (15 of whom were new complainants). These charges comprise:

- 26 counts of indecent dealing between males
- Three counts of permitting carnal knowledge against the order of nature
- One count of attempted carnal knowledge against the order of nature
- Four counts of carnal knowledge against the order of nature
- 24 counts of unlawful and indecent assault
- 8 counts of indecent dealing with a child under the age of 14.

At the time of preparation of this report these charges are still pending.

6.4 The convictions against Neil McKenna

In March 2012 Neil McKenna stood trial before Judge alone in the Perth District Court on ten charges of sexual offences (including one in the alternative) which were allegedly committed against three female students at St Andrew's Hostel. Neil McKenna was acquitted of all but three of these charges. The three convictions were for offences which had been committed against a 15 year old girl and comprised:

- Two offences of unlawful and indecent assault of a girl under 16 years of age
- One offence of sexual penetration without consent of a girl under 16 years of age.⁴

When acquitting McKenna of the remaining charges the trial Judge nevertheless found that he had committed some of the sexual acts alleged. In that regard it was an element of some charges that Neil McKenna had been a "schoolmaster" at the material time and the evidence did not establish that McKenna's employment as a Hostel supervisor fell into that category. In respect of other charges the prosecution failed to prove a necessary element that the

⁴ *The State of Western Australia v Neil Vincent McKenna* (2012) WADC 50.

sexual activity had occurred without the girl's consent. Some charges were also dismissed because the trial judge did not accept the evidence of one or other of the complainants that the alleged events had happened.

6.5 The facts as found against Neil McKenna in respect of his offences and other matters

The evidence in relation to the offences of which Neil McKenna was convicted satisfied the trial Judge that:

*"...the accused was during his time at the Hostel not only sexually interested in teenage girls but was also willing to act on that interest by engaging in significant sexual activity, including sexual intercourse, with girls who were living at the Hostel."*⁵

At the time of the offences of which McKenna was convicted the complainant had been a naïve 15 year old girl who had never had any meaningful relationship with a boyfriend. McKenna first made approaches towards her when she was working as an usherette in the Hostel cinema and he would touch her on the arm or a leg. He committed the first offence while the Hostel students were on a camp at Albany when he gave her a "full frontal kiss" without her consent.⁶

Thereafter he continued to flirt with the girl and he committed the most serious of the three offences while they were both on a Hostel bus which he had been driving. After other students had been dropped off and the two of them were alone on the bus he had sexual intercourse with her on the back seat of the bus without her consent. It was a premeditated offence because McKenna had told the girl to wear loose clothing prior to the bus trip. It was also the first such sexual experience for the young girl.⁷ The remaining offence of unlawful and indecent assault involved McKenna fondling the complainant's breasts.⁸

Two charges of sexually offending against one of the other complainants were dismissed because Neil McKenna was not a "schoolmaster" within the meaning of the law (as it then stood).⁹ The trial judge nevertheless accepted the evidence of the complainant in respect of one of those charges and was satisfied beyond reasonable doubt that McKenna had committed the sexual acts as alleged.¹⁰

The relevant facts were that the girl regularly worked as an usherette in the Hostel cinema. One night when she was 16 years old Neil McKenna sat down alongside her at the back of the cinema. He then molested her by touching her in her genital area and by placing her hand on his penis (on the outside of his clothing). McKenna then put his hand inside her clothing and digitally penetrated her vagina.¹¹

This same complainant was accustomed to doing domestic chores for Neil McKenna and his wife which meant she was sometimes alone with him in his house. On these occasions

⁵ *The State of Western Australia v Neil Vincent McKenna* [2012] WADC 50 at 766.

⁶ *ibid*, at 289-305.

⁷ *ibid*, at 308-329.

⁸ *ibid*, at 334-342.

⁹ *ibid*, at 662-668.

¹⁰ *ibid*, at 741-780.

¹¹ *ibid*, at 66-73.

McKenna had a habit of coming up behind her and hugging, kissing or touching her inappropriately. On one particular occasion when he did this he took her into the main bedroom of the house, pulled down her underwear, and then had sexual intercourse with her while she was bent forwards over his bed. She had never had sexual intercourse before and he did not seek her consent for what happened.¹²

Following his convictions Neil McKenna was sentenced to six years and three months imprisonment with parole, and he is currently serving that term.

¹² *The State of Western Australia v Neil Vincent McKenna* [2012] WADC 50 at 75-86.

7. The extent of alleged offending

The extensive evidence which the Inquiry has heard as to the circumstances surrounding the offending by Dennis McKenna and other staff members at hostels has referred not only to offending which is the subject of convictions but also to other alleged offending which is yet to be dealt with by the courts. (In that regard the Inquiry has been made aware of numerous alleged victims who have chosen not to come forward).

As stated earlier in this Report it is not the role of this Inquiry to determine the full extent of Dennis McKenna's offending or the offending of anyone else. That is entirely a matter for the courts and it would be very wrong for the Inquiry to make any findings in that respect. Nevertheless the Inquiry must have regard to the full extent of **alleged** offending if it is to properly address its Terms of Reference.

This Chapter analyses all of the alleged offending at St Andrew's Hostel, and for legal reasons I will not name all of the alleged offenders. There are numerous factors which prevent any precise estimate of the true extent of alleged offending by staff at the Hostel. These include, but are not limited to:

- where and to whom disclosures were made
- the relative lack in efficiency of legislation and legal proceedings at the material time¹
- the inadequate policy approaches of various Government agencies at the time in capturing disclosures
- the community's lack of understanding of child sexual abuse matters
- the unwillingness of victims to report offences.

7.1 Sources from where disclosures are obtained

The Inquiry has obtained information on disclosures of sexual abuse at the Hostel from three main sources:

- Western Australia Police (WA Police)
- Redress WA (Redress)
- Individuals who have contacted this Inquiry.

7.1.1 WA Police

The information passed on to the Inquiry by WA Police (including information on criminal prosecution) concerning individual disclosures, falls into four main categories, being:

- An individual disclosure where the victim provided sufficient particularisation for a prosecution.
- An individual disclosure where the victim provided insufficient particularisation for a prosecution.

¹ See Chapter 18.

- An individual disclosure where the victim provided sufficient particularisation for a prosecution but for whatever reason did not wish to proceed.
- Other disclosures where alleged abuse was considered.

7.1.1.1 An individual disclosure where the victim provided sufficient particularisation for a prosecution

As is well known, the WA Police have prosecuted a number of staff from the Hostel commencing in 1990 when the first individual disclosures were made via Operation Paradox².

To date, a total of 31 victims have individually disclosed allegations of abuse to WA Police and these resulted in Dennis John McKenna, Neil Vincent McKenna and another staff member being charged with numerous child sex offences.

Dennis John McKenna

Between 1990 and 1991, five (5) victims made disclosures to WA Police which resulted in Dennis McKenna being convicted and sentenced to imprisonment.³

By 2011, a further six (6) victims made disclosures resulting in charges to which Dennis McKenna pleaded guilty resulting in yet another custodial sentence.⁴

During 2012, an additional sixteen (16) alleged victims made sufficient disclosures to the WA Police for Dennis McKenna to be charged for the third time. Given that these matters are currently *sub judice*, they will not be the subject of any comment.

The table below sets out the number of students allegedly abused each year at the Hostel by Dennis McKenna. Some of these students were allegedly abused over consecutive years and the table illustrates that in each year McKenna was allegedly offending against a number of victims during that period.

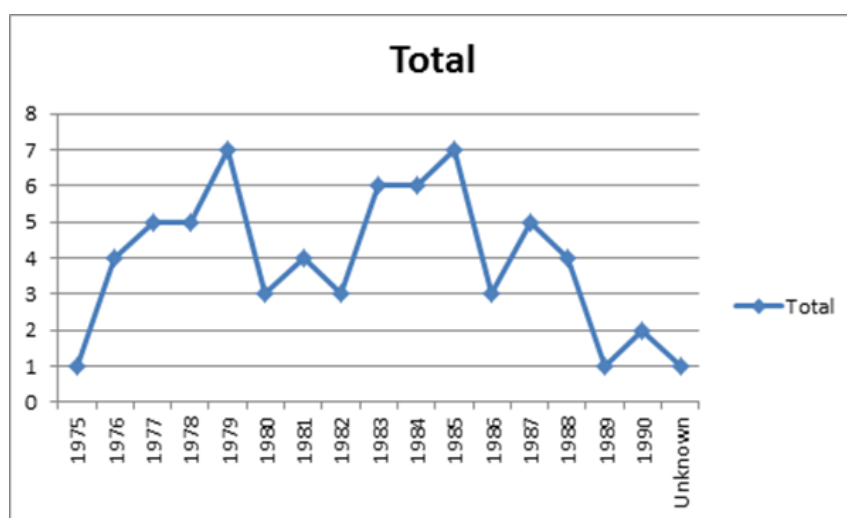


Table 7.1: Number of victims allegedly abused at the Hostel each year (individuals identified by year in which the alleged abuse occurred, including multiple years).

² See Chapter 18.3.1

³ See Chapter 6

⁴ See Chapter 6

Neil Vincent McKenna

Three (3) victims made sufficient disclosures for the WA Police to charge Neil Vincent McKenna in 2011.

Chapter 6 provides information on the 2012 convictions of Neil McKenna and on other factual findings by the trial judge.

Third staff member

In 2012, one (1) victim made a sufficient disclosure for the WA Police to charge another staff member.

7.1.1.2 Individual disclosures where victims have provided sufficient particularisation for prosecution but for whatever reason did not wish to proceed

Records of WA Police show that since 1990 a further 10 alleged victims have disclosed abuse of a sexual nature but have chosen not to proceed with a prosecution.

- 5 (five) of these individuals have made allegations against Dennis McKenna
- 4 (four) have done so against Neil McKenna
- 1 (one) individual has disclosed allegations against both Dennis and Neil McKenna

The Inquirer has personally interviewed this last victim who did not proceed (referred to as 'B') and her experience is referred to later in this Chapter.

7.1.1.3 An individual disclosure where the victim provided insufficient particularisation for a prosecution

The Inquiry has obtained records which reveal that 1 (one) victim has disclosed allegations against another staff member, but with insufficient particularity for WA Police to prosecute.

7.1.1.4 Information still being considered by WA Police

As a result of recent referrals from this Inquiry, there are 3 (three) individuals who have alleged sexual offending by Dennis McKenna which matters are still being investigated by WA Police.

7.2 Redress WA

Redress WA was a State Government initiative which commenced on 3 December 2007. It enabled victims, who claimed to have experienced sexual, emotional or physical abuse in a State run facility to receive compensation.

Records obtained under summons from Redress WA have indicated that a total of 18 applications were lodged for claims for compensation in relation to former residents of St Andrew's Hostel. Twelve applications related to alleged sexual abuse.

Nine of the 12 applicants who lodged claims alleging sexual abuse are captured in the WA Police data above with the exception of 3 who chose not to have their applications referred to WA Police. These 3 individuals alleged sexual abuse by Dennis McKenna.

7.3 St Andrews Hostel Inquiry

As a result of the work undertaken by the Inquiry's Investigators further victims made disclosures of sexual offences. Under my Terms of Reference, these issues which went to criminal behaviour were referred to WA Police. The allegations of sexual abuse by those individuals which relate to the Hostel are captured in the WA Police data above.

7.4 Allegations against Dennis and Neil McKenna by the former female student "B"

There is only one former female student from the Hostel who claims to have been a victim of sexual abuse by Dennis McKenna. She is also the only former Hostel student to allege that some episodes of sexual abuse involved adults who were not staff members at the Hostel. In order to preserve the anonymity of this former student I am giving her the pseudonym "B", and will not state when she was at the Hostel other than to indicate that it was during the 1980s.

The Inquiry became aware of "B's" allegations when it obtained a copy of a very lengthy statement that she gave to WA Police in 1992. That statement detailed innumerable alleged instances of sexual and physical abuse by Dennis McKenna which commenced when "B" was aged 12 and continued for approximately three years. The statement also alleged that Neil McKenna was sometimes present during these acts of sexual abuse, and that there was one occasion when "B" was taken by Dennis to a house in the Perth metropolitan area where she was sexually abused by approximately half a dozen other adult men. The sexual abuse by Dennis McKenna was said to have included vaginal and anal intercourse as well as penetration with other objects.

The WA Police file also shows that the investigation of these matters was delayed when "B" made a near successful attempt at suicide which required a lengthy period of treatment and rehabilitation. Ultimately, the detectives were advised by solicitors acting for "B" and her parents that she was "withdrawing her complaint" and for that reason no charges were laid.

When "B" was first contacted by the Inquiry she was very cooperative, but nevertheless reluctant to discuss her experiences at the Hostel. She explained that she had been able to get on with her life and to achieve significant success in her chosen career by putting those experiences behind her. Furthermore, she still had serious health problems and found it very traumatic to revive her memories of what had happened to her at the Hostel.

In light of these understandable concerns I arranged for a face to face meeting with "B". At that meeting I requested "B's" permission to investigate the allegations she had made in 1992, but she politely declined this request. She said that she stood by the truth of the allegations she had made in 1992, but was not willing to undergo the psychological trauma of having to deal with them again. All she wanted to do was to put these matters behind her and to continue on with her life. As there was no doubt as to the sincerity of "B's" concerns in this regard I decided that the Inquiry should respect her wishes.

Although I am not in the position to make any findings in respect of "B's" allegations I have had the opportunity of lengthy discussions with her about peripheral matters and she impresses me as a very genuine and credible individual. "B's" statement to the police in 1992 alleged some very bizarre behaviour by Dennis McKenna and others, but I nevertheless consider the account she then gave to be plausible.

7.5 The under-reporting of sexual abuse

Studies worldwide show that there is a significant under reporting of child sexual abuse particularly in respect of offences committed against boys. In this regard, Rosemary Cant has provided the following evidence of a survey of over 2500 people in the United States⁵:

"Randomly selected survey of the general population. They found that 27% of women and 16% of men reported a history of child sexual abuse. Of those who did report that they had in some way been sexually abused, 42% only had reported - had disclosed the incident of abuse within a year of the incident and that disclosure could be to anyone. So it's not a disclosure to authorities. Then 27% told of the event later and 38% had never told anyone up to the point of that survey. So the survey itself was the first time that they had told anybody of the incident.

Q. Does that include men and women?

A. That includes men and women, and if we look at the abused men, by the time of the survey 42% of men had never disclosed the abuse compared to a third of the women."

If the results of this survey were to be valid in Australia it would suggest that perhaps 42% of males abused at the Hostel have not yet disclosed their sexual abuse to anyone. However such rates may vary, and it is obviously not possible to determine the extent of under reporting of sexual abuse at the Hostel.

7.6 Conclusions

The Inquiry has determined that a total of 48 individuals have disclosed allegations of sexual abuse which are said to have occurred while they were residing at St Andrew's Hostel. Of these alleged victims 38 have made complaints against Dennis McKenna, 7 against Neil McKenna and 2 against a third staff member. In addition, one individual, "B", alleges that Dennis and Neil were both perpetrators. The age of the individuals when the alleged abuse commenced is set out in the table below, with 13 and 14 years being the predominant ages. Many victims allege that the abuse occurred over consecutive years whilst they were at the Hostel.

⁵ *Inquiry Transcript of Evidence*, p. 884

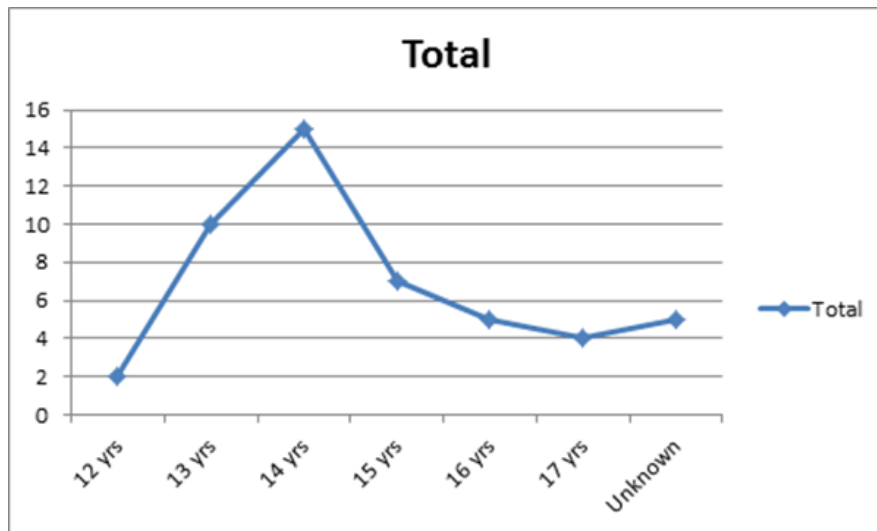


Table 7.2: Age of St Andrew's Hostel resident when alleged abuse commenced.

The evidence of disclosure rates as validated by studies in the USA, Canada and Australia establishes with a high degree of probability that there are many more former students who may have been sexually abused but do not wish to disclose or to pursue criminal charges.

Whilst I believe that there are many former students who are yet to come forward, unfortunately I am not in a position to speculate about this number.

8. Fear and favour – how the Hostel operated

One of the significant factors which enabled Dennis McKenna to avoid justice for so many years was his ability to create a veil of secrecy around his sexual activities with boys at the Hostel. He achieved this in a variety of ways which involved a mixture of favouritism and intimidation.

His methodical approach to maintaining secrecy was based upon tight control of the behaviour of Hostel students and over their interactions with others. Obviously these methods were very successful because he was able to continue offending and to remain untouched for 15 years.

8.1 Hostel Routine

The daily routine for Hostel students was a regimented affair conducted in a very orderly manner. Because of the numbers of students, it was obviously necessary that there be some rules, routines and arrangements in place but Dennis McKenna's regime was unduly oppressive and tended to isolate Hostel students from any outside influences (including their parents).

It can be seen from the timetable below in a Student's Handbook, that out of school activities on weekdays were highly structured, and were regulated by use of the Hostel siren:

7:15am	Siren	All rise
8:00am	Siren	Breakfast (all duties to be carried out by 8:00am)
8:35am	Siren	Dormitory Inspection
12:40pm		Lunch
1:10pm	Siren	All return to School
3:30pm		Canteen, Bank (Mon-Thurs)
4:00pm	Siren	Sports training, House Projects and activities
5:25pm	Siren	Prepare for evening meal
5:30pm	Siren	Evening meal
6:25pm	Siren	Prepare for study
6:30pm	Siren	Study for all years
8:00pm	Siren	All leave study - supper
8:30pm	Siren	Compulsory study Yrs 11 and 12
9:15pm	Siren	All to Dorms – prepare for bed
9:30pm		Lights out, Yrs 8, 9 and 10
10:30pm		All lights out

This routine allowed the students very little time for personal activities with only 30 minutes allocated each weekday for this purpose. Rostered community activities on weekends also limited the opportunities for students to return home which meant that they spent most of the school term at the Hostel.

8.2 Strict Rules at the Hostel:

8.2.1 Uniforms

The compulsory wearing of the St Andrew's Hostel uniform was one of many outward symbols by which McKenna increased the reputation of the Hostel within the community. This uniform differed from the Katanning Senior High School uniform and made hostel boarders stand-out from the other students while at school and elsewhere in the community.¹

The required standard of dress was specified in the Hostel Student's Handbook. It stated:²

"We at St Andrews take pride in our standing within the school and local community and in order that our good name should continue, we expect a high standard of dress and conduct when at school and in public.

Dress: The general tone of the Hostel and its standing within the community and the school, depends very largely on the way we present ourselves.

School: ... By being well dressed, we lead the way in setting and maintaining a good standard of dress generally at the school. Whilst some other students may wear gym boots and look a bit scruffy, we should not follow suit and lower our own standards."

Ian Parker, a Hostel student during 1977 and 1978, remembers that the uniform requirements for Hostel students were much more stringent than those for other high school students. Hostel students could not wear joggers or sports shoes and had to wear complete school uniforms, including ties. The other Katanning Senior High School students did not have any enforceable uniform code.³

Kylie Haddow, a Hostel student from 1984 until 1986, has testified about Dennis McKenna's insistence that all uniforms of Hostel students be exactly the same: Hostel students "had to wear exactly the same sort of shoe and exactly the same sort of skirts and shirt and tie and jacket". Students and their families were instructed where to buy footwear; and "if yours were even slightly not looking like the other ones there would be comments and you would be in trouble or your parents would be told to buy new ones".⁴

This insistence on a very high standard of dress for Hostel students was McKenna's way of publicly demonstrating his purported professionalism, and also enhanced the reputation of the Hostel in the community. This was all part of his grooming of the local community.⁵

8.2.2 The ban on close relationships

Sharon Parker was a student at the Hostel during 1983 and 1984 (while in Years 11 and 12). Another student at the Hostel was a close friend whom she had known since the age of seven. It is Ms Parker's evidence that:

¹ Edwards, T M 2012, *Inquiry Transcript of Evidence*, 1 March, ppp.694-5; Galluccio, J L 2012, *Inquiry Transcript of Evidence*, 3 May, p.2399.

² St Andrew's Hostel, [undated circa 1987], *St Andrews High School Katanning Student's Handbook*, pp. 5, 8.

³ Parker, I G 2012, *Inquiry Transcript of Evidence*, 21 February p.92.

⁴ Haddow, K J 2012, *Inquiry Transcript of Evidence*, 24 February, p.373.

⁵ See Chapter 9.

*"To begin with, we were next to each other in the dormitory, but Dennis split us up very early on and really tried hard to sort of split our friendship up. So he continually would call me down to the office and say that my friend was dragging me down and that she was the problem and then, in the meantime, he would have her down to the office and say that I was the problem... But he was also calling my parents and saying that my friend was the problem and he was calling her parents and saying that I was the problem. So he really seemed quite determined to destroy our friendship."*⁶

It is also Ms Haddow's evidence that McKenna "didn't allow anyone to have proper friendships and didn't even allow siblings to take care of each other or function properly as a family". When Ms Haddow commenced at the hostel in Year 8 she was homesick. Initially McKenna allowed her older sister to comfort and protect her from other students, but this ceased when he instructed the sister that she could no longer do so.⁷

Many witnesses have testified about a strict rule that students could not have boyfriends or girlfriends.⁸ According to Mr Parker McKenna sometimes victimised male students and gave them extra duties in order to prevent them from interacting with girls.⁹

Another former female student who was at the Hostel during the early 1980's recalls:

*"There was a couples book that you would be written into if you were seen more than three times in the same week talking to the same girl. I know this because the rules were told to me as I was a vice house captain in year ten. We had to report this. I was in the book when I was "going out" with a boy."*¹⁰

8.2.3 The rule against consorting with "townies"

"Townies" was the name that Hostel students gave to day students at Katanning Senior High School as well as to other children not living at the Hostel. The evidence shows that Dennis McKenna often instructed Hostel students not to mix with town children. Deborah Wallwork, a Hostel student in 1985 and 1986, has testified that "he would say to me that basically I had to stop being so friendly with the townies...we weren't allowed to talk about what went on at the hostel with the townies."¹¹ Former Hostel students still at the high school were also treated as "townies", and after Ms Parker left the Hostel the students who ceased to mix with her included those whom she had previously thought were "really friends".¹²

⁶ Parker, S K 2012, *Inquiry Transcript of Evidence*, 21 February, p.178

⁷ Haddow, K J 2012, *Inquiry Transcript of Evidence*, 24 February, pp.364, 365.

⁸ Galluccio, J L 2012, *Inquiry Transcript of Evidence*, 3 May, p.2398; McKenna, R I 2012, *Inquiry Transcript of Evidence*, 10 May, p.2905; Brown, J 2012, *Inquiry Transcript of Evidence*, 18 June, p.3697; Hilder, M F 2012, *Inquiry Transcript of Evidence*, 21 February, p.126; Brown, J A 2012, *Inquiry Transcript of Evidence*, 24 February, p.397; Edwards, T M 2012, *Inquiry Transcript of Evidence*, 21 March, p.693; Brown, E 2012, *Inquiry Transcript of Evidence*, 19 March, p.1050.

⁹ Parker, I G 2012, *Inquiry Transcript of Evidence*, 21 February, p.110.

¹⁰ Matters, J 2012, *Inquiry Submission*, 27 February.

¹¹ Wallwork, D M 2012, *Inquiry Transcript of Evidence*, 18 June, p.3652. See also, Williams, A M 2012, *Inquiry Transcript of Evidence*, 28 February, pp.506, and 516,-517 and, Edwards, T M 2012, *Inquiry Transcript of Evidence*, pp.694-695.

¹² Parker, S K 2012, *Inquiry Transcript of Evidence*, 21 February, pp.189-190.

8.2.4 Restrictions on communication

The evidence clearly establishes that McKenna habitually accessed Hostel students' private communications. At a time when young people did not have mobile phones the Hostel landline was a critical mode of communication between the Hostel students and their families and friends. Ainslie Evans has testified that McKenna positioned the Hostel's telephone outside his office window so that he could supervise phone calls by students. This was because "he wanted to know (which) students were using the telephone and he had reason to ask who they were phoning".¹³

Ms Parker also confirms that:

*"there was a telephone located right outside Dennis' office, which meant that every time you made a phone call he was there watching you. Which is why in those early days that I described when I was homesick, you really almost couldn't ring your parents because of course when you talk to your parents you get upset and you start crying and then you're right outside his office and he can see you and...that would then just make him get even more annoyed with you. So the telephone was not a good way of communicating."*¹⁴

Ms Haddow and her older sister, Jody Brown (formerly Haddow), have said that they rang home "just about every day" to inform their parents of what was happening at the Hostel. While they were doing this McKenna would sit in his office listening to their conversations. According to Ms Haddow it was because she and her sister had told their parents how they were being treated at the Hostel, that McKenna introduced new rules that students could call home only once a week and parents could ring them only once a week.¹⁵

McKenna also opened and read Hostel students' incoming and out-going mail.¹⁶ Wayne McKenna, a Supervisor at the Hostel from 1977 to 1984, remembers that at one stage the envelopes for outgoing mail were not being sealed, but he did not know why. He also remembers his brother reading letters which were not addressed to him.¹⁷

Dennis McKenna sometimes made improper use of the information he had gleaned by listening to telephone conversations or reading students' mail. Ms Parker has testified that the letters she sent to very close friends were dropped at McKenna's office for stamping and posting. She later had reason to suspect that these were being read because the private information in them was being repeated back to her by other students. Ms Parker then tested these suspicions by planting information in a letter which "absolutely nobody else knew and in fact was not true." This information was repeated to her by another student within a couple of days.¹⁸

It is reasonable to conclude that the restriction and monitoring of students' communications by McKenna was a deliberate strategy to make students realise that he had complete control over their lives at the Hostel. This strategy had the desired effect of minimising students'

¹³ Evans, A V 2012, *Inquiry Transcript of Evidence*, 12 April, p.1688.

¹⁴ Parker, S K 2012, *Inquiry Transcript of Evidence*, 21 February, p.182.

¹⁵ Haddow, K J 2012, *Inquiry Transcript of Evidence*, 24 February, pp.364 -365.

¹⁶ Parker, S K 2012, *Inquiry Transcript of Evidence*, 21 February, pp.181-182.

¹⁷ McKenna, W L 2012, *Inquiry Transcript of Evidence*, pp.2967-2970,

¹⁸ Parker, S K 2012, *Inquiry Transcript of Evidence*, 21 February, pp.181-182.

contacts with outsiders and reducing the risk that they might complain or talk to others about his sexual abuse.

8.2.5 Spies and reporting

The evidence also shows that McKenna organised a system by which students were required and encouraged to report other students' transgressions against his rules.

When Ms Williams was in Year 9, she was told by a male student that he had been instructed by McKenna to search through her cubicle and some other girls' cubicles for their diaries. He warned her not to continue writing in her diary. According to Ms Williams, McKenna "had plenty of people to... for want of a better word, spy on you... mainly students".¹⁹

Ms Parker also confirms that "prefects were meant to report on what other people were doing and I'm not saying that all prefects did that by any means but... they felt approved by Dennis and they wanted to get more approval from him and telling things other students had said or done was just a way of them getting more approval and being more safe in the group".²⁰

McKenna also instructed students to report on the number of times that any other male and female students were seen talking to each other so that this could be recorded in the "couples book".

8.3 Emotional and psychological abuse

A number of witnesses have testified about Dennis McKenna's psychological or emotional abuse of particular students he did not like. He did this in a variety of ways including spreading gossip about the alleged sexual habits of female students,²¹ embarrassing them about their body weight or physical appearance,²² giving them humiliating nicknames,²³ playing cruel pranks or humiliating them in some way in front of other students,²⁴ and showing mixed groups of students grossly violent horror movies.²⁵

Accordingly, particular girls would be called "sluts" or "slags". McKenna also gave some boys humiliating nicknames which reflected the size or physical characteristics of their genitals.²⁶ Students were encouraged to use these nicknames or descriptions of particular students, and encouraged to speak disparagingly about those he had chosen to humiliate.

¹⁹ Williams, A M 2012, *Inquiry Transcript of Evidence*, 28 February, pp.507,514-515.

²⁰ Parker, S K 2012, *Inquiry Transcript of Evidence*, 21 February, p.183.

²¹ Parker, S K 2012, *Inquiry Transcript of Evidence*, 21 February, p.181; Haddow, K J 2012, *Inquiry Transcript of Evidence*, 24 February, p.357-8, 378; Parker, D M 2012, *Inquiry Transcript of Evidence*, 1 March, p.626, 643; "F", 2012, *Inquiry Transcript of Evidence*, 18 June, p.3627; Williams, A M 2012, *Inquiry Transcript of Evidence*, 28 February, p.517-8.

²² Parker, S K 2012, *Inquiry Transcript of Evidence*, 21 February, p.184, 186.

²³ "S" Chapter 11.2, Parker, I G, 2012, *Inquiry Transcript of Evidence*, 21 February, p.102.

²⁴ Edwards, T M, 2012 *Inquiry Transcript of Evidence*, 1 March, p.695-698; Taylor, M A, 2012, *Inquiry Transcript of Evidence*, 1 March, p.789;

²⁵ Reddington, J E, 2012, *Inquiry Transcript of Evidence*, 2 March, p.833

²⁶ "S", 2012, *Inquiry Transcript of Evidence*, 19 March, p.928; Parker, I G, 2012, *Inquiry Transcript of Evidence*, 21 February, p.102, 116.

Sharon Parker recalls McKenna announcing over the PA system of the Hostel that he had dedicated a song to her which had the title: "Nice legs, shame about the face".²⁷ Ms Parker has a Ph.D in psychology, and has the expertise (with the benefit of hindsight) to provide the following description of the techniques used by McKenna to divide and control the Hostel students and others:

"Dennis McKenna was an incredibly powerful person. Students, teachers and many other respectable people in the town blindly idolised him, going to incredible lengths to gain his approval. Teachers joined slandering sessions about other teachers; parents reported on the private lives of other parents; students constantly battled to gain his approval, slaving in the kitchen, the garden or wherever they would be seen. They told stories about other students - the more shocking and victimising the tale, the more attention. All these things to be in.

Being in with Mr McKenna meant all sorts of benefits - pizzas at night, free visits to nice places, prefect's badges. Most of all, it meant approval from Dennis. Approval that made you feel superior than the rest, approval that made you selectively attend to what was going on, shutting out the negative realities.

But if you couldn't shut out reality, if you couldn't be in with Dennis, then life at the hostel was tough. There were simple but cruel pranks, like placing a huge washing bowl of cereal at your breakfast plate if you thought you were overweight; like broadcasting over the PA song titles with slight modifications - eg, "Nice legs, shame about the face".

There was public psychoanalysis, such as the frequent late-night sessions in the girls' dormitories, where he slandered all those not present - all those who had better things to do than sit up until 2am in the morning listening to malicious gossip.

There was the endless violation of privacy, the reading of our mail, the all-seeing and all-saying prefects reporting back to Dennis, the constant watching of our every mood and every move.

There was the guilt you were made to feel for studying - you should be doing things for Dennis; guilt for wanting to go home; guilt for liking a boy - you shouldn't like boys unless you are a slut; guilt for not joining in the tale-telling, the ridiculing, the lies. You should trust Dennis enough to say these things.

And then perhaps hardest of all was reconciling all this against the espoused values of goodness and decency, the sheer hypocrisy of Dennis McKenna.

I was not sexually abused by Mr McKenna, I was emotionally abused. He attacked things deep inside of me - my confidence, my sense of self-worth, my esteem. He ridiculed, he slandered, he psychoanalysed, he victimised me. He wanted to destroy me."²⁸

²⁷ Parker, S K 2012, *Inquiry Transcript of Evidence*, 21 February, p.186.

²⁸ Parker, S K 2012, *Inquiry Transcript of Evidence*, 21 February, p.191-3.

8.4 Dennis McKenna's accommodation arrangements

I have already referred to McKenna's decision when appointed Warden to remain in his flat within the boys' dormitory area and not move to the larger Warden's house (Chapter 5).

He has testified that he liked where he was and was happy in the flat. When asked why he was happy there his response was "well, it's obvious I presume... some of the sexual abuse was there".²⁹ Clearly his decision to stay in the flat was a deliberate stratagem to assure him of access to his victims at night time. In this regard there was only one entrance to the boys' dormitory area (apart from the emergency exits), and after lights out this entrance was locked with McKenna retaining the keys. These arrangements ensured that he was the only adult within the locked boys' dormitory area overnight.³⁰ Accordingly he was free to pick and choose his victims, and to sexually abuse them without any fear of being disturbed.

8.5 Grooming of students and modus operandi of offending

Rosemary Cant, a clinical psychologist and an expert in child sexual abuse, has made the obvious point that children who are not subject to parental oversight are more easily targeted by child sex offenders. The Hostel students were especially vulnerable to McKenna's offending because their parents had placed them in his care in the belief that they would be properly supervised and cared for. Mrs Cant has also testified that the children of separated parents or children with low self-esteem are particularly vulnerable.³¹

McKenna used various techniques to groom chosen students so that they would succumb to his wishes. These techniques all depended upon his ability to gain the trust or control of each victim by a process of rewards and threats.

The rewards included:

- Allowing selected students to stay up late³²
- Allowing them to watch TV and movies in his flat³³
- Providing them with soft drinks and confectionary³⁴
- Supplying alcohol to selected students³⁵
- Selecting students to go on "special" trips³⁶

²⁹ McKenna, D J 2012, *Inquiry Transcript of Evidence*, p.1204.

³⁰ *ibid*, p.1203.

³¹ Cant, R L 2012, *Inquiry Transcript of Evidence*, 6 March, p.877.

³² Bentley, L 2012, *Inquiry Transcript of Evidence*, 20 February, pp.44-46; McKenna, D J 2012, *Inquiry Transcript of Evidence*, 28 March, p.1233; McKenna, R L 2012, *Inquiry Transcript of Evidence*, 10 May, p.2903.

³³ Jefferis, C M 2012, *Inquiry Transcript of Evidence*, 1 March, p.764; McKenna, W L 2012, *Inquiry Transcript of Evidence*, 10 May, p.2961; McKenna, W 2012, *Inquiry Transcript of Evidence*, 10 May, p.3004; Shiner, R A 2012, *Inquiry Transcript of Evidence*, 18 June, p.3641.

³⁴ Parker, I G 2012, *Inquiry Transcript of Evidence*, 21 February, p.98; McKenna, W L 2012, *Inquiry Transcript of Evidence*, 10 May p.2961.

³⁵ 'S' 2012, *Inquiry Transcript of Evidence*, 19 March, p.932; Stephens, K R 2012, *Inquiry Transcript of Evidence*, 20 February, p.36.

- Appointing students to positions of authority over other students (such as Hostel prefects).³⁷

The threats, real or implied, were:

- Imposing particular hostel duties which were disliked as punishment (such as toast or bathroom duty)³⁸
- Arranging scraggings³⁹
- Organised humiliation of designated students in front of other hostel students⁴⁰
- Informing parents that their child had been smoking⁴¹
- Suspensions and expulsions⁴²
- Threatening prosecution for defamation.⁴³

Kerryn Stephens has testified that as early as 1976 McKenna “promoted what you might call privileges, such as going to the flat... after lights out” and “privileged trips away for selected few – all that sort of things”. Mr Stephens has also stated that McKenna would nominate the Hostel prefect positions and generally it was those boys who had privileges. According to Mr Stephens the previous Hostel wardens had not conferred any of these privileges.⁴⁴

8.6 Student showers

Each of the junior and senior boys’ dormitories had a set of showers. During Dennis McKenna’s time as Warden these showers lacked any doors or curtains.⁴⁵ Accordingly anyone entering the bathroom had a plain view of naked students while they were showering.⁴⁶

³⁶ Stephens, K L 2012, *Inquiry Transcript of Evidence*, 20 February, p.30; Haddow, K J 2012, *Inquiry Transcript of Evidence*, 24 February, p.362.

³⁷ Stephens, K L 2012, *Inquiry Transcript of Evidence*, 20 February, p.33; Parker, S K 2012, *Inquiry Transcript of Evidence*, 21 February, p.179; Moore, R K 2012, *Inquiry Transcript of Evidence*, 24 February, p.410.

³⁸ Moore, R K 2012, *Inquiry Transcript of Evidence*, 24 February, p.410; McKenna, W L 2012, *Inquiry Transcript of Evidence*, 10 May, p.2938; Parker, I G 2012, *Inquiry Transcript of Evidence*, 21 February, pp.95,96; Haddow, K J 2012, *Inquiry Transcript of Evidence*, 24 February, p.364.

³⁹ ‘S’ 2012, *Inquiry Transcript of Evidence*, 19 March, p.928.

⁴⁰ Stephens, B 2012, *Inquiry Transcript of Evidence*, 20 February, p.59; Parker, S K 2012, *Inquiry Transcript of Evidence*, 21 February, pp.184,186; ‘S’ 2012, *Inquiry Transcript of Evidence*, 19 March, p. 928; Williams, A M 2012, *Inquiry Transcript of Evidence*, 5 April, pp.513,514; ‘F’ 2012, *Inquiry Transcript of Evidence*, 18 June, p.3627; Haddow, B 2012, *Inquiry Transcript of Evidence*, 2 March, p.839.

⁴¹ Parker, I G 2012, *Inquiry Transcript of Evidence*, 21 February, pp.83-85.

⁴² See Chapter 8.8 below.

⁴³ Shiner, R A 2012, *Inquiry Transcript of Evidence*, 18 June, p.3642.

⁴⁴ Stephens, K R 2012, *Inquiry Transcript of Evidence*, 20 February, pp.19,30.

⁴⁵ Parker, I G 2012, *Inquiry Transcript of Evidence*, 21 February, p.96.

⁴⁶ *ibid*, 21 February, p.96.

The evidence establishes that Dennis McKenna would frequently:

- take photographs of boys while they were naked in the showers⁴⁷
- enter the shower area to speak to them and pass on messages⁴⁸
- stand and watch boys while purportedly timing the period that each student spent under the shower⁴⁹
- stand and watch particular boys in the shower and openly comment on their bodies and the size of their penis.⁵⁰

One student recalls that these activities occurred on almost a daily basis, while others say that they happened “quite often”.⁵¹

The photographs were taken with an instamatic polaroid camera and the images produced were kept in a photo album in Dennis McKenna’s office. This type of camera did not require film to be developed and therefore McKenna was able to avoid the risk that outsiders might become aware of this activity.⁵²

8.7 Alcohol, movies and pornography

There is evidence that McKenna sometimes provided his victims with alcohol as a prelude to them being sexually abused.

According to Mr Stephens during 1976 McKenna often provided him with scotch and beer in his flat once all other students had gone to bed and were asleep. It was after Mr Stephens had drunk the alcohol that he would be sexually abused.⁵³

It was also in about 1976 that Livia Bentley was told of boys drinking alcohol and staying up late watching television in McKenna’s flat.⁵⁴ Michael Hilder who was a student at the Hostel between 1978 and 1982 was often supplied with alcohol while with groups of boys in McKenna’s flat.⁵⁵ Mr Hilder has also described a trip to Perth when McKenna purchased a bottle of scotch for him and another boy to drink on the return journey.⁵⁶

Bruce Carmichael has testified that in the early 1980s his daughter reported to him that alcohol was being provided to boys while they watched “late night... pornographic films” with McKenna.⁵⁷ It was also during the early 1980s that “S” was plied with alcohol and

⁴⁷ Hilder, M F 2012, *Inquiry Transcript of Evidence*, 21 February, p.129.

⁴⁸ Stephens, K L 2012, *Inquiry Transcript of Evidence*, 20 February, p.25.

⁴⁹ Parker, I G 2012, *Inquiry Transcript of Evidence*, 21 February, p.96.

⁵⁰ Hilder, M F 2012, *Inquiry Transcript of Evidence*, 21 February, p.129.

⁵¹ Stephens, K R 2012, *Inquiry Transcript of Evidence*, 20 February, p.25; Hilder, M F 2012, *Inquiry Transcript of Evidence*, 21 February, p.129.

⁵² Hilder, M F 2012, *Inquiry Transcript of Evidence*, 21 February, p.129.

⁵³ Stephens, K R 2012, *Inquiry Transcript of Evidence*, 20 February, pp.22, 23.

⁵⁴ Bentley, L 2012, *Inquiry Transcript of Evidence*, 20 February, p.55.

⁵⁵ Hilder, M F 2012, *Inquiry of Transcript of Evidence*, 21 February, p.122.

⁵⁶ Ibid, pp.124-126.

⁵⁷ Carmichael, B D 2012, *Inquiry Transcript of Evidence*, 28 February, p.608.

shown movies before being sexually abused by McKenna.⁵⁸ The victim who spoke to Maggie Dawkins in 1985 was another former Hostel student who complained of being given alcohol before being sexually abused.⁵⁹

There is clear evidence that with the availability of VHS technology from the early 1980s, Dennis McKenna regularly used this medium to show boys pornographic movies in his flat. Young teenage boys were easily enticed into this activity and it was part of McKenna's grooming behaviour to sexually arouse them in this way. The X rated movies were in three categories:

1. Cartoon or animated movies of a pornographic nature.⁶⁰
2. Movies depicting a range of sexual activities between adults.⁶¹
3. Violent bestiality pornographic movies.⁶²

The evidence also suggests that there may have been some selectivity in the type of pornographic movies that McKenna showed to particular students. For example, "S", who was a 14 year old in Year 9, can only recall that (other than horror movies) he was shown cartoon or animated pornographic movies.⁶³ However other students introduced to pornography in this way were shown movies depicting adult sexual acts.⁶⁴

8.8 Threats, allegations of stealing and expulsions

McKenna regularly intimidated students and ensured that they complied with his wishes by telling them of his influence with the Authority and the Hostel board. He would quite often boast that he "had enough influence with the Authority to have wardens at other hostels removed". He also sometimes said to a student that "if I expel you from here I can make very, very certain that you do not go to another state run hostel".⁶⁵ For students from families who could not afford a boarding school at Perth, this was a very potent threat. For them, any expulsion would raise the prospect that they might not be able to complete their secondary education.

A particular example of the way in which McKenna would use the threat of expulsion to control student behaviour has come from Ian Parker. Mr Parker recalls an occasion after lights out when he and another boy were discussing the questionable manner in which McKenna was handling Hostel finances. McKenna crept into the dormitory to listen in to this conversation and then suddenly "popped his head around the corner". He told the two boys that they "would have some explaining to do".

⁵⁸ 'S' 2012, *Inquiry Transcript of Evidence*, 19 March, pp.932-934.

⁵⁹ Dawkins, M A 2012, *Inquiry Transcript of Evidence*, 23 February, p.251.

⁶⁰ 'S' 2012, *Inquiry Transcript of Evidence*, 19 March, p.931.

⁶¹ Hilder, M F 2012, *Inquiry Transcript of Evidence*, 21 February, p.122.

⁶² Moore, R K 2012, *Inquiry Transcript of Evidence*, 24 February, p.413; Jolley, J, 2012, *Inquiry Transcript of Evidence*, 27 February, p.498.

⁶³ "Shame of the Jungle", "Fritz the Cat" and "The case of the Smiling Stiff".

⁶⁴ Michael Hilder recalls being shown "Deep Throat" and "Debbie does Dallas" (Hilder, M F 2012, *Inquiry Transcript of Evidence*, 21 February, p.122).

⁶⁵ Parker, I G 2012, *Inquiry Transcript of Evidence*, 21 February, p.82.

On the following morning when the other students went off to school, Mr Parker had to remain behind so that he could be chastised by McKenna. He was told that he had been “bitching” and “white anting” and he was threatened with expulsion.⁶⁶ According to Mr Parker other students had been expelled by McKenna “for things like what he used to term “bitching”, which is spreading discontent or complaining. There were [also] a number of people that were expelled for stealing or, you know, offences that seemed out of character with those people”.⁶⁷

McKenna also used the threat of expulsion as a means of ensuring that his victims did not complain about their sexual abuse. An example was the 14 year old boy “S” who was a Ward of the State and had no home to return to while his foster parents were overseas. Prior to each visit to the Hostel by “S’s” case officer, McKenna would warn him to the effect “Just remember, you have nowhere else to go”.⁶⁸

Although it was the Board which had the power to expel students the Inquiry is aware of only one instance where it did not do McKenna’s bidding in this regard.⁶⁹ McKenna had the power to suspend students, and it would seem that once this occurred, expulsion was more or less automatic. As early as 1977 a complaint by one of McKenna’s victims to the Head Prefect that he had been sexually abused resulted in his immediate expulsion.⁷⁰

Nevertheless not even McKenna could have someone expelled without a purported reason, and the common reason given was a fabricated assertion that the student had been caught stealing.⁷¹ Regardless of the reason, these expulsions happened fairly frequently and often very suddenly. The expelled student was sometimes driven home the same day, or alternatively told to pack his bags and wait at the front door to be collected by his parents.⁷²

For many of these students their expulsion was the end of their secondary education.⁷³ Consequently McKenna was able to use his power of expulsion as a very potent means of control.

8.9 Conclusion

The evidence shows that Dennis McKenna ruled St Andrew’s Hostel with an iron fist, and that he played favourites with some selected students while at the same time targeting others for vilification. He was able to orchestrate campaigns to humiliate particular students with impunity.

Favoured students, predominantly boys, were granted privileges including visits to McKenna’s flat after lights out when they would be allowed to watch television and be

⁶⁶ *ibid*, pp.93-94.

⁶⁷ Parker, I G 2012, *Inquiry Transcript of Evidence*, 21 February, pp.105-106.

⁶⁸ “S” 2012, *Inquiry Transcript of Evidence*, 19 March, p.930.

⁶⁹ Deborah Wallwork (See Chapter 11.14).

⁷⁰ See Chapter 11.3.

⁷¹ Hilder M F, 2012, *Inquiry Transcript of Evidence*, 21 February, p.131;; Groves B J, 2012, *Inquiry Transcript of Evidence*, 1 March, p.666;; Parks, A H, 2012 *Inquiry Transcript of Evidence*, 10 April, p.1407;; Stephens, L O K, 2012, *Inquiry Transcript of Evidence*, 9 May, p.2867-8;; “S” Chapter 11.7.

⁷² Parker, I G 2012, *Inquiry Transcript of Evidence*, 21 February, pp.105-6, Chapter 11.3.

⁷³ Parker, I G 2012, *Inquiry Transcript of Evidence*, 21 February, p.82, 103.

treated to free cool drinks and lollies taken from the canteen. So began the grooming of groups of boys from which he ultimately selected those to be sexually abused.

McKenna's favoured students were also allowed access to alcohol, and with his purchase of a VCR in the early 1980s they were permitted to watch videos after hours in his flat. Sometimes pornographic movies were shown for the purpose of further grooming and sexually arousing the boys.

Dennis McKenna also controlled student behaviour within the Hostel in ways which reduced the risk of any complaint or reporting of his sexual misconduct. He made boasts and threats of his ability to expel students and to ensure that they could not be re-enrolled. He also restricted telephone calls to parents and friends, and opened students' mail. Friendships with "townies" were not tolerated.

This mixed environment of intimidation and favouritism within the Hostel was one of the significant contributing factors which enabled McKenna to evade justice for his crimes for a period of 15 years.

9. Grooming the community

Rosemary Cant (a clinical psychologist and specialist in the area of child sexual abuse) has provided the Inquiry with expert evidence on the subject of grooming behaviour by paedophiles. Mrs Cant has defined grooming as:

“process by which a person prepares a child, significant adults and the environment for the abuse of this child. Specific goals include gaining access to the child, gaining the child’s compliance, and maintaining the child’s secrecy to avoid disclosure. This process serves to strengthen the offender’s pattern of abuse as it may be used as a means of justifying or denying their actions.”¹

Mrs Cant described three types of grooming being:

1. Grooming the environment.
2. Grooming of significant others.
3. Self-grooming.

Mrs Cant explained that even very respectable members of the community can sexually abuse children, and that those who have these tendencies seek situations where they will have access to children. This type of behaviour is defined as institutional grooming where they find their way into an institution and groom that organisation to accept them in a positive light (so that they can gain access to children and also safeguard themselves against complaints).²

McKenna was able to find his way into the position of Warden at the St Andrew's Hostel and be accommodated within the Hostel in a situation which gave him ready access to young students overnight with little risk of being discovered by other adults. This situation left the children absolutely vulnerable and as Mrs Cant has noted was akin to a *fox guarding a hen house*. Mrs Cant has also pointed out that in circumstances where independent adult scrutiny of McKenna's behaviour was eliminated because of key staffing positions being held by his relatives then there was nowhere the children could go within the institution to complain.³

9.1 Volunteer work by students for the elderly

During his time as Warden, McKenna promoted and in some cases forced, the Hostel students to engage in community activities including voluntary work. He organised the students to visit the elderly, and specifically widows who had lost their partners. The students were required to spend time with these elderly people chatting over cups of tea and attending to household chores such as mowing lawns and tidying gardens. This

¹ 2012, *Inquiry Transcript of Evidence*, p. 866. Craven 2006, *Sexual Grooming of Children: Review of Literature and Theoretical Considerations*, Journal of Sexual Aggression.

² 2012, *Inquiry Transcript of Evidence*, p. 868-869.

³ *ibid*, p. 870.

voluntary service by Hostel students for elderly members of the community was a deliberate strategy by McKenna to improve the Hostel's reputation in the Katanning community.⁴

McKenna also used the Hostel to host pensioner functions including four course dinners combined with entertainment provided by students. McKenna later sent circulars to the parents of the students stating: "You would have been proud to witness your children working and getting pleasure out of doing their part in something for the oldies".⁵

9.2 Community activities

Throughout McKenna's reign as Warden he involved Hostel students in a wide range of voluntary community activities, including:

- doorknocking for the Red Shield Appeal⁶
- cleaning the verge of the Great Southern Highway for The Keep Australia Beautiful Council⁷
- operating stalls at the Katanning Show⁸
- conducting the St Andrew's Annual Fete⁹
- tree planting for desalination¹⁰
- picking up sticks and rocks on farms¹¹
- conducting street stalls and raffles¹²
- cleaning up the showgrounds of the Katanning Agriculture Society¹³
- litter drives¹⁴
- rubbish collection from Katanning road verges¹⁵
- helping meals on Wheels.¹⁶
- fundraising for the Freedom from Hunger Campaign¹⁷

⁴ Stephens K R 2012, *Inquiry Transcript of Evidence*, p. 20.

⁵ McKenna D J, *Katanning Parents Circular*, 23 March 1979, p. 1; McKenna D J, *Warden Report*, 10 September 1980.

⁶ McKenna D J, *Warden Report*, 16 July 1980.

⁷ McKenna D J, *Warden Report*, 16 April 1980. Brown J A *Inquiry Transcript of Evidence*, p. 386.

⁸ McKenna D J, *Warden Report*, 17 October 1979.

⁹ Parker I G *Inquiry Transcript of Evidence*, p. 91.

¹⁰ Brown J A *Inquiry Transcript of Evidence*, p. 386; Great Southern Herald 1985 *Beautifying Dam Area*, 24 July, p. 1.

¹¹ Stephens K R *Inquiry Transcript of Evidence*, p. 20.

¹² *ibid.*

¹³ McKenna D J, *Warden Report*, 19 November 1980.

¹⁴ McKenna D J, *Warden Report*, 21 July 1982; Great Southern Herald 1987 *Student litter drive*, 21 October, p.5.

¹⁵ Great Southern Herald 1988 *Student's record rubbish haul*, 9 March, p.16.

¹⁶ St Andrews Hostel Annual Magazine, 1988, p. 4.

¹⁷ *ibid.*

- Hospital visits and fundraising for donations.¹⁸

Kevin Brown, a Hostel student between 1979 and 1983, has testified that McKenna developed a close relationship with the police in Katanning. This resulted in arrangements for police cadets stationed at Katanning to be boarded at the Hostel and for them to act as part-time supervisors during evenings and on weekends.¹⁹

McKenna was highly successful with these endeavours to ingratiate the Hostel (and more importantly himself) with the local community. A story in a local newspaper in April 1977 reported that the then Premier Sir Charles Court had opened a plant nursery at the Hostel. This article quoted the Premier as saying that the Hostel students had set “a fine example of young people doing something for themselves and earning their own money to better their amenities instead of asking the government for handouts.” The article went on to quote the Premier as stating that McKenna “had been able to enthuse the students magnificently”, and that “it was largely due to his commitment to the welfare and spiritual needs of the students that the Hostel had achieved so much”.²⁰

McKenna gained that very favourable local publicity less than 15 months after becoming the Hostel's Warden. Virtually overnight he had become the toast of Katanning for his untiring efforts and seemingly good intentions to make the lives of his students more productive and enjoyable.

9.3 Sport

The Hostel boarders were also provided with the opportunity to participate in structured sporting competitions, including:

- football²¹
- netball²²
- basketball²³
- inter-Hostel sporting carnivals²⁴
- squash.²⁵

Archery, canoeing, cycling, indoor hockey, cricket, tennis, golf, badminton and volleyball were also available sometimes to Hostel students.²⁶

¹⁸ *ibid.* Great Southern Herald 1985 *Students work for hospital*, 3 April, page 2. Great Southern Herald 1989 *Hostel students demonstrate their concern*, 12 April, page 22. Unknown Newspaper 1979 *St Andrew's Speech Night*, 7 December, page unknown.

¹⁹ *Inquiry Transcript of Evidence*, p. 73. Todd W A *Inquiry Transcript of Evidence*, p. 1093. St Andrew's Hostel Katanning Minutes of Board Meeting, 15 July 1981.

²⁰ Unknown newspaper *Sir Charles Court visits St. Andrew's Hostel, Katanning*, unknown date and page.

²¹ McKenna D J, *Warden Report*, 17 October 1979.

²² *ibid.*

²³ *ibid.*

²⁴ *ibid.*

²⁵ McKenna D J, *Warden Report*, 17 September 1980.

²⁶ *ibid.*

McKenna personally involved himself in these sporting activities by coaching, performing administrative tasks and transporting the players to games in the local community and throughout the State.²⁷

9.4 Improvement in Hostel facilities

Prior to McKenna becoming Warden, the Hostel had limited facilities. However, between 1975 and 1990 he was responsible for dramatic improvements in this regard. The new facilities included:

- a theatrette²⁸
- a coffee shop²⁹
- an 8 person sauna
- a swimming pool³⁰
- a gymnasium
- a nursery
- a Nissen Hut with a modular stereogram
- a roller skating rink
- an indoor cricket area
- new recreational facilities for badminton, disco, pool, table tennis, table soccer, darts, television, radiogram, piano and reading
- buses used for sporting events, outings and camping trips.³¹

From the local community's perspective these were remarkable additions to the Hostel which would attract more students and improve its economic viability as well as benefit the town.

Ian Parker, a Hostel student in 1977 and 1978, has described the circumstances surrounding the establishment of a nursery within the Hostel grounds. The nursery was a business enterprise set up by the Hostel staff and built by the Hostel students. According to Mr Parker "a tractor and a plough were sourced from a local farmer, and an area of the Hostel grounds was ploughed up and planted to bulbs to produce commercially flowers and bulbs for sale." McKenna and other Hostel staff also made frequent trips to wholesale nurseries in Perth to buy plants for resale. The nursery was staffed by students and was open to the general public on weekends for the purchase of plants.³²

²⁷ St Andrews Hostel Annual Magazine, 1987, p. 18.

²⁸ McKenna D J, *Warden Report*, 16 July 1980. Great Southern Herald *St Andrews theatre*, 8 June, p.8.

²⁹ McKenna D J, *Warden Report*, 16 July 1980; Unknown Newspaper 1985 *St Andrew's in show business*, 21 August, page unknown.

³⁰ Unknown Newspaper 1979 *St Andrew's Speech Night*, 7 December, page unknown.

³¹ The Great Southern Herald 1988 *Huey joins Dewey and Louie*, 29 June, page 4.

³² *Inquiry Transcript of Evidence*, p. 91.

During the first seven years of McKenna's time as Warden, the students purportedly raised more than \$70,000 (increasing to \$100,000 after ten years) for improvements to the Hostel and surrounding buildings. In that time the Hostel's acquisitions included two buses, two televisions, a video machine, organ, café bar, carpets, curtains, pot plants, paintings, tents, canoes and a \$10,000 swimming pool. A recreation shed was also built with a grant from the Country High School Hostels Authority.³³

McKenna continually requested, proposed and undertook capital works projects. Funding came from various sources including student fundraising, parent donations³⁴, local businesses and government grants. These capital works projects include two new lounge rooms, a kitchen renovation, a new toilet/shower block, air conditioning, dormitory and laundry extensions, new recreation areas, improved facilities in staff flats, and a bus shed.³⁵

In 1988, a Parliamentary Committee reviewed the Authority and later stated in its Report that "Katanning's Hostel is a magnificent example of self-help, with many of the facilities being the result of the initiative of the warden and students (an example being the very well set out cinema which serves as a community entertainment facility)."³⁶

The numbers of students attending the Hostel increased from 61 in 1976³⁷ to a peak of 141³⁸ in 1989. From 1978 until 1988 this increase was nearly 55% which was the largest increase amongst the nine government run Hostels at the time. The Hostel was also one of only two Hostels in 1988 that were at or very near to maximum capacity.³⁹

9.5 Use of Hostel facilities by the public

In 1980 the Student Hostels Association of WA held its Annual Conference at the Hostel. The program for the conference stated that "St Andrew's has a theatrette, coffee shop and a 8 people (sic) sauna which has all been constructed by our students, and are all available for your enjoyment".⁴⁰ The theatrette and coffee shop were officially opened by Mr Colin Philpott, Chair of the Country High School Hostels Authority, in September 1980.⁴¹

The Hostel recreational facilities were frequently used by members of the public and various clubs and associations. In addition, the Hostel was also used for such things as:

- weddings⁴²

³³ Peacock, J 1982, Unknown newspaper *St Andrews: They're proud of their happy home*, 22 September, page unknown. Fraser P, 1985, Great Southern Herald *Honour for St Andrew's*, 24 October, p.1.

³⁴ The Great Southern Herald 1988 *Huey joins Dewey and Louie*, 29 June, page 4.

³⁵ The Great Southern Herald 1981 *Extensions under way*, 14 May, page unknown. Unknown newspaper 1982 *He's got a room with a view*, 25 August, page unknown.

³⁶ Standing Committee on Government Agencies, Western Australia, Legislative Assembly, 1988 *Twentieth Report – A Review of the Country High School Hostels Authority*, 20 September, p.37.

³⁷ Beechan, A, 1984 Investigation into Country High School Hostels provided by State of Western Australia.

³⁸ McKenna D J, *Warden Report*, 3 March 1989.

³⁹ Standing Committee on Government Agencies, Western Australia, Legislative Assembly, 1988 *Twentieth Report – A Review of the Country High School Hostels Authority*, 20 September, p.25.

⁴⁰ Annual Conference Programme, 1980

⁴¹ McKenna D J, *Warden Report*, 16 July 1980.

⁴² McKenna D J, *Warden Report*, 20 March 1980.

- conferences⁴³
- meetings⁴⁴
- dinners⁴⁵
- catering⁴⁶
- overnight accommodation during trips from Perth to Albany⁴⁷
- school reunions⁴⁸
- state conventions⁴⁹
- sporting camps
- seminars⁵⁰
- P&C Quiz nights⁵¹
- Miss Australia entrant concert⁵²
- church services and plays⁵³
- fashion parades⁵⁴
- youth activities that included discos, roller skating, indoor sports, youth clubs and use of the theatre and coffee shop.⁵⁵

These events were all catered for by the Hostel and students would act as waiters at large functions for up to hundreds of people.

In 1985 the Hostel also leased its Kartanup premises (which was a former convent) to the State Government's Westrek project, and in 1987 this building became an annex to provide additional accommodation for Hostel students.⁵⁶

⁴³ McKenna D J, *Warden Report*, 16 April 1980.

⁴⁴ McKenna D J, *Warden Report*, November 1979.

⁴⁵ McKenna D J, *Warden Report*, 17 October 1979; McKenna D J, *Warden Report*, 19 August 1981.

⁴⁶ McKenna D J, *Warden Report*, 17 October 1979.

⁴⁷ McKenna D J, *Warden Report*, 19 September 1979.

⁴⁸ Evans A V, *Inquiry Transcript of Evidence*, p. 1672

⁴⁹ St Andrews Hostel Katanning Board Minutes, 20 July 1983.

⁵⁰ McKenna D J, *Warden Report*, 17 September 1980.

McKenna D J, *Warden Report*, 24 April 1982.

⁵¹ McKenna D J, *Warden Report*, 17 March 1982.

⁵² McKenna D J, *Warden Report*, 24 April 1982.

⁵³ *ibid.*

⁵⁴ The Great Southern Herald 1988 *Cavalcade of Fashion*, 21 September, page 5.

⁵⁵ The Great Southern Herald 1985 *New Dimensions for hostel*, 27 February, page 3. The Great Southern Herald 1985 *Providing Place for Katanning's youth*, 24 April, page 8.

⁵⁶ St Andrews Hostel Katanning Board Minutes, 21 August 1985. The Great Southern Herald 1987 *Reidy House to cater for 25*, 4 February page 9.

Sharon Parker was a student at the Hostel during 1983 and 1984. Ms Parker has testified with regard to students volunteering their time:

*"You felt obliged to participate in fundraising because again if you were not seen to be doing these things then, you know, you were not being loyal and worshipping him enough and stuff. So I participated in some. I also did not participate in others but then suffered the consequences. But at the time that I was at the Hostel he was quite advanced in his fundraising, so he was doing weddings and things like that. So the students would, under supervision, I guess cook the food but also deliver it, serve it up to people and things. But at the time that I was there also, you know, I remember other young kids every morning got up at 6 o'clock, ridiculous early times, and they would clean. They would vacuum the corridors and go down to the kitchen and scrub the floor and they were doing it because this was a way of gaining favour with Dennis and I'm really just saying that to give an example of how I guess it's sort of extreme. That people thought this was normal that 15 year old or 13 year old kids should get up at 6 o'clock in the morning and just clean."*⁵⁷

9.6 Patronage of particular stores

In 1990 following a disagreement with a shop owner in the Katanning Plaza Shopping Complex McKenna wrote informing him that he would no longer benefit from any business from the Hostel or from the 135 families associated with it.⁵⁸ This type of behaviour was consistent with his regular encouragement of Hostel students to attend particular shops in the town, mainly the BKW Co-operative and the chemist.⁵⁹

Mr Parker has stated that:

*"There were two other businesses in town that Dennis McKenna and his family had either direct involvement in or partial involvement in. One was a fruit and veggie store that was opened up in one of the streets in Katanning, and plants from the nursery were part of the stock that was sold down there along with some of the cut flowers from the gladioli. They were sold there. In the town, Wagin, which is 50 kilometres away, the warden had leased a building there as well, which had been a panel beater's workshop, and Hostel students went to that, cleaned it out, and basically set it up, and it was retailing plants, and I'm not sure what else - whether fruit and veg was going through as well, but certainly the students were involved in the set-up and the running of these businesses, and the staffing of them as well."*⁶⁰

Graeme Norrish has been an employee of BKW Co-operative since 1977 and its Manager since 1987. He has confirmed that McKenna was friendly with the previous Manager, Len Wilkinson who was the Chairman of the Hostel Board. He has also stated that McKenna was a frequent visitor to the shop with students from the Hostel.⁶¹

⁵⁷ *Inquiry Transcript of Evidence*, p. 186

⁵⁸ Letter dated 1 August 1990.

⁵⁹ Edwards T M *Inquiry Transcript of Evidence*, p. 695.

⁶⁰ *Inquiry Transcript of Evidence*, p. 92.

⁶¹ Statement, 27 April 2012.

9.7 Economic benefits of the Hostel to the town

Peter Potter, a farmer who was once involved in the scout movement, has testified that when McKenna became Warden he seemed to keep the students at the Hostel on weekends and also encouraged parents to stay away. This had a negative impact on businesses in town as previously parents had done their weekly shopping in Katanning while picking up and dropping off their children each weekend.⁶² Mr Potter has also stated that following McKenna's convictions in 1991 the numbers of students attending the Hostel declined and farming families sent their children to board in Perth. Many of these students schooled in Perth did not return to the community to work on the land and consequently the Great Southern has probably lost two generations.⁶³

Councillor Ainslie Evans, a Shire Councillor since 1983 has expressed a slightly different view. According to her the economic benefits of a large and successful Hostel in the town were considerable and the town was appreciative of that. She attributes the success of the Hostel in large measure to McKenna.⁶⁴

9.8 Accolades for Dennis McKenna

McKenna became the Katanning Citizen of the Year in 1984, and received the award for "his significant contribution to the Katanning community".⁶⁵

Mrs Evans states that this award was for McKenna's work in involving the Hostel students in various community activities. (The Citizen of the Year award is conferred by the Premier and is an annual event for local government entities. Advertisements are placed in newspapers requesting that nominations be sent to the local Shire Council. A Committee then considers these nominations and makes a recommendation to the Shire Council which is usually accepted).⁶⁶

McKenna's name was not removed from the Katanning Citizen of Year Honorary Notice Board until 2012. Mrs Evans has stated that "people from the public wrote to the Shire and asked for it (McKenna's name) to be removed, and it was the vote at Shire Council that it be removed".⁶⁷ Mrs Evans also maintains that McKenna was responsible for the Hostel regaining a good reputation.⁶⁸

A newspaper article in 1982 stated that "It is hard to believe that seven years ago St Andrews had only 39 students and was on the verge of closing. Its reputation among the townspeople was somewhat less than favourable. Today, all 110 of its beds are filled and there is a two year waiting list. Businessmen, teachers and townspeople speak highly not only of the Hostel, but also of the students that live there."⁶⁹

⁶² *Inquiry Transcript of Evidence*, p. 3606.

⁶³ *ibid*, p. 3611.

⁶⁴ *ibid*, p. 1673.

⁶⁵ Unknown newspaper 1984 *Katanning's top citizens*, 1 February, page unknown.

⁶⁶ *Inquiry Transcript of Evidence*, p. 1669-1671.

⁶⁷ *ibid*, p. 1668.

⁶⁸ Evans A V 2012, *Inquiry Transcript of Evidence*, p. 1671.

⁶⁹ Unknown newspaper 1982 *St Andrews: They're proud of their happy home*, 22 September, page unknown.

In 1982 the Hostel Board also received correspondence from the Minister of Education congratulating the Warden on the standard of the Hostel.⁷⁰ In 1985 the Hostel received an award from the Federal Minister for Education for its “outstanding community involvement which was fostered by its warden, Dennis McKenna.”⁷¹

By 1986 the Hostel had a waiting list of prospective boarders who wished to make bookings up until 1995. That same year the “Great Southern Herald” described the Hostel as “one of the best Hostels in the State and one that ten years prior was not worth mentioning.”⁷²

In 1988 an Upper House Committee report examining the Country High School Hostels Authority named the Hostel as the “State’s leader in supervisor training and the provision of top quality recreation facilities.” This report also stated that McKenna’s work over the previous 13 years was widely acknowledged as contributing to the Hostel’s success.⁷³

The evidence also shows that McKenna constantly sought favourable publicity from the local newspaper the “Great Southern Herald”. He did this by feeding it stories about the good things the Hostel students were doing such as catering for functions and fundraising.⁷⁴

However Mr Parker has stated in his submission to the Inquiry that the Hostel’s “spectacular success” must be viewed in another context and should not be entirely attributed to McKenna:

“the truth is completely different; Katanning High School Hostel achieved full capacity due to an accident of demographics more than any other factor. The influx of hundreds of young families with similar economic backgrounds who required their children to be available to assist in farming operations over weekends and holidays, into the Katanning Hostel’s catchment area, assured that the facility would rapidly reach capacity as those children reached high school age. A change to the minimum age for school leavers prolonged the growth, albeit for a short period of time. During the 1990’s, numbers of young people began to decline across the region as a generation was subject to socio-economic drift and the retention of facilities both educational and sporting became increasingly difficult.”⁷⁵

9.9 Conclusion

It is Mrs Cant’s opinion that McKenna was very good at grooming the community. He lifted the reputation of the Hostel by increasing enrolments, involving the students in community service, and organising fundraising activities for facilities at the Hostel which brought accolades upon himself.⁷⁶

Mrs Cant has also referred to a 2006 textbook ‘The Socially Skilled Child Molester: Differentiating the Guilty from the Falsely Accused’ which states:

⁷⁰ St Andrews Hostel Katanning Board Minutes, 8 December 1982.

⁷¹ Fraser P, 1985, Great Southern Herald *Honour for St Andrew’s*, 24 October, p.1.

⁷² The Great Southern Herald 1986 *Waiting list to join St Andrew’s happy family*, 7 May, page unknown.

⁷³ Fraser P, 1988, Great Southern Herald *St Andrew’s the State’s Top Hostel*, 19 October, p.1.

⁷⁴ Brokenshire S J *Inquiry Transcript of Evidence*, p. 1345.

⁷⁵ Parker I G, *Submission Child Abuse in Boarding Schools*, undated.

⁷⁶ *Inquiry Transcript of Evidence*, p. 873.

“child molesters groom the parents, school, church, clubs or any other organisations where children congregate into accepting them as upstanding in the community. These child molesters are known, loved, trusted or possibly feared, and their conduct is unfortunately assumed to be above reproach. As a result these offenders obtain continued free access to the victims by the very adults responsible for the protection of children... their skill of efforts often result in a variety of public accolades, including awards such as Man of the Year, Volunteer of the Year and Teacher of the Year; expressions of community gratitude for their good works.”⁷⁷

This description of the typical characteristics of a skilled and sophisticated child molester is clearly a very good fit for McKenna. Quite obviously he achieved all that he set out to achieve by his grooming of the Katanning community.

⁷⁷ *ibid*, p. 874.

10. The credibility of witnesses generally

This Inquiry has heard from a total of 149 witnesses, 64 of whom gave evidence about mostly non-controversial (or less controversial) matters and had their statements read into the transcript. The remaining 85 witnesses have given oral evidence which to a greater or lesser degree concerns matters about which other witnesses disagree. The evidence generally covers a wide variety of different incidents spanning the 15 year period between 1975 and 1990.

In the many instances where two or more witnesses differ as to a particular issue of fact this can be due to a number of factors. It may be that one or more of them is unwilling to be honest because it is not in the interest of that witness to tell the truth of what happened. More often, the differences in the evidence will be attributable to the poor memories of witnesses. Nearly every witness has experienced problems with accurately recollecting events which occurred so long ago. Particularly with peripheral matters (such as dates, times of day, the precise words used in a conversation) it would be a very rare witness who is capable of a completely reliable and accurate account of an event which happened more than 22 years ago.

Over the past few decades there have been numerous scientific studies into the reliability of human memory of events which occurred a long time previously. In 2008 the Research Board of the British Psychological Society prepared a summary of these scientific studies for the purpose of assisting all participants in the justice system. It also issued some "Guidelines on Memory and the Law" containing certain "key points" which included the following:

"Key points"

- i. ***Memories are records of people's experiences of events and are not a record of the events themselves.*** In this respect, they are unlike other recording media such as videos or audio recordings, to which they should not be compared.
- ii. ***Memory is not only of experienced events but it is also of the knowledge of a person's life, ie schools, occupations, holidays, friends, homes, achievements, failures, etc.*** As a general rule memory is more likely to be accurate when it is of the knowledge of a person's life than when it is of specific experienced events.
- iii. ***Remembering is a constructive process.*** Memories are mental constructions that bring together different types of knowledge in an act of remembering. As a consequence, memory is prone to error and is easily influenced by the recall environment, including police interviews and cross-examination in court.
- iv. ***Memories for experienced events are always incomplete.*** Memories are time-compressed fragmentary records of experience. Any account of a memory will feature forgotten details and gaps, and this must not be taken as

any sort of indicator of accuracy. Accounts of memories that do not feature forgetting and gaps are highly unusual.

- v. ***Memories typically contain only a few highly specific details.*** Detailed recollection of the specific time and date of experiences is normally poor, as is highly specific information such as the precise recall of spoken conversations. As a general rule, a high degree of very specific detail in a long-term memory is unusual.
- vi. ***Recall of a single or several highly specific details does not guarantee that a memory is accurate or even that it actually occurred.*** In general, the only way to establish the truth of a memory is with independent corroborating evidence.
- vii. ***The content of memories arises from an individual's comprehension of an experience, both conscious and non-conscious.*** This content can be further modified and changed by subsequent recall.
- viii. ***People can remember events that they have not in reality experienced.*** This does not necessarily entail deliberate deception. For example, an event that was imagined, was a blend of a number of different events, or that makes personal sense for some other reason, can come to be genuinely experienced as a memory, ***(these are often referred to as "confabulations")***.¹

These "key points" resonate with my own experiences (as a Counsel and then a Judge) in respect of countless witnesses over many years, and provide a helpful framework within which to consider the reliability of the evidence from particular individuals. I consider key points vii and viii to be particularly significant in the circumstances of the present Inquiry where many witnesses have had cause to reflect on relevant events on a number of occasions over the intervening years.

During 1990 and 1991 nearly all of the witnesses who played a role in the events the subject of this Inquiry had cause to repeatedly remember what happened as a result of Dennis McKenna being charged, going to trial, and then being sentenced for his first set of convictions. These witnesses had further cause to reflect on the relevant events in the course of 2010 when McKenna was again arrested, charged and sentenced for his second set of convictions. There were yet further occasions when they would have recollected the relevant events as a result of the publicity surrounding the present Inquiry, being contacted and questioned by the investigators, and then being summonsed to appear as witnesses.

Each time that an event is remembered it is possible for the memory of it to be subtly and subconsciously modified. Over a lengthy period of time that memory can significantly change, and from my own experience with the justice system it will usually change in a way which favours the self-esteem and self-image of the individual who is remembering the particular event. For these reasons it is possible for a witness to give an honest account of a long distant event in which he or she was intimately involved, but still be completely wrong about what happened.

¹ The British Psychological Society, 2008, *Guidelines on Memory and the Law: A report from the Research board*, United Kingdom, p 2.

Nevertheless, a witness is more likely to retain an accurate recollection of the substance of an event than about matters of detail. The recollection is also more likely to be reliable if the event had a traumatic impact at the time it happened, was a unique experience, or occurred on some memorable occasion. (For example most people can remember where they were and what they were doing when they first learned that Princess Diana had died, or when the World Trade Centre was attacked).

In the end, and in relation to the evidence of each witness at this Inquiry, I have had to assess whether that witness did his or her best to tell the truth, and if so, to what extent I can accept the evidence as being accurate and reliable. These assessments of the truthfulness and accuracy of any evidence are not necessarily mutually exclusive and in some instances I have come to the conclusion that a witness' evidence is unreliable without being certain of the cause.

Some witnesses whose credibility is in issue enjoy high reputations in the community for the good work they have done in the past (and in some instances continue to perform). Some also have received honours or awards for their service to the community. Obviously I should have regard to the past good reputation of a witness when deciding whether to accept that he or she is being truthful. However, that past reputation cannot be determinative of the question of whether or not their evidence is reliable. In the end, my findings must be based upon the facts as established by the evidence overall and irrespective of any particular witness' past reputation.

Given the nature of the events the subject of this Inquiry, as well as the particular people involved, it is inevitable that my findings will damage the reputations of some individuals. That is an unavoidable consequence of revealing the truth of what happened. In that regard, my role as Special Inquirer is not to judge the character of any particular witness, but to establish the true facts of the matters encompassed within my terms of reference. Although the truth can hurt, it needs to be remembered that all humans are capable of mistakes. Even very good people can make very serious mistakes.

During the period which elapsed between 1975 and 1990 there were numerous incidents or episodes when public officials or other individuals were, might, or should have become aware of the possibility of sexual abuse occurring at St Andrew's Hostel. In the following Chapters 11.1 to 11.20 I set out each of these incidents in approximate chronological order by summarising the evidence and making the relevant findings of fact. Nearly all of these incidents were missed opportunities to have the ongoing offending of Dennis McKenna brought to an end.²

In Chapter 11.21 I deal with an incident of similar importance which was relevant to the offending of Neil McKenna. Chapter 12 sets out the evidence and findings in respect of allegations made to public officials in the mid-1970s concerning sexual abuse which was occurring at St Christopher's Hostel in Northam. Chapter 13 addresses the issues arising from the handling of similar allegations of sexual abuse at Adamson House in Northam, Hardie House in South Hedland, and at the Narrogin Hostel. Finally, Chapters 14 and 15 relate to findings generally in respect of St Andrew's Hostel and the Country High School Hostels Authority.

² Transcript referencing in subsequent pages relating to missed opportunities and findings are intentionally in-text to assist with cross referencing of the Inquiry Transcripts of Evidence. All other referencing is by footnote for full identification.

11.1 1976 Peter Potter: The first person to do something

In 1967 Peter Potter moved with his family from Victoria to a farm near Katanning where he still lives. He commenced a longstanding involvement in the scouting movement in 1968 and ultimately became "District Scouter" for the Great Southern Region. In 1976 he was the Scoutmaster of the "First Katanning Scouts" and also responsible for overseeing a second Scout troop in the town. This required him to attend scout meetings approximately three nights per week at various scout halls in Katanning.

Mr Potter remembers that prior to Dennis McKenna becoming Warden at St Andrew's Hostel a few of the Hostel boys were members of Katanning Scout troops. He also remembers a particular incident involving two of those boys when McKenna was still "new" at the Hostel. He believes that this happened during 1976.

The two Hostel students were members of a Scout Patrol comprising six or eight boys. They were not mixing well with the other members of the Patrol and one night Mr Potter spoke to them about this while they were outside a scout hall waiting to be collected to return to the Hostel:

"A. I was trying to encourage them to join in activities. They got talking about what Mr McKenna had been doing to them and they told me he had been molesting them..."

Q. Did they use the word "molesting", was that their word?

A. Yes. Originally "molesting". When I tried to get out what (he was) doing, they said "Doing things to us that we don't want to do". That was virtually what they said.

Q. Did they elaborate?

A. No...I tried to pump them a bit but they wouldn't (say) anything more. They got very ashamed.

.....

Q. What did you say to them about that?

A. I just said "You should tell someone else in authority, tell your parents or tell someone" and they just clammed up. They...wouldn't answer me back or say anything, either of them. I actually pushed them back in the shell, I'd say. Probably did the wrong thing." (t 3596-7, 3598-9)

Mr Potter was unwilling to let the matter rest and within a week of his conversation with the two boys he approached three local ministers of religion for advice on how to handle the situation. He took this step because he considered that the ministers were like doctors and police and could be "trusted". He also thought that the ministers were "supposed to be protectors of the community" (t 3600). Accordingly, he visited in turn the Anglican minister, the Uniting Church minister, and the Catholic priest in Katanning, but they all gave him the same answer. Their advice was to the effect that McKenna was:

“...doing great work around town. He’s got the kids in all sorts of sports and that and you will be into defamation of his character, and you will cause trouble, you will end up in court” (t 3599)

Mr Potter remembers that the Uniting Church minister in particular “couldn’t care less” and brushed him aside (t 3601). The Catholic priest got “really wild” and for some reason thought that Mr Potter was “really, really bad” (t 3600).

The impression that Mr Potter gained from his discussions with the ministers and the priest was that they all thought he was “a nutter”. Virtually all of them said that Mr Potter would “end up having a defamation case”, which concerned him because he did not “want to end up in court” (t 3600). Nevertheless, Mr Potter decided to pursue the matter with a local policeman who happened to be the father of one of his scouts. When the policeman next came to the scout hall to collect his son Mr Potter approached him and sought his advice. The policeman was not “angry or anything” about Mr Potter’s approach but told him that he was “putting his neck on the line” because of McKenna’s reputation in the community. The policeman also said that:

“If you were going to go this way, you are going to have to get backup, or you are putting your neck out on the line yourself” (t 3603).

By this stage Mr Potter was scared that he was “getting into hot water” so he decided to follow the policeman’s advice and “get the boys to talk”. However, when he spoke to the two boys again and suggested that they go with him to see the ministers or the police, they each refused to do so (t 3603).

Without any “backup” from the two boys Mr Potter worried about the risk of defamation proceedings, and felt that he could do nothing more. He decided not to contact the parents of the boys because he thought it would be “just about impossible” to approach anyone he did not know to say: “Hey, your son is being molested” (t 3611).

Because these events occurred more than 35 years ago Mr Potter is unable to recall the identities of any of the two ministers, the priest or the policeman that he spoke to. During 1976 there were three successive ministers in the Anglican Parish of Katanning. Michael Harford was the first of those Anglican ministers and he departed the Parish in February 1976. Reverend Harford was then succeeded by a “locum” priest (who remained in Katanning until late November) and Mr Potter believes that it was that priest whom he spoke to (t 360). The locum priest (Reverend W. E. Henn) is now deceased.

It was not until June 1977 that the Uniting Church was formed, so it was probably either a Methodist, Presbyterian, or Congregational minister that Mr Potter spoke to from that denomination. There were three Catholic priests who were possibly at Katanning at different times during 1976. All of them are now deceased.

The actions taken by Mr Potter would seem to be the earliest attempt by anyone to respond to allegations of sexual misconduct by McKenna. However, he ceased these attempts because of his fear of defamation proceedings (which is a factor which was to deter many others over the following 14 years). Nevertheless, Mr Potter set a very high standard by which to compare the conduct of others and displayed commendable qualities of citizenship. It is obvious that he also cared for the wellbeing of the young people under his care and it is a great pity that there were not more people like him in the local community. The response that Mr Potter received from the local religious leaders was very disappointing, but also

typical of a similar lack of action by other community leaders during the years which were to follow. Regrettably there were many “trusted” people who were “supposed to be protectors of the community” who failed to fulfil those roles. They not only let down the community as a whole, but more importantly failed to take the lead in ensuring that the children at the Hostel were not being sexually molested.

Conclusion

None of the individuals who Mr Potter approached with the allegations were “public officials”. Nevertheless their failure to respond appropriately to what he told them was a major contributing factor to McKenna’s ability to continue offending over the following 14 years.

11.2 1975-1978: Maude Bruce the Hostel laundress

Between 1965 and 1978 Maude Bruce (now deceased) was employed as the laundress at the St Andrew's Hostel. After Mrs Bruce's husband passed away in 1974 she experienced some financial stress, and the income she was earning from the Hostel became very important to her.

Mrs Bruce had a daughter Susan (now Mrs Susan Cox) who moved out of the Bruce household in 1973 but returned to live with her mother in 1975. By then Mrs Cox was aged 18 years and was an unemployed single mother. However she would "still hang around" with some of the girls from the high school and for that reason was often at the Hostel.

It is Mrs Cox's evidence that some of the boys at the Hostel would often confide things to her mother, and that whenever Dennis McKenna suspected that this was happening "he would sneak down to the laundry to eavesdrop on what was being said". Mrs Cox herself caught McKenna eavesdropping in this way on a number of occasions (t 3620).

One day Mrs Cox told her mother that she thought McKenna was "queer" because he did not like any of the women or the girls at the Hostel. Mrs Bruce did not immediately comment on that suggestion, but later told her daughter that she was right. Mrs Bruce also said: "he doesn't like women, he likes little boys, the ones that are here" (t 3620). In that regard:

"Mum once told me that some of the boys would often talk to her and they would tell her that after lights out Dennis would come and get four to seven boys out of bed and take them to his room where he would get them to dress up in female dresses, high heels, wigs and make-up.

He would then judge them and then he would keep one or two of them in his room. The rest (he) would send back to their beds.

The boys who had to stay back would be forced to do sexual favours on Dennis.

Mum reckons that a number of the boys would speak with her about the abuse at least every week, but she never gave me names." (t 3621)

Mrs Cox also clearly remembers asking her mother "why people were not doing anything about what Dennis was doing to those boys". Her mother responded that "she tried to raise the issue with people, but she was told that because she did not have any kids residing at the Hostel, there was nothing she could do". Amongst the people that her mother said she had seen about this were Mrs Cox's uncle, her cousin, and a minister of a church (t 3620-1).

McKenna obviously became alarmed that some of his victims may have been disclosing sexual abuse to Mrs Bruce. At one point he banned all boys from visiting the laundry before 4pm (which was the time at which Mrs Bruce ceased work). Ultimately McKenna took the unjustified step of terminating Mrs Bruce's employment on the pretext that the laundry was being privatised.

Although the above information concerning Mrs Bruce is hearsay evidence, I consider it to be reliable. I am satisfied that she did seek advice from relatives and from a minister of a church on what she should do about the disclosures from the Hostel boys who had confided in her. It can be assumed that the response she received from the church minister would have been similar to that given to Mr Peter Potter, a scout leader at around the same time. Another factor that probably deterred Mrs Bruce from taking further action is that her financial situation required that she keep her employment. In all of these circumstances her approach to the church minister was perhaps the most that reasonably could have been expected of her.

Conclusion

1. As Mrs Bruce was an employee of the State Government she was also a “public official” within the meaning of the PSM Act (even though that legislation did not exist at the time). Accordingly her response to the allegations of sexual abuse which were made by the boys who confided in her was conduct which falls within the scope of the present Inquiry.
2. In her capacity as a laundress Mrs Bruce could not be expected to respond in the same way as a public official such as a child protection officer. In reality her response was that of an ordinary decent citizen. In my view, Mrs Bruce did all that could be reasonably expected of her.

11.3 1976: Keith Stephens - the father who found his son in bed with McKenna

11.3.1 Kerry Stephens' evidence

Keith Stephens became the Chairman of the St Andrew's Hostel Board in 1975. At that time his sons Kerry and Darryl (in Years 10 and 8 respectively) were boarding at the Hostel. Towards the end of that year Dennis McKenna was engaged as a housemaster at the Hostel and then went on to become Acting Warden.

Kerry Stephens may well have been the first student to fall victim to McKenna. Although Kerry Stephens is unable to recall when and how the sexual abuse commenced, he remembers that by Easter 1976 he was being regularly abused approximately three times per week. The abuse included sexual acts of the worst kind, but Kerry Stephens naively believed at that time that this behaviour by McKenna was "normal" (t 22).

However the abuse continued into 1977, and by then Kerry Stephens had developed a different attitude towards what was happening. He recalls that during the May school holidays in 1977 he was at home on the family farm and feeling in a "pretty sad state". His father asked him why he was "so doughy and useless", and Kerry responded by describing (in explicit terms) exactly what McKenna was doing to him. According to Kerry Stephens, his father then said that he would "have to talk to (Dennis) about it" (t 25-26).

When the school holidays came to an end Mr Stephens drove his two sons back to the Hostel. When they arrived Mr Stephens went off to McKenna's office, and Kerry Stephens assumed that he was going there to raise the issue of sexual abuse with Dennis. While this was happening, Kerry Stephens took his bags to the dormitory, and then returned to the car park so that he could speak to his father before Mr Stephens left. It is Kerry's evidence that when his father emerged from McKenna's office and returned to the car park he said:

"stop telling lies and get on with it, you've got to be at school" (t 28)

Kerry Stephens then realised that he was on his own, "that he had no choice", and just had to "continue on". He felt that if he was a liar in his father's eyes then he had nowhere else to go.

Over the following few days Kerry noticed that there had been a significant change in his relationship with Dennis McKenna. He was ostracised by McKenna, who told other students not to talk to him. He was basically put into "coventry", and it took some time before his relationship with Dennis returned to "normal" (t 28-29).

According to Kerry Stephens he and his father did not speak about McKenna's sexual abuse ever again. It is also important to note that (during his interview with the Inquiry's investigators) Kerry Stephens was adamant that there was never any incident when his father saw him in bed with McKenna.

11.3.2 Keith Stephens' confession to his local MLA

Keith Stephens' wife Shirley passed away in 2005, and by that time they had sold the family farm and moved to Albany. The local Member of the Legislative Assembly for Albany is Peter Watson, and Mr Watson met Mr Stephens one day while he was out doorknocking. It would seem that from then on the two men became casual acquaintances.

Late last year after the present Inquiry had been publicly announced, Mr Stephens visited Mr Watson to discuss the subject matter of the Inquiry. During that first visit Mr Stephens told Mr Watson of his connections with the St Andrew's Hostel including the fact that he had been Chairman of the Hostel Board when McKenna was first appointed warden. Thereafter Mr Stephens continued to visit Mr Watson to discuss matters to do with the Hostel, and his general demeanour indicated that "he wanted to get things off his chest" (t 323). Mr Watson's evidence as to these subsequent conversations is as follows:

"Q. So the subject matter when you saw him on those occasions was what?

A. The main subject matter was that he walked in on...Dennis McKenna and has found him in bed with his son Kerry.

.....

Did he say when that was, in relation to that event?

A. He didn't give me a specific date, he just said that he was at the hostel and he wanted to go and see Mr McKenna and he knocked on the door but no-one answered and he just walked in.

.....

Q. Did he say anything more about that particular incident?

A. You know, he said, look, he wanted to know what was going on. McKenna threatened him; said that "I will take away your farm, I'll have your children taken away from you and I will ruin you".

Q. Did he say anything as to what context Mr McKenna made that threat?

A. No, but he believed him. He believed that the power he had in the town and the contact(s) he had in the town that he could ruin him.

Q. Can you just clarify: did he say that that conversation with McKenna was at the time of walking into the bedroom --

A. It was. And he asked -- you know, he said "Kerry will deny it and you will look a fool. No-one will believe you over me."

Q. Can you recall Mr Stephens' demeanour when he was telling you this?

A. He was very emotional. He said it had ruined his life, affected his relationship with his wife and his boys and his daughter.

Q. Did he say anything to you about his feelings about not taking any action in relation to what he saw at that time?

A. He said he regrets it to this day but at the time he thought it was the right decision because he felt that the threat would come true." (t 324-5)

Mr Watson thought it appropriate to notify this Inquiry of these conversations, and as a result Mr Stephens was contacted by the Inquiry's investigators.

11.3.3 Keith Stephens' versions of events

Keith Stephens agreed to participate in interviews with the Inquiry's investigators on three occasions. During the first interview on 7 February 2012 Mr Stephens denied that his son Kerryn Stephens had at any time disclosed to him that he was being sexually abused (or had been sexually abused) by McKenna. He also chose not to answer the question whether he ever saw, walked in on, or caught McKenna in a compromising position with "any boy" at the Hostel. However he said that McKenna had threatened him on occasions (but did not elaborate on the nature of those threats). At one point Mr Stephens was questioned about his relationship with Kerryn Stephens at the material time, and he responded:

"It's not just the family relationship you're delving into here. It's like in a private discussion. I told our member for Parliament but this was very, very difficult for me and for Shirley and to see and we were pretty close and, yes, so it was not just our immediate five kids. It was - - there's about 100 other kids or 50 other kids that were our hostel family and they were getting hurt and bad things got really bad and it's just been one continuous nightmare, you know" (interview t 45)

When Mr Stephens was asked how he would describe himself as a father towards his sons and daughter he said:

"Terrible. Down near the bottom of the list, weak. Yeah, just terrible. Just terrible...I had...that thought of myself being weak for a very, very long time." (interview t 46)

During the second interview on 24 April 2012 Mr Stephens spoke of McKenna spending weekends at his family farm during the time that he was the Hostel Board Chairman. He also said that while McKenna was with them on those weekends he and his wife Shirley "didn't know he was having it off with a bloke's son" (interview t 46).

During the third interview on 1 May 2012 Mr Stephens continued to deny that he ever had any discussion with Kerryn concerning sexual abuse by McKenna. However, he acknowledged (for the first time to the Inquiry's investigators) that when Kerryn Stephens was about 15 or 16 he found his son in McKenna's bedroom:

"MR STEPHENS: I went to the hostel one day and asked the kids where Dennis was. They said, "He's in his bedroom." We were having a - you know, we were getting on good as friends and everything. I'd went down there. Now, I can't remember whether I knocked on the door or just opened the door and walked in, and I saw him in bed with my son, blanket over them. I couldn't see whether they were naked or not. I couldn't - there was about a foot between them, and Kerryn seemed quite happy, didn't seem at all distressed, and it was after that that Dennis said to me what he said. I think I told you what he said.

INVESTIGATOR: No, you didn't.

MR STEPHENS: Oh, he just said to me, "if you open your mouth", or words to that effect, "I'll have your everything - your farm, your family, you, everything". That's not the way he put it, but I suppose I better get it pretty closer.

INVESTIGATOR: *However you recollect it, Keith.*

MR STEPHENS: *He just said, "Look, if you say anything, I will have your farm, I will destroy your family, I will destroy you, I will destroy your marriage and you'll have nothing left, so shut your bloody mouth."*

.....

MR STEPHENS: *I went home to Shirley and told her what I'd seen. And I said to her, "I feel as weak as water. I should have done something about that. What do you think?", and she said, "Look, he's – we're all good friends, we're just good friends, just look – just let it go, shut your mouth", and that was what was – you know, and you shouldn't say bad about the dead, but she was my love, my wife. It was her son too, you know." (interview t 9-10)*

Later in the interview Mr Stephens clarified that McKenna would "often threaten defamation proceedings against people" and that that was "the whole thing I was scared of". He also said that he had been "dumbfounded" when he found his son and McKenna in bed together. Mr Stephens was also unsure as to the timing of the threats made by McKenna. (i.e. whether they were made when he entered the room or some time later).

In Mr Stephens' formal evidence to the Inquiry (at a hearing on 9 May 2012) he described the "bedroom incident" in substantially the same terms as he had during his third interview, but elaborated as follows:

"Q. Well...what did you think when you first saw that here's your teenage son - -

A. I just thought that they were very, very good friends, and I just thought that if they had been touching one another or anything like that, then I would have acted differently, but they weren't doing that...so I just thought, "Well, they're good friends, they're just laying there talking", or, you know, and – naïve, sure; mistake, yes, but I made it, and I have never denied that...I did the thing that I thought was right for my son and the hostel at the time, and it was wrong, very wrong, and I know that now, but I didn't know it then.

Q. What you saw, I suggest to you, would at least have looked suspicious to you?

A. I've already answered this a couple of times. Of course it looked suspicious.

Q. Did you...subsequently ask your son about it?

A. No.

Q. Did you subsequently ask Dennis McKenna about it?

A. No, I didn't.

Q. Why didn't you ask your son about it?

A. I have no idea why I didn't ask my son about it. No idea at all." (t 2844-5)

Consistent with his first answer above, Mr Stephens also testified (in the context of what view he took of the incident in hindsight once McKenna was arrested):

"...like I said earlier, I really believed that it was just a friendly thing, you know. We were...brought up during the Second World War and boys and girls slept in the same bed, and boys slept with boys, and it just didn't occur to me that – I'd never heard – I

didn't know what a paedophile was, I had to get the blooming dictionary out, find out. I said to Shirley, "What's a bloody paedophile?" She said, "I don't know", so we got the dictionary out, find out what it was." (t 2861)

During his evidence Mr Stephens stated for the first time that the incident had occurred in the middle of an afternoon. In relation to that I asked him the following:

"Q. ...did it occur to you why they would be in bed in the middle of the afternoon together – you know, with bedclothes covering them?

A. Yes, it did. Yes, it did. But, your Honour, I – I've thought this over a million times over the last 10-odd years and I can't give myself an answer to that. I really just can't answer why they were there. I can't answer why I didn't do more about it, and I knew that – and as I've said, I held considerable guilt over that, and I can't do any more." (t 2847)

It is also Mr Stephens' evidence that following that incident he gave no consideration to putting Kerry Stephens in a different school or arranging for his two youngest sons to attend a different hostel. According to him it was only very recently that he learned that one of those other sons was also sexually abused by McKenna (t 2858).

Mr Stephens does not agree that when speaking to Mr Watson about the matter he was "getting it off his chest". However it is very clear from the following passage of his evidence that Mr Stephens does carry a great burden of guilt:

"Q. Well, when you learned in 1990 of what Dennis had done, did you think back to this incident?

A. Of course. Of course.

Q. What did you think then?

A. Oh, horror. Absolute horror. Absolute horror. Tore my – tore me to bits. Just too hard. Just too hard. Of course it did, you know.

Q. When you were in that situation of 1990 did you ever think, well, you should have done something different when you'd seen your son in bed with Dennis?

A. When we saw Dennis being arrested in Katanning?

Q. Yes.

A. Yeah, of course we should. Oh, gee. Yeah, Shirley and I sat down and we cried and cried.

Q. So what did you think about at that stage?

A. Oh, gee. What – what – what have – what have we done? What have we allowed to happen? We should have just gone ahead and nailed him, but we would have lost so we wouldn't have nailed him anyway. So – you know, that's just how it is. We were pretty much struck, all those kids, all those lives and all those families." (t 2860-1)

Nevertheless, it is fair to point out that those sentiments do not appear to be consistent with remarks that Mr Stephens made in 1991 when interviewed by a newspaper:

“Nyabing farmer Keith Stephens, who was acting chairman of the St Andrew’s Hostel board when McKenna was appointed warden...believes the hostel is a ‘tribute’ to McKenna...

Mr Stephens says that at no stage did he suspect that there was anything amiss at the hostel.

He was shocked when he heard the news of McKenna’s charges late last year.

“I’ve been asked many times since I left the board if there were any complaints like that.

“There was no complaint made to the board.

“I never heard any rumours that he was a homosexual.”

“A lot of people had a lot of good living and pleasure out of the hostel, but I feel terribly sad for those who had the other experience.

“Until this bubble burst, he was held in the highest esteem.” (Great Southern Herald 31 July 1991 – Exhibit 15)

11.3.4 Findings

The conflicts in the evidence of Keith and Kerryyn Stephens are quite extraordinary. Given the nature of what they have each separately described, it can be expected that despite the passage of years each of the alleged incidents would be vividly remembered by both of them. It is also difficult to conceive any motive why either of them would deny the incident alleged by the other.

Kerryyn Stephens impressed me as a careful and honest witness. Apart from his father’s denial that he had disclosed McKenna’s sexual abuse during the May school holidays in 1977, there was nothing about the manner in which he testified to make me think that he might not be telling the truth about that matter.

However it is clear that Kerryyn Stephens has some significant gaps in his memory of relevant events. He cannot recall how McKenna’s sexual abuse started, and his first memories are around Easter 1976 by which time he was being regularly abused approximately three times per week. When interviewed, Kerryyn Stephens also could not remember a complaint that was made to him (as head prefect) in 1977 by another boy who was being sexually abused. As a result of that complaint the boy was immediately expelled from the Hostel and driven home by McKenna to his parents’ farm approximately 300km away.

Kerryyn Stephens was with McKenna in the vehicle when the boy was driven home, but he has no memory of that or of any of the surrounding circumstances. In all probability that expulsion was the direct result of Kerryyn Stephens informing McKenna of the boy’s complaint. That being so, the boy’s immediate expulsion may well have been a traumatic event not only for the boy but also for Kerryyn Stephens.

It is reasonable to assume that McKenna’s initial acts of sexual abuse must also have been traumatic experiences for Kerryyn Stephens. Likewise, it may well have been another traumatic experience when and if his father discovered him in bed with McKenna. If so, then

the psychological trauma experienced at the time of these three separate events offers a possible explanation for the gaps in Kerry Stephen's memory.

In this regard there are numerous studies in the field of clinical psychology which establish that complete or partial memory loss is a frequently reported consequence of child sexual abuse. Appendix 4 to this report is a review of the relevant literature compiled in June 2010 by the Mental Health Co-ordinating Council, and it identifies "dissociation" as the likely cause of this traumatic amnesia. The paper describes dissociative amnesia in the following terms:

"Dissociative amnesia is "characterized by an inability to recall important personal information, usually of a traumatic or stressful nature, that is too extensive to be explained by normal forgetfulness," (American Psychiatric Association, 2005, p. 519). Dissociative amnesia is suspected if there are gaps or blank periods in a person's autobiographical memories.

During a traumatic experience such as an accident, disaster, or crime victimization, dissociation can help a person continue to function and tolerate what might otherwise be too difficult to bear. A person may dissociate the memory of the place, circumstances, or feelings about the overwhelming event; mentally escaping from the fear, pain and horror. This may make it difficult to later remember details of the experience, as reported by many disaster and accident survivors.

For people repeatedly exposed to traumatic events, especially in childhood, dissociation is an extremely effective coping 'skill' which characteristically becomes reinforced and conditioned. It can protect them from awareness of the pain in the short-term. However, over time, frequent dissociation affects a person's sense of their history and who they are."

In light of this research, I consider it possible that if Mr Stephens did discover his son in bed with McKenna, this caused psychological trauma to Kerry Stephens which resulted in dissociative amnesia. From Kerry Stephens's perspective it is reasonable to assume that any such trauma would have been accentuated by his father's failure to bring the sexual abuse to an end.

Regardless of the reasons why Kerry Stephens might have forgotten the "bedroom incident" I accept his evidence of the other incident during the May school holidays of 1977 as being truthful and reliable.

Although there are many flaws and inconsistencies in Mr Stephens' evidence, it is hardly likely that any father would falsely admit to having seen his son in bed with a man now known to be a paedophile, unless that had really happened. In my view Mr Stephens' motive in making that admission is his longstanding guilt and anguish that he did nothing in response to what he saw. Accordingly, I am satisfied that the "bedroom incident" did indeed occur. Given Mr Stephens' evidence that his son was 15 or 16 years old at the time, I am also satisfied that it occurred in 1976, and prior to the school holidays conversation described by Kerry Stephens.

Beyond my findings as to those fundamental facts, I do not consider Mr Stephens' varying accounts of the details of what happened to be accurate or reliable. There are many contradictions both within his evidence and when that evidence is compared to his earlier statements to Mr Watson and to the investigators. In particular, his claim that he did nothing

because he believed that his son and McKenna were “just good friends” cannot be reconciled with his evidence that he feared doing anything because of a threat from McKenna.

I also consider that Mr Stephens’ varying descriptions of the precise nature of McKenna’s threat are inherently incredible. The threat as described to Mr Watson was that his farm and children would be taken away and that he would be ruined. Mr Stephens told Mr Watson that he believed that threat because of “the power that McKenna had in the town”, but during the third interview said that “the whole thing” that scared him was that McKenna would “often threaten defamation proceedings”.

In 1976 McKenna was only 30 years old, at the very start of his career as Hostel Warden, and had not yet become a man of any power or influence in the town. Furthermore, any fear that Mr Stephens had of defamation proceedings must necessarily have evaporated once McKenna was convicted of sexual offences in 1991. It is therefore difficult to understand why Mr Stephens subsequently offered relatively glowing comments about McKenna during his newspaper interview that year.

I also doubt Mr Stephens’ evidence that he consulted with his wife on how he should respond to the “bedroom incident” and to the threats he says had been made by McKenna. If there really was a threat to take away his farm and to destroy his marriage and family, it seems most unlikely that Mrs Stephens would have advised him to “let it go” because “we’re all good friends”. In my view Mr Stephens’ comment many years later to Mr Watson that the incident had “affected his relationship with his wife” is probably much closer to the truth.

I also consider Mr Stephens’ evidence that the “bedroom incident” occurred in the middle of an afternoon to lack credibility. Kerry Stephens’ evidence is that the sexual abuse at the Hostel occurred at night time, which was consistent with McKenna’s modus operandi for nearly all of the offending against other victims. The reason why McKenna committed the offences in his flat at night time is that the door to the dormitory area was locked, and there was no opportunity for outsiders to walk in. I simply do not believe that McKenna would have been so careless as to sexually abuse Kerry Stephens during a mid-afternoon when students and others were about, and there was a substantial risk of being discovered by someone walking into his room.

The evidence does not indicate why Mr Stephens might lie about the time at which the “bedroom incident” occurred, and it is not appropriate for me to speculate about what those reasons might be. In the end, I can only find that Mr Stephens did see his son in bed with McKenna in compromising circumstances, and that for some unknown reason (against his better judgment) he decided that he would keep that fact a secret.

The consequences of that fateful decision are obvious. If Mr Stephens had done the right thing and reported what he had seen to either the police or to the Hostel Board, then almost certainly McKenna would not have been able to continue offending against his son, or against any other Hostel students over the following 14 years. In failing to act appropriately, Mr Stephens breached not only his responsibility as a parent, but also the very high responsibility that he owed to other Hostel students as Chairman of the Hostel Board. It is therefore very understandable why Mr Stephens carries such a heavy burden of guilt.

11.3.5 Conclusions

1. As Chairman of the St Andrew's Hostel Board, Keith Stephens was a "public official" (within the meaning of the PSM Act) exercising a high degree of responsibility for the wellbeing of the students at St Andrew's Hostel.
2. The reasonable standards of conduct for a public official (in Mr Stephens' position in 1976 and 1977) required that he report to the Police or to the Authority any evidence of behaviour by the Warden indicative of sexual misconduct towards any student.
3. Mr Stephens failed to do this on two occasions (firstly when he saw his son in bed with the Warden, and secondly when his son told him that he was being sodomised by McKenna). These were gross breaches of Mr Stephens' responsibilities as a public official for the wellbeing of the Hostel students.

11.4 1976: Livia Bentley – the teacher who tried to tell her principal

Livia Bentley is currently the Deputy Principal of a Perth metropolitan primary school. She commenced her teaching career in 1976 when she was 21 years of age, and her first posting was to the Katanning Primary School. She taught at Katanning Primary School for two years in 1976 and 1977.

For most of that period Mrs Bentley (then working under her maiden name of Livia Pallotta) boarded at the St Andrew's Hostel rent free in return for tutoring Hostel students during the evenings. Mrs Bentley initially occupied a "bedsitter" in the dormitory buildings but later shared accommodation with other teachers in what ordinarily would have been the warden's house. However the warden Dennis McKenna chose to live in quarters adjacent to the boy's dormitory.

Mrs Bentley had frequent opportunities to observe McKenna's interaction with the students and it troubled her that his behaviour towards the boys was "a little bit inappropriate". In this regard he always had boys "hanging off him, off his shoulders, touching his hand, and often when he was sitting down there would be boys sitting on his lap." Although Mrs Bentley did not see anything of a sexual nature she considered that McKenna's physical interactions with the boys were "too close" for what she believed an educator could properly have with a child (t 43).

Mrs Bentley also noticed that McKenna would treat some boys differently to others. Selected boys were able stay up later, seemed to have authority, and were "sort of semi-bosses themselves" (t 44).

Although McKenna's accommodation was "out of bounds" to students he would sometimes take boys in there. When she enquired of those boys why they went there she was told: "It's a treat, it's a reward for doing the right thing. We're allowed to watch television and stay up late". Mrs Bentley also recalls that when one boy responded to this question he seemed to be saying something in a less than direct fashion, and (in hindsight) she "never picked up on it strongly enough" (t 46).

Mrs Bentley was sufficiently troubled by what she saw to think that she should perhaps do something about it. She first spoke to her mother who advised her that "you are trying for permanency, be careful". Consequently it took her a long time to decide that she should raise the matter with her primary school principal whenever the opportunity arose (t 44). From Mrs Bentley's perspective it required some courage to broach the subject of McKenna's behaviour with her principal. In those days principals behaved in a much more formidable way towards a 21 year old than they would today, and junior teachers always did as they were told (t 50). Nevertheless when she next had a face to face meeting with her principal (for the purposes of a performance review) she raised the subject of McKenna's behaviour. It is her evidence that:

“I brought up that I was homework tutoring at the Hostel and that I felt that Dennis was getting a little bit too close to the boys, or he was allowing the boys to get too close to him, and I was going along those lines when he said , “What are you saying young lady? You need to be careful. You’re new to town” (t 51)

According to Mrs Bentley she didn’t get a chance to discuss the matter any further because that was the end of the matter. The principal (Brian Downes) is now deceased and there is no way of ascertaining what his version of his conversation with Mrs Bentley might have been. However, Mrs Bentley was a very credible witness and I have no hesitation accepting her evidence as being truthful and accurate.

Obviously it is a great pity that the hierarchical culture within the education system at that time created barriers between junior teachers and their principals. Had Mr Downes been more willing to discuss the sensitive topic raised by Mrs Bentley it may well have led to enquiries about what was happening at the Hostel, and exposure of the sexual abuse that was then occurring.

Conclusions

1. At the time of Mrs Bentley’s conversation with Mr Downes they were both “public officials” within the meaning of the PSM Act. By going to her Principal with her concerns Mrs Bentley did all that reasonably could have been expected of her as a young school teacher.
2. Although Mrs Bentley was attempting to raise matters which did not directly affect the primary school students under Mr Downes’ care, a reasonable response to her approach would have been to pass the information on to the high school principal.
3. By failing to ask Mrs Bentley to elaborate on her allegation, and by failing to pass the allegation on to the high school principal, Mr Downes’ conduct fell short of what reasonably could be expected of a public official in his capacity in 1976.

11.5 Bruce Carmichael's request to John Renk

In the late 1970s and early 1980s Bruce Carmichael was a farmer at Jerramungup. He was married with four children, and during 1979 and 1980 his two eldest daughters were boarders at St Andrew's Hostel.

It would seem that Mr Carmichael had a close and open relationship with his daughters because they were willing to tell him "stories" about what was happening to some boys at the Hostel. The substance of those stories was that Dennis McKenna had favourite or selected boys (described by the Carmichael girls as "pretty boys") who were regularly invited to his quarters late at night. During those visits these boys were permitted to drink alcohol and to view pornographic films. According to Mr Carmichael this was:

"something that was well known amongst the students at the Hostel. They discussed it amongst themselves and it came home to us." (t 610)

Mr Carmichael's daughters also told him that McKenna had a strict rule that "anything that happened at the Hostel had to stay at the Hostel and nothing was to go home" and if any students did take stories home to their parents then they faced "weird and wonderful punishments" (t 610). One such punishment that McKenna had imposed on a Carmichael girl was to put her on two days duty washing headstones in the Katanning cemetery (t 608).

Mr Carmichael was very concerned about what his daughters had told him and decided that he should inform a Hostel Board member whom he knew. That Board member was John Renk, an officer with the Commonwealth Development Bank whom Mr Carmichael had met as a result of applying for a loan.

Mr Carmichael duly telephoned Mr Renk and relayed to him what he had been told by his daughters. According to Mr Carmichael:

"I would have told him about the special boys spending time in his rooms at night time, late at night, the porno videos and the grog that he was feeding to them. They were my concerns at that time, that I thought that was not appropriate for a man in that position of authority in the Hostel" (t 611-612)

Mr Carmichael told Mr Renk about these allegations because as a Board member he was in the position to at least "check it out and see what he could find out" (t 611). It is Mr Carmichael's evidence that Mr Renk "heard me out and said he would look into it" (t 612).

Approximately two or three weeks later Mr Renk telephoned Mr Carmichael to say that "he had checked it out, and as far as he was concerned there was not a problem" (t 612). Mr Renk did not explain what he had done by way of checking that there was not a problem, but he said words to the effect that "he hadn't found a ripple on the water and everything in the garden was lovely" (t 613).

Mr Carmichael believes that his telephone conversations with Mr Renk took place either at the end of 1979 or the beginning of 1980 but he is not completely sure of this. His eldest daughter was at the Hostel for only one year (1979), and his second daughter commenced during the last term of 1979 and continued through until 1981. The second daughter did not

complete 1981 at the Hostel because McKenna rang Mr Carmichael to say that she was no longer welcome. This telephone call was made while the daughter was home for a week, and she and her father were both quite happy for her to leave. When they went to the Hostel to collect her belongings she discovered that some personal items including her diary were missing from her locker. The diary had recorded the daughter's observations of "the things that had happened" at the Hostel (t 614-615).

Mr Renk was summonsed to give evidence to the Inquiry but he testified that he had no recollection whatsoever of any involvement with St Andrew's Hostel or of Dennis McKenna, or of the Hostel Board. Mr Renk claimed that he had suffered this loss of memory notwithstanding documentary evidence (including Board minutes) showing that he was a Board member for a total of 13 years between 1973 and 1986. During that period Mr Renk was responsible for taking minutes, and he was one of the most regular attenders at Board meetings.

Mr Renk is now 76 years of age and during his evidence attributed his claimed loss of memory to a stroke or "transitory ischemic attack" (TIA) which occurred in 2000. It was his evidence that as a result of that stroke he was hospitalised for three days. He received no further medical treatment or attention for the stroke but since then has come to realise that he has lost his memory about certain specific things including his time of service on the Hostel Board.

However, Mr Renk displayed a detailed memory of his activities with the Commonwealth Development Bank during the same period that he was serving on the Hostel Board. He was also able to recall the details of significant family events (such as weddings) during that same period. For this reason I was initially very sceptical about his claimed loss of memory.

Furthermore, Mr Renk's evidence that he has lost his memory about Board matters seemed to be inconsistent with the testimony of James Laffer. During his younger years Mr Renk coincidentally attended the same agricultural college in South Australia as Mr Laffer and the two men met at a reunion function at the college in 2005. They had not seen each other for many years and the only experience that they had in common was their service on the Hostel Board. Accordingly, they had a lengthy discussion "revisiting old times" and reminiscing about the Hostel Board and McKenna. They also discussed the sexual abuse and the fact that "Dennis had been locked up". It is Mr Laffer's evidence that Mr Renk did not appear to have any difficulty in remembering these matters (t 3219-3220).

The Inquiry obtained (with Mr Renk's consent) the medical records of Mr Renk's admission into Katanning Hospital (which was not in 2000 but on 1 December 2001). Mr Renk presented at the hospital feeling generally unwell and with symptoms of chest tightness and pins and needles in the left hand. Although the results of an ECG were normal, Mr Renk was admitted for observation in case he had suffered a stroke or TIA. Over the following two days no abnormalities were noted other than in a blood test which revealed a mild diabetic condition. There was no diagnosis of either a stroke or TIA, and Mr Renk was discharged on 3 December 2001 after being provided with advice on diet and exercise for his diabetic condition.

When Mr Renk was informed that the hospital records did not support his claim that he had lost his memory, he put forward an alternative reason why this might have happened. He forwarded a letter from a physician advising that he had been diagnosed earlier this year

with a condition known as sleep apnoea. The letter also stated that “sleep apnoea can be associated with poor memory and concentration”.

In response to that letter the Inquiry requested further and more specific information from the physician on whether the sleep apnoea was capable of causing selective memory loss as claimed by Mr Renk. However, the physician declined this request for a more substantial report which made it difficult to accept that Mr Renk's sleep apnoea had caused the claimed memory loss.

Nevertheless Mr Renk's wife and daughter have since provided written statements which give convincing accounts of the problems that he has been experiencing with his memory in recent years. It would also seem that he was very wrong about some details of the family events he was able to recall while testifying. In the end I feel that fairness requires that I should accept his evidence that he is unable to remember the relevant events.

Mr Carmichael was a very credible witness and his evidence is uncontradicted. I have no hesitation in accepting his account of his conversations with Mr Renk as being truthful and accurate. However in the absence of evidence from Mr Renk outlining the enquiries that he made in response to Mr Carmichael's request and the results of those enquiries, I am unable to make any findings as to what he in fact did. Whatever enquiries Mr Renk may have made they obviously were not effective in bringing to light the ongoing offending of Dennis McKenna.

Conclusions

1. In 1979 or 1980 Mr Carmichael informed the Hostel Board member Mr Renk of allegations that the Warden was supplying alcohol and showing pornographic movies to boys at the Hostel.
2. Approximately two weeks later Mr Renk reported back to Mr Carmichael that there was no basis for those allegations.
3. It is not possible to determine what investigations or inquiries (if any) were made by Mr Renk before coming to that conclusion.

11.6 1980 onwards: Noel Parkin – the parent who told anyone and everyone

11.6.1 The background to Mr Parkin's complaints

During the 1970s Noel Parkin was a wool buyer living in Ongerup with his wife and three sons. His children were educated at Katanning and his eldest son Stephen commenced to board at St Andrew's Hostel in 1977. His middle son Bradley followed in 1979.

While visiting the Hostel to see his children Mr Parkin's suspicions were aroused by Dennis McKenna's behaviour. This was because McKenna's behaviour seemed very similar to that of a paedophile Mr Parkin had encountered during his own school days. In this regard, McKenna was "always handling boys" and it didn't look right to Mr Parkin that he would "handle the boys the way he did" (t 580).

Mr Parkin was also troubled by the school report that his eldest son brought home at the end of third term in 1979. The report stated that Stephen had been away from school for a total of 17 days during that term, and this was the first that Mr Parkin and his wife had known about it. When their son and McKenna failed to give satisfactory explanations for this absenteeism, the Parkins removed Stephen from both the school and Hostel and placed him in employment at Ongerup.

The Parkins also experienced difficulties with Bradley who had trouble settling in at the Hostel. These problems culminated in Bradley breaking out of the Hostel during the night time on 29 May 1980 and walking home to Ongerup (where he arrived two days later).

It is Mr Parkin's evidence that the school then arranged for Bradley to see a "psychiatrist" (who was most probably a psychologist) in Perth. Mr Parkin later drove Bradley to see the psychiatrist in Kings Park Road, Perth where he was examined or assessed over the course of four days. At the end of that period Mr Parkin kept an appointment with the psychiatrist to learn the results of the assessment. The psychiatrist advised that "you have to get your boy out of that Hostel", but would not give any reason for that advice (t 580). When Mr Parkin asked if McKenna was interfering with boys, the psychiatrist said "I can't tell you that". Mr Parkin interpreted that answer as confirmation that McKenna was indeed a paedophile (t 580).

11.6.2 The incident at the Country High Schools Hostel Authority office

It is Mr Parkin's evidence that he felt very angry after leaving the psychiatrist, and decided that he would visit the "Country High School Hostels" head office straight away to lodge a complaint about McKenna "interfering with boys". He found the address of the head office in a telephone book at a nearby telephone box and immediately went there with Bradley.

When Mr Parkin entered the Authority office he asked to see the Chairman of the Authority Colin Philpott, but was told that he was not there. According to Mr Parkin, he then told the man behind the counter that he was there to complain about McKenna interfering with boys and the man replied “you’re off your head”.

By this time another man had approached from “out the back” and during the conversation which followed Mr Parkin said to the first man: “are you his bum boy as well?”

Mr Parkin was told that if he didn’t leave at once the police would be called but he insisted on staying “until you hear someone about it”. The man behind the counter then asked the other person to call the police and after two or three minutes Mr Parkin decided that it would be best to leave. He was feeling very upset and angry, and as he left he saw a police car arrive. Mr Parkin and Bradley then drove back to Ongerup (t 581-583).

At that time the Authority was operating from an office in St Georges Terrace Perth where it employed an administrative officer Mr Peter Hepper (who is now deceased). The Chairman of its Board was Colin Philpott. It is Mr Philpott’s evidence that Mr Hepper was the only person who worked in the Authority’s office, and that there could not have been two people there as claimed by Mr Parkin. Mr Philpott is also certain that Mr Hepper would have told him about the incident involving Mr Parkin if it had ever occurred but he was never told about it (t 2481). Accordingly, Mr Philpott is “just so sure that he never made that complaint” (t 2573).

It is also Mr Philpott’s evidence that if he had heard of a complaint along the lines alleged by Mr Parkin he “would have done something about it”. He would have contacted the Industrial Relations section of the Education Department for advice on how to handle the situation (t 2482). In this regard the Authority relied upon the Education Department for the resourcing of its operations, and Mr Hepper had been seconded from that department.

However there is evidence from Alan Parks (who was a Hostel Board Member between 1979 and 1992) which contradicts Mr Philpott’s assertions. Mr Parks recalls that “around 1980” he became aware that an incident involving Mr Parkin had occurred at the head office of the Authority. This subject was discussed by the Board over the space of what Mr Parks believes were two consecutive board meetings. At the first meeting McKenna informed board members that Mr Parkin had gone to the Authority and “caused a stink”. McKenna did not name Mr Parkin at first but simply said that “a parent had been to the Authority and caused a stir”. It was at a later stage of the meeting that McKenna named that parent as Mr Parkin. Mr Parks believes that it was probably at the next meeting that the subject was raised once again:

“Q. What did you find out about it at the next meeting?”

That Noel had been to the Authority’s office and made such a noise that they were getting the police in to have him removed.

Q. Who conveyed this information to you at the next meeting?

A. Dennis. We got it through Dennis. We guess it came from head office.

Q. ...did he say what the stir was about?

A. I don’t remember. I don’t remember...whether it was brought up or not. I think it was, yes.

.....

Q. But you can't remember what it was?

A. No.

Q. Mr Parkin has told...the Inquiry that the stir he was causing at the head office was that he was accusing Mr Dennis McKenna of sexually interfering with boys.

A. Mmm-hmm.

Q. Does that jog your memory as to what you were told this stir was about?

A. No, we weren't told what it was about, not by Dennis, no. That came out later.

Q. When did it come out later?

A. Well, I think one of the board members brought it up and said that Noel had been going around telling people that Dennis was interfering with boys.

Q. Can you remember when that was, Mr Parks?

A. I couldn't say offhand.

Q. Was it before Dennis McKenna had been charged in 1990?

A. Oh, it was well before, yes. It was around about the time that Todd was put out. I'd say around '82."(t 1430-1)

(Mr Parks' reference to "the time that Todd was put out" relates to his own son Todd being expelled from the Hostel. According to Minutes of a Special Board Meeting that event occurred in March 1982).

11.6.3 The Pingrup incident

After returning to Ongerup, Mr Parkin followed the psychiatrist's advice and removed Bradley from the Hostel. From that time on Bradley lived at home again.

According to Mr Parkin, Bradley got into trouble with the police in 1981 or 1982 when he threw a rock through the window of a bus being driven by McKenna. This occurred at Pingrup where earlier that day Bradley had played cricket with the Ongerup cricket team. It is Mr Parkin's evidence that on the day after the cricket match, a policeman visited him at home and said that he had come to arrest his son for "wilful damage and grievous bodily harm". Bradley was not at home at the time, but in answer to Mr Parkin's questions the policeman gave some limited information about the alleged incident. Mr Parkin guessed that the incident had involved McKenna and told the policeman that if his son had broken the window of a bus driven by McKenna: "I'll go to court and tell them why he did it...that bloke is a paedophile" (t 588). The policeman then went away, but returned later in the day to tell Mr Parkin that "all charges are dropped" (t 589).

The Ongerup police occurrence book records an incident on 29 October 1980 which almost certainly is the incident described by Mr Parkin. The record shows that at 9:20am a police constable received the following complaint from Dennis MacKinnon(sic) a warden at St Andrew's Hostel:

“Last Sunday 26/9/80 at Pingrup a person called Brad Parkin threw a stone at our bus causing a small dent in the side of the bus. I saw him do this. At the time the bus was driving past the Pingrup Hotel. Can you warn him not to do it again please. I don’t want him charged or anything but he shouldn’t get off scot free”

The occurrence book also records that:

“Attention promised. Inquiries at Ongerup with father Noel Parkin revealed that Bradley Parkin had been in Ongerup on Sunday 26/10/80 and played cricket at the Ongerup sports ground all day. He had then attended at the Bowling Club at Ongerup with his parents. It would appear the complainant made a mistake identifying Parkin. Complainant advised of inquiries made and thanked police for their attention. NFIN at this stage.”

At the Hostel Board meeting approximately three weeks later on 19 November 1980 the Warden’s Report raised the following item (which perhaps indicates that the damage to the bus was more than a small dent):

“4. The buses are still being fixed, the MTT bus was collected last Thursday by myself. A run down on the buses will be given with this report”

11.6.4 The evidence of the many complaints made by Mr Parkin to others

It is Mr Parkin’s evidence that soon after returning to Ongerup from the Authority’s office in Perth he telephoned the police at Katanning. He asked for the “bloke in charge” but is not sure who he spoke to. When he told the policeman on the other end of the line that McKenna was interfering with boys “he wasn’t nice to me”. Mr Parkin was told that he was telling lies and that if he kept on making up complaints like that “we’ll come over and lock you up” (t 584).

The Inquiry’s research staff have combed through the Katanning Police occurrence book for 1980 but cannot find any record of Mr Parkin’s phone call. However, the police procedure at the time was that a telephone call of the type described by Mr Parkin would not necessarily be recorded. In the absence of any specific complaint of an offence, it was a matter of discretion for the police officer whether or not to record the call.

It is Mr Parkin’s evidence that he also telephoned various Hostel Board members to complain about McKenna. He remembers ringing Keith Stephens who said “you’re telling lies” and put down the phone. When asked to recall who else he called it is Mr Parkin’s evidence:

“I don’t know. I don’t – the one, he was manager of a BWK Co-op at Katanning, I ring him and told the same story and he hung up on me as well. I rang the bloke from a bank, I guess it was the Commonwealth Bank, I think, and told him and he wouldn’t listen to me and thought I was sick in the head and they also – I guess the other one I rang was a newsagent, I think he was on the board. There was another – one more in Katanning, I think he was a newsagent, but I can’t be sure of that.” (t 585)

It is Mr Stephens' evidence that he has no recollection of Mr Parkin's telephone call, and that he would remember if it had occurred. Furthermore Mr Stephens would have been "horrified" to be told that McKenna was interfering with boys and if that had happened he would have immediately contacted the then Board Chairman and told him to do something about it (t 2875-6).

The Board Member who was a manager of the BWK Co-op around that time was Len Wilkinson. According to Mr Wilkinson he has no recollection of a telephone call from Mr Parkin. If Mr Parkin had telephoned him to say that McKenna was interfering with boys, Mr Wilkinson would have "wanted to get to the bottom of it". It is also Mr Wilkinson's evidence that it is not in his nature to hang up the telephone on people (t 3100-3).

The Hostel board member from the Commonwealth Bank was John Renk, and it is his evidence that he has no recollection of Mr Parkin's telephone call. I have already found that shortly prior to the time of Mr Parkin's alleged call, Mr Renk received a very similar telephone call from Bruce Carmichael. Therefore, if Mr Renk did receive Mr Parkin's call he would have had good reason to treat it very seriously. However for the reasons expressed in Chapter 15, I have accepted Mr Renk's claim that he is unable to remember Mr Parkin's call.

The Inquiry's investigators have been unable to identify the Hostel board member who Mr Parkin believes to have been a newsagent at the time.

I have already noted Mr Parks' evidence that in about 1980 the Hostel Board was informed by Dennis McKenna of the incident involving Noel Parkin at the Authority's head office. Mr Parks has also testified that in about 1982 a Board Member told the Board that "Noel had been going around telling people that Dennis was interfering with boys". If that statement was reported to the Board it would be consistent with Mr Parkin's evidence that by 1982 he was going to "all the parents" and telling them that McKenna was interfering with boys. Mr Parkin generally received a hostile reception to this assertion. It is Mr Parkin's evidence that no one believed him, and "they just thought I was soft in the head" (t 593).

Mr Parks believes that the board member who informed the other board members of what Mr Parkin was saying was Garth Addis (now deceased). However Mr Parks must be mistaken with that recollection because Mr Addis did not become a Board member until 1985. By 1982 Mr Parks was the Chairman of the Board and he has given the following evidence of the Board's response when it heard of Mr Parkin's allegation:

"Q. What did the Board do about that?"

I'm not sure whether they contacted the Authority or not.

Q. Well, if you were the Chairman of the Board - -

A. would have passed it on to - to the Country Hostel Authority.

Q. Do you know if that was done though?

A. Couldn't tell you. Can't say. I don't recall.

Q. Did you not think that the Board itself should undertake some investigations of its own?

A. Well, I don't think the Board believed it.

....

Q. Including you. You didn't believe it?

A. No, I didn't believe it.

Q. How would you know whether there's any truth to it or not, unless it's investigated?

A. I wouldn't know.

....

Q. You now say that the Board was told about the very subject matter that Mr Parkin was complaining about. Would it be unfair to suggest at the very least you, as Chairman of the Board, should have contacted Mr Parkin?

A. Not really. Noel could be very abusive and that, so no, I didn't contact him.

Q. Because you were concerned he might be abusive towards you?

A. Yes, and the fact that he'd go on a lot about it, because his son was put out and that was it, we took Dennis's word for what he'd said.

Q. What, regarding the son being put out?

A. Yes.

Q. What about this matter? What about this matter of him sexually interfering with hostel boys? Did anyone from the Board, to your knowledge, speak to him about it?

A. Not that I know of.

....

A. I don't think the Board believed it.

Q. Yes. So the Board just put its head in the sand?

A. Pretty well.

Q. We know hindsight is a wonderful thing, but the allegations that Mr Parkin was making now we know...to be entirely true?

A. That's right." (t 1432-4)

Nevertheless, a few people did believe what Mr Parkin was telling everyone, and one of them was a farmer Tom Fisher. In 1986 Mr Fisher had two sons, and the eldest of them was due to start at the Hostel the following year. At about that time Mr Parkin approached Mr Fisher in a shearing shed and expressed his concern: "that Dennis was a paedophile and that he wished to warn the boys to look out for any behaviour that they felt was abnormal" (t 841).

Mr Fisher took this warning seriously and discussed with his boys and his wife the dangers of attending the Hostel. Notwithstanding the risk of McKenna interfering with the boys, the family decided that they would still go to the Hostel because it was impractical for them to attend any school other than Katanning. However a few days before his eldest son commenced at the Hostel Mr Fisher took the precaution of speaking to McKenna:

"I told him that if he ever touched either of my boys physically in anger or in any inappropriate manner, he would spend a great deal of time in hospital" (t 842)

The two Fisher boys went on to complete their secondary education while boarding at the Hostel, and they never experienced any problems with McKenna.

11.6.5 Findings

In my view, Mr Parkin is an honest witness but the reliability of his evidence has been adversely affected by his anger and hostility towards McKenna. Mr Parkin's feelings are quite understandable given the frustrations that he endured over many years in trying to warn his local community about McKenna, as well as the devastation caused to his own family by his son Bradley's death in 2008. Mr Parkin obviously suffers a great deal of anguish when he contemplates all of the damage that has flowed from the refusal of people to listen to him so many years ago. Furthermore, Mr Parkin is still affected by a stroke that he suffered in the recent past, and I consider that this may have impacted on the way in which he presented his evidence.

Some insight into how these factors have impacted on the reliability of Mr Parkin's evidence can be gained from a comparison of his account of the Pingrup incident with the entries in the Ongerup police occurrence book.

Nevertheless, the most critical parts of Mr Parkin's evidence are corroborated by other witnesses. In that regard, Mr Parks' evidence confirms beyond doubt that Mr Parkin visited the Head Office of the Authority in 1980 and complained in very vigorous terms that McKenna was a paedophile. I am satisfied that the person who received that complaint was the Authority's administration officer Mr Hepper.

Notwithstanding that Mr Hepper effectively ejected Mr Parkin from the office, I am satisfied that he did take (or was instructed to take) some action in response to the complaint. That action was to refer the complaint to the Hostel Board via McKenna. In that regard, it obviously was not in McKenna's best interests to raise the matter of Mr Parkin's complaint with the Board, and the only reasonable inference as to why he did this is that he had been directed to do so by the Authority.

I consider that Mr Alan Parks is a credible witness. He is the only former board member to concede that the Board was ultimately informed of Mr Parkin's complaint (and I commend him for his honesty in that respect). It is clear from Mr Parks' evidence that when McKenna raised the topic with the Board in 1980, he did so in such a way as to ensure that no action would be taken. In particular McKenna did not inform the Board of the specific nature of the complaint, namely that McKenna had been "interfering with boys".

Obviously it was most inappropriate of the Authority to use McKenna as its channel of communication with the Board on such a matter. The Authority should have referred the matter to the Education Department for investigation so that Mr Parkin could be interviewed after he had had time to calm down. Alternatively, if it had been appropriate for the Hostel Board to deal with it, the Authority should have communicated the complaint directly to the Board Chairman and instructed him to investigate it without alerting McKenna.

I accept Mr Parkin's evidence that after visiting the Authority's Head Office in 1980 he telephoned a number of Hostel Board members to voice his complaint about McKenna. However in light of what I have said concerning the reliability of his evidence I make no findings as to which particular Board members he spoke to.

Notwithstanding that McKenna successfully stymied any consideration of Mr Parkin's complaint in 1980, I am satisfied that the Board as a whole was informed of the latter's allegation at one of its meetings in about 1982. (By which time Mr Parkin had repeated his allegation to many people throughout the Katanning region). The reason why the Board did not respond appropriately to that allegation is that it chose not to believe it. (Mr Parks has rightly conceded that the Board had "its head in the sand"). This failure to at least investigate Mr Parkin's complaint was a breach of the Board's fundamental duty to look after the welfare of the Hostel students, and was also a significant factor which contributed to McKenna's continuing ability to offend.

11.6.6 Conclusions

1. The Authority failed to respond appropriately to the allegation made by Mr Parkin in 1980 that McKenna was "interfering with boys", in that:
 - 1.1 It failed to implement its policy of having such allegations investigated by the Education Department.
 - 1.2 It referred the matter to be dealt with by the Hostel Board and did so by notifying McKenna of the allegation (thus ensuring that it would not be appropriately dealt with).
2. If not already aware the St Andrew's Hostel Board was made aware by 1982 of an allegation by Mr Parkin that McKenna was "interfering with boys" at the Hostel. The Board failed to investigate that allegation and by this inaction also breached its fundamental obligation to ensure the wellbeing of its Hostel students.
3. These failures by the Authority and the St Andrew's Hostel Board were significant contributing factors to McKenna's ongoing ability to offend.

11.7 1983: The “S” Affair – the squashing of an official investigation

11.7.1 The background

“S” is 43 years of age and now lives in Queensland. He was born in Western Australia of a single mother, and became a Ward of the State at the age of nine months. Ultimately he was placed into the care of foster parents who had frequent changes in their employment. Consequently, “S” was moved from place to place around Western Australia as a young child.

Throughout “S’s” childhood, the Department of Child Welfare (which later became the Department of Community Welfare) was responsible for monitoring his care. This required a case officer from the District Office of the Department that was closest to wherever he was living to make regular visits and to file quarterly reports on his welfare. By the late 1970s the family had settled on a farm near Gnowangerup, and “S’s” case officer was Francis Crowley at the Gnowangerup District Office of the Department for Community Welfare (the “DCW”).

In 1982 when “S” was 13 years old his foster parents told the DCW that they were experiencing problems with his behaviour. They had also decided to accept temporary employment in Papua New Guinea and were unable to take “S” with them. DCW was faced with finding a place for “S” while his foster parents were away, and the decision was made that he should become a boarder at St Andrew’s Hostel and attend Katanning Senior High School.

“S” commenced at Katanning Senior High School in the second term of 1982 and remained there until the end of 1983. During that period he was in Years 9 and 10 and was aged between 13 and 15 years.

“S” was relatively small and underdeveloped for his age, and he felt shy and isolated in his new environment. However, it is “S’s” evidence that he did not receive any sympathy or support from Dennis McKenna for his situation. About once a fortnight McKenna would encourage other boys to strip the clothes off him and to give him a “scragging”. McKenna also gave “S” the humiliating nickname of “stubbie” based upon the size of his penis. Because “S” was reluctant to shower with the other boys McKenna regularly arranged for him to be squirted down with a fire hose (t 927-8).

“S” also witnessed what he regarded as the “strange” behaviour of McKenna towards other boys. McKenna often had a young boy sitting on his lap whilst in his dressing gown, and he also would grab or flick at boys’ genitals as they walked past. He did this openly at all times of the day or evening and never tried to hide his touching of male students (t 929).

According to “S”, McKenna would have a movie night in his flat once or twice a month for a group of about 14 or 15 boys. “S” went to these movie nights on five or six occasions and the

films that were shown were soft porn cartoons and comedies. "S" felt very "special" when invited to these exclusive movie nights (t 931).

While "S" was boarding at the Hostel he was visited about once every term by his case officer Ms Crowley. According to "S" McKenna would take him aside prior to each of these visits and say: "just remember that you have nowhere else to go". "S" understood this to be a threat as to what might happen to him if he told Ms Crowley what was happening at the Hostel (t 930).

During every one of these visits other than the last visit, Ms Crowley met with "S" in either the breezeway of the Hostel or in McKenna's office. In each of these areas there was no privacy because of the other people around, and "S" was too scared to tell Ms Crowley what was happening to him at the Hostel (t 930).

On long weekends Hostel students would return home to their families, and "S" usually spent time with a nearby farming family who were relatives of his foster parents. However this did not happen on the first long weekend after "S's" birthday on 28 July 1982, and he had to spend that weekend at the Hostel.

According to "S", on the Saturday night of that long weekend McKenna invited him to his flat to watch a movie. During the movie McKenna gave him two or three drinks of coke and alcohol and also rubbed his nipples. McKenna also told him that the "scragging" was for his own good to make him tough. "S" does not know what happened to him after that and his next recollection was waking up in his own bed just before dawn (t 932-3).

On the following night (a Sunday) "S" was invited to McKenna's flat to watch another movie and was once again given two or three drinks containing alcohol. After the movie finished McKenna took him to his bedroom where he put "S" on the bed, removed his pyjamas, and performed oral sex on him. McKenna was also masturbating himself and in the course of this his toupee fell off onto "S's" stomach. "S's" last memory of that night is being in bed with McKenna's erection pressing up against him.

"S" later woke up and got out of McKenna's bed while it was still dark. "S" saw that McKenna kept the till drawers from the Hostel under his bed. "S" then stole some of the cash in the till drawers and returned to his dormitory (t 933-5).

On the following day (a Monday) "S" had breakfast in McKenna's room, and according to "S":

"McKenna told me that everything that had happened that weekend had to stay between us and that if I told anybody I would go to a place where kids who had no family go." (t 935)

On another long weekend in 1983 "S" again had to stay at the Hostel. McKenna once again invited him to his flat to watch a movie. "S" remembers that the movie was "Star Wars: Return of the Jedi" and that he was told it was a pirate copy on a video which McKenna had obtained on one of his trips away. ("S" has also established that that particular movie was first released in May 1983, so the long weekend must have been after that date. It was also the last long weekend that "S" stayed at the Hostel).

While watching the movie McKenna once again gave "S" three or four glasses of coke mixed with alcohol. McKenna had also ordered a pizza for them to eat. At some point McKenna put

his hand into "S's" pyjamas and masturbated him. "S" was also made to masturbate McKenna (t 935-6).

11.7.2 Wayne McKenna's late night telephone call to the Hostel Board Chairman

Throughout the time that "S" was a boarder at St Andrew's Hostel, one of the staff supervisors was Dennis McKenna's brother Wayne, and the Chairman of the Board was Alan Parks. It is Mr Parks' evidence that late one night at about 11 pm he was roused from his sleep by a telephone call from Wayne McKenna:

"...he didn't go into details, but he told me that Dennis, from what I can remember told me that Dennis was picking on a student. This student had come in, I don't know whether, what the story was fully, but apparently he'd been elsewhere and had a disability of some kind, I don't know whether it was a learning disability or what, and Dennis wasn't treating him as well as he should have been." (t 1436)

According to Mr Parks this was a most unusual telephone call because Wayne McKenna had never rung him at home before and never at that late hour (t 1436-7). Mr Parks spoke to Dennis McKenna about the matter the next time he went to the Hostel:

"I asked him how the lad was going and he said, "has someone been talking?", and I said, "No, I'm just curious – just wondering how the boy's going", and he said, "Oh, he's going fine." And I left it at that and kept my eyes and ears open, and never heard anything after that. So whether it continued on or not, I'm not 100% sure." (t 1437-8)

Wayne McKenna has confirmed that he made that late night telephone call. The subject of that call was "S" who was "a lonely boy" who didn't have many friends. Also his "hygiene was no good" because he wasn't taking any showers (t 2972-4, 2977).

Wayne McKenna's evidence as to the circumstances of the call is not entirely clear. He says that his purpose in telephoning Mr Parks was to discuss the boy's hygiene (t 2972-3). However he also agrees that he raised with Mr Parks the difficulty that he saw in the relationship between "S" and his brother Dennis (t 2976). It is obviously significant that at the time of the telephone call "Dennis may have been off somewhere" (t 2973).

11.7.3 "S's" complaint to the Department

The last time that "S" met with Ms Crowley was approximately two weeks before his birthday on 28 July 1983. For some reason (which "S" cannot recall) this particular meeting took place in a room opposite the dining room which was a study or library. It was the first and only time while he was at the Hostel that he was able to meet Ms Crowley in private. According to "S":

"We chatted about everyday things...I told Ms Crowley that something was not right at the Hostel. I also remember saying words to the effect, "They make me feel uncomfortable." I was referring to Mr McKenna and his family members who worked at the Hostel. I cannot recall the exact words but I believe I told Ms Crowley that Mr McKenna had done something bad with me.

By this stage my schoolwork was suffering and my behaviour was at times poor. I put that down to Mr McKenna's abuse and the Hostel environment. At the time I did not know what sexual abuse was. Sex was not something that had been discussed by my foster parents with me.

Despite that, I knew Mr McKenna was doing the wrong thing with me and I feel I must have told Ms Crowley that he was doing things with me. Ms Crowley wrote things down as I spoke with her...She had some sort of pad with her and she made notes of our conversation. I spoke with her for about 5 to 6 minutes and then the dinner bell went. I had to go to dinner and that ended my meeting with Ms Crowley.”
(t 937-8)

After that meeting “S” did not receive another visit from Ms Crowley or from any other case officer. He has since learnt that after his last meeting with Ms Crowley she ceased to be his Case Officer and was replaced by Mr Sam Namour. However, “S” never met nor received a visit from Mr Namour (t 939).

“S” was never ever informed of the outcome of his complaint to Ms Crowley, and it was only much later in life that he decided that he should follow it up. It was not until 25 November 2011 that his wife (on his behalf) first communicated with the Department for Child Protection (the successor to the DCW) to enquire what had happened to his complaint.

11.7.4 Brian Humphries' evidence

Brian Humphries is 79 years old and a retired Child Protection Officer. He commenced his career with the Government in 1960 at the Department of Native Welfare and in 1965 was transferred to the Department of Child Welfare.

From about 1975 Mr Humphries was a Senior Divisional Officer based at the DCW's divisional office at Albany, and Katanning fell within his area of responsibility. Although there was a District Office at Katanning which handled most of the child welfare issues arising in the Katanning area, Mr Humphries' duties as a Senior Divisional Officer took him to that town about every month or six weeks (t 66).

Whenever Mr Humphries visited Katanning he always had a number of matters to deal with. In that regard particular issues that arose from time to time often became “divisional matters” which required Mr Humphries' intervention. There were various reasons why this could happen. A particular matter might have required handling by a third party outside the Katanning District Office, it may have required juvenile justice input (an area in which Mr Humphries had considerable expertise), or a fostering report may have been required (t 67). Another possible reason was that the matter involved a Ward of the State (t 952).

In early 2012, and as a result of the publicity surrounding the present Inquiry, Mr Humphries had cause to remember a particular divisional matter from Katanning that he had been required to attend to sometime during the early 1980s. He remembered this particular matter because of the very unusual circumstances in which it had been terminated (t 65-9).

Mr Humphries recalls that he was asked to go to Katanning to “make enquiries and investigate allegations of ill treatment of a child at the Katanning Hostel”. Mr Humphries believes that this request came from the Superintendent of the Albany Divisional Office at that time but cannot recall whether the instruction was given orally or in writing. He also

cannot recall the details of the complaint but is certain that it was “physical ill treatment”. At that time “physical ill treatment” was a term which could encompass a child being “knocked around or it could have been sexual” (t 65-6).

When that particular complaint was referred to Mr Humphries it was one of a number of matters that he had to deal with at Katanning. When he arrived at Katanning to attend to these matters he first called at the DCW's District Office in the town. While he was there he received a telephone call from his Supervisor at the Albany Divisional Office. He cannot recall who the Supervisor was or what his title was at that time (in this regard there were a number of changes in personnel and in the designation of particular positions within the Albany Office during the early 1980s). It is Mr Humphries' evidence that the person at the other end of that telephone call told him:

“That I was not to continue the inquiry at the Hostel and I was not to go there. He had been instructed by Head Office Perth along these lines” (t 68)

This was a most unusual instruction for Mr Humphries to receive and when he queried why it was being given he was told that a politician was involved in the decision to terminate his investigation. Mr Humphries has a clear recollection of the surname of the politician who was named by his Supervisor, and that surname was “Logan” (t 68-9). It is Mr Humphries' evidence that the reason why he is able to remember this event after approximately 30 years is that:

“..it is stuck in my mind as strange. I guess that's the main reason. I don't think it ever happened again that we had a clear complaint and then someone told us not to proceed. I don't think that ever happened again to me.” (t 69)

11.7.5 Evidence from Departmental and other records at the time

“S's” former Case Officer, Ms Crowley is now deceased. She was born in England in 1939, and in 1968 commenced a career in the public service of Western Australia when she joined the Department of Native Welfare. She later transferred to the Department of Child Welfare and in 1976 was appointed as a District Officer for that department at Gnowangerup.

In 1977 Ms Crowley became the Case Officer for “S” and she remained his Case Officer until 14 February 1983 when she was transferred to the Albany Divisional Office. From that date Ms Crowley was replaced as “S's” Case Officer by the then officer in charge of the Gnowangerup Office, Samuel Namour (who also is now deceased).

“S's” case file shows that “S” was placed at St Andrew's Hostel because of behavioural problems in his foster home. His foster parents were having trouble disciplining him and it was thought that the Hostel placement would be the most appropriate way to address these problems. Later reports on the file commented favourably on the results of this strategy and in a letter dated 31 December 1982 to the Chief of Welfare Services Ms Crowley stated that:

“Placement at the Hostel proved beneficial both to “S” and his foster parents” (Exhibit 26)

“S’s” evidence that he never received a visit from his new case officer Samuel Namour is corroborated by the departmental file which does not contain any quarterly reports or records of any visits to him for the whole of the period between 24 January 1983 (the date of Ms Crowley’s last report) and 15 March 1984 (when the file was shifted to the Pilbara Office). However, there are records (from both the departmental file and the Hostel) which show that during 1983 Mr Namour had dealings with McKenna concerning issues to do with the fees payable in respect of “S”, and whether or not he could continue to stay at the Hostel. On an unknown date in about August 1983 Mr Namour also visited the Hostel to discuss these matters with McKenna but did not visit “S” himself (Exhibit 29).

The relevant records include the Warden’s Report and Hostel Board minutes of 20 July 1983. The Warden’s Report stated that “S” and another boy “are causing problems. Both have psychological and behaviour problems which are the main reasons for their erratic behaviour”. In response to that Report the Board resolved that the two boys (including “S”) “will have to leave; parents to be advised accordingly” (Exhibit 28). In my view a fair inference from all that is known about McKenna and his power and influence is that this resolution was passed at his behest, and effectively “rubber-stamped” by the Board. (McKenna also habitually provided the Board with false information about students he wished to get rid of so that they would be expelled).

It is important to note that this Board meeting took place approximately one week prior to “S’s” birthday on 28 July 1983 or about a week after the date when “S” claims to have made his complaint to Ms Crowley. The coincidence of these dates is important because it raises the possibility that there was some nexus between “S’s” complaint and the Board resolution which effectively expelled him from the Hostel.

The next document of relevance was a letter dated 2 August 1983 (on the DCW file) from McKenna to Mr Namour which read as follows:

“We are very concerned with “S’s” behaviour of late, he has on four occasions stolen either money or items that belong to others.

His parents are now out of the country and we wish to advise you that he will be given no further concessions. If “S” commits any further breaches of our rules he will immediately be expelled without further warning.

This Hostel caters for normal adjusted children and we are...(not) equipped to handle children requiring special guidance. Yours sincerely.” (Exhibit 29)

(It is “S’s” evidence that the only theft he had committed was the money he had taken from under McKenna’s bed. McKenna was not in a position to complain about that particular theft, and accordingly, “S” contends that the allegations in McKenna’s letter were fabricated.)

At the bottom of that letter there is a notation in Mr Namour’s handwriting which reads “visited McKenna with SWS. Situation is okay now.” (Exhibit 29). The “SWS” referred to in Mr Namour’s note was the Social Work Supervisor based at Albany. That Social Work Supervisor held the same position as the person who (whether before or afterwards) telephoned Mr Humphries at Katanning and directed him to drop his investigation into the complaint from the Hostel.

Departmental records show that the Social Work Supervisor in Albany from 18 December 1979 until 29 January 1982 was Edward Mildern. Mr Mildern was not replaced until 31 May 1982 and in the interim the position was filled by Robert Wilson in an acting capacity. From 31 May 1982 until 7 October 1985 the Social Work Supervisor was William Howell. It follows that Mr Howell was almost certainly the "SWS" who accompanied Mr Namour on the visit to McKenna in about August 1983, and who held that position during the previous month when "S" says he made his complaint to Ms Crowley.

It is Mr Mildern's evidence that although Ms Crowley transferred to the Albany Divisional Office in February 1983 she may well have temporarily kept in contact with "S" and continued to visit him at the Hostel (t 966). (In this regard it is relevant that she had been "S's" case officer for six years, had developed a relationship with him, and had been responsible for his placement at the Hostel. If she was a caring person she would have had good reason to remain in contact with "S" while he was at the Hostel). Mr Mildern was also asked how Ms Crowley might have handled the complaint from "S":

"Q. If, in fact, as "S" says, he made a complaint to her which wasn't very specific but which might have been reasonable to interpret (as) a complaint about sexual abuse, what would you have expected her to have done in terms of who she would have told about it?

A. Expectation would be that the first person she would probably tell would be the Social Work Supervisor in Albany and at that stage a strategy would be worked out about how it might be investigated as well, and also, because of the...anticipated volatility of something like that, I at that stage would have also let my line manager know, my supervisor know as well that things could get very, very difficult and very sticky." (t 966)

As Ms Crowley and Mr Howell are both now deceased there can be no direct evidence of whether or not events took the possible course as suggested by Mr Mildern. Regrettably, and notwithstanding that Mr Howell is unable to defend himself, it is necessary to refer to what his former colleagues have said about his professional shortcomings. (I would have preferred that this evidence not be made public but it is significantly relevant to my findings).

In Mr Mildern's estimation Mr Howell "was not as meticulous as he should have been in his attitude towards proper procedure" (t 965). According to Brian Humphries:

"There were things that Bill Howell did and ways that he operated that I did not agree with. Mr Howell was not the supervisor who I spoke with regarding the Katanning Hostel. If Bill Howell had given me that instruction I probably would have gone against his instruction." (t 952)

However, in a more recent statement (which Mr Humphries made after reading the publicly available transcript of other evidence to the Inquiry) he has changed his mind about whether or not it was Mr Howell who instructed him to drop the investigation:

"In relation to my previous written statement I now want to say that I should not have so strongly said that Mr Bill Howell ("Mr Howell") was not the supervisor who gave me the direction to cease the investigation of an allegation of ill-treatment of a child at St Andrews.

I should not have so strongly said that it was not Mr Howell but I did not want to speak ill of the dead and it is difficult to make a statement about Mr Howell without saying negative things.

In the whole of the district Mr Howell only got on well with one other Department employee and that was Mr Sam Namour. It is enough for me to say that Mr Howell was not well regarded because of the way he performed his work functions and his willingness to go outside normal practice and procedure.

Whilst I cannot be totally certain because of the number of years since this matter I believe it was Mr Howell who gave me the direction to cease the investigation of an allegation of ill-treatment of a child at St Andrews.

When I was given the direction to cease the investigation I argued with the supervisor who gave me the direction because it was such a strange order. I believe it was Mr Howell who gave me the order and even though it was Mr Howell and I did not like him I gave in and followed the order because it came from a supervisor.

The assertion in my previous statement that I would not have followed the order if it was from Mr Howell was perhaps more a comment of what I would like to have done with the benefit of hindsight.” (t 4196-7)

Robert Wilson, who worked under Mr Howell for a number of years has expressed the following opinion of him:

“There was a fairly unhappy situation in the office when Bill Howell (was) there. Staff had personality difficulties with him and there was quite a lot of conflict.

When Bill Howell came to the office we initially got on and later on both myself and other staff had concerns about how he operated and how he performed. Our relationship deteriorated over time and I believe he took a dislike to myself and some other staff. At times I felt frustrated and had some questions [about his] competence [and] about his decisions. Part of that was feedback from members of the community who were also critical of how he managed specific cases.

...

I believe that the direction that Mr Humphries received to stop the investigation is possibly something that Bill Howell would do.

I believe this because at times I was given directions by Bill Howell (on) how to deal with cases and in some cases as a social worker I didn’t believe those directions were appropriate.” (t 978-980)

Given that Mr Howell is now deceased and unable to respond to these negative assessments of his character the Inquiry invited his daughter to do so on his behalf. Her statement is as follows:

“My father William George Howell was a very hard working, caring and dedicated person, both personally and professionally. He was forthright with a no nonsense attitude that was to be admired and he dedicated much of his time to his work with the Child Welfare Department. He had strong beliefs with regard to his work and what he expected from fellow staff members from respect to ones conduct in the workplace and work ethics. He was honest and trustworthy.

As I recall he was transferred to Albany Office to sort out and clean up the office which was met with much criticism from several staff members. This resulted in complaints forwarded against him from the staff to have him removed from the Albany Office. He was extremely hurt and disappointed with the Department and their actions and he left shortly after being transferred from Albany office to Perth office and retired.

My father would not have stopped any investigation into a suspected child abuse claim if he had known about it."

It is very significant that "S" was almost certainly the only male boarder at St Andrew's Hostel during the early 1980s who was a State Ward. (It is not possible to establish this fact with complete certainty because this would require the mammoth task of cross-checking every single departmental file on individual State Wards against the names of each and every student who resided at the Hostel during that period). The significance of this fact is that the DCW would have had good reason to investigate a complaint of physical or sexual abuse committed on one of its wards at a school hostel. According to Mr Mildern the departmental policy at the time was to investigate only cases of alleged intra-familial abuse and to refer all allegations of extra-familial abuse to the police (t 974). (Note that there is conflicting evidence on this point: Robert Wilson – t 978, Des Semple – t 4312). However, the Department was always under an obligation to investigate any complaint of abuse against a Ward of the State because of its statutory responsibility towards a child placed in its care.

Accordingly, there was good reason why Mr Humphries would have been tasked to investigate a complaint by "S" concerning some form of abuse at the Hostel. It is also difficult to conceive of any possible reason why he would have been required to investigate a complaint of alleged abuse against any other student at the Hostel.

11.7.6 Other relevant circumstances

The Inquiry's investigations reveal that the politician named "Logan" (referred to by Mr Humphries) could only be the Honourable Leslie Arthur Logan who was a Country Party Member of the Legislative Council from 1947 until 1974. Mr Logan was also the Minister for Local Government, Town Planning and Child Welfare between 1959 and 1971. Mr Logan died at the age of 92 years in 2000, and it is clear from the Hansard record of a condolence motion in the Legislative Council at that time that he enjoyed a very high reputation for his achievements in the community.

If it was the complaint by "S" that Mr Humphries was sent to investigate (and if "S" is correct about the date on which it was made) then he would have been assigned that task in late July or August 1983. At that time there had been a recent State election which had resulted in a change to a Labor Party government, and the Minister for Community Welfare was the Honourable Keith Wilson MLA. Therefore, it would be very surprising if a long retired former Minister from the Country Party was able to persuade or direct someone in the DCW's Head Office to terminate Mr Humphries' investigation. (The former minister Mr Wilson has confirmed that he was totally unaware of such an event – t 4162).

Nevertheless, the Inquiry's investigators have done their best to uncover any possible link between Mr Logan and any officer in the upper hierarchy of the Department for Community

Welfare in 1983. Although some of these officers in the upper hierarchy had been lower level public servants in the DCW when Mr Logan was minister, no evidence has been found to suggest that any of them then had a close or improper link with him.

The Inquiry's investigators have also searched for any evidence of political activity by Mr Logan following his retirement which could have any bearing on the instruction allegedly given to Mr Humphries in 1983. Initially it was thought that a memo dated 7 May 1975 from the Director General of Education to the then Minister for Education indicated that Mr Logan took an interest in hostels following his retirement. That memo recommended how the Minister should deal with a request from the Student Hostels Association for representation on the Country High Schools Hostels Authority (Exhibit 23). The Minister (the Hon G C MacKinnon MLC) rejected this advice and instead annotated (what was initially considered to be) the following response:

*"I would prefer to discuss this matter with Messrs **Logan**, Watt, Knight, Withers, Lewis and Sibson at the one meeting."* (emphasis added)

However the Minister's handwritten annotation is hard to read and the better view is that the name "Logan" is in fact "Tozer".¹

No other evidence has been found which might indicate that Mr Logan had any particular interest in Hostel matters following his retirement. However, the Hon John Sibson MLA who was one of the politicians named in the Minister for Education's note had strong connections with McKenna prior to 1983. Mr Sibson and McKenna were longstanding members of the Student Hostels Association, and in 1977 and 1978 were both members of that Association's Executive Committee. Colin Philpott had been another fellow committee member and it is his evidence that Mr Sibson and McKenna got along very well together (t 3753).

In 1983 the DCW was structured so that the next officer in the chain of command above Mr Howell at Albany was John Anthony McDermott, the Senior Social Work Supervisor (South) based in Perth. He in turn reported to Gary John Bowler who was the Chief of Welfare Services. Mr Bowler reported to the Assistant Director of Field Services (a position that rotated between Des Semple, David Greenhill and Geoff Aves). The Assistant Director of Field Services reported to the Deputy Director Peter Gorton who in turn reported to the Director Keith Maine.

The Inquiry's investigators have interviewed all of these former officers other than Peter Gorton who is now deceased. The investigators have also interviewed Michael Hepburn who sometimes acted in Mr McDermott's position. These interviews did not reveal any information capable of supporting a reasonable suspicion that any of these former officers were involved in the instruction given to Mr Humphries. On the contrary, the general reaction of these former officers to the suggestion that this could have happened is as stated by Mr Bowler:

"I would vividly recall any political involvement or approaches to stop an investigation into ill treatment of a child and my own standards would not allow that and I would go to my superiors if that occurred."

It would be such an outrageous action and in my experience I never heard of it occurring."

¹ The handwritten annotation on the memo is reproduced on page 5 of Appendix 1 to this Report.

I recall if correct procedure was followed a politician couldn't go direct to a public servant with a complaint or instruction and if he did then the public servant should go to his superior who would have to go through the Minister at the time.

I don't know of anyone in the senior management team who had influential political links or associations at that time.

I don't know of anyone in the management hierarchy of Brian Humphries who had influential political links or associations at that time." (t 992)

The former Director of the Department, Keith Maine has testified that he served under many ministers from both sides of the political fence and not one of them ever directed him not to do anything in relation to the proper management of a case. He "cannot imagine" that any of his staff would have complied with a direction or request from a former minister to withdraw from the investigation of a complaint of child abuse (t 1009-1010).

11.7.7 The Inquiry's attempts to interview John Sibson

Mr Sibson retired from Parliament in 1983, is now 82 years of age, and lives with his wife at Bunbury. Given the connections that McKenna had with Mr Sibson in 1983, the Inquiry is obviously interested to know whether or not the two men ever had any discussion relating to the investigation of a complaint against McKenna by the DCW. For this reason, the Inquiry's Instructing Solicitor (Mr Terry Dobson) telephoned Mr Sibson on 23 March 2012 and asked him about his previous connections with Dennis McKenna. In the course of a relatively lengthy telephone conversation Mr Sibson expressed difficulty in remembering things which had happened a long time ago, but when asked directly whether Dennis McKenna had ever requested him "to pass on a message to someone who could stop an investigation into a child abuse allegation" he responded in a way which suggested that he had some knowledge of such an event. Mr Sibson answered the question with words to the effect that if he had "done something like that" it was a long time ago and was of no concern to the Inquiry "because it was only a small thing".

Mr Dobson then said words to the effect that it sounded to him as if McKenna had in fact asked Mr Sibson for assistance to stop an investigation into a complaint of child abuse. Mr Sibson responded to this proposition by stating that he had an appointment and had "to go now". Mr Sibson then hung up the phone.

On 27 March 2012 Mr Dobson telephoned Mr Sibson once again and requested that he make himself available for an interview. Mr Sibson's response was to the effect that there was no point in an interview because "I don't know anything". Mrs Sibson also advised Mr Dobson over the telephone that speaking to her husband "won't do you any good". Mrs Sibson later provided the Inquiry with a copy of a medical report from a consultant physician dated 11 December 2006 which had diagnosed Mr Sibson as suffering from moderate Alzheimer's dementia. According to that report Mr Sibson had poor short-term memory but was able to remember "events from far back". (Mr and Mrs Sibson have given consent for this private medical information to be publicly disclosed).

Notwithstanding this diagnosis the Inquiry requested an interview with Mr Sibson subject to whatever conditions his medical advisors might think to be appropriate (for example for it to take place in the presence of his general practitioner or some other support person). Mr and

Mrs Sibson cooperated in seeking medical advice on this request, but the consultant physician refused to cooperate. Arrangements were then made for Mr Sibson to be seen by another suitable specialist in Bunbury, but at a very late stage that specialist informed the Inquiry that he was unavailable. In the end, Mr and Mrs Sibson declined the Inquiry's request for an interview.

I have given careful consideration to the question whether Mr Sibson should be summoned to give formal evidence before the Inquiry but have decided not to take that step. My reasons for this decision are Mr Sibson's longstanding diagnosis of dementia, the possibility that his responses to Mr Dobson over the telephone were due to that condition, and the unlikelihood that any useful information will be forthcoming without his cooperation (if in fact he has such information). Furthermore Mr Humphries has been asked if the name he was given at the relevant time could have been "Sibson" but he is certain that it was "Logan" (t 4198-9).

11.7.8 Findings

I consider that Mr Humphries is an honest and credible witness. I accept his evidence that on a date he cannot now recall during the early 1980s while he was a Divisional Officer of the DCW at Albany, he was instructed to investigate a complaint of ill treatment of a child at the St Andrew's Hostel. I am also satisfied that when Mr Humphries arrived at Katanning and was about to commence that inquiry he received a telephone call from his superior in Albany instructing him to cease the investigation. I also accept that when he asked about the reasons for that instruction he was told that it had come from Head Office and that a politician named "Logan" was involved.

The reasons which would have justified Mr Humphries' investigation of that complaint at the time were fairly limited. In that regard the DCW's general policy in respect of such investigations focussed on complaints of intra-familial abuse and there was a tendency to refer all other complaints to the police. However any incident involving alleged abuse of a child who was a Ward of the State always had to be investigated by a DCW officer.

I also accept the evidence of "S" that during 1982 and 1983 he was sexually abused by McKenna. Although he was regularly visited by his Case Officer Ms Crowley, he was unable to convey any complaint to her up until her last visit because their contacts did not take place in private. However, when Ms Crowley made her last visit to "S" at the Hostel they were able to meet alone in a small room. I accept "S's" evidence that he then made a complaint to Ms Crowley along the lines that McKenna was doing "something bad" to him.

Although not conclusively established, the evidence strongly suggests that "S" was the only male boarder at St Andrew's Hostel during the early 1980s who was a Ward of the State. "S" was never advised of the outcome of his complaint, and he never received any contact visits from his new Case Officer (even though that Case Officer went to the Hostel in or about August 1983 to meet McKenna). In my view, the only reasonable inference from all of these circumstances is that it was the complaint by "S" that Mr Humphries was sent to investigate.

As to the reason why that investigation was terminated, it is significant that McKenna arranged for a Board resolution that "S" be expelled from the Hostel within a week of the date when "S" says he made his complaint to Ms Crowley. Given the vague way in which he had made the complaint, it is entirely possible that Ms Crowley (not realising its serious

nature) sought information about the matter from McKenna before leaving the Hostel. The Board resolution to expel "S" was consistent with McKenna's usual method of removing victims who were likely to cause trouble. Therefore it is probable that McKenna had got wind of "S's" complaint whether from Ms Crowley or by some other means.

In my view the fact that the investigation of "S's" complaint was terminated in the extraordinary way in which it was provides further evidence that McKenna had become aware of it. In that regard the only reasonable inference is that it was McKenna who initiated whatever action it took to bring about the instruction given to Mr Humphries. It is difficult to conceive of any reason why another person would have been motivated to take the extraordinary measures necessary to bring about such an outcome.

The evidence overall shows that McKenna could be very meticulous in his manipulation of various situations to his advantage. Assuming that he had become aware of "S's" complaint and had arranged for the Board to approve his expulsion, then from his perspective he would have had the DCW over a barrel. "S's" foster parents were still in Papua New Guinea, and no alternative placement would have been readily available. (From my own experience as a Children's Court Magistrate in the 1980s I know that the DCW would have had difficulties in achieving a quick resolution to this situation).

The fact that the Social Work Supervisor travelled from Albany to meet McKenna in or about August 1983 (and did not leave the negotiations to Mr Namour) indicates the seriousness with which he regarded the situation. Presumably when he attended the meeting he was well aware of "S's" complaint and of the potential for it to complicate any resolution of the matter.

The outcome of the meeting (as noted by Mr Namour) was that the "situation is okay now". Although McKenna had power to enforce the expulsion resolution by the Board he did not carry through with it and allowed "S" to remain at the Hostel. These circumstances strongly suggest that all issues involving "S" (including his complaint) had been settled by agreement between the Supervisor and McKenna at that meeting.

From the Supervisor's point of view he may well have considered this outcome to be in "S's" best interests, particularly if he thought that the complaint had little substance by reason of the vague way in which it had been framed. If this is what happened then he would not have wanted "S" to revive his complaint. In my view, this provides a possible explanation for the extraordinary fact that contrary to standard departmental procedure, "S" never received a contact visit from his Case Officer again.

The one fact that does not sit well with the above hypothesis is that Mr Humphries was not instructed to abandon the investigation before he left Albany for Katanning. Possible reasons for this are that his departure coincided with the meeting at Katanning, or that the Supervisor neglected to give him the instruction before he left. However, these are obviously matters of conjecture rather than evidence.

The more important question is why Mr Humphries was told that the direction to terminate his investigation had come from Head Office at the instigation of a politician named Logan. Regardless of whether or not that was true, it was a very bizarre and puzzling statement to make. If Mr Logan really had organised the instruction then he and the others who passed it on would surely not have wanted his involvement to be known. If on the other hand Mr Humphries was told a lie, then it was hardly a credible lie (given the improbability that senior

officers of a department which had a Labor Party Minister would heed an illicit request from a former Country Party Minister).

Regrettably, the evidence does not allow me to reach any conclusive findings as to how it was that Mr Humphries came to be instructed to terminate his investigation. However, I consider it more likely that he was told a lie about the reasons for the instruction than that what he was told was true. Certainly there is no basis to conclude that Mr Logan had any involvement in this instruction.

In my view, the most probable explanation for the termination of the investigation of “S’s” complaint is that it was part of an agreed outcome of the meeting between McKenna, the Social Work Supervisor and Mr Namour. In return for agreeing to resolve what may have seemed to the Supervisor to be a small problem for McKenna, the latter agreed to resolve a potentially messy problem for the DCW. However, these are not conclusive findings and are obviously partially speculative in nature.

11.7.9 Conclusions

1. In July or August 1983 the DCW officer Brian Humphries was instructed by his Social Work Supervisor to investigate a complaint that a child had been subjected to “physical ill treatment” at St Andrew’s Hostel. Such a complaint (in accordance with the DCW terminology used at the time) could encompass either physical or sexual abuse of the child.
2. The complaint in fact related to “S”, a student at the Hostel who had been sexually abused by McKenna.
3. Before Mr Humphries could investigate that complaint McKenna (by some unknown means) became aware that it had been made. McKenna then took steps to ensure that the complaint would not be investigated.
4. The means by which McKenna achieved that end cannot be determined. However he successfully brought about an outcome which resulted in the investigation of the complaint being improperly terminated.

11.8 1983-1985: John Peacock – the Board member who conducted his own investigation

11.8.1 Mr Peacock's evidence

During the 1980s John Peacock lived with his family on a farm east of Frankland. He had a daughter and a son who attended Katanning Senior High School in successive years during the period from 1982 until 1986. While completing their secondary education each child boarded at St Andrew's Hostel.

Mr Peacock was a member of the Hostel Board between 1983 and 1986, and from 1985 he was its Deputy Chairman. Throughout that period he perceived that his primary role was to be a representative of the parents of students from the Frankland District who were boarding at the Hostel.

In about 1983 he was approached at a school bus stop by one of the Frankland parents who had two sons at the Hostel. Her name was Gaye Davies and she said to Mr Peacock that there was "something fishy" or some "tomfoolery" going on at the Hostel. She went on to tell him that her two boys had come home and told her that Dennis McKenna was "mucking around with boys". Mr Peacock understood this to mean that McKenna was "having gay sex with the boys" (t 1153-5).

Although Mr Peacock found this allegation "hard to believe" he took it seriously and decided that he would try to do something about it (t 1156-7). He told Mrs Davies that he would do the best he could to find out what was going on (t 1175).

Mr Peacock thought that the best way to investigate the situation was to "go quietly" (t 1175). He also considered that he should not discuss the matter with other Board members until he had "something concrete" to tell them (t 1176). He did not consider bringing the matter to the attention of the police because "without concrete evidence they would just laugh at you" (t 1180).

Mr Peacock instead decided that he would conduct his own investigation by dropping in on the Hostel at irregular intervals and entering McKenna's room unannounced. To facilitate this plan he and his wife changed the venue for their shopping from Albany to Katanning, and at intervals of up to twice a week or once a month he would visit the Hostel at varying times of the night or day. Significantly however, Mr Peacock never visited the Hostel after 11p.m. when the dormitory was locked for the night (t 1171).

Mr Peacock continued these intermittent and unannounced visits for a period of perhaps two years but never saw anything which aroused his suspicions. In his own words he was "trying to catch McKenna out" (t 1166). He would walk into McKenna's room unannounced but only ever saw students (up to 10 or 12 in number and both boys and girls) watching movies (t 1171-2). He never ever saw any blue or pornographic movies being played (t 1168).

Mr Peacock also asked his own children about the matter but they told him that they knew nothing about McKenna sexually interfering with boys (t 1165). At one stage Mr Peacock decided to speak to McKenna himself:

"I just said to him that "There's rumours going around that you're, you know, mucking around with the boys", like that, and he said "That's just hearsay". He said that there is nothing going on. He said "You've been in my room all these times, there's eight to 10 students there, how can it go on?"...But after that I still continued to go to his room right up until I...finished...as a Board member, I still continued to go in." (t 1173)

Mr Peacock concedes in hindsight that he probably did not try hard enough and that "maybe I should have gone a bit further at what I was doing, but I didn't" (t 1165, 1178). However it is also his evidence that in hindsight it is "too unbelievable to see what he (Dennis McKenna) did at that Hostel" and that he "just can't comprehend it". In that regard: "We're just not that type of people. We are just good, decent people" (t 1192).

11.8.2 Other relevant evidence

Barbara Groves is the mother of a girl who was boarding at the Hostel in 1990 (See Chapter 11.21) and she has known Mr Peacock for many years. During her evidence she testified about a conversation she had with Mr Peacock at her parent's house in 1990 after McKenna had been arrested:

"...we were down at mum and dad's at Franklin, just sitting around the table - we'd all had a meal...we knew that John had been on the Board, and my husband and I were talking to him and said, "...were the Board aware of anything that was going on? Did you notice anything", and he said the only thing that he was aware of (was) innuendo that they'd been showing blue movies at the hostel, and...he was one of the people - I think there was a second person, I'm not sure...who was a Board member, was asked to call in at the Hostel at any time, day or night, and just walk into Dennis's flat and see if he could catch him out...he was on his way home from Perth, in the truck, and he called in, and he walked in and he caught Dennis showing movies. That's what he said to me...I'm not totally certain, but I believe he said that they were blue movies." (t 660-1)

It is also Mrs Groves' evidence that in more recent times after she had been contacted by the Inquiry's investigators, her husband telephoned Mr Peacock to remind him of that conversation (t 662). Mr Peacock agrees that Mr and Mrs Groves telephoned him prior to the Inquiry's investigator telephoning him (t 1191). It is also his evidence that he himself telephoned Mrs Groves after she had testified to the Inquiry. He referred to her evidence and told her that he "could not believe what she was saying" (t 1192). Mr Peacock does not deny that he had a conversation with Mrs Groves about McKenna back in 1990 but believes that there "must have been a misinterpretation". In that regard it is his evidence that:

"I never saw any blue movies, there must have been a misunderstanding between Barbara and I. I never saw any of the blue movies. If I had seen that, I would have told you." (t 1190)

11.8.3 Findings

With regard to the issue arising from Mrs Groves' evidence, I note that she herself is not completely certain about what Mr Peacock said back in 1990. It is also unclear from her evidence whether or not it was the second person that she believed to be involved who had seen the blue movies.

Furthermore, at times during Mr Peacock's evidence he seemed to mishear questions, and to have a genuine misunderstanding of what was being asked. There were similar difficulties during the preparation of his written statement (t 1157-8), and there is reason to believe that he may be one of those individuals who can experience problems in clear communications with others. Mr Peacock impresses me as an honest witness, and I accept his evidence that Mrs Groves must have misunderstood what he said back in 1990.

The Inquiry's investigators had considerable difficulty in locating Mrs Davies (the lady who spoke to Mr Peacock at the bus stop in 1983). Regrettably, she would not cooperate in providing a statement, and I only have Mr Peacock's evidence as to what took place between him and her.

Nevertheless, I am satisfied that Mrs Davies did tell Mr Peacock that her sons had informed her that McKenna was "mucking around with boys". I am also satisfied that Mr Peacock treated that allegation seriously even though he did not believe it to be true. It is very much to his credit that notwithstanding this belief, he considered it was his responsibility as a Hostel Board member to investigate the allegation to try and find out whether or not it was true. (In this regard he is the only Hostel Board member known to the Inquiry who upon hearing such an allegation against McKenna accepted that responsibility).

It is open to argument that Mr Peacock could have adopted some other course such as consulting with the Chairman or other Board members. However, he was wary of speaking to others until he had "concrete evidence", and in my opinion in circumstances where he did not believe the allegation to be true it was reasonable for him to take that view. I consider that Mr Peacock should be commended for recognising and accepting his responsibilities towards Hostel students as a Hostel Board member.

11.8.3 Conclusions

Mr Peacock did all that reasonably could have been expected of him as a public official in his capacity as a St Andrew's Hostel Board member in the mid-1980s.

11.9 Early 1985: Mary Pilatti

During 1984 Mary Pilatti and Lina Bertolini were young teachers employed at St Patrick's Catholic Primary School Katanning. They were both accommodated at Kartanup House (the old convent now known as Reidy House) in Amherst Street Katanning. A male teacher, Ken Perris (see Chapter 11.10) was also staying in the same building.

This accommodation had been arranged with Dennis McKenna when Ms Pilatti first met him as a result of her involvement in a church choir. He offered free accommodation at Kartanup House for the two women in return for their agreement to tutor students at St Andrew's Hostel on two nights per week.

The usual routine for tutoring was that Ms Pilatti would attend at the Hostel around the evening meal time. The students commenced their homework once they had finished their meals and Ms Pilatti would walk up and down the dormitories to see if any of them required help. Her tutoring duties extended to both boys and girls, and she was usually required between 7 pm and 9 pm.

Ms Pilatti's first impression of McKenna was that he was an admirable man because "though not a Catholic himself, he used to bring some of the Hostel kids to the Catholic Church for Sunday mass" (t 3631).

However, one night at the Hostel in February or March 1985 Ms Pilatti needed to ask McKenna something. She went to his quarters near the boy's dormitory and knocked on the door. When she heard McKenna say "come in" she opened the door and walked in (t 3631).

There were many young boys inside as well as a "disarming silence" (t 3631). Ms Pilatti saw that McKenna was sitting on a chair at the back of the unit and on either side of him boys were sitting on the arms of the chair. She recollects that he may also have had a boy sitting on his lap, but is unable to say how many boys there were.

Ms Pilatti does remember McKenna looking at her with a smirk on his face as if to say "I am above this so what are you going to do". Ms Pilatti spoke to McKenna but cannot remember what they talked about. At that time she was feeling quite shocked and also had a "horrible feeling" that something was "not right" (t 3632).

As Ms Pilatti left McKenna's flat she saw Ms Bertolini outside. According to Ms Bertolini she noticed that Ms Pilatti "was as white as a ghost". When the two women returned to Kartanup House that night Ms Pilatti described what she had seen. They discussed the situation at length but "rationalised it away" (t 3634) and came to the conclusion that McKenna was probably being fatherly towards the students. In this regard, they "had heard absolutely nothing untoward about McKenna's character or behaviour that would make us think to the contrary" (t 3632).

Shortly after this incident Ms Pilatti and Ms Bertolini were informed (by someone on behalf of McKenna) that they were required to move out of Kartanup House, and they then shifted to private accommodation. As time passed Ms Pilatti became very angry about McKenna evicting them from their accommodation, and she suspected that this had happened because she had seen him with the boys in his room.

At the time of the incident Ms Pilatti was a young and inexperienced teacher. McKenna on the other hand had a high reputation and standing amongst the local community. Therefore it is quite understandable that (notwithstanding Ms Pilatti's feeling that something was "not right") she was able to rationalise away the need to do anything about what she had seen.

In light of McKenna's typical pattern of behaviour it is very likely that he did terminate Ms Pilatti's accommodation because of her negative reaction to what she saw in his room. This is yet another example of him using his power to his own advantage. It is also a further example of his high reputation and standing in the local community hindering any questioning of his behaviour.

Conclusions

1. As teachers employed within the Catholic school system Ms Pilatti and Ms Bertolini were not public officials who fall within the scope of this Inquiry.
2. Nevertheless they behaved reasonably in response to what Ms Pilatti saw, and what Ms Bertolini was told. They are both to be commended for coming forward and providing information to the Inquiry.

11.10 Mid 1985: The young teacher who told his Primary School principal

In 1985 the Department of Education posted 22 year old Ken Perris to Katanning to be the physical education teacher at two primary schools (Katanning and Braeside primary schools). For three months from March 1985 he shared accommodation with two other teachers in the old convent and annex of St Andrew's Hostel, now known as Reidy House and then named "Kartanup".

Mr Perris stayed at Kartanup rent free in return for the work that he did each weekday evening supervising homework at the Hostel. This supervision took place between 7 pm and 9 pm, and Mr Perris worked predominantly with boys. He was required to have a timesheet signed each night by Dennis McKenna, and for this reason he always went looking for McKenna at around 9 pm.

On these occasions Mr Perris often found McKenna in his flat surrounded by boys. There were usually six to eight of these boys who were mostly younger students. Mr Perris noted that the boys tended to sit or lie around McKenna on a modular lounge or on a shelf affixed to the wall behind the lounge. He also noticed that some boys would often have their heads on McKenna's leg or lap whilst watching television. Mr Perris "just thought it was odd" that McKenna had these younger boys in his flat with their heads resting in such positions (t 488-489).

On most weekends Mr Perris returned to Perth to play Pennants cricket. The other two teachers staying at Kartanup were also in the habit of leaving Katanning on weekends. The last one to leave always locked the premises.

Mr Perris was usually the first teacher to return to Kartanup on a Sunday afternoon and he sometimes noticed that the furniture had been shifted or beds rearranged. He particularly noticed that two single beds which were normally placed together to make a double bed had sometimes been separated.

On at least three occasions when Mr Perris returned to Kartanup (at approximately 3pm on a Sunday) he found McKenna inside the building. McKenna had boys with him each time but on one occasion there was just one boy. When asked what he was doing there, McKenna would make comments along the lines that he was checking the building with a view to accommodating students from the Hostel.

The Principal of Katanning Primary School at that time was Ron Byrne. Mr Byrne occasionally met with Mr Perris to provide him with feedback on his professional development. As a result of these sessions Mr Perris had a very high regard for Mr Byrne whom he considered to be a very professional and personable Principal. Accordingly, Mr Perris always felt very comfortable in Mr Byrne's presence.

In May or June 1985 Mr Perris shifted from Kartanup into private accommodation in Katanning. When he next met with Mr Byrne the subject of this change in accommodation

was discussed. Mr Perris then said to Mr Byrne that he had been happy to move from Kartanup:

“...because of the fact that I observed Dennis McKenna at Kartanup House when I returned and I felt that privacy had then become an issue and...I made a point that...I thought that behaviour was unusual, that we hadn’t been informed, and I also commented on the fact of observations that I had made whilst doing homework supervision at the hostel where I observed boys in his flat...in an unusual position, laying across his lap, laying across the top of the lounge suite, and that’s what I conveyed to Mr Byrne at the time.” (t 494)

It is Mr Perris’ evidence that Mr Byrne said he would make a ‘note’ of what he had been told. Mr Perris did not know whether this meant that Mr Byrne would make a mental note, or whether he would make a written note in his diary or the school journal. In this regard, Mr Perris was aware that Mr Byrne kept a school journal to record “events of significance, critical incidents, or other information that had come to his attention”.

Mr Perris also recalls that during this discussion Mr Byrne referred to the fact that McKenna had been made Citizen of the Year in Katanning. However, this was not said in a demeaning way, and Mr Perris felt very comfortable in making the comments that he did to Mr Byrne (t 495).

Mr Byrne is now 75 years of age and has been retired for 15 years. He confirmed in evidence that he was the Principal of Katanning Primary School for two years in 1984 and 1985.

Mr Byrne remembers Mr Perris and recalls him as a “young keen sort of guy who was out to do as best he could and who had a genuine interest in the children” (t 1882). Mr Byrne has read the transcript of Mr Perris’ evidence but does not have any recollection at all of the conversation to which Mr Perris refers.

According to Mr Byrne he kept a personal desk diary and also made entries in the school journal which remained with the school. If Mr Byrne made a note of the conversation he believes that he would not have done so in the school journal. His reason for this is that Mr Perris “didn’t actually see the children being sexually assaulted” and Mr Byrne would not have risked being sued for defamation as a result of any entry in the journal. If on the other hand he had made a note in his diary this would no longer be available because he always destroyed his diaries at the end of each year (t 1894).

Although Mr Byrne cannot recall the conversation he does not say that it did not happen (t 1889). However he believes that in the situation as outlined in the transcript he would have advised Mr Perris to go to the police and to also telephone the District Education Office to tell them what he had done. Mr Byrne believes that he would also probably have advised Mr Perris to notify the High School Principal (t 1889).

Mr Perris is a very credible witness and I am satisfied that he did have a conversation with Mr Byrne along the lines as he has testified. Notwithstanding Mr Byrne’s belief that he would have advised Mr Perris to go to the police, I am satisfied that that advice was not in fact given. It may well be that the information imparted by Mr Perris was not delivered in a sufficiently vivid fashion for Mr Byrne to deem such advice to be necessary. In that regard the conversation as described by Mr Perris during his evidence would seem to have focussed more on the issue of his privacy at Kartanup than on the questionable conduct of McKenna towards the boys.

Conclusions

1. Mr Perris did all that reasonably could be expected of him as a public official in his capacity as a young inexperienced school teacher.
2. The evidence does not justify any conclusion that Mr Byrne failed to respond appropriately to what Mr Perris told him.

11.11 Late 1985: The barmaid who was angry about “kiddie fiddling”

11.11.1 The evidence of “M”

In 1985 the witness “M” was 30 years of age, married, and the mother of two young children. In January of that year she moved with her family from Perth to Katanning when her husband was transferred in his position with the public service.

For the following two years “M” had part-time employment as a barmaid at the Federal Hotel on the main street of Katanning. “M” worked on nights and weekends and served a very mixed clientele at the bar. In this regard the Hotel’s customers were “all sorts of different people”, including both men and women, farmers, business people, members of Rotary and sporting groups, as well as people from outlying areas who had come into town to do their shopping or banking or to visit the sale yards or the co-op (t 3685, 3686, 3692).

In the course of “M’s” bar work she would move from customer to customer and overhear “brief snatches” of conversation on a variety of subjects. It is “M’s” evidence that a subject which was frequently a topic of conversation was “kiddie fiddling” at the St Andrew’s Hostel:

“Q. Would this be from the same people who would go and drink at the bar?”

A. No, it was very mixed. It was a whole lot of different people at different times but so often it came up. Over the months it was just so often but very different people. It wasn't just the same group talking about the same thing all the time.

Q. Was there any name mentioned as to who was involved in this kiddie fiddling or any title?

A. It was just - I think at times "What's the warden up to? What's happening at the hostel?", but it was very...brief. It was just quick mentions and someone would say "What's the warden up to? What's happening?", just very - very briefly.

Q. Were you able to find out from hearing these snatches of conversation whether it was kiddie fiddling involving a particular sex, as to whether it was boys or girls or boys and girls?

A. Always I only ever heard talk about boys.

Q. Did you have an understanding of what the phrase "kiddie fiddling" meant back then?

A. Yes, I did, yes. I did understand it to mean.

Q. What was that?

A. Interfering with boys. The kiddie fiddling, that was - it was always a connection with boys, all the snatches of conversation was the boys and "What's happening at the hostel?" and "What's the warden up to?".” (t 3686)

It is also “M’s” evidence that this talk of “kiddie fiddling” continued to occur regularly for most of the two year period that she worked at the Federal Hotel. However, it was after the first few months of hearing this topic of conversation that “M” thought to herself: “What is going on?” and decided that she should speak to someone about it.

The first person that “M” raised the subject with was Ainslie Evans who was a long term and very popular Councillor on the Katanning Shire Council. “M” approached Councillor Evans because she had learnt through her involvement in a nursing mother’s playgroup, kindergarten, preschool, swimming lessons, and as a result of some problems she had had with the local council that if there was “anything that you wanted to ask about” you should: “ask Ainslie”. In that regard, it seemed to “M” that Mrs Evans was “connected with everything” (t 3688).

For this reason, it was “M’s” expectation that if she talked to Mrs Evans about the situation Ainslie would look into it and speak to other people. However, according to “M”:

“I ran into her one day down the street and I spoke to Ainslie Evans...I had met her a few times by then so I knew who she was, and I spoke to her and I said "There's an awful lot of talk about the hostel and the kids and 'kiddie fiddling'. What is going on at the hostel?" and...she said "Nothing. The hostel is fine. They are all really good people. Everything is fine at the hostel. There are no problems. Everything is fine". She was very polite. She didn't want to discuss it with me. So I tried to say "Look I've heard, I keep on hearing it" and she didn't want to discuss it with me. She said "Everything is fine" and - well, she turned around and walked away.” (t 3688)

It is “M’s” evidence that when Mrs Evans turned away and walked off she just stood there and “didn’t really know what to do”. However, not long afterwards she took advantage of an opportunity to raise the issue with the local police Sergeant Bill Todd. She knew Sergeant Todd because she had met him on a few occasions at the Hotel. In that regard, policemen on patrol would often walk in, have a look around, say hello, and then leave. It was “because of the Hotel and police coming through” that “M” had met Sergeant Todd. Furthermore, “Katanning was very small. We met everybody all the time” (t 3690-1).

“M” has also identified Sergeant Todd from his photograph in an issue of the Great Southern Herald. Because of an advertisement on the same page of that newspaper publicising a change in management at the Federal Hotel, “M” is also able to say that she spoke to Sergeant Todd during the latter half of 1985 (t 3692). According to “M”:

“One night, and this was after the new people had taken over in the Federal Hotel...Bill Todd came in...I was cleaning up, so it was after we had closed...and he came in and I said to him "Bill, there is an awful lot of talk around the bar about the hostel and what's going on at the hostel and the "kiddie fiddling" and the whole situation at the hostel, it keeps on getting talked about, it's mentioned around the bar at different times" and he was just really quite rude. He said "What would you know? How would you know anything?". He was very...rude and just very dismissive.

Q. So he didn't ask you anything about who it was who you had heard speaking about this?

A. No.

Q. At that time, going back then, if he had asked you that would you have been able to provide him with names of people that you had heard speak about this?

A. I'm not sure but I may have been able to say "Look, so and so is in that group but I'm not sure, but if you talk to some of these people maybe they will remember who was talking about it".

Q. ...what were you expecting Sergeant Todd to do?

A. I thought because the talk had gone on for so long that the police should have a look at what was happening. Because I felt there had to be something because it wasn't just one group just talking about the same thing. It wasn't just one group just drinking and carrying on about one subject. It was mixed. It was around different people at different times and I really thought - from what I heard, the phrase "kiddie fiddling", which is so horrendous, I really thought the police should have followed up, had a look at something.

Q. Can you recall your reaction to how Sergeant Todd dealt with this information you gave him?

A. I was really annoyed that he was so rude to me...I was very polite to him but I tried to speak quietly and politely to him and he was just very rude...He just tried to put me down." (t 3689-90)

By the time that McKenna was arrested and charged in 1990, "M" had moved back to Perth. She remembers her reaction upon hearing that news was that she was:

"Angry it took so long...I had spoken to people, and it went on for so long. It was 1990 before he was charged, and I remember just stomping around swearing, just angry that the whole town just let this happen. If it was talked about in the pub with a lot of different people - not just farmers or sports people or whatever - different people - tradesmen, businessmen, everything - if I heard it, why didn't somebody do something? At least in '85 when I heard it, why did it go on so long?" (t 3693)

11.11.2 Ainslie Evans' evidence

Mrs Evans was offered the opportunity to testify in response to "M's" evidence, but chose instead to provide the following written statement:

"I do not recall any person with that name. I do not recall any discussion that may, or may not have occurred with her.

This street corner conversation would have happened over 25 years ago.

I have never had any management position with the St Andrew's Hostel, and would not have been in any position to act if this information was correct.

I don't believe that she had 'evidence', only pub talk and gossip, perhaps this is why the local Police (Bill Todd) dismissed her claim.

At that time, I was living in the main street and often walked to the Mill and shops, I always chat with people, I enjoy that part of the community. Most requests that came to me were about things of historical interest or the children's school and simply local information and usually forgotten by the time I arrived home."

11.11.3 Inspector Todd's evidence

In 1985, Inspector Todd was the Sergeant in charge of the Katanning Police Station. He had commenced in that position in 1983. Inspector Todd agrees that it was part of his normal police work at that time to “glean information” and listen to rumours from any people that he might happen to meet in the street or elsewhere. Depending on the severity of the information that he obtained in this way “you would follow up just about everything that was told to you” (t 3820-1).

Inspector Todd has read the transcript of “M’s” evidence and according to him it is “entirely incorrect” (t 3825). It is Inspector Todd’s evidence that he would never have visited any hotel while in uniform because his duties as Officer in Charge of the Katanning Police Station did not include going on patrol. It was the officers he had rostered on afternoon shift who patrolled hotels at closing time. Inspector Todd’s role was to stay at the station unless “a serious matter came up”. For these reasons Inspector Todd is “100 per cent” positive that during 1985 he never entered the Federal Hotel in Katanning around closing time. Furthermore, “officers don’t go around in the evenings on Friday nights alone to close up pubs”. Accordingly “that lady has made an error”, and any police officer that she spoke to “certainly was not Sergeant Bill Todd” (t 3826-9).

It is also Inspector Todd’s evidence that if someone like “M” had come to him to say that there was “kiddie fiddling” going on at the Hostel he “would have done something about it”. He would have made some enquiries, and if the information had been confirmed from more than one source, he probably would have contacted the CIB (t 3835, 3837).

11.11.4 Peter Flockhart's evidence

In light of the conflict in the evidence between “M” and Inspector Todd, the Inquiry’s investigators located Peter Flockhart, who was the Proprietor and Publican of the Federal Hotel at Katanning at the material time. He remembers employing “M” who worked as a barmaid until closing time whenever she was rostered. Mr Flockhart also recalls seeing Sergeant Todd “on one or two occasions at the Hotel” but is unable to say “whether he was working or not”. In that regard Mr Flockhart believes that Sergeant Todd would have been in uniform but cannot be absolutely certain (t 4278). On these occasions Mr Flockhart presumed that Sergeant Todd was there:

“...within the line of his duties looking for people, seeing who was there, whether good order and service has been applied...”

...

He would look around, perhaps acknowledge one or two people in the bar, say “Good evening”, “Good night”, whatever. Never stayed there, from what I can recall, for very long.” (t 4279)

It is important to note that Mr Flockhart knew who Sergeant Todd was because he occasionally visited him at the Katanning Police Station (t 4278).

11.11.5 The evidence in response to Mr Flockhart's assertions

Inspector Todd has provided the Inquiry with a written statement (dated 10 July 2012) in response to Mr Flockhart's evidence. That statement confirms that it was part of the duties of Katanning Police to monitor and control the behaviour of people in the town, which required patrols of licensed premises to ensure that there were no breaches of the peace. However, the statement outlines in considerable detail the nature of Inspector Todd's duties as Officer in Charge, and why these did not allow him time to participate in these patrols.

The statement also deals at length with the possibility that Mr Flockhart was mistaken in his identification of Inspector Todd as the Sergeant he had seen in his hotel, and suggests that the police officer may have been the previous Officer in Charge Sergeant Marlow. Inspector Todd has raised this issue because Mr Flockhart in his initial statement said that he had taken over the Federal Hotel in 1982. However, Mr Flockhart was mistaken about this (at the time of his statement) and in his evidence has confirmed "M's" testimony that he acquired the hotel lease in 1985. According to Mr Flockhart he commenced at the hotel in March or April 1985 and remained there for approximately 18 months until about September 1986 (t 4277). Mr Flockhart has also confirmed that "M" was employed as a barmaid before he took over the hotel, and that she continued in that employment after he left (t 4276).

The Inquiry has also received written statements from a total of nine police officers, former police officers or staff who were stationed at Katanning during the time that Inspector Todd was Officer in Charge. Their evidence is to the following effect:

- Some of them corroborate Inspector Todd's evidence as to the nature of his duties, and the hours during which he usually worked, as Officer in Charge of Katanning Police Station.
- None of them is able to recall the then Senior Sergeant Todd working afternoon shifts or participating in the nightly patrols of hotels.

Nevertheless, there are entries which were made by Inspector Todd in the Occurrence Books of Katanning Police Station between June and December 1985 which show that he was on duty during afternoon shift or after hours on at least 10 separate occasions.

11.11.6 Findings

I consider "M" to be an impressive witness. Despite being very reluctant to give evidence she felt it was her duty to come forward at a very late stage in the Inquiry's proceedings because of what she had seen and heard in the media. In that regard she was aware that many witnesses had denied any knowledge of sexual abuse happening at St Andrew's Hostel at the relevant time, and felt compelled to testify about the conversations she had heard while working as a barmaid at the Federal Hotel.

I believe that "M" has testified honestly and that the substance of her evidence is generally reliable. I accept that in the course of her work at Katanning she heard constant conversations amongst a great variety and number of customers about "kiddie fiddling" at the Hostel. I also accept her evidence that she was very concerned about what she heard and for that reason decided to raise the issue with Mrs Evans and the police officer whom she recalls to have been the then Sergeant Todd.

Mrs Evans does not recall any conversation with “M” concerning rumours about “kiddie fiddling” at the Hostel, but does not deny that such a conversation ever happened. In that regard, Mrs Evans does not believe that anything said to her by “M” would have been “evidence” but would have been merely “pub talk and gossip”.

I consider that “M” is unlikely to be mistaken about the conversation she had with Mrs Evans. I accept her evidence that she did speak to Mrs Evans and raised with her the subject of the rumours she had heard at the hotel, and that Mrs Evans then responded to the effect that “everything is fine” and walked away. (I infer from Mrs Evans’ response at that time that she had already heard these rumours).

With regard to Inspector Todd I accept his evidence (corroborated by other police officers) that his duties as Officer in Charge of Katanning Police Station did not usually involve him in visiting hotels in the town or participating in the regular daily foot patrols. However, I do not accept that he never entered the bar of the Federal Hotel in the course of his duties, and in that regard accept “M’s” evidence (which is corroborated by Mr Flockhart) to be reliable.

I am satisfied that “M” did speak to a police officer and raised her concerns about the rumours of “kiddie fiddling” at St Andrew’s Hostel, and that this occurred one night around closing time in the course of that police officer’s patrol of the hotel. I am also satisfied that “M” knew who Sergeant Todd was at the time and occasionally saw him at the Hotel. However, on the question of whether or not it was Sergeant Todd on the particular occasion when she raised the subject of the rumours, I think there is room for her to be mistaken. In Chapter 10 I have referred to the problems that witnesses experience when trying to remember the details of events which occurred a long time ago. It is significant that “M” came forward to the Inquiry as a result of publicity in the media which had referred to and broadcast vision of Inspector Todd. In these circumstances there is a danger that she has mistakenly identified Inspector Todd as the policeman she spoke to on the particular occasion that she remembers 27 years ago.

11.11.7 Conclusions

1. On an unknown date in late 1985 “M” who was then a barmaid at the Federal Hotel, informed a police officer from Katanning Police Station of rumours she had heard in the bar concerning “kiddie fiddling” at St Andrew’s Hostel. The police officer was dismissive of “M’s” concerns and did nothing in response to the allegation.
2. The evidence does not prove that that police officer was Inspector Todd.

11.12 1985-1986: The Trezise saga

11.12.1 The background

The Trezise saga spanned the years of 1985 and 1986. It began with the removal of three children from St Andrew's Hostel because of Dennis McKenna's behaviour, and came to an end after solicitors (acting for the Hostel Board and McKenna) sent letters to the parents of those children threatening proceedings for defamation.

One of the children removed from the Hostel was the daughter of David and Coral Trezise who lived on a farm near Pingrup. The other two children were the sons of Glenys Flanigan, who also lived at Pingrup along with her long term partner William McPharlin. Pingrup is a small town approximately 50 kilometres south of Lake Grace and 100 kilometres east of Katanning.

All three children boarded at the Hostel during 1984, but by the end of that school year they were all unhappy and wished to leave. In this regard the Trezise's daughter, Jacqueline Galluccio, had told her parents that "it was a horrible place and that she wasn't going back". According to Mr Trezise she also told them that McKenna made her "feel sick the way he used to have boys hanging off him and on his knee and fondling them and so forth" (t 536). (However their daughter Jacqueline Galluccio cannot recall making this statement – t 2398).

The two Flanigan boys also objected to McKenna's behaviour. In this regard one boy had told his mother:

"...that the housemaster had called him into his office or some place similar, and had undid his fly on his pants while he was standing next to him...He did that back up and the housemaster undid it again. And then he did it up and walked out of the door..."
(t 528)

Coincidentally at the end of 1984 there was a proposal for the Lake Grace school bus service to be extended further south to Pingrup. The Trezises anticipated that in the event of this happening there would be no further need for their daughter to be sent to the Hostel because she would be able to commute to Lake Grace High School each day. However their daughter had been booked to continue at the Hostel for the 1985 year, and they had delayed in cancelling this booking until there was some certainty about the new bus service. Consequently it was not until January 1985 when the extended bus service was confirmed that the booking was cancelled.

11.12.2 The dispute over fees

Ms Flanigan also cancelled her two sons' bookings in January 1985, and those cancellations took effect without any response from the Hostel. However when McKenna learned of the Trezise's cancellation he told them that they had not given enough notice and that they remained liable for the Hostel's fees for the whole of the 1985 year. Mrs Trezise now suffers from a medical condition which has affected her memory, and prevents her from testifying about the relevant events. However it is Mr Trezise's evidence that:

“...we argued that. And then he came back – and I think we may have had a letter from the Board...that said we were due for three months or one term’s fees and, okay, we thought about that, and in the meantime there was a lot of gossip going around town that Dennis McKenna was telling people that we couldn’t pay our bills and we weren’t financial enough to pay our bills, and that got our back up.” (t 537)

Accordingly, the Trezises refused to meet the Board’s demand that they pay one term’s fees, and over the months that followed the dispute quickly escalated. The Trezises wrote to the Authority asking it to reverse the Board’s decision, and when that request was refused they sought a review by the Ombudsman. They also wrote to the Minister for Education seeking a reversal of the Hostel Board’s decision.

In June 1986 the Ombudsman ruled that the Trezises were contractually bound to pay one term’s fees but suggested that the Board should deduct from this sum the notional costs of catering that had been saved. The Minister’s response was to suggest that the Trezises should be allowed to pay off the debt by instalments. However the Trezises were not happy with either of these outcomes.

As can be expected, Mr and Mrs Trezise had generated a considerable quantity of documentation while pursuing the matter. Amongst the materials gathered in support of their cause were two letters from other parents who had withdrawn their children from the Hostel but had not had to pay fees. The first letter (dated 22 August 1985) from Mr McPharlin and Ms Flanigan was as follows:

“To Whom It May Concern,

We wish to advise that our two children weren’t re enrolled at St. Andrews Hostel Katanning for the 1985 school year.

We gave no notice to them whatsoever of our intentions, neither have we heard anything or had any correspondence from them in relation to our decision to send them to Lk. Grace High School.

The children were removed because they both complained of suspicious suggestions made to them by the housemaster, one Dennis McKenna” (Exhibit 8) (emphasis added)

The second letter (dated 20 August 1985) was from a Mrs Neve:

“We removed our daughter from St Andrews Hostel without a terms notice, because she was on the verge of a nervous breakdown.

We wrote to the Hostel Board stating our case and nothing more was heard or said about it from the board.” (Exhibit 10)

It is Mr McPharlin’s evidence that the reference in his letter to “suspicious suggestions” related to the behaviour reported by his stepsons, and in particular McKenna’s actions in twice unzipping the fly on one of the boy’s pants.

11.12.3 Mr Trezise decides to speak out against McKenna

It is Mr Trezise's evidence that while he was pursuing the dispute over fees: "the old town grapevine was growing well, and it was being well fertilised, and there were rumours around that things were going on at the Hostel" (t 540). Some of these rumours were to the effect that McKenna was "fiddling with boys", therefore (as I understand Mr Trezise's evidence) he considered the reference to "suspicious suggestions" in the McPharlin/Flanigan letter to be consistent with these rumours (t 540-541).

There was also an occasion around 1985 when a young lad Mr Trezise knew (John Jolley) helped him with some fencing. Mr Jolley had recently completed his schooling as a boarder at the Hostel and while helping with the fencing he told Mr Trezise that "McKenna fiddles with boys" (t 542). (It is relevant to note that McKenna was convicted at his trial in 1991 of an offence against Mr Jolley). It is Mr Trezise's evidence that as this was the first time that he was given this information firsthand "alarms bells rang". For this reason he decided that he should approach a Hostel Board Member (Garth Addis) whom he had known for many years. When he next saw Mr Addis (at a sporting event):

"...I called him aside and I said to him I thought there were some irregularities going on at the hostel and he asked me what. I told him the information John had given me.

Q. In particular, can you recall, to the best of your recollection, what you said to him?

A. I just told him that I had it on pretty good authority through John Jolley and from a letter from Bill McPharlin, which he would have already read no doubt, that there was something fishy going on at the hostel.

Q. Did you expand on that at all?

A. Yes, I told him that Mr McKenna was fiddling with boys.

Q. Can you recall Mr Addis's response to that?

A. Yes, he took exception to it and gave me a lecture on how good a fellow this McKenna was. I was quite taken aback by his reaction, and I did mention to him, because of this grapevine, I had heard his son might have been one of the ones involved so he should look in his own home as a starter.

Q. Can you recall the manner in which you described that, the phrase you used?

A. I think it was just, you know, "Please look in your own backyard and start looking at this."

Q. When you mentioned that, when you referred it personally to him, did his reaction change?

A. No, he still wasn't happy." (t 543)

(It is relevant to note that in 2011 McKenna was convicted of four offences of sexual abuse that had been committed against Mr Addis' son between 1983 and 1985).

It is Mr Trezise's evidence that he also approached another Hostel Board Member, Alan Parks:

"...I spoke to him on several occasions...the first occasion I cannot say exactly when it was, but it wouldn't have been long after the reaction I got from Garth Addis.

Q. Can you recall a specific occasion that you raised this with Mr Parks?

A. Yes, some time after that – I'm not sure exactly the year or time, Mr Parks might be able to enlighten you – but I was constructing a dam catchment on his property and he jumped up on the grader and we discussed the catchment and, after we had spoken about that I reminded him of our discussion.

Q. Can you recall what you said to him?

A. Yes, that John Jolley gave me that information - -

Q. Did you tell Mr Parks what that information was?

A. Yes, yes. I told him, you know, that McKenna was fiddling with boys and I trusted John implicitly and that...they'd had letters...from us and there was also a mention of that in the letters, which was referring to Bill McPharlin's letter.

Q. Can you recall Mr Parks' response to that?

A. He didn't really respond. I got the impression that they had closed ranks and they weren't going to talk about it." (t 544)

Mr Addis is now deceased. However, Mr Alan Parks has confirmed that Mr Trezise helped him to construct a dam catchment on his farm in April 1986 (But for an entry in his diary he would not have remembered that event). Although Mr Parks does not remember the discussions as alleged by Mr Trezise, he does not dispute that they might have occurred. It is his evidence that if he did have such a conversation with Mr Trezise he believes that he would have raised the issue with another member of the Board (t 1445-6).

11.12.4 Mrs Trezise's letter to the Country High School Hostels Authority

The Trezises did not give up on their attempts to be relieved from payment of the Hostel fees following the rejections by the Ombudsman and the Minister. On 17 September 1986 Mrs Trezise wrote to Colin Philpott, the Chairman of the Country High School Hostels Authority (Authority), protesting that outcome (Exhibit 11.1), and enclosing copies of the two letters obtained from other parents (including the one written by Mr McPharlin and Ms Flanigan referring to "suspicious suggestions" – Exhibit 8). Although those letters had been previously circulated to the Hostel Board, the Ombudsman and the Minister, it would seem that this was the first time that they were sent to the Authority.

It is Mr Philpott's evidence that he has a clear recollection of receiving the letter and of directing the Authority's administrative officer (Mr Lammas) to forward it on to the Hostel Board Chairman (Mr Len Wilkinson) for further enquiry. The enquiry that Mr Philpott wished the Chairman to undertake was not into the issue of outstanding fees, but into the assertion by Mr McPharlin and Ms Flanigan that:

"The children were removed because of suspicious suggestions made to them by the housemaster, one Dennis McKenna" (t 2499, 2509-2510)

Although at that time Mr Philpott did not consider that "suspicious suggestions" necessarily meant sexual misconduct, he thought that what had been written was "suspicious enough for further enquiry to be made" (t 2499, 2512).

It is also Mr Philpott's evidence that if he had thought that the McPharlin/Flanigan letter was alleging sexual misconduct by McKenna he would not have referred it to the Hostel Board for further investigation. He instead would have asked the Education Department to carry out an investigation:

"A. My memory of this is that there wasn't sufficient evidence at the time to put it forward to the Education Department. We needed more investigation, and that's why it went to the Chairman of the Board.

Q. Well, how about making a simple phone call to Ms Flanigan or Mr McPharlin to ask what they meant by that? Wouldn't that have solved the problem?

A. Well, that is part of the investigation. It would have been done by the Board, I would hope." (t 2504)

Mr Lammas has testified that he has no memory of seeing Mrs Trezise's letter or of being instructed by Mr Philpott to forward it on to Mr Wilkinson. However his stamp on the original correspondence shows that he received it on 19 September 1986 and that the action he took was to "forward copy to Hostel Chairman – table at next meeting". Mr Lammas also believes that any action to be taken in respect of the "suspicious suggestions" allegation would ordinarily have been decided by the Board of the Authority. Notwithstanding that the allegation lacked detail, Mr Lammas agrees that it was a "potentially serious accusation" and he would have expected the Board to direct that it be investigated by the Education Department (t 2776-7). However, it is also Mr Lammas' evidence that if nevertheless he was directed by Mr Philpott to forward the letter to the Chairman of the St Andrew's Board for further investigation he would have followed that instruction. This was because "I would have to do what I was told" (t 2778). This was so notwithstanding the potential difficulty that McKenna would be present at the Hostel Board meeting which would consider the matter.

11.12.5 The response of the Hostel Board and its Chairman

The copy of Mrs Trezise's letter that was forwarded by the Authority was duly received by the Chairman of the Hostel Board Mr Wilkinson. If Mr Wilkinson carried out any investigation this did not include contacting Mr McPharlin or Ms Flanigan to ask what they meant by "suspicious suggestions". Mr Wilkinson instead consulted a local firm of solicitors, and almost certainly did so in the company of McKenna. As a result of the instructions which were then given to those solicitors by Mr Wilkinson and McKenna, letters of demand were sent to the Trezises, as well as to Mr McPharlin and Ms Flanigan. The letter sent to Mr McPharlin and Ms Flanigan was as follows:

"Dear Sir and Madam,

Re: St. Andrews Hostel

We act for the Hostel Board and the Hostel's Warden, Dennis McKenna.

We enclose a copy of a letter dated 22nd August 1985 apparently signed by you.

It was attached to a letter written by Mrs. Coral Trezise to the Chairman of the Country High School Hostels Authority.

The last sentence in your letter is libellous toward Mr. McKenna.

Not only does it contain an imputation against the character of Mr. McKenna, it is also clear that the statement has been published to others – to Mrs. Trezise for one and to the Members of the Country High School Hostels Authority secondly.

We have advised Mr. McKenna that he has firm basis for the issue of a Writ against you as authors of the statement. If however you sign and return to us the enclosed form of apology, he will consider not taking any further action.

Yours faithfully,

TAYLOR, NOTT & MURRAY

(Exhibit 9)

The enclosed form of apology was as follows:

"To: Mr Dennis McKenna,

St. Andrews Hostel,

Round Drive,

KATANNING. W.A. 6317.

In an open letter dated 22nd August 1985 we made the following statement in respect of the residence by the children of the undersigned GLENYS FLANIGAN at the St. Andrews Hostel:

"The children were removed because they both complained of suspicious suggestions made to them by the Housemaster, one Dennis McKenna".

We now unreservedly withdraw the statement and any imputation of impropriety it conveyed.

We admit that the statement is without foundation.

We regret making the statement and we tender to you our sincere apology.

Yours faithfully,

Signed: B. MCPHARLIN

Signed: G. FLANIGAN" (Exhibit 9)

The letter that the solicitors sent to Mr and Mrs Trezise was in very similar terms and also enclosed a form of apology for signature (Exhibit 11.3). It is relevant to note that both letters were dated 8 October 1986 which was only 19 days after the Authority had received Mrs Trezise's letter. (Which was a remarkably swift response in all of the circumstances). Furthermore, the letters were sent on behalf of both McKenna and the Hostel Board, even though no prior Board meeting had been held to approve this action.

It is Mr Wilkinson's evidence that he has no recollection of Mrs Trezise's letter or of the solicitors' letters that were sent on his instructions (t 3109, 3112). However, he believes that he did not take this action in "isolation" and that he must have spoken to other Board Members before instructing the solicitors (t 3119).

Mr Wilkinson accepts that it would be difficult to construe the term "suspicious suggestions" as referring to anything other than something of a sexual nature (t 3114). He therefore assumes that McKenna must have given some explanation which satisfied him that there had been no sexual impropriety (t 3114).

Mr Wilkinson has no recollection of speaking to Mr McPharlin or Ms Flanigan to find out what they meant by the term "suspicious suggestions". He agrees that he should have taken this step if he was doing his job properly (t 3120). He also agrees that if he failed to do so, then the matter was not "broadly enough" nor "satisfactorily investigated" (t 3115).

The Hostel Board gave consideration to the Trezise matter at its next meeting on 22 October 1986. Those present at the meeting included McKenna and the Authority's administrative officer Mr Lammas. The minutes of the meeting record the following resolution:

"(e) Trezise – discussion followed by the motion moved by B. Hendry and seconded by J. Ireland – "Board endorses action taken by the Chairman and Warden in recent correspondence concerning Trezise's [sic]" carried." (Exhibit 34)

Some indication of the nature of the discussion which gave rise to that resolution can be found in a separate record of this meeting kept by one of the Board Members, the school Principal Gerald Marriott. Mr Marriott has no recollection of the discussion at all, but his personal planner (Exhibit 97) records the following note:

"Allegations against D McKenna defended"

Mr Lammas likewise has no recollection of being present at the meeting or of discussing the Trezise matter with the Board (t 2783). He agrees that the obvious first thing which should have been done by way of enquiry was to ask Mr McPharlin and Ms Flanigan what they meant by the term "suspicious suggestions" (t 2781). He cannot recall whether or not he asked the Board what investigations had been carried out, but assumes that he "must have felt that the Board was in control of the situation" (t 2787-8).

Robert Hendry was another Board Member present at the meeting but he also cannot recall the Trezise matter, the resolution that was passed, or the letters that were sent by solicitors on behalf of the Board. Even though he was the mover of the motion, he suggests that he might have endorsed the solicitors' correspondence without having seen it (t 1917).

Although the Trezises, Mr McPharlin and Ms Flanigan did not comply with the solicitors' demands, they were never subjected to any proceedings for defamation. Even though the solicitors were acting for the Board and McKenna they sent their bill to the Authority and those costs were met by the Authority. Neither Mr Philpott nor Mr Lammas can offer any

explanation for this arrangement. Mr Lammas is surprised that the Authority met the costs because “I would have thought it would have been the costs of the Board” (t 2791).

11.12.6 The meeting between the Trezises and Colin Philpott

It is Mr Trezise’s evidence that on a date he cannot remember in 1985 or 1986 he and his wife attended a public meeting in Lake Grace which had been called to discuss a proposal for construction of a new hostel. Colin Philpott was one of the speakers at the meeting which was held after “we forwarded him the letters that we had from other parents” (t 1545).

When the meeting finished the Trezises followed Mr Philpott outside and stopped him on his way to his car. After raising the matter of the fees, Mr Trezise says the following occurred:

“Q. Did you raise with him any other subject matter?

Yeah, the matter of information I’d had about boys being fiddled with.

Q. Can you recall what you said to him in that regard?

A. Yeah. I said to him to look at the letter from Bill McPharlin and take it as read.

Q. Did you say anything else?

A. I did eventually. He was as mad as a hornet and he said, “You wrote that letter and forwarded it to people.” And I said, “That’s easy to prove. We’ll do a writing – easy to prove. Our writing’s nothing the same. Get some correspondence from each of us.”

.....

Q. When you said “this information”, what - -

A. I was referring to the information that John Jolley had given us and the information in Bill McPharlin’s letter.

.....

Q. But what did you remind him of as to what that information was?

A. Well, McKenna was fiddling with boys at the hostel.” (t 546-7)

(Mr Trezise understood Mr Philpott’s assertion that he “wrote that letter” to be an accusation that he had forged the letter signed by Mr McPharlin and Ms Flanigan).

Mr Philpott agrees that he had a brief meeting with the Trezises at Lake Grace in the circumstances claimed but contends that it took place on 11 March 1986 (which was well before receiving the letter from Mrs Trezise). He bases this assertion on the following entry in the minutes of the Authority meeting on 11 March 1986:

“Lake Grace Parents Group

The Chairman advised the Authority he had met with a delegation of parents from the Lake Grace region who were seeking the establishment of a hostel at Lake Grace. The Authority was addressed by Mr M Gatty, Planning Directorate – Education Department, who provided statistics for possible regional school enrollments [sic] and trends for Lake Grace.” (Exhibit 89)

However a seemingly more relevant entry can be found in the minutes of the Authority meeting on 11 November 1986 (Exhibit 79):

"(iii) Lake Grace

Mrs C Mercer (Member) reported on a meeting held between parents and the Authority at Lake Grace on November 5, 1986. The Authority resolved to include the construction of a hostel at Lake Grace in it's 1987/1988 budget."

When questioned about this later entry Mr Philpott recalled that he did attend Lake Grace for the meeting on 5 November 1986, and he accepts that he may have met with the Trezises on that occasion (t 2493-4). However whether their meeting was on 11 March or 5 November 1986, he maintains that the only matter discussed was the issue of fees. His evidence generally on this point is as follows:

"Q. And I gather from what you are saying then, that if, in fact, some allegation is to be made about Dennis McKenna fiddling with boys, it would have been something you would have followed up?

A. Would have taken it up and done something about it.

Q. Mr Philpott, his Honour has already made the comment that we use different terminology for describing sexual abuse now than what might have been used in the 80s?

A. Very much so, yes.

Q. But had, in fact, someone said to you a phrase to the effect of or accusing someone of "fiddling with boys", would you have understood that to mean something of a sexual nature?

A. Not necessarily.

Q. What do you think. I know it may be difficult to cast your mind back. Any idea how you would have interpreted that?

A. "Fiddling with boys" could have been wrestling with them, something in the showers or something of that nature. Not necessarily would it have been sexual abuse.

HIS HONOUR: Q. When you say "in the showers", what do you mean by that?

A. I think there was some relevance in the minutes somewhere that McKenna used to go into the showers and view the boys and strap them or something.

MR URQUHART: Q. I don't think that's in the minutes anywhere but it certainly was the evidence that was given at the Inquiry, yes. So you wouldn't necessarily link a description of "fiddling with boys" to sexual abuse?

HIS HONOUR: Back then, we are talking about.

MR URQUHART: Back then. Sorry, back then, sorry, yes.

THE WITNESS: Yes, I probably would." (t 2497-8)

11.12.7 Findings

Regardless of whether or not Mr Trezise spoke to each of Mr Addis, Mr Parks and Mr Philpott about McKenna “fiddling with boys”, it is very clear that the Board and the Authority were well aware that there was an allegation to that effect. The fact that the Board was aware of an allegation of sexual misconduct is shown by its endorsement of Mr Wilkinson’s action in instructing the solicitors to threaten Mr McPharlin, Ms Flanigan and the Trezises with proceedings for libel. (No witness has been able to suggest any way in which the words “suspicious suggestions” could sensibly be regarded as defamatory other than in a sexual context).

Likewise, the Authority via Mr Lammas had knowledge of those instructions. Furthermore, the evidence indicates that Mr Philpott was not a laissez-faire type of Chairman, but exercised a fairly strong and tight control over the affairs of the Authority. I am satisfied that Mr Lammas would have reported to Mr Philpott on the actions of Mr Wilkinson and the Hostel Board. The fact that the Authority paid the costs of the letters of demand also shows that it was most probably a party to the instructions given to the solicitors, or at the very least was well aware that that action had been taken.

I consider Mr Trezise to be an honest witness who could nevertheless be mistaken about some of the details and dates of the relevant events. Nevertheless I am satisfied that he did speak to each of Mr Addis and Mr Parks to communicate his concerns about McKenna “fiddling with boys”. The fact that Mr Trezise had good reason to be concerned that Mr Addis’ son was a victim was subsequently confirmed by McKenna’s convictions. Although Mr Parks cannot recall the relevant conversations, it is unlikely that Mr Trezise would be mistaken about raising the issue with him a number of times. Furthermore, Mr Parks’ diary confirms the circumstances surrounding one of the alleged conversations.

In light of what appears in the Authority’s minutes of 11 November 1986, I am satisfied that the meeting at Lake Grace between the Trezises and Mr Philpott took place on 5 November 1986. At that time all three of them were well aware of the letters of demand which had been sent only four weeks previously, and the only reasonable inference is that the threatened defamation proceedings must have been uppermost in their minds.

In these circumstances it is inconceivable that there would not have been some discussion between the Trezises and Mr Philpott concerning the McPharlin letter and what it signified. In any event, as I have already found, Mr Philpott was by then well aware of the implications of the “suspicious suggestions” referred to in the letter. Accordingly, I am satisfied that there was a robust discussion of that subject between Mr Trezise and Mr Philpott in the course of which the latter was told that “McKenna is fiddling with boys”.

To my mind it is self-evident that the responses of each of the Authority and the Board to the allegations made against McKenna were totally inadequate. They did not even take the very simple step of enquiring from Mr McPharlin or Ms Flanigan what they meant by “suspicious suggestions”. Even when told quite explicitly that McKenna was “fiddling with boys” they did nothing at all to determine whether or not that allegation was true. The Authority could have utilised the resources of the Education Department to carry out a proper investigation but it would seem (through Mr Lammas and Mr Philpott) that it was not interested in taking that course.

Far from seeking to establish the truth of the allegation, the Board (in collaboration with the Authority) used the threat of defamation proceedings as a successful strategy to pressure the Trezises, Mr McPharlin and Ms Flanigan into silence. No doubt they took this step believing that McKenna could not possibly be guilty of such crimes. However, the inevitable consequence of their failure to investigate and their pressuring of these “whistle-blowers” into silence was that McKenna was able to continue with his offending and to wreak devastation on young lives for a further four years.

11.12.8 Conclusions

1. In April 1986 Mr Trezise informed Mr Parks (in his capacity as a member of the St Andrew's Hostel Board) that McKenna was “fiddling with boys” at the Hostel. Mr Parks' obligation as a Board member required that he have that allegation investigated by the Board but he failed to do so.
2. On about 19 September 1986 Mr Philpott as Chairman of the Authority became aware of a written allegation that McKenna had made “suspicious suggestions” to boys at St Andrew's Hostel. Although Mr Philpott understood that the allegation might refer to sexual misconduct he (and the Authority) failed to respond appropriately in that they:
 - 2.1 Did not arrange for an investigation of the allegation by the Education Department.
 - 2.2 Directed the Authority's Administrative Officer to forward the allegation to the Hostel Board Chairman (Mr Wilkinson) for investigation.
 - 2.3 Did not subsequently check that the Hostel Board Chairman had carried out a proper investigation.
 - 2.4 Instead allowed the Authority to become a party to a threat by the Hostel Board and McKenna that defamation proceedings would be issued if the allegation was not withdrawn.
 - 2.5 Ignored oral confirmation from Mr Trezise on 5 November 1986 that the written allegation was a reference to McKenna “fiddling with boys”.
3. Mr Len Wilkinson, the Chairman of the St Andrew's Hostel Board, failed to respond appropriately to the allegation that McKenna had made “suspicious suggestions” to boys at the Hostel, in that he:
 - 3.1 Did not attempt any investigation of the allegation.
 - 3.2 Instead joined with McKenna in threatening the authors of the allegation (and others) with defamation proceedings.
 - 3.3 Arranged for the Hostel Board to retrospectively approve those actions.
4. The St Andrew's Hostel Board (as a whole) was made aware of the allegation against McKenna but failed to respond appropriately in that it:
 - 4.1 Did not arrange for any proper investigation of the allegation.

- 4.2 Retrospectively approved the Chairman's and McKenna's action in threatening defamation proceedings.
5. The above failures by the Authority and its Chairman, and by the Hostel Board and its Chairman, to fulfil their official responsibilities were significant contributing factors to McKenna's ongoing ability to offend until 1990.

11.13 Late 1985: The Westrek affair

11.13.1 The background

In 1985 (which was the International Year of Youth) the Government of Western Australia decided that it would implement some new initiatives in the area of youth policy. One of these initiatives addressed the issue of youth unemployment. It was a scheme known as the "Westrek" program which provided an "opportunity for young West Australians to learn new work and life skills while being involved in voluntary conservation based projects throughout the State" (Exhibit 46).

In March 1985 Cabinet approved a pilot Westrek program to be conducted in the last half of that year under the auspices of the Department of Employment and Training (DET). The primary aim of this pilot program was to evaluate its effectiveness as well as the possibility of it being funded on a permanent basis by the Federal Government and/or private enterprise. As to the latter possibility, the then Minister for Employment and Training (the Hon. Peter Dowding MLA) had reached a tentative understanding with Mrs Janet Holmes à Court that if the pilot program was successful her family might provide the funding necessary for it to continue.

Arrangements were made by the DET for Westrek projects to be conducted for six months at six separate locations (Carnarvon, Murchison Station, Geraldton, Katanning, Norseman and Bunbury). At each location there would be 12 participants (aged between 17 and 25 years) as well as a group leader in charge. Each group of 12 would participate in two separate projects by spending three months at each site. However the group leader at each project would remain at the one site for the full six months (Thus having responsibility for two successive groups of participants).

The locations for the projects were chosen because of the willingness of those particular local communities to provide support. The support that was expected from each local community included selection of the particular conservation sites at which work was to be done, provision of accommodation for the Group Leader and participants, appointment of a Committee to oversee and supervise the project, and the supply of any materials required.

At Katanning the Westrek pilot program enjoyed the full support of the local Shire Council. The Council firstly resolved on 20 June 1985 to seek assistance from McKenna for participation by the Shire in the International Youth Year (Exhibit 47). After Katanning was chosen as one of the sites for the pilot program, the Shire also appointed a local "Westrek Committee" which included McKenna and Ainslie Evans as members (Exhibit 48). Mrs Evans later became the Chair of that Committee as well as the "Community Liaison Officer" for the project. Accommodation for the Westrek participants was provided at the former St Rita's Hostel (then known as "Kartanup") and the DET agreed that it would lease those premises from St Andrew's Hostel.

By the time that the pilot project commenced there were five key personnel within the DET who were responsible for its administration. Elizabeth Stroud was the Training/Field Officer responsible for training the Group Leaders and she reported to the Manager of the Westrek program, Peter Sherlock. Mr Sherlock reported in turn to a Deputy Director of the

Department, Ian Carter. Above Mr Carter, was the Head of the Community Employment Initiatives Unit Peter Kenyon, as well as the Director General of the Department Mike Cross (who is now deceased).

At all material times there was also a “Westrek Advisory Group” which was a committee including departmental representatives chaired by the Westrek program’s patron Janet Holmes à Court. Although this Advisory Group had oversight of the pilot program its precise role is not entirely clear. (It was not until 1986 that the Advisory Group was converted into a smaller “Management Board” for the ongoing Westrek program – see “Westrek Prospectus”).¹ However, the evidence does not suggest that the Advisory Group or its Chair had any significant role in the day-to-day management of the pilot program. (As distinct from the subsequent “permanent” program in respect of which the Management Board may have played a greater role).

It is important to note that the Inquiry’s search for contemporaneous departmental records has been largely unsuccessful. In that regard the Inquiry has been informed by the DET’s successor (The Department of Training and Workforce Development) that the relevant records were destroyed without authorisation during the 1990s. (The only Westrek records that have been recovered were copies of some documents that were copied to the Department of Education at the time of the project).²

One of the first tasks faced by the DET in getting the pilot program up and running was the recruitment and training of suitable Group Leaders. I understand that the initial selection of Group Leaders was made by Ms Stroud in conjunction with Mr Carter (and possibly Mr Kenyon) but that their training was entirely her responsibility. However there was also intervention from above in relation to the selection of Ms Maggie Maruff (now known as Maggie Dawkins).

In 1985 Mrs Dawkins was 27 years of age and employed as an Electoral Officer for Kim Beasley MHR, the then Minister for Defence and the Federal Member for the seat of Swan. At that time Mrs Dawkins had also had a recent relationship, and was still friendly with John Dawkins MHR, who was the Federal Member for Fremantle, the Minister for Trade, and the Minister assisting the Prime Minister on Youth Affairs. (Mrs Dawkins went on to marry John Dawkins in 1987).

In late 1985 Mrs Dawkins took six months leave from her employment without pay, and applied to become a Group Leader with the Westrek program. That application was successful, and it is clear that Mr Cross, the Director General was very pleased to have Mrs Dawkins on board with the Westrek program. In that regard he considered that her involvement in Westrek as well as her political connections would enhance the prospects of Federal funding for the permanent program.

Mrs Dawkins attended a training program at Woodman Point where she met and became friendly with a fellow trainee Patricia Thomson. Mrs Dawkins was then assigned to be Group Leader of the Katanning project, and she arrived there in early July to make arrangements

¹ Westrek Board 1987, Westrek, Westrek Board, Western Australia.

² In the last week of the Inquiry a Westrek file was identified at the State Records Office by a member of the Inquiry which was not previously identified by the relevant agency. This was reviewed however it did not provide any significant information relating to this Inquiry.

for the arrival of the participants. The first group of 12 participants arrived on 11 July 1985 and they started work on the designated project (restoration of an old mill) on 22 July 1985.

It is relevant to note that after the pilot program had commenced the DET decided that there should be two Group Leaders at each project. The second Group Leader for Katanning ("I") arrived in or about August 1985. (I have given the second Group Leader the pseudonym "I" for reasons which will become apparent).

11.13.2 Mrs Dawkins' evidence

Mrs Dawkins now lives in South Australia and at the time of giving evidence was in considerable pain because of serious leg injuries she had suffered in late 2011 when kicked by a horse. In order to accommodate these difficulties she was permitted to appear before the Inquiry by video link and to give her evidence in chief by reading from her written statement.

According to Mrs Dawkins she experienced problems with McKenna and Ainslie Evans from the very start of her time at Katanning. They did not respect the privacy of the Westrek group at Kartanup and failed to adhere "to the simple courtesy of knocking and waiting to be invited in". McKenna was also "at pains to let me know that he knew my every move" (t 235-6).

As work on the Katanning project progressed a 23 year old participant named Simon became very friendly with McKenna. Simon would spend a great deal of time with McKenna at the St Andrew's Hostel and Mrs Dawkins suspected that they were in a sexual relationship. She was uncomfortable about this situation and unsure whether it was an issue for her as Group Leader given that Simon was in Westrek's care. For this reason she sought guidance from Ms Stroud and was advised that she should be tolerant of any sexual relationship (t 237).

Simon then left the Westrek project as a result of McKenna arranging for him to become a Supervisor at the Amity Hostel in Albany. While discussing Simon's departure with Mrs Evans, Mrs Dawkins suggested that "there might be more to the relationship" between him and McKenna. However after expressing delight that McKenna had been able to recruit a new Supervisor Mrs Evans "politely but categorically refused to be drawn into further discussion of the matter" (t 237).

Sometime later Mrs Dawkins was at a Hotel in Katanning where she was introduced to a young man by a Westrek participant. Mrs Dawkins cannot remember the young man's name but he looked about 18 or 19 years old and could have been as young as 17. He told her that he was a former resident of St Andrew's Hostel and that he had been sexually abused by McKenna:

"He told me that he'd been given alcohol – I think it was Scotch, but it was alcohol – it was spirits, and he was fondled in his private, you know, business, and that he was made to perform oral sex with Mr McKenna and he was raped and it happened repeatedly; it wasn't just once." (t 251)

The young man was unwilling to go to the police with his allegations but asked Mrs Dawkins if she could have the activities of McKenna investigated (t 238, 299). Mrs Dawkins was unsure how she should respond to this request and decided to seek the advice of a local

policeman (Bill Todd) with whom she had a “warm working relationship”. When she went to the police station and spoke to Sergeant Todd:

“He said that he needed a statement with names, dates, times et cetera. Mr Todd warned me of the severity of the allegations being made against “the golden boy” of Katanning Dennis McKenna, who was then Citizen of the Year. I recall Mr Todd making a comment along the lines that he had to live in the town, while I would leave when my contract expired. I asked him what I should do to have the allegations brought to someone in authority who could act to investigate them. Mr Todd advised me that I had very little to go on – maybe I should contact my supervisor.” (t 238)

After receiving this advice Mrs Dawkins telephoned Ms Stroud at the DET Head Office in Perth and sought guidance on how to handle the situation. Ms Stroud suggested that she should raise her concerns with Mrs Evans. However when Mrs Dawkins approached Mrs Evans on the subject:

“...she did not for a moment focus on the allegations but lost her composure berating me for daring to besmirch the glowing reputation of Dennis McKenna who was Citizen of the Year.

I tried in vain to convince Mrs Evans that it wasn’t a case of me against Dennis McKenna. I appealed to her to have the allegations investigated. I became a pariah for raising these concerns and was on the receiving end of a tirade of verbal abuse.

My vivid recollection of this meeting was that I was surprised at Mrs Evans’ loss of control and her down right refusal to agree to raise these allegations with anyone else let alone have them investigated.

...I made it clear to Mrs Evans that it was not up to her to judge whether these allegations had substance or not, it was important that others, such as the Country Hostels Association, or the Education Department investigate or some other body outside of Katanning. Mrs Evans asked me to name the boy who had come to me. When I divulged his name she dismissed him as being nothing but trouble. I volunteered to Mrs Evans that it was quite possible that his “troublesome” behaviour was [a] direct result of sexual abuse by Dennis McKenna. She was not interested in my views or in having these concerns investigated. [She] told me that she would contact my supervisors and have me removed immediately. During the course of the meeting Mrs Evans turned from a warm motherly person into an aggressive vindictive woman out to have me sacked.” (t 239-240)

It is Mrs Dawkins’ evidence that after that meeting with Mrs Evans she felt “beyond mad” and furious. She decided to confront McKenna directly and immediately drove to the Hostel:

“I told him I knew what he was doing and I made it clear that I would do what I could to have his disgusting activities stopped. Dennis never denied what I accused him of - [he] laughed in my face. He threatened me by saying that he would have me sacked. He told me he had friends in high places. He would crush me. I had been a tutor in Fremantle and Canningvale Prisons, and [I] told him I had friends in low places and that he would meet them soon.” (t 240)

Following that confrontation there was another telephone conversation between Mrs Dawkins and Ms Stroud either later that day or the next day. Mrs Dawkins cannot recall who

telephoned whom, but she was directed by Ms Stroud to pack up and move to the Westrek project at Bunbury:

"I was given 48 hours to do so. Ms Stroud informed me that Dennis McKenna had threatened to withdraw the accommodation at Kartanup from Westrek. This would have put an end to the project I had worked so hard to set up." (t 240)

It is also Mrs Dawkins' evidence that the only specific reason that Ms Stroud gave for requiring her to move to Bunbury was that she had damaged Westrek's relationship with the local community by upsetting Mrs Evans and McKenna. Ms Stroud did not raise any issues as to her personal behaviour (t 254, 264). Although Mrs Dawkins was unhappy with this decision she accepted that she could no longer stay at Katanning. She transferred to Bunbury as directed and "really enjoyed the Bunbury project" (t 294).

After Mrs Dawkins moved to Bunbury she had meetings with Ms Stroud and Mr Sherlock at which the events at Katanning were further discussed. Although Mrs Dawkins cannot recall the locations of these meetings:

"I do have a lasting impression that Elizabeth Stroud and Peter Sherlock took the approach that I was a politically savvy person, who understood the sensitivity of the programme. When I expressed a lack of understanding [for] their lack of support for me, I was told that I had put the Katanning project in jeopardy by upsetting Mrs Evans and Dennis McKenna. When I pressed them about how to get my concerns addressed, they made it clear to me that I was sticking my neck out about mere suspicions of allegations made by an unreliable youth, who refused to make a police statement. I did not have much to go on. It was Elizabeth Stroud who advised me to put in writing what the young man had told me of his allegations of sexual abuse and my concerns to have Dennis McKenna investigated. I did as advised and I handed Elizabeth Stroud and Peter Sherlock a copy of that account. I recall Peter Sherlock giving me an undertaking that even though it was very little to go on, he would try to alert the relevant authorities." (t 242-3)

Mrs Dawkins then continued to manage the Bunbury project and recalls that by this time she was having more dealings with Mr Sherlock than Ms Stroud who "seemed to have been removed from the coordinator's position". The next event of significance was that she was summoned to the Head Office in Perth for a day of meetings. Prior to driving to Perth she was telephoned by her friend Patricia Thomson. Dr Thomson was no longer a Group Leader but was working in the Head Office and she warned Mrs Dawkins that her superiors would be demanding her resignation. Mrs Dawkins has difficulty recalling the sequence of events when she attended the meetings in Perth, but it is her evidence that:

"I do remember meeting with Peter Sherlock, Peter Kenyon and Ian Carter. I recall [that] Mr Kenyon and Mr Carter held positions senior to Mr Sherlock. I recall Peter Kenyon or Mr Carter informing me that I had caused serious damage to the working relationship with Mrs Evans and Dennis McKenna at Katanning. I remember being told that Vic, the Group Leader who replaced me was experiencing difficulties with Mrs Evans, and Dennis McKenna was continuing to insist that I be sacked. I recall being presented with a prepared letter of resignation to sign. It was only a few lines on a page. I refused...to cooperate, as I had sought and had followed the advice of my supervisor. I do not recall where Elizabeth Stroud was during these meetings. I am unclear whether she attended them. I asked what they had done to have the

allegations of sexual abuse investigated, which to me remained at the centre of the issue.

I do not recall who said the actual words, but the view I came away with that day and remains with me to this day is that the sexual abuse of a former secondary school student at a government hostel was not a “Westrek” concern. This has always been the major difference between me and my superiors at the Department of Employment and Training.

During the course of that day I spoke informally to the Head of Department Mike Cross and asked him to intervene to have the allegations investigated and [to] have Peter Kenyon and Ian Carter leave me alone as I had followed the advice of Ms Stroud and I would therefore not resign.

Later I think it was the same day I was given an assurance by Peter Kenyon and Ian Carter that they would have my concerns raised with the appropriate authorities. I was advised by them to return to my project and keep my head down. They complimented me on my running of the Bunbury project. I was told not to discuss with anyone the contents of these meetings.” (t 243-4)

Mrs Dawkins was also “sworn to secrecy that I wasn’t to mention why I left Katanning” and was told by the Department “not to discuss any of those details” (t 268). Mrs Dawkins never heard again from the Department about the matter and does not know if her concerns about McKenna were ever addressed.

11.13.3 Patricia Thompson’s evidence

Some aspects of Mrs Dawkins’ evidence are corroborated by Dr Thomson who was the Westrek Group Leader who became friendly with Mrs Dawkins while they were undergoing training. They also maintained occasional contact with each other after being posted to their separate project locations.

Dr Thomson was the Group Leader at the Norseman project when Mrs Dawkins commenced at Katanning. She recalls a telephone conversation at about that time when Mrs Dawkins complained about “unrestricted access visits” at Kartanup and told her that “Dennis McKenna was always there and that Ainslie Evans was sticking her nose in too” (t 334).

By the time that Mrs Dawkins left Katanning Dr Thomson had been transferred from Norseman to the Head Office of the DET in Perth. She worked in an open plan area approximately three metres from Ms Stroud and in the near vicinity of Mr Sherlock. Dr Thomson could overhear conversations between the other two, and it is her evidence that she recalls an occasion when Ms Stroud was talking to someone on the telephone and said words to the effect:

“What, be fired, Maggie? What, be fired? Fire her?” (t 335)

When Ms Stroud put the telephone down she turned round towards Mr Sherlock and said “they want her to come in for a meeting”. Ms Stroud and Mr Sherlock then discussed who would be at the meeting, and Dr Thomson overheard that Mr Cross, Mr Kenyon and Mr Carter were going to be present.

Armed with this information Dr Thomson waited until later that day when no one else was present in the office. She then telephoned Mrs Dawkins and said:

"...I thought she better know, if she was being called about coming into a meeting, that she should anticipate it probably wasn't the reason that she thought she was coming to Perth for, that she was probably going to be fired and to be prepared." (t 336)

Dr Thomson was not present in the office when that meeting was held, but within a day or two Mrs Dawkins told her over the telephone what had happened. Amongst other things, Dr Thomson specifically recalls:

"...that she said that she had raised other matters of concern about the St Andrew's Hostel. I also remember specifically that she told me that she had been chastised for causing trouble and she was to stop doing it. I also remember her telling me specifically that she had been asked to sign a prepared letter of resignation, that she refused to do (so), and I don't want to elaborate on the expletives that she actually used in regard to that." (t 338)

At some time later in the year Dr Thomson's employment took her to Bunbury where she discussed with Mrs Dawkins what had happened at Katanning. Dr Thomson's evidence of that discussion includes the following:

"A. ...I also specifically recall three issues that she said. She said that Dennis McKenna used to give a signal to boys to visit his room by tapping on the end of his bed. She did not at that time say to me that there was a sexual abuse issue. The other thing she told me was that Elizabeth Stroud had told her specifically to stop causing trouble in the community and that had been communicated to her by Ainslie Evans as well.

The third thing I remember her telling me is that Elizabeth Stroud had asked her to document concerns that she had, to note anyone who was involved and to provide her with that written material, which she had done.

Q. When she raised with you about the matters that had been brought to her attention by that young man that you mentioned a moment ago, did she say anything about the subject matter of those concerns to you?

A. No, she did not. I just said to you previously that she did not say anything about sexual abuse; she just said that a young man had brought some issues to her attention." (t 340)

11.13.4 The evidence of Inspector Todd

In 1985 Inspector William Todd was the Officer in Charge of the Katanning Police Station. It is his evidence that he has no recollection of the Westrek group being in town (t 1086, 1100) or of a woman named Maggie Maruff coming to the Police Station to complain about McKenna sexually abusing a boy (t 1085-8, 1100). Although Inspector Todd cannot recollect any dealings with Mrs Dawkins he is very certain that she did not speak to him about an allegation of sexual abuse at the Hostel because "had she come to me with a complaint of that nature we would have responded immediately. (We have) always carried out our views

without fear or favour to anybody, whether it's McKenna or the Shire President or anybody at all" (t 1088, 1091-2, 1098-1100).

Although Inspector Todd was stationed at Katanning for three years between January 1983 and January 1986 it is his evidence that he did not know McKenna very well and spoke to him only about two or three times during the whole of the time he was there. He did not hear any rumours about sexual misconduct at the Hostel, and a police cadet named Stubbs who was boarding there never reported anything untoward (t 1092-3).

When Inspector Todd later learned that McKenna had been sexually offending against students for 15 years he was amazed "that this could have gone on for so long without anybody being advised about it" (t 1102). He also cannot understand why Mrs Dawkins did not pursue the matter with more intensity:

"That's the reaction that I had, is that why somebody hadn't done something about it. I can assure you that nobody came to my office, or any of my staff, with a complaint of this nature" (t 1102)

While stationed in Katanning Inspector Todd purchased 650 acres of land which he still owns. For this reason he has regularly visited Katanning ever since and he has many local friends including Mrs Evans (t 1103-5).

11.13.5 The issue of whether Inspector Todd gave Mrs Dawkins a driving test

Mrs Dawkins and Inspector Todd are in conflict on a number of matters which ordinarily would be of no great importance, but have gained significance because they are relevant to the credit of each of these two witnesses. One such matter relates to Mrs Dawkins' evidence that she had to apply for a new category of driving licence so that she could drive the 14-seater bus that had been made available for the purposes of the Westrek program. According to Mrs Dawkins it was as a result of Sergeant Todd giving her the driving test for that new category of licence that she first came to know him and developed the "warm working relationship". However, Inspector Todd denies that he conducted the driving test, and he has placed great emphasis on this aspect of Mrs Dawkins' evidence in his written submissions:

"Ms Dawkins has advised the Inquiry that she knew me through completing driving lessons and a driving examination in relation to a 14 seater bus. I believe she is mistaken in relation to this matter based on the following:

- a) Whilst the Katanning Police Station did attend to drivers licensing matters, it was not the duty of the OIC of the station to be doing driving lessons or giving drivers licence examinations. These examinations were generally held on a specific day each week. I do not recall at any stage doing any driving tests, let alone one for a bus licence;*
- b) To complete a driving test for any class of licence, the testing officer had to have been issued the same class of licence. You could not take a person for a licensing test if you yourself did not hold the relevant class of licence. I believe back at about this time, the correct class of licence for a bus would have been an 'F' class licence. I did not have an F class licence at the time Mrs Dawkins*

speaks of and I did not obtain one until September 2007 when I was directed by WA Police to obtain such a licence for work purposes (see Attachment A);

- c) Licensing examination matters were generally handled by the four traffic officers at the station. I believe on occasions when traffic officers were not available due to rostering or operational reasons, the examinations were done by the general duties officers. At the time reported by Mrs Dawkins, the traffic Sergeant was Third Class Sergeant Wendt. Mrs Dawkins may be mistaken that I attended to the driver licensing matters for her. Sergeant Wendt was of similar age, build and height. Further, there were 10 other officers working at the station at that time, and if she did in fact do a driving test at Katanning, it could have been completed by any of these officers.*

If Mrs Dawkins is mistaken in relation to the bus issue, I submit that she may also be mistaken in relation to purporting to provide the information stated to me.”³

At the time of forwarding his submissions Inspector Todd also provided the Inquiry with a written statement from Sergeant David Haendel (dated 10 July 2012) who served at Katanning Police Station between 1980 and 1988. Sergeant Haendel states:

“I do not recall the general duties staff or Officer in Charge performing any duties associated with motor driver’s licensing or testing...I do not recall ever seeing Senior Sergeant Todd conduct a driving test with any person whilst I worked at Katanning.”
(t 4292)

Since then Inspector Todd has forwarded to the Inquiry statements from a total of seven additional police officers or staff who served under him while he was Officer in Charge at Katanning. Relevant to the issue of the driving test, these statements confirm the following:

- At the material time, Katanning Police Station had a separate traffic section which was run by Sergeant Ray Wendt and then by his successor Sergeant Kevin Scorer. The traffic section was responsible for taking all MDL tests.
- Any prospective new driver wishing to undergo a driving test would make a booking and be allocated a set time on a weekday for taking that test.
- The traffic officers stationed at Katanning were predominantly responsible for conducting the driving tests.
- No police officer can recall Sergeant Todd ever conducting a driving test.

Following Inspector Todd’s submissions, and in order to clarify some of the issues surrounding the alleged driving test, the Inquiry obtained further information from WA Police. As a result Detective Inspector George McIntosh of the Internal Affairs Unit provided a statement which included the following evidence:

“Inspector Todd’s driver’s licence number...revealed he originally held the following state driver’s licence classes:

A - Car to carry less than 12 passengers,

B - Motor wagon or tractor, Motor car to carry more than 12 passengers,

C - Articulated vehicle,

³ Submission from Inspector Todd to Counsel Assisting dated 10 July 2012

K - Motor Cycle of any engine capacity.

Inspector Todd now holds an HC,R Motor Driver's Licence which is a National classification. The HC,R covers the previous state based classes of A, B, C, K. The new national classes came into effect in 2001.

IMS records indicate that Inspector Todd's State licence classes were added on 01/01/1983." (t 4301-2)

The Inquiry also obtained a further statement from Mrs Dawkins as to the circumstances in which she claims Inspector Todd conducted the driving test. Her evidence (from this statement) is to the effect that soon after arriving in Katanning she was introduced to the then Sergeant Todd who was known as "Toddy". She believes that that introduction was made by Mrs Evans. Mrs Dawkins does not recall knowing any other police officer in Katanning and has no recollection of Sergeant Wendt (t 4297). As to the driving test, it is her evidence that:

"I was alerted to needing a bus licence by my ex-husband who is a solicitor.

He told me that I needed another class of licence to drive the bus.

He was concerned that if I had an accident I wouldn't have insurance and it could affect my assets.

When I returned to Katanning with the Westrek participants I went to see Bill Todd at the police station. I had met him when I had made my initial calls and contacts with various organisations in the town to advise them of the Westrek pilot program. I am certain that I had visited Sgt Bill Todd in this capacity, in the set up phase of the pilot program.

Bill Todd accompanied me as I drove the bus around Katanning and he gave me instruction on driving the bus.

Bill Todd asked me to reverse down the driveway situated along side the police station. I was unable to reverse straight down the driveway, even after several attempts with his instruction. I recall Bill saying something like I think we have to assume you should only drive the bus forward and I said fair enough.

We went inside the police station and I remember Bill Todd nodding to a policeman behind the counter and directing him to issue me with a B class licence.

I do not recall sitting a written test.

From our initial meeting when I first arrived in Katanning we waved at each other whenever we saw each other about town. I recall exchanging pleasantries when we met in the street." (t 4297-8)

The Inquiry has endeavoured to corroborate with Mrs Dawkins' former husband that he had advised her in 1985 to obtain the additional qualification to her driving licence. However he is now in Canada and the Inquiry has been unable to contact him. The Inquiry has also tried to confirm with WA Police and the Department of Transport that Mrs Dawkins had a B Category added to her motor driver's licence while at Katanning in 1985. Although this was a simple request, those agencies were unable to provide an answer to it. (The explanation given was that there were some flaws when the relevant data was transferred or converted into new information systems over the intervening years).

However, the Inquiry has viewed Mrs Dawkins' South Australian licence which she acquired when she moved to that State in 1994. This confirms that she had a "light truck" category added because of the equivalent category that she then held in this State. Furthermore, a newspaper article published in Katanning at the time of the Westrek project made reference to Mrs Dawkins having to drive a bus as a result of her participation.⁴

11.13.6 Ainslie Evans' evidence

It is Councillor Ainslie Evans' evidence that during the time that McKenna was Warden of the Hostel she had a casual or "community friendship" with him (t 1667). The local community had regarded the Hostel fairly poorly before McKenna became Warden, and he was responsible for it regaining a good reputation. By the time he became Citizen of the Year in 1984 she believed him to be a great role model for the Hostel students (t 1671).

Mrs Evans has no memory that she was the Chair of the Westrek Committee or the Community Liaison Officer for the program but in light of the Shire records she accepts that she was (t 1676-8). She does recall that she would see Mrs Dawkins about once a week in relation to the restoration of the old mill and would also visit her at Kartanup on occasions. Mrs Evans had very little in common with Mrs Dawkins who "was unhappy about a lot of things" to do with living in a country town (t 1679-1680).

Mrs Evans believes that she may have sometimes expressed concerns to Mrs Dawkins about the behaviour of the Westrek participants because she found that "these children did not have the same background or the same moral upbringing or the same family life" as her own children. However her concerns would have been limited to their language, eating habits and manners, and on occasions she may have had cause to correct them in this respect (t 1681). Apart from those minor matters she had no other concerns about their behaviour and was not aware of anyone else in Katanning who had concerns. Mrs Evans never had cause to make any complaint to the DET Head Office about the behaviour of Westrek participants (t 1681-2). Mrs Evans was also unaware of any breakdown in the relationship between Mrs Dawkins and the Katanning community, and apart from herself does not believe that there was anyone else in the community who "particularly knew about her" (t 1686). In this regard, it is significant that Mrs Evans was quoted in the 'Great Southern Herald' of 11 December 1985 as stating that the Westrek group "achieved all it set out to do" (Exhibit 50). The Shire Council minutes of 18 December 1985 also record her report that the project had been "very successful" (Exhibit 49).

Mrs Evans agrees that while the Westrek participants were at Kartanup she probably had the habit of walking in without knocking, but her reason for that was that it was difficult for anyone inside to hear her knocking on the front door (t 1690). She has no memory of any conversation with Mrs Dawkins about McKenna's relationship with a Westrek participant who became a supervisor at the Albany Hostel (t 1691).

The only relevant conversation that Mrs Evans can recall is Mrs Dawkins telling her that McKenna had "too much control" over Hostel students. Mrs Evans' response to that statement was that "it was a good thing" that he had that control (t 1687-8). Mrs Evans has

⁴ Great Southern Herald 1985, "Herald Magazine" 13 November, p. 16

no recollection of any conversation when Mrs Dawkins suggested that McKenna had sexually abused a student at the Hostel. However:

"I would have found any indiscretions of Dennis' hard to believe because of the standing he had in the town, and because of the fact that Maggie complained about most things." (t 1696)

Mrs Evans is very confident that she never said to Mrs Dawkins that she would have her removed from the project. She was only a casual volunteer and it would have been far beyond her powers or ability to redirect Mrs Dawkins' employment (t 1694). However, when asked whether it was possible that the conversation alleged by Mrs Dawkins had happened but she cannot remember it, Mrs Evans responded as follows:

"Yes, it could have happened, but perhaps it was taken out of context. It might have been - she might have been complaining about five different things in the same conversation. I don't recall. She complained quite regularly, and I don't recall that conversation. It could have been with something else, I don't know." (t 1699)

Mrs Evans denies that she had any knowledge of the particular reasons why Mrs Dawkins suddenly left town. She did not consider that there was anything untoward about the nature of her departure at the time and she had thought:

"The project was nearing its end, it was very close to the last few days of the project, and there was a project in Bunbury that she could take on. That was the way I saw it at that time." (t 1703)

11.13.7 Elizabeth Stroud's evidence

Ms Stroud was involved in the Westrek project from the very beginning and helped to prepare the initial proposal to the Minister for Employment and Training. She also ran the training sessions for Group Leaders. However, following the appointment of Mr Sherlock to the Westrek team, she "stepped back from having day-to-day contact with a lot of the Group Leaders". Consequently Ms Stroud spoke to Mrs Dawkins only "a maximum of three or four times" while she was at Katanning (t 1479).

Ms Stroud denies that she at any time advised Mrs Dawkins on how she should deal with suspicions about a sexual relationship between McKenna and the Westrek participant named Simon (t 1482). Ms Stroud also denies that Mrs Dawkins at any time sought her advice on how to handle the allegations made by a former student at the Hostel that he had been sexually abused by McKenna (t 1485, 1493).

However, Ms Stroud does remember a telephone conversation when Mrs Dawkins referred to an allegation that McKenna had sexually abused a boy at the Hostel. Her evidence about this telephone conversation is best summarised in her written statement to the Inquiry signed 12 April 2012:

"Relevant to the issue, I have a memory of Maggie ringing Peter Sherlock's phone in an open plan office.

Peter was out of the office, I answered his phone and it was Maggie.

Maggie said to me words to the effect "a boy has told me that he's been abused by Dennis McKenna, I have gone to the police and I have gone to Ainslie Evans, get Peter Sherlock to ring me".

I said to Maggie words to the effect "ok, have you documented all this?"

Maggie then said to me "get Peter to ring."

I said "fine Maggie, I will."

I relayed the message to Peter and as I understand Peter followed it up with Maggie.

I relayed the message to Peter in person that same day."

As to the reasons why Mrs Dawkins was transferred from Katanning to Bunbury, Ms Stroud's evidence is again best summarised in her written statement:

"Each site had its challenges. However, Katanning became a very emotive community.

The Katanning sponsorship community began to raise concerns about both team leaders' professional behaviours and the participants' behaviours.

The Katanning sponsorship community was led by Ainslie Evans.

As I recall from a very long time ago, after concerns were raised about the conduct of the team leaders and the participants, Peter Sherlock spoke with Ainslie Evans about the concerns.

I believe Peter visited Katanning.

I recall this from my recollection of general discussion of the concerns in the Perth office at the time.

I recall that after his visit to Katanning, Peter made a request to Mike Cross to remove the team leader Maggie Dawkins from Katanning.

My understanding is that Maggie could not be removed because of her political connections.

I recall Peter said words to this effect to me at the time.

There was a discussion that the Bunbury team leaders had some personal issues; they were a married couple and were leaving the programme.

I believe a decision was made by Mike Cross, Peter Sherlock and Ian Carter to move Maggie to Bunbury because it was a larger community and the work projects were more spread out.

Maggie would then be in a larger community."⁵

Ms Stroud has also testified that she did not at any time advise Mrs Dawkins of the reasons why she was being transferred from Katanning to Bunbury. That was not a matter which was within her area of control (t 1479). However she was aware that the particular complaints made by the Katanning community about Westrek Group Leaders and participants had included:

⁵ Written statement signed 12 April 2012 paragraphs 49-60

“Participants and group leaders drunk, mooning or baring their backsides out the windows of the van, drinking and high consumption of alcohol and disposal of empty alcohol canisters from the hostel...late going to work, the quality of work, the lack of participation in learning programs.” (t 1499)

Ms Stroud is “absolutely certain” that she and Mr Sherlock never met with Mrs Dawkins following her transfer to Bunbury (t 1502). However, she believes:

“that there was a meeting initiated by Mike Cross that Peter Sherlock and Ian Carter and maybe Janet Holmes à Court were present at, but I’m not certain that Janet was there.” (t 1501)

Ms Stroud overheard conversations concerning that meeting between Mr Carter, Mr Sherlock and Mr Cross. To the best of her knowledge Mr Sherlock had asked for Mrs Dawkins to be removed but Mr Cross said “she will be a team leader and you need to manage her” (t 1507). She also gathered from what she heard Mr Cross say to Mr Sherlock regarding Mrs Dawkins that “politically she could not be dismissed or fired from the Westrek programme” (t 1505).

11.13.8 Peter Sherlock’s evidence

Mr Sherlock was the Manager and Executive Officer of the Westrek program between 1985 and 1990. His prior background had included work with the Commonwealth Public Service managing the Community Youth Support Scheme in Western Australia.

By the time that Mr Sherlock became engaged in the Westrek project the initial Group Leaders were already employed. Mr Sherlock was concerned that some of them (including Mrs Dawkins) had no previous experience in youth work and he took these concerns to the Director General, Mr Cross. Mr Cross consulted with the Minister about the matter and as a result:

“Got back to me and said that he had been to see the Minister who said that all of the appointments needed to stay and in particular Mrs Dawkins, because it was a political issue, and I was instructed to manage the process.” (t 1552)

It is also Mr Sherlock’s evidence that for the first six months of the project (i.e. the period of the pilot program) Ms Stroud was the “contact person” for all Group Leaders. However he received a larger number of direct telephone calls from Mrs Dawkins than from any other Group Leader (t 1551). These telephone calls (which he received at both work and home) became so persistent that he regarded Mrs Dawkins as something of a “nuisance or a pest” and a “drama queen” (t 1552, 1571, 1574). Mr Sherlock also became aware of hearsay accounts of Mrs Dawkins and Westrek participants at Katanning being involved in episodes of minor misbehaviour (including “mooning” by the participants, painting parts of the anatomy of the fibreglass “Wagin Ram”, and excessive consumption of alcohol – t 1571-1578). However, Mr Sherlock regarded these as “relatively trivial” matters, and considered that Mrs Dawkins was running an “okay project” (t 1588-9).

It was against this background that Mr Sherlock heard a “rumour” from someone in the Westrek Office who could have been Ms Stroud. The rumour was that Mrs Dawkins had told someone that McKenna “had been seen in bed with a couple of students” (t 1559).

Mr Sherlock was well aware that McKenna was the Warden of St Andrew's Hostel in Katanning and effectively the landlord of the premises where the Westrek participants were staying. His primary concern upon hearing the rumour was to learn "if any of the Westrek people were involved" or had been seen in bed with McKenna (t 1562). Mr Sherlock was disturbed and surprised by this rumour because he had been told by a cousin living at Gnowangerup that McKenna was a "wonderful person" who had turned the Hostel around, and "it was a great place for kids to be" (t 1554). Mr Sherlock was asked during his evidence:

Q. ...are you sure about your recollection of what that rumour was?

A. To the best of my knowledge, that is what the rumour was.

Q. Might it have been that an ex-student had complained to Maggie Dawkins about being sexually abused by Dennis McKenna?

A. That's not as I remember it.

Q. So what was the next thing you recall about this?

A. Talking to Maggie and saying, "If you are concerned about this, you must go and see the police".

Q. How did you come to talk to Maggie about it?

A. Because I'd heard the rumour and wanted to talk to her about an appropriate course of action.

Q. But you're saying it was only a rumour.

A. Yes.

A. ...I wanted to see if she believed that the rumour had substance.

Q. And why did you want to do that?

A. We had young people living in the hostel. We had a duty of care toward them. I wanted to know whether that involved any of those particular people." (t 1560)

Mr Sherlock does not remember the precise details of his conversation with Mrs Dawkins and can only recall her saying that "Mr McKenna had been seen in bed with a couple of students" (t 1609). It is his evidence that he did not follow up the matter with the police himself because he instructed Mrs Dawkins to talk to them about it (t 1598). Furthermore:

"I certainly would have discussed it with Elizabeth Stroud. I just need to reiterate, it was a rumour. I already said I regarded Mrs Dawkins as somewhat of a drama queen. And, of course, it's easy in hindsight, and following convictions, to see that it is appalling, but it was only a rumour in the context of other issues that weren't overly important. It is subsequently obviously important." (t 1599-1600)

Mr Sherlock later checked with Mrs Dawkins to confirm that she had taken the matter to the Katanning Police and was told that "they wouldn't do anything unless they got a sworn statement" (t 1571-2, 1583). At that point in time he regarded the matter as at an end because "my perception was that my duty had been exhausted by reference to the police in Katanning" (t 1572, 1614).

However, Mr Sherlock was soon to discover that the matter was not at an end. Within “something like a week or two” of hearing the rumour (t 1565) he received a telephone call from McKenna who was “completely irate”:

“The substance of that call was that Mrs Dawkins had been to see him, had said that she was unsatisfied with the way things were going, and that she was going to the press. Now, his concern, and he was totally furious, was that it would ruin his reputation and the reputation of the hostel. He went on at a fair amount - at a fair length and wanted Maggie moved - wanted Mrs Dawkins moved out of there immediately. I talked to him about it. I did say to him, but I'm asking you to recall that I've still got this image in my mind about how he was basically the saviour of the town. I did ask him if there was any truth in the rumour that he was involved with boys, and he denied it emphatically and sort of laughed in a kind of an offhand way, as though, of course it wasn't true. Yes. That's not a phone conversation that I will forget.

Q. Do you accept that he may well have also said that he would [kick] the Westrek participants out of their accommodation unless Mrs Dawkins was moved?

A. I don't recall that precisely, but he could well have said that, because that would have been in the context of his rage on that particular day.” (t 1564)

Mr Sherlock was very concerned about this telephone call because it placed the Katanning project in jeopardy. Irrespective of whether or not Dennis McKenna had lied when denying any sexual involvement with boys, “the publicity and the community support for him would have damaged the project and the programme” (t 1582).

In any event Mr Sherlock believed McKenna’s denial of any wrongdoing, and he did so for two reasons. Firstly there was the glowing report he had received about McKenna from his cousin. The second reason was that “the police had not reacted to Mrs Dawkins’ visit to them”. Although he had not himself checked directly with the police he assumed that “had there been any substance [to the rumour] they would have done something about it” (t 1565).

It was as a result of McKenna’s telephone call that Mr Sherlock decided (in consultation with Ms Stroud) that Mrs Dawkins should be shifted from Katanning to Bunbury:

“Q. Did you tell Maggie Dawkins about this telephone call you had from Dennis McKenna?

A. My recollection is yes, I did. But I think we, the group, if you like, or at least Elizabeth and I, had decided to swap the Bunbury coordinator for Mrs Dawkins.

Q. Was that decision made fairly soon after you had that telephone call from Mr McKenna?

A. I think it would have been in just the next few days.

Q. You mentioned the name "Elizabeth". Are you referring to Elizabeth Stroud?

A. Yes. I should be more specific. Elizabeth Stroud.

Q. Did she have some input in what was going to happen with Maggie Dawkins, did she?

A. My recollection is that we both did.

.....

Q. Were there any others within the department involved in that decision to move Maggie Dawkins from Katanning to Bunbury, apart from you and Elizabeth Stroud?

A. I can't specifically recall. It's likely that I would have told Ian about it, Ian Carter, but probably after the event or after the decision was made, because that was my role. It didn't, as far as I can recall, require that. But I do not recall Ian's response." (t 1566)

It is also Mr Sherlock's evidence that if McKenna had not telephoned him Mrs Dawkins would have remained in Katanning (t 1590). In that regard her previous alleged indiscretions were not enough on their own to require her removal from Katanning. However, the telephone call from McKenna was "the straw that broke the camel's back" because it involved a person with a very positive local reputation "jumping up and down" about a matter which could have "wide public exposure which would damage the Westrek project" (t 1589-1590).

The only meeting that Mr Sherlock can recall having with Mrs Dawkins after she went to Bunbury was one where Ms Stroud was also present and they discussed the reasons for her transfer (t 1586). However he does not remember Mrs Dawkins giving him a written account of what had happened at Katanning, and considers it highly unlikely that he would have given her an undertaking to "alert the relevant authorities" about the matter. His reason for this is that he had already "exercised his responsibility" in respect of the matter by ensuring that she talked to the police at Katanning (t 1583-4).

Mr Sherlock has "no recollection whatsoever" of Mrs Dawkins being summoned to Head Office for a series of meetings with Mr Kenyon, Mr Carter and himself. Nor does he remember Mrs Dawkins being asked to sign a resignation letter, and he repudiates the assertion that this ever occurred (t 1586, 1614).

However it is important to note Mr Sherlock's concession that his recollections about some of the relevant events might not be completely reliable. In that regard, when asked to comment on a certain aspect of Ms Stroud's evidence his response was:

"The best part of my recollection, or the only part that I'm completely sure of is the phone call with McKenna, and then the subsequent actions, or some of the issues." (t 1563)

11.13.9 Ian Carter's evidence

Mr Carter's career prior to joining the Department of Employment and Training was as a school teacher and then a Youth Development Officer with the Education Department. He joined the DET in 1984, and over the following year or two held a variety of positions as a Deputy Director in the Community Employment Initiatives Unit.

Mr Carter remained with the DET until 1989 and throughout that period he was responsible for the oversight of numerous programs. The Westrek program was one of those that fell under his "broad responsibility" (t 1619). It is Mr Carter's evidence that in respect of the day-to-day operation of the projects that were under his control:

"I think...(my) management style then, as is now, is setting broad goals and targets, ensuring people have resources, and letting them manage them, and so...I'm not a hands-on details manager, I'm a hands-off direction manager. I facilitate, encourage, empower, rather than get involved in day-to-day detail. If I employ a manager, I let them manage the project, particularly when you've got people like Peter Sherlock, who are competent." (t 1654)

For this reason he did not involve himself in the day-to-day running of the Westrek program and was completely unaware of any allegation that the Warden of St Andrew's Hostel had sexually abused a boy (t 1621). Mr Carter also has no recollection of McKenna's name being raised directly with him:

"...I may have been aware of his name, but I can't remember any serious discussions about Dennis McKenna or what his role was, because I wasn't involved in the day-to-day running of the Westrek program. It sat under Peter Sherlock and Elizabeth Stroud, and so...I didn't have any detailed understanding of who was doing what in the different communities where we were running Westrek...if someone said to me, "Who were the key people in the community at the Westrek projects in those things?", I wouldn't have been able to name the key community people, so I wasn't aware of him." (t 1622)

Mr Carter does remember Mrs Dawkins being moved from Katanning to Bunbury. The decision to move her was made because of "issues of inappropriate behaviour by her and a breakdown in relations with the Katanning community". However:

"I can't remember whether I was actually involved in the decision or I was briefed on it. I was certainly aware of the issue...It is one of those issues where in the line of responsibilities a number of people may well have been briefed and involved in it. Based on the fact that Peter Sherlock and Elizabeth Stroud were recommending that that is what happened, were talking about the issues surrounding what was going on in the community and around Maggie, and essentially...I don't remember getting the piece of paper and signing off on it and making that deliberative decision." (t 1634)

Mr Carter recollects that it was Mrs Evans who had raised concerns about Mrs Dawkins' behaviour on behalf of the Katanning community but he himself never spoke directly to Mrs Evans about these matters (t 1637, 1659). As to the nature of the issues raised by Mrs Evans:

"...I remember issues such as her taking the Westrek participants to the local pub and getting drunk with them and creating problems in the street. I remember an issue about painting something pink in the town...I remember something was painted pink and I remember there was great concern about it in the local community...I remember the issue of a sexual relationship between the two group workers, Maggie and her co-male group worker. They were the issues that I have recollections of that were raised with me in terms of concerns from the Katanning community. And my only recollection of names raising those issues with the department was Ainslie Evans. I don't remember Dennis McKenna's name being in and around those issues." (t 1636-7)

Mr Carter was asked to comment on Mr Sherlock's evidence that an irate telephone call from McKenna was the predominant reason why Mrs Dawkins was removed from

Katanning. Mr Carter accepts that in light of Mr Sherlock's evidence that issue must have been "first and foremost" in the decision to shift Mrs Dawkins. He also accepts that he may have been briefed about the issue concerning McKenna, but has no recollection that Mr Sherlock did so (t 1638-9). If in fact that did happen then:

"...clearly if we were ignoring issues around allegations of sexual abuse then clearly it would be a concern. My contention is that I was not made aware of those issues and I acted appropriately in moving a staff member from one site to another, although I can't specifically remember being involved in the direction for moving her from Katanning to Bunbury either." (t 1641)

Mr Carter cannot recollect any later decision by Westrek management to ask Mrs Dawkins to voluntarily resign. However he was aware of previous discussions at senior levels of the department (but not including himself) on how Mrs Dawkins should be managed:

"I think in any government agency when you have someone who has political connections as part of their history and relational stuff it is clearly an issue that needs to be raised, worked through." (t 1643)

Mr Carter cannot remember being present at a meeting with Mrs Dawkins when she was asked to sign a resignation letter. In any event that is not a way in which he would ordinarily operate and he considers it a most inappropriate way to manage people (t 1645-6).

11.13.10 Peter Kenyon's evidence

Peter Kenyon has a long history of involvement in youth work, and in 1983 he was recruited by the newly elected Labor Government to develop a youth strategy for the State. Once he completed this strategy he was asked to implement it, and in 1984 he became the Head of the Community Employment Initiatives Unit of the Department of Employment and Training. In that role he was responsible for up to 50 staff who administered 11 different program areas covering approximately 250 projects. Six of these projects comprised the Westrek pilot program (t 2299).

The Westrek program was conceived by Mr Kenyon during a Churchill Scholarship which had taken him to Canada. The State Government enthusiastically adopted the idea which it saw as an important political initiative. Consequently Mr Kenyon had to implement the program much more quickly than he would have liked. From his perspective this task was complicated by the fact that Westrek had an Advisory Board chaired by Janet Holmes à Court of which he was not a member. Furthermore, the Director General Mr Cross took a personal interest in Westrek and played a much larger role in its oversight than would normally have been the case (t 2297-8, 2300).

The day-to-day running of the Westrek program was in the hands of Ms Stroud and Mr Sherlock. Mr Sherlock reported to Mr Carter who was responsible for four or five program areas within the Community Employment Initiatives Unit. According to Mr Kenyon, Mr Carter was heavily involved in the Westrek program and was the person "managing it with Mr Sherlock as the person on the ground" (t 2301). Mr Kenyon's evidence as to his own role with Westrek is that:

"...I was probably initially involved in trying to give it some direction but I certainly played a very peripheral part...and certainly I was not a Kevin Rudd micro-manager. I

left that to Ian Carter because I...did have a whole pile of other things that I was overseeing. So I didn't really get involved in the nitty-gritty...I never even...visited Katanning. I didn't actually visit, I think, any of the Westrek projects.

Q. Would you be consulted with respect to any major decisions that had to be made regarding the running of the program?

A. It would [depend on] what you mean by major decision. I think increasingly I found myself not making any decisions about this program because my immediate boss, Michael Cross, took a personal interest in it...I think he may even have been on the Advisory Group. He particularly wanted to liaise with the Holmes à Courts and so much of what I learnt about the program was actually learnt informally or from him...on most days I had a briefing with Michael where a whole pile of issues would be raised. He certainly was hearing things...that he would raise with me.

Q. ...what would you expect to be told about the running of the Westrek program?

A. Certainly I would expect, through Mr Carter and Mr Sherlock, to...have reports on it, awareness of any issues that were coming up with it, any challenges that the program actually had that we might need to go to the department with. But...it was a strange program compared to everything else because we suddenly had this other group who really was overseeing it called the Advisory Group. They were the ones who were visiting the project and were making more and more of the decisions.” (t 2302-3)

It is also Mr Kenyon’s evidence that he played no part in the decision to employ Mrs Dawkins as a Group Leader but was told that she would be a Group Leader. In that regard:

“I suspect our minister was a good friend of her boyfriend. She was also on the staff of Kim Beazley, the two most powerful federal politicians, and I was...told, whether it was from the Minister, from his office or through Mike Cross, that Maggie Dawkins, or Maruff at the time, would be a leader. She liked this thing and she wanted to be it and there was no question whether or not she was suitable for it. We were told we inherited her.” (t 2352)

According to Mr Kenyon, Mr Cross was particularly keen to secure Federal funding for the Westrek program, and “looking after the special friend of the Minister assisting the Prime Minister for Youth Affairs was something pretty important to him” (t 2382).

It is Mr Kenyon’s evidence that soon after Mrs Dawkins commenced at Katanning she became: “an incredibly difficult person to manage”. He regarded her as a young, opinionated, over-confident, and politically savvy person who “complained about everything”. There were also problems “in terms of her interpretation of what supervising young people was all about [which] rang contrary to the spirit of the programme” (t 2354).

Mr Kenyon became aware of these problems as a result of his conversations with other staff including Mr Carter and the Director. In this regard Mr Cross was certainly aware of “some of the issues there” and was “in contact with Janet Holmes à Court and other people who seemed to be aware of some of the problems” (t 2355). More particularly:

“...I certainly...have memories of her own personal behaviour with the co-worker, their sexual relations, which I certainly was strongly disapproving of. There were issues to do with...participants getting drunk and whether she was supervising that.

There were issues to do, I think, with the desecration of public art that I remember. I mean, these are issues I particularly raised with Michael Cross, the Director-General, when we were talking about how do we cope with her behaviour in Katanning.” (t 2315)

According to Mr Kenyon he had a number of discussions with people in the Westrek program about the “difficulties of this person” and directed Mr Carter and Mr Sherlock “to raise these things with her” (t 2316 - 2318). However, because of Mrs Dawkins’ political connections “we were clearly having to accept that, and there was no way that we could actually get rid of her”. He was constantly told by Mr Cross that “you can’t sack her” (t 2386).

It was these issues as to Mrs Dawkins’ behaviour which ultimately resulted in the decision to transfer her from Katanning to Bunbury. However, Mr Kenyon probably had very little involvement in that decision:

“It was an operational issue and I would have probably been informed that this was what was actually happening. I certainly didn't have any disagreement with it because it seemed to be "At least that's worth trying", so I wasn't part of that decision-making.” (t 2375)

Nevertheless Mr Kenyon is adamant that Mrs Dawkins “was not moved because she was a ‘whistle-blower’” (t 2310). The only reasons for her transfer were her “inappropriate behaviours” (t 2310) and the fact that she was “this square peg in a round hole in Katanning” (t 2322).

Mr Kenyon was unaware that a complaint from McKenna or a threat to the accommodation at Katanning played a part in the decision. In that regard: “that certainly hasn’t been raised with me and it certainly isn’t something in 1985 that I would have responded to” (t 2323). Accordingly Mr Kenyon is “definitely surprised” at Mr Sherlock’s evidence that Mrs Dawkins would have remained in Katanning but for the telephone call from McKenna (t 2328). If he had known there had been such a telephone call concerning an “issue of paedophilia” this would have “rung bells”. It was also an “uncharacteristic stuff up” if Mr Sherlock failed to inform him that this was the pivotal reason for moving Mrs Dawkins to Bunbury (t 2337). Mr Kenyon agrees that if Mrs Dawkins is correct with her account of the real reason why she was moved from Katanning, then this would not reflect well on those who were responsible for that move (t 2340).

It is Mr Kenyon’s evidence that he first became aware of Mrs Dawkins’ allegation concerning McKenna in late 2011 when he was telephoned by a journalist from the ABC 7:30 Report. He was shocked to learn that “this woman was claiming she was sent off to Bunbury because she was a whistle-blower”, and when the journalist mentioned the name “Dennis McKenna” it was “certainly not a name I knew” (t 2304).

Mr Kenyon asserts that if he was told in 1985 that Mrs Dawkins was being transferred for a reason “linked to paedophilia” it would have been “a stand out comment” which he would remember because of his long involvement with young people at risk (t 2305). If he had been told that at the time he also would have advised Mrs Dawkins to “immediately relay that to both the police and to the Child Protection people in the Department of Community Welfare in Katanning” (t 2356).

Mr Kenyon can remember only one meeting with Mrs Dawkins, and this occurred when she was first engaged as a Group Leader (t 2380). He cannot recall whether he was at a meeting

with Mrs Dawkins when she claims to have been summoned from Bunbury to Perth. In this respect he does not deny that he might have been there, he simply does not have any vivid recollection of this happening (t 2381).

However, Mr Kenyon is certain that he would not have been a party to tendering a letter of resignation to Mrs Dawkins. Given that Mr Cross had always said that “we couldn’t get rid of her” the signing of a letter of resignation was never an option (t 2353). Furthermore, he would be “shocked” if that had occurred in his presence because he has not at any time used this as a method of managing staff (t 2366).

It would not surprise Mr Kenyon if Mrs Dawkins did go and see Mr Cross at some stage of that meeting (as she claims). No other coordinator would have been able to do that, but certainly Mr Cross never mentioned the matter to him. Mr Kenyon also doubts that Mrs Dawkins was asked to sign a letter of resignation because Mr Cross “constantly raised with me the need to kind of like make sure that we managed and not alienate her” (t 2383).

11.13.11 The evidence regarding “I”

“I” was the second Group Leader who commenced at Katanning approximately one month after Mrs Dawkins had arrived with the first group of participants. The evidence shows that “I” and Mrs Dawkins developed a relationship which in itself was one of the “behavioural issues” referred to in evidence by other Westrek witnesses. It was not until after the Westrek witnesses had testified that the Inquiry received information from the WA Police that “I” had been investigated in 1985 concerning a complaint of a sexual nature from one of the female participants.

In essence it had been alleged that on 12 October 1985 there was a fire within a room at the Kartanup building, and the complainant was accused of being responsible. She became extremely upset at this accusation and “I” then intervened to calm her down. “I” also took her for a walk down the street and she later complained that while the two of them were out of the building he had sexually molested her. Ultimately, the Police did not charge “I” with any offence, but in the meantime the DET transferred him from Katanning to work at the Perth Head Office for a few months.

Upon receiving this information the Inquiry interviewed “I” and also requested statements from all of the Westrek witnesses concerning their knowledge of the allegation made against him and how this may have impacted on the events involving Mrs Dawkins. (In this regard, the fact that there had been a fire inside the Kartanup building raised the possibility that McKenna was aware of the complaint against “I” and might have used this as leverage when demanding Mrs Dawkins’ dismissal).

However, in the end the evidence does not establish that the complaint against “I” had any bearing upon the removal of Mrs Dawkins from Katanning. In that regard it is Mrs Dawkins’ recollection that the incident involving the fire did not occur before she left Katanning, and that she first became aware of it when “I” visited Bunbury (t 4298).

The only residual relevance of the matter is that all Westrek witnesses (other than Mrs Dawkins) claim to have no memory of the complaint against “I” or of him being transferred to Head Office. This is despite them remembering that it was his relationship

with Mrs Dawkins, as well as the other “behavioural issues” which resulted in her being transferred to Bunbury.

11.13.12 Events in 1991

When McKenna was first convicted of child sex offences in 1991, Mrs Dawkins felt vindicated, and she decided to telephone Mrs Evans. It is her evidence that:

“I phoned Mrs Evans and asked her how she felt about what had transpired between us in 1985. She explained to me that she felt an obligation to the town, as the economic benefits of having the hostel were considerable. Mrs Evans said I threatened the continuation of this economic prosperity and she was not concerned that I had suffered as a result. When I pressed Mrs Evans to express any remorse towards the victims, she refused.” (t 244-5)

Mrs Evans remembers receiving that telephone call, and her interpretation of it at the time was that “she called me to say she was right and I was wrong” (t 1715). When Mrs Evans was asked to comment on Mrs Dawkins’ evidence of what was specifically said during that telephone conversation, her response was as follows:

“Yes. I don't have a problem with that...I was supportive of the fact that any commercial enterprise in Katanning keeps going and I would not be trying to get rid of anything that's commercial, and that was a commercial asset. But, also, condemning somebody that ran it, even though he had been convicted then, we still needed the facility to operate. But I don't know about not showing remorse. I didn't know the victims...I can't agree with I didn't show remorse. I think it's a tragedy.” (t 1711)

Mrs Evans also agrees that in 1985 she had viewed Mrs Dawkins as “some sort of threat” to the Hostel. In this regard “it was her falling out with Dennis that was the problem and because Dennis was the epitome of the Hostel, then I saw the Hostel being under threat if Dennis wasn’t part of it” (t 1712-3). When asked to explain why this also threatened the economic prosperity of the town, Mrs Evans responded:

“Because if the Hostel didn’t operate, it was a significant commercial feature that wasn’t operating and wasn’t bringing in an income.” (t 1716)

It is Mr Sherlock’s evidence that he also received a telephone call from Mrs Dawkins soon after McKenna was sentenced in 1991. (Mrs Dawkins did not herself testify about this telephone conversation). According to Mr Sherlock Mrs Dawkins was “triumphant” and told him that she “was right”. She also made it clear that he had been wrong not to believe her in 1985 (t 1590-1).

At about the same time in 1991 Mrs Dawkins also wrote a letter to the Great Southern Herald newspaper in Katanning (Exhibit 4). This letter was published on 26 June 1991 under the heading “Hurried Departure Explained”. The contents of that letter were entirely consistent with her present evidence, and included the comment that:

“It seemed that the continuation of the Westrek project was of far more importance than investigating claims of sexual abuse by McKenna.”

In the same issue of the newspaper there was a front page and page 3 article which reported the response of the “authorities involved” to what Mrs Dawkins had claimed in her letter. That article included the following paragraphs:

“Mrs Dawkins is angry that her character was smeared by the incident and that authorities were prepared to believe McKenna and not her.

But authorities involved say that although they believed Ms Maruff they were anxious to keep the program which was in its pilot stage, running smoothly.” (Exhibit 4)

The author of the newspaper article, Patricia Gill cannot recall how she obtained this information from the “authorities involved”. However:

“I would have had to refer my questions through the State Government Media Office which then obtained a statement from the Department of Education and Training which ran the Westrek project. This is standard practice in journalism but I do not recall making the inquiry.” (t 4088)

It is important to note that at the time of writing her letter to the Great Southern Herald Mrs Dawkins had to hand a copy of the written statement that she says she had given to Mr Sherlock in 1985 as well as various notes and files relating to McKenna (t 296). Unfortunately, when Mrs Dawkins and her husband moved to South Australia in 1994 she disposed of these materials on the mistaken assumption that she would never need to refer to them again (t 2451).

11.13.13 More recent events

In September 2011 Mrs Dawkins was contacted by the Member of the Legislative Assembly for Albany, Peter Watson. Mr Watson asked her to provide information which could assist victims of McKenna in seeking compensation from the State Government. Mrs Dawkins no longer possessed the files and materials which would have refreshed her memory of the relevant events, so she decided to telephone Ms Stroud. She was able to contact Ms Stroud (who was then working in Zambia) and it is Mrs Dawkins’ evidence that:

“She was warm and friendly readily assisting me when I told her the purpose of my call. I requested Elizabeth's assistance to refresh my memory, as I couldn't recall the Katanning Councillor's name. Elizabeth recalled Ainslie Evans's name immediately. We chatted comfortably with Elizabeth and I agreeing on the key points regarding the circumstances of my departure from Katanning.

I called Elizabeth a second time, this time on her work landline in Perth, a few weeks later and received a very different reception. She appeared tense and warned me that "they" were out to bring my reputation into disrepute. I would be portrayed as unprofessional and unreliable if I named my superiors either in the media or in court. Elizabeth asked me to think very carefully about the personal cost of having my character impugned. She told me that "they" now had contrived alternative reasons for having me removed from Katanning. Elizabeth Stroud now said she was "hazy" about details we had agreed with only a few weeks before - and it was now a case of being so long ago.” (t 245-6)

(Since giving evidence Mrs Dawkins has produced records of her Telstra account which show that the two telephone conversations with Ms Stroud took place on 19 September and 27 October 2011 – Exhibit 147 – t 4299-4300).

Mrs Dawkins was cross-examined at length about the word “they” in her written statement concerning the second telephone conversation. It is her evidence that Ms Stroud did not expressly state who she meant by “they”. In the course of the second telephone conversation a number of names were mentioned by each of them including Janet Holmes à Court, Peter Dowding and Mrs Evans. However Mrs Dawkins understood “they” to mean Mr Kenyon and Mr Carter, who were referred to during the conversation not by their actual names but by semi-derogatory nicknames which they had both used back in 1985 (t 255, 257-260, 313, 319).

Ms Stroud agrees that there were two telephone conversations between Mrs Dawkins and herself in late 2011 but has a very different version of what was said. In essence, Ms Stroud asserts that during the first telephone conversation on 19 September 2011 she disagreed with Mrs Dawkins’ account of the relevant events and told her that it was her behaviour in Katanning which people remembered most. Ms Stroud also said to Mrs Dawkins that “you need to look long and hard at why you did not continue to pursue this matter with the police”, and that she should have used her connections with Kim Beasley and John Dawkins to pursue the matter further. According to her written statement signed 12 April 2012 Ms Stroud finished that first conversation with the words:

“People are not out to get you, all I’m saying to you is that people do not remember you as a professional team leader in Katanning and people all have the feeling that your behaviours were inappropriate.”

Ms Stroud’s evidence of the second telephone conversation (on 27 October 2011) is that she disagreed with Mrs Dawkins’ assertion that she was removed from the project because of what had happened with McKenna. Ms Stroud reiterated to Mrs Dawkins that it was her own personal behaviour that had resulted in her removal.

According to Ms Stroud she did not say to Mrs Dawkins that any particular people “were out to get her”. What she said was that everyone would remember her for her poor behaviours, and particularly her behaviour at a function attended by Janet Holmes à Court.

There is also evidence of other recent telephone calls between some of the witnesses. During late 2011 and early 2012 Ms Stroud, Mr Sherlock, Mr Carter, and Mr Kenyon, all spoke to each other a number of times on the telephone. These telephone calls were initially triggered by media stories concerning the events in Katanning in 1985. Further telephone calls came about as a result of the publicity accompanying this Inquiry as well as their expectations that they would each be called to give evidence.

(There is not necessarily anything sinister about potential witnesses contacting each other to discuss relevant facts because it is understandable that they would seek each other’s assistance when trying to recollect distant events. Nevertheless when assessing their credibility I need to take account of the fact that they did have the opportunity to compare and discuss each other’s recollections prior to giving evidence. This raises the possibility that their memories of relevant events may have been moulded or influenced by what the others were able to recall. Therefore it should not be assumed that when two or more of these witnesses concur on a particular fact, that this necessarily adds weight to their evidence).

Following Ms Stroud's initial testimony the Inquiry came into possession of the following e-mail exchange between her and an ABC journalist (Exhibit 129):

"From: Jake Sturmer

Sent: Friday, 23 September 2011 4:40 PM

To:

Subject: ABCTV 730 WA Story

Hi Elizabeth,

My name's Jake Sturmer, I work for the ABC's 7.30 WA program.

I've been investigating what happened at the St Andrew's hostel in Katanning in the 70s and 80s and just spoke to Maggie Dawkins who suggested I contact you. Maggie told me she spoke to you about raising concerns about what was happening.

I was just wondering if you were able to tell me what happened from there? I would have called but Maggie said you were overseas and I didn't want to disturb you. If there's a good time to have a chat on the phone, please let me know.

Otherwise, we can converse via email.

Hope to hear from you soon.

Cheers,

Jake

From: Elizabeth Stroud

Sent: Friday, 23 September 2011 4:57 PM

To: Jake Sturmer

Subject: RE: ABCTV 730 WA Story

Jake

I am currently in Zambia working. I return Monday night and depart Wednesday for Kalgoorlie and will be on a mine site running a training program, so unavailable.

My recollection of the issue is that Maggie raised the concern and was quickly banished from town by the then mayor Ainslie Evans. That is my sum total of recollection. I believe she also spoke to Peter Sherlock wrt the issue. I have not maintained contact with him; at the time he live in Mundaring area.

I hope this is helpful, regards,

Elizabeth"

The email that was sent to the ABC journalist on 23 September 2011 is self-evidently consistent with Mrs Dawkins' version of her first telephone conversation with Ms Stroud and inconsistent with the latter's version. Ms Stroud was recalled before the Inquiry (on 19 June 2012) to explain this discrepancy and she gave some very lengthy and tangential responses to the questions that were put to her. In the end, her essential contentions were that it was a "reactive email" and "a very quick response without giving a lot of thought" (t 3728). Her evidence is also to the effect that she realised soon after the email was sent that it was not "well written" and for that reason telephoned the journalist (on 27 September 2011) to clarify what it meant:

"I sought to clarify what would be a poorly worded email. I wanted to be able to give my truth, I wanted to support Maggie to tell her my truth, what I remembered." (t 3725)

Nevertheless, Ms Stroud can "understand the logic" of the suggestion that her email was "consistent with Maggie's message" that "she was removed from Katanning as a result of blowing the whistle on Dennis McKenna" (t 3725).

11.13.14 Findings

The issues surrounding the Westrek program have become more complex than any of the others that this Inquiry has had to deal with. The evidence has set hares running in many different directions and has not always remained within the area of the Inquiry's central focus, namely the response of public officials to allegations of sexual abuse at St Andrew's Hostel. As there is little in the way of departmental records to assist in determining the truth of what happened, my findings must necessarily depend upon assessments of the credibility of the various witnesses.

I have been aided in this task by the significant admissions of some critical facts made by two of the departmental witnesses. In this regard there is Ms Stroud's evidence of a telephone conversation when Mrs Dawkins told her of the allegation against McKenna and of what Mrs Dawkins had already done by going to the police and to Mrs Evans. Although I am not satisfied as to the reliability of Ms Stroud's testimony as a whole, her evidence of that telephone call provides significant corroboration of Mrs Dawkins' version of events.

Even if I find that that telephone conversation did not occur in the circumstances claimed by Ms Stroud, it still confirms that prior to Mrs Dawkins being moved from Katanning, she had given her superiors an account of what had happened which was largely consistent with her present evidence.

Similarly, Mr Sherlock's evidence of the "rumour" that he heard at about the same time corroborates the fact that Mrs Dawkins had informed the Department of an allegation against McKenna concerning paedophilia. Mr Sherlock's evidence that he advised Mrs Dawkins to take that allegation to the police, and later confirmed that she had done so, is also highly significant. Even if I find that Mr Sherlock is partially mistaken in these recollections, it still corroborates the fact that Mrs Dawkins did indeed visit the police in her quest to have the allegation investigated.

My assessment of Mr Sherlock is that he was an honest witness who did his best to give an accurate account of the relevant events despite considerable difficulty with his recollections.

He made no attempt to distance himself from any responsibility for his actions, and was the only witness to frankly admit that Mrs Dawkins was transferred from Katanning because of an irate demand from McKenna. Mr Sherlock's evidence has been of great assistance in unravelling the truth of what happened, and I commend him for his honesty about these matters.

Mrs Dawkins also impressed me as an honest witness, and given that her version of the events surrounding her removal from Katanning is largely corroborated by Mr Sherlock (and to a lesser extent by Ms Stroud), I have no hesitation in accepting the reliability of those aspects of her evidence.

Although Mrs Evans has testified that she cannot recall any discussion with Mrs Dawkins in 1985 about an allegation against McKenna, she does remember what was said during the 1991 telephone call. She agrees with Mrs Dawkins' summary of that telephone conversation and also admits to being told that she (Mrs Dawkins) "was right and I was wrong". That assertion by Mrs Dawkins in 1991 could only refer to the allegation that had been made against McKenna in 1985. In any event the only conceivable reason why Mrs Dawkins would contact Mrs Evans in 1991 was to express her feelings of vindication following McKenna's convictions. Therefore the very fact that Mrs Dawkins behaved as she did by making that telephone call in 1991 corroborates her evidence that she had told Mrs Evans about the allegation in 1985. (The same observations can be made about Mrs Dawkins' telephone call to Mr Sherlock around the same time).

Furthermore Mrs Evans' evidence about the 1991 telephone conversation tacitly admits her reason for reacting as she did to what Mrs Dawkins had said in 1985. She regarded the allegation against McKenna as a "threat to the Hostel" which in turn meant that it was a threat to the economic prosperity of Katanning. It is reasonable to assume that because of the friendship that Mrs Evans had with McKenna in 1985 she did not believe the allegation. Nevertheless she gave a higher priority to the economic well-being of the town than to any need to investigate the truth of what was then being alleged. By doing this, and by joining with McKenna in seeking Mrs Dawkins' removal from the town, she unwittingly contributed to his ongoing ability to offend.

Inspector Todd was a relaxed and comfortable witness and seemed very much at ease throughout his evidence. He tended to answer questions unhesitatingly and was able to bat away every ball that was bowled at him. Nevertheless, at times his denials of the propositions that were put to him seemed to be more in the nature of automatic responses to the questions rather than considered answers (e.g. t 1110-1).

Mrs Dawkins' evidence that she sought Inspector Todd's advice on how she should handle the allegation against McKenna is corroborated by what she told Ms Stroud (and possibly Mr Sherlock) soon afterwards. In my view she cannot be mistaken that it was Inspector Todd whom she spoke to. Unlike "M" (the barmaid at the Federal Hostel)⁶ she did not know any other policeman in Katanning, and it is her evidence that she did not go to just any policeman, but to Sergeant Todd specifically, to obtain his advice.

Inspector Todd's denial that he was the policeman spoken to by Mrs Dawkins is based on his assumption about what he would have done if there had been any such conversation. It is his evidence that if he had been told of any allegation of sexual abuse at St Andrew's Hostel

⁶ See Chapter 11.11

he would have immediately referred it for investigation by the CIB. Given that Inspector Todd did not take any such action he asserts that he was not the policeman who was approached by Mrs Dawkins.

With regard to the issues surrounding the driving test, the evidence overall does not impact on Mrs Dawkins' credibility. I accept Inspector Todd's evidence (and the evidence of other police officers stationed at Katanning at the time) that it was not his usual role to conduct driving tests. However, there was nothing to stop Inspector Todd from testing Mrs Dawkins for the addition of a "B" category to her driver's licence if he wished to. (Because contrary to his submissions he was licensed to drive a bus himself). Furthermore, Mrs Dawkins' evidence as to the circumstances in which the test was performed are consistent with it being done as a favour to her rather than a formal testing (involving bookings) in the usual way. In the end the issues surrounding the driving test are really no different from all of the others in respect of which the two witnesses are in conflict.

Regardless of Inspector Todd's denial that he was the policeman spoken to by Mrs Dawkins about the allegation of sexual abuse at the Hostel, it is difficult to accept that he had not already heard rumours to the same effect. In this regard, the evidence establishes that by 1985 there were wide spread rumours throughout Katanning and the surrounding districts concerning "kiddie fiddling" at the Hostel.⁷ Furthermore, at around the same time that Mrs Dawkins claims to have spoken to Inspector Todd about the allegation of sexual abuse, "M" spoke to a policeman at the Federal Hotel concerning rumours on the same subject.⁸ Accordingly "M's" evidence corroborates Mrs Dawkins' evidence as to the lack of any response by Katanning Police at that time to such allegations or rumours.

For all of these reasons I am satisfied that Mrs Dawkins did have the conversation with Inspector Todd that she claims. Certainly Mr Sherlock believed that Mrs Dawkins had reported the allegation to the Katanning police, and it was because of that fact, and only because of that fact that he took no further action. Accordingly, Inspector Todd must bear the major responsibility for the failure of Mrs Dawkins' persistent efforts to have the matter properly investigated. It is Inspector Todd's evidence that he would have "responded immediately" if Mrs Dawkins had come to him in the circumstances she alleges. That is exactly what he should have done, and if he had responded appropriately in 1985 it is unlikely that McKenna would have been able to continue to offend.

I find that after being told of the "rumour" in 1985 Mr Sherlock correctly believed that Mrs Dawkins had gone to the Katanning Police with the allegation against McKenna. In those circumstances I consider that he had reasonable grounds to refrain from any further action himself. That decision by him as Manager of the Westrek program also absolves Ms Stroud and his superiors in the Department from any responsibility for the fact that the matter was not properly investigated at that time.

Very soon afterwards Mr Sherlock transferred Mrs Dawkins to Bunbury and he did that in response to a demand from McKenna. That transfer in itself did not contribute in any way to the failure to have the allegation against McKenna investigated. It was simply an inappropriate response to McKenna's demands in circumstances where Mr Sherlock genuinely believed the Katanning project was in jeopardy. There was good reason for Mr

⁷ See Chapter 14

⁸ See Chapter 11.11

Sherlock to have that belief because McKenna was a very manipulative individual who also had considerable influence in the town. Mr Sherlock has admitted the possibility that at the time of demanding Mrs Dawkins' removal McKenna also threatened to withdraw the accommodation from the Westrek team (t 1564). I accept Mrs Dawkins' evidence that she was told of that threat by Ms Stroud at the time she was instructed to leave Katanning. Accordingly I am satisfied that that threat is one of the reasons why Mr Sherlock caved in to McKenna's demand.

It was within Mr Sherlock's power and authority to decide on his own that Mrs Dawkins should be transferred from Katanning. There is no direct evidence to positively prove that he consulted with either of Ian Carter or Peter Kenyon before making that decision.

Nevertheless it is difficult to accept that Mr Kenyon and Mr Carter were both totally unaware of that decision at the time it was made. With regard to Mr Kenyon, it is significant that he had sufficient interest in Mrs Dawkins (as only one of his 50 staff) to know that she was "incredibly difficult to manage". He also was "constantly told" by Mr Cross that he could not sack Mrs Dawkins which suggests that he took a very close and active interest in her. Therefore it is highly unlikely that his interest in seeing Mrs Dawkins removed from the Westrek program would have coincidentally and abruptly ceased at the time of the decision being made to transfer her from the Katanning project.

It is also difficult to accept that Mr Kenyon and Mr Carter are both able to remember the details of the various "behavioural issues" concerning Mrs Dawkins, but have no memory of the much more serious issues arising from the complaint against "I" as well as the telephone call from Mr McKenna and the consequent crisis with the Katanning project.

Corroboration of the fact that the officers in the Department responsible for the Westrek program were aware of the true reason for Mrs Dawkins' removal from Katanning can be found in the comment quoted in the Great Southern Herald of 26 June 1991 (Exhibit 4):

"...authorities involved say that although they believed Ms Maruff they were anxious to keep the programme, which was in its pilot stage, running smoothly."

It can be assumed that at the date of that newspaper article the relevant departmental files were still accessible and officers who had been involved in the program were available to confirm the veracity of the public statement that was then made.

Furthermore Mrs Evans denies that she ever made any complaint to the Head Office of the DET concerning the behaviour of Mrs Dawkins. Mrs Evans is no friend of Mrs Dawkins and for that reason her evidence on that particular point can be given considerable credence.

For these reasons I am satisfied that Mr Kenyon, Mr Carter and Ms Stroud have magnified the importance of the "behavioural issues" surrounding Mrs Dawkins while she was at Katanning. I accept Mr Sherlock's evidence that in the context of all that was happening at the relevant time these were only trivial matters which on their own did not justify her removal from Katanning. Accordingly, I reject the evidence of Mr Kenyon, Mr Carter and Ms Stroud that these behavioural issues were the sole reason for that decision.

Mr Kenyon has also repeatedly attempted (in evidence and submissions) to divert the focus of the Inquiry away from the employed officials within the DET and onto the voluntary Chair of the Advisory Board Janet Holmes à Court. Apart from his general assertions as to Mrs Holmes à Court's involvement in the day-to-day management of the pilot program, he has

not adduced any evidence to show that she was a party to the decisions affecting Mrs Dawkins. The only witness to suggest that Mrs Holmes à Court may have participated in one of those decisions is Ms Stroud, but for the reasons that I will refer to shortly I consider that evidence to be unreliable. (Certainly Mr Sherlock has not suggested that Mrs Holmes à Court was in any way involved in those matters).

Nevertheless the Inquiry's investigators have interviewed Mrs Holmes à Court to ascertain her knowledge of the circumstances of Mrs Dawkins' removal from Katanning. Mrs Holmes à Court asserts that she had no involvement in that decision but that the Advisory Committee was informed (she thinks by Mr Sherlock) that Mrs Dawkins had been moved to Bunbury because of "unsatisfactory performance as a Group Leader and her inappropriate behaviour" (t 4222). Mrs Holmes à Court also states that she cannot recall any complaints about the conduct of Westrek participants at Katanning, or any proposal being put to Mrs Dawkins that she should resign from the project (t 4223).

There is no evidence to suggest that Mrs Dawkins caused any problems for the Department or that her performance as a Group Leader was unsatisfactory once she was transferred to Bunbury. (Even Mr Kenyon has no recollection of any "major problems" at Bunbury – t 2370). Nevertheless, it is Mrs Dawkins' evidence that she persisted with her attempts to have the allegation against McKenna properly addressed. In meetings with Mr Sherlock and Ms Stroud she was told that she was "sticking my neck out about mere suspicions of allegations made by an unreliable troubled youth who refused to make a police statement" and that she did not have much to go on. According to Mrs Dawkins she was ultimately asked to put in writing what the young man had told her, and she provided Ms Stroud and Mr Sherlock with a written statement. It is also Mrs Dawkins' evidence that Mr Sherlock gave her an undertaking that "even though it was very little to go on, he would try alert the relevant authorities" (t 243).

Mr Sherlock cannot recall any meeting with Mrs Dawkins after she moved to Bunbury, or of receiving her written account of the allegation. He also considers it highly unlikely that he would have given any undertaking to contact authorities because he considered he had exercised his responsibility by having Mrs Dawkins go to the police.

Ms Stroud also denies all knowledge of these matters, but for a number of reasons I do not consider her evidence to be reliable. Firstly I do not accept her evidence that the only reason for Mrs Dawkins' removal from Katanning was her "consistent inappropriate behaviour". I also reject her evidence that she was unaware of McKenna's telephone call to Mr Sherlock. In this regard she worked within metres of Mr Sherlock in an open plan office and there were constant exchanges between them in the course of a working day. Furthermore I accept Mr Sherlock's evidence that he recollects consulting with Ms Stroud when making the decision to transfer Mrs Dawkins from Katanning.

I also reject Ms Stroud's version of her first telephone conversation with Mrs Dawkins on 19 September 2011. Her account of that telephone conversation is not only contradicted by the email she sent to the ABC journalist soon afterwards, but also in my opinion simply does not ring true. It defies logic that Mrs Dawkins would suggest to the journalist that he contact Ms Stroud unless they had both agreed "on the key points" regarding Mrs Dawkins' removal from Katanning. I also consider it highly unlikely that when unexpectedly called at her workplace in Africa by a person with whom she had had no contact for many years Ms Stroud would be in a position to say:

“People do not remember you as a professional team leader in Katanning and people all have the feeling that your behaviours were inappropriate.” (Ms Stroud’s written statement signed 12 April 2012)

Furthermore Ms Stroud’s evidence that Mr Sherlock spoke to Mrs Evans in 1985 about the Katanning community’s complaints concerning Mrs Dawkins’ behaviour is not only contradicted by Mr Sherlock (t 1554, 1573) but by Mrs Evans herself (t 1681-2). In the end, I do not consider Ms Stroud to be a reliable witness and I am satisfied that her evidence is an inaccurate reconstruction of events intended to distance her from what happened.

Mr Sherlock has frankly admitted the difficulties he has in remembering some of the events surrounding the irate phone call from McKenna. My assessment of Mrs Dawkins is that she is an honest witness and that the substance of her evidence is reliable, but that she may be mistaken about some aspects of the relevant events. I am nevertheless satisfied that after moving to Bunbury she did persist in trying to have her concerns addressed, and for this reason met with Mr Sherlock and Ms Stroud. I am also satisfied that she provided them with a written account of the allegations that had been made against McKenna by the young man in Katanning.

According to Mrs Dawkins she then continued to manage the Bunbury project and it was at some later time that she was summoned to the Head Office in Perth and also telephoned by Patricia Thomson who warned her that her superiors would be demanding her resignation. Mrs Dawkins and Dr Thomson have both given credible evidence about these matters and it is highly unlikely that they would be mistaken about these events occurring. I am satisfied that Mrs Dawkins was summoned to the Head Office, that Dr Thomson did hear Ms Stroud tell Mr Sherlock that Mrs Dawkins was going to be “fired”, and that she then telephoned her friend to warn her that her superiors would be demanding her resignation.

Mrs Dawkins is unlikely to be mistaken about the fact that she was asked to sign a letter of resignation because it was a significant life event of a type which nearly all people would remember. As to the reason why she was asked to sign the letter it is her evidence that she was told that she had caused serious damage to the working relationship at Katanning, that the replacement Group Leader was experiencing difficulties, and that McKenna was continuing to insist that she be sacked.

Having been forewarned by Dr Thomson, Mrs Dawkins was in the position to resist the demand that she sign the letter of resignation. I accept that she refused to sign and then went directly to Mike Cross and asked him to intervene. As a result it was agreed that Mrs Dawkins would go back to Bunbury and “keep her head down”. In return she was given an assurance that her concerns would be “raised with the appropriate authorities”. However she was “sworn to secrecy” that she would not mention to anybody why she had left Katanning nor discuss any of those details.

There is no evidence to indicate that Mrs Dawkins’ concerns were ever “raised with the appropriate authorities”, and the only reasonable conclusion is that McKenna ultimately achieved his aim via the Department of shutting down any further attempts by Mrs Dawkins to have the allegation against him investigated.

The remaining significant issue which needs to be determined is whether either or both of Mr Kenyon and Mr Carter participated in the effort to have Mrs Dawkins sign the letter of resignation, and then in persuading her not to continue with her attempts to have the

allegation against McKenna investigated. Mr Kenyon is “certain” that he was not involved in these matters whereas Mr Carter is somewhat less strident in rejecting his involvement. Mr Kenyon and Mr Carter have each also said that he had very little involvement in the day-to-day management of the Westrek program. However Mr Kenyon contradicts the other’s evidence that he had a “hands off” role and asserts that Mr Carter was “heavily involved” in the management of Westrek.

Regardless of the extent to which either of the two men were involved in the daily management of the Westrek program, the essential issue is whether the evidence is sufficient to satisfy me that they each participated in the events surrounding the letter of resignation. The only evidence to support this finding comes from Mrs Dawkins, and she has testified that she has difficulty in recalling the sequence of events that day.

Mrs Dawkins’ evidence that Mr Kenyon and Mr Carter were present is corroborated to a limited extent by Dr Thomson who overheard Ms Stroud and Mr Sherlock discussing the arrangements for the proposed meeting. In that regard Dr Thomson overheard that Mike Cross, Peter Kenyon and Ian Carter were all going to be there. However, it is Mrs Dawkins’ evidence that Michael Cross was not present at the time that she was asked to sign the letter of resignation. Quite obviously, and assuming that Dr Thomson is correct about what she overheard, the fact that it was anticipated that each of Mr Kenyon and Mr Carter would attend the meeting does not in itself establish that they were actually there.

The strength of Mrs Dawkins’ evidence on this point is reduced by the circumstances in which she was permitted to give evidence. When a witness is asked to accurately remember the details of an event which occurred a very long time ago, it is not entirely satisfactory that the evidence should be adduced by way of the reading of a prepared statement. The danger is that evidence obtained in this way does not spring from an actual recollection but from a process of reconstructing what happened from what may have been fairly vague memories at the time that the statement was being prepared.

Although it is highly probable that at least one of Mr Kenyon or Mr Carter were present at the material times I consider that the evidence is not really strong enough to satisfy me that they were both there at the same time.

In the present circumstances the standard of proof required for reasonable satisfaction under *Briginshaw v Briginshaw* (see Chapter 3.11) is a relatively high one. Mr Kenyon and Mr Carter have both had lifetime careers in the area of youth work, and the consequences of an adverse finding could be very serious for them. After giving the matter very careful consideration I have come to the conclusion that I cannot be reasonably satisfied that one or the other of them was a party to the attempt to have Mrs Dawkins sign the letter of resignation, or in persuading her not to pursue the allegation against McKenna.

I have no doubt that those responsible for these manoeuvrings within the Department were motivated by what they believed to be the best interests of the Westrek program, and by the political pressures they were under to ensure that it was a success. It is also highly probable that they gave no credence to the allegation against McKenna. It is therefore sadly ironic that their successful endeavours to preserve a program for troubled youth had the unintended effect of condemning other youths to continued offending by McKenna.

The “Westrek affair” does not reflect well on the Department of Employment and Training. Nevertheless a public official who emerges with great credit from the affair is Mrs Dawkins.

The personal traits which her superiors found to be objectionable and which made her a “pest or a nuisance” as well as a “drama queen” turned out to be admirable qualities which drove her persistent attempts to put right what she correctly believed to be wrong. Throughout the entire 15 years of McKenna’s offending no other public official set a higher standard of response to allegations of sexual abuse at St Andrew’s Hostel. The efforts that Mrs Dawkins made against resistance from above can be reasonably described as the ‘gold standard’ of response for any public official.

11.13.15 Conclusions

1. In late 1985 Maggie Dawkins was a Group Leader for the Westrek project at Katanning and she was told by a former St Andrew’s Hostel student that he had been sexually abused by McKenna. The former student did not wish to go to the police about the matter but asked Mrs Dawkins to have the activities of McKenna investigated.
2. Mrs Dawkins was unsure how to handle this request and sought the advice of Sergeant William Todd of the Katanning Police. Sergeant Todd advised her that she had very little to go on and suggested that she seek the advice of her supervisor.
3. Mrs Dawkins then sought the advice of her supervisor Elizabeth Stroud who suggested that she take her concerns to the Westrek Community Liaison Officer, Ainslie Evans.
4. Mrs Dawkins then approached Mrs Evans who not only rebuffed her but berated her for daring to raise the subject of the allegation against McKenna. Mrs Evans also told Mrs Dawkins that she would contact her supervisors and have her removed from Katanning. (There is no evidence to show that Mrs Evans did in fact do that, but it may well have occurred).
5. Mrs Dawkins then confronted McKenna directly and told him that she would do what she could to have his “disgusting activities” stopped. McKenna did not deny Mrs Dawkins’ accusations but laughed at her and told her that he would have her sacked.
6. Within a day of that confrontation Mrs Dawkins was telephoned by Ms Stroud who told her that she was being transferred to the Westrek project at Bunbury. The decision to transfer Mrs Dawkins was made by the Westrek Manager Peter Sherlock as a result of a telephone call from Dennis McKenna demanding that she be removed from Katanning. Mr Sherlock complied with that demand because he feared that the Westrek project would be in jeopardy if he did not do so, and because he also did not believe the allegation against McKenna.
7. Mr Sherlock did not take any action in response to the allegation against McKenna because he knew that Mrs Dawkins had been to the Katanning Police about the matter. If Mr Sherlock had not known of that fact he would himself have referred the matter to the Police or taken other appropriate action.
8. After Mrs Dawkins was transferred to Bunbury she was recalled to Perth for a series of meetings with DET officers in the course of a single day. During one of these meetings she was asked to sign a letter of resignation but she refused to do so. She was told that one of the reasons for that request was that McKenna was still

demanding that she be sacked. Ultimately these issues were resolved on the basis that her concerns about McKenna would be raised with the appropriate authorities and she would continue in her position in Bunbury. Mrs Dawkins was also “sworn to secrecy” about the matter.

9. As a result of these arrangements McKenna achieved his objective of having Mrs Dawkins pressured into silence. The allegation against him was never investigated and he was able to continue offending for another five years.
10. However at all material times Mrs Dawkins’ superiors in the DET were aware that she had been to the Katanning Police with the allegation. For that reason their own failure to take any action in response did not fall short of the conduct which reasonably could be expected of them as public officers.
11. As Sergeant Todd and Mrs Evans were not “public officials” within the meaning of the PSM Act, their failures to respond to the allegation are not matters which fall within this Inquiry’s terms of reference. Nevertheless it has been relevant to make findings in respect of each of them because of the impact that their conduct had on the actions of public officers.

11.14 1986: Deborah Wallwork - the girl who was undaunted

11.14.1 Deborah Wallwork's evidence

Deborah Wallwork grew up in Gnowangerup and attended the Katanning Senior High School in 1985 and 1986 for Years 11 and 12 of her secondary schooling. While in Katanning she boarded at St Andrew's Hostel.

At an early stage of her stay in Katanning Ms Wallwork accompanied other Hostel students on a camping trip to Wellington Mills. While there she saw what she regarded as very inappropriate behaviour by Dennis McKenna towards boys. In this regard there was "a lot of touching going on" whether on the shoulder, on the leg, or by ruffling their hair, but it was "just lots of physical contact" from McKenna to the boys (t 3646).

Ms Wallwork was "completely horrified" by what she saw. Her parents had taught her about normal touching and inappropriate touching and she was "really shocked and surprised" that McKenna was touching these boys in a very familiar way without anyone seeming to be bothered by it (t 3647).

Over a period Ms Wallwork noticed that this type of behaviour "happened all the time" and that it occurred not just while camping but also back at the Hostel. When boys walked past Dennis he would stroke them, and when sitting next to boys in the cinema he "would be touching them on the thigh, rubbing their thigh" and "just constantly touching them". McKenna would do these things openly in front of other students and appeared "quite relaxed" about this behaviour (t 3648-9).

From time to time Ms Wallwork reported this behaviour to her mother, and between the two of them they decided that unless somebody made a complaint, there wasn't any real evidence that McKenna was actually doing anything other than being "physically overly friendly". Ms Wallwork also did not want to "make too many waves" while in Year 11, so although she was uncomfortable about McKenna's behaviour, she did nothing about it (t 3650).

However, Ms Wallwork's attitude changed during Year 12 and she became more vocal and "volatile in some ways". She admits to "bad mouthing Dennis McKenna and the Hostel" when talking to the "townies" at school. She told them exactly what she thought about McKenna and his behaviour and also about the way he ran things and the way he disciplined Hostel students (t 3650-1).

It was a rule of the Hostel that the boarders should not associate too closely with "townies", and McKenna had a system in place which ensured that breaches of this rule would get reported back to him. Accordingly, Ms Wallwork soon found herself in the situation of being regularly disciplined by McKenna for talking to "townies" and for spreading rumours about him. However Ms Wallwork stood up to McKenna during these confrontations:

“He knew that I was saying that he was behaving inappropriately with the boys. He actually did deny that he was doing that, but I would always tell him that it didn't matter, he could deny it all he wanted, I didn't believe him. Even though I didn't have any real proof, I still believed that...his behaviour was inappropriate, and that something more was going on with the boys...It got to the point that basically every time my name was called over the PA system...there was always boys hanging around outside to hear what I was going to say to him next, because I was very, very vocal. You know, and I would answer back to him and I would...be very forceful about telling him exactly what I thought of him...I didn't actually use the word “paedophile”, but I basically told him straight to his face that I thought he was interfering with the boys.”
(t 3653-4)

There were approximately five such confrontations between McKenna and Ms Wallwork during 1986. Each time she was told that she had to “toe the line” and “stop the rumours” but she would respond “straight to his face” that she was not going to do so. Somewhat surprisingly, although Ms Wallwork was twice threatened with suspension from the Hostel, there was never any formal punishment imposed other than a reprimand. Given McKenna's usual response to any trouble from a student, it is a fair inference that he realised that with Ms Wallwork he had bitten off more than he could chew.

However matters came to a head one night when Ms Wallwork and another girl decided to enter McKenna's flat uninvited. When they went through the door Ms Wallwork saw McKenna sitting on a couch wearing a short terry towelling dressing gown with his legs apart. One boy was sitting on the floor between his legs and others were sitting closely nearby. McKenna was massaging the boys with his hands and had one hand on a boy's thigh. Ms Wallwork took all of this in with one glance, and said directly to McKenna in front of everybody present that “this is fucking disgusting”. Ms Wallwork then walked out of the room (t 3661-2).

On the following day Ms Wallwork was called to McKenna's office to be disciplined once again. He told her that this time he had had enough of her, that he was going to speak to the Board about having her suspended, and would then get her expelled. Ms Wallwork immediately said “go right ahead” (t 3662).

As Ms Wallwork believed McKenna's threat to be credible she telephoned her mother to inform her of what had happened and to seek her advice. Her mother suggested that if she had to speak to the Board, Ms Wallwork should tell them that her aunt was a friend of the Minister of Education and that “if they were going to kick me out that we would make sure that there was going to be an investigation” (t 3665).

Approximately two days later Ms Wallwork was called to a meeting in McKenna's lounge room. When Ms Wallwork arrived at the meeting McKenna introduced her to two other people who were present. One was Len Wilkinson whom she was told was the Chairman of the Board. The other was a woman who was introduced to her by name, but which name Ms Wallwork is unable to recall. She is also unable to recollect whether or not she was told that this woman was a Board member. As to why Ms Wallwork remembers the name Wilkinson, it is her evidence that:

“I remember that because I had a friend whose name was similar but it was Gilkinson, but that's not the only reason I remember. I also remember because I've told this story a dozen times to various people over the years. It's not something I have just

suddenly woken up and remembered. This is a story that I've told many, many times before." (t 3663)

It is Ms Wallwork's evidence that the meeting proceeded in the following way:

"A. Mr Wilkinson did most of the talking, the lady didn't say all that much. He made it clear that Dennis McKenna had told him what I had been saying and doing and that they weren't happy with it and they no longer considered that I was an appropriate student to be attending the hostel any longer...Mr Wilkinson actually wanted me to apologise to Dennis McKenna about all the things that I had been saying and doing...I told Mr Wilkinson...that I was not going to apologise because everything that I was saying was true and I wasn't going to stop saying it.

Q. Did you say to them what you had been saying?

A. Absolutely, I did. I told them about the lounge room incident and what I had seen and why I had said the words that I had said out loud. I didn't go into a lot of detail because I wasn't really given that opportunity to but I definitely got in the fact that I'd - what I'd witnessed in Dennis's lounge room and that that wasn't the first time I'd seen him behaving that way towards boys.

Q. When you told these two people...what was their reaction?

A. They basically didn't say much about that at all. I think they pretty much didn't believe me. It was glossed over, it was basically set along the lines of all that is irrelevant to my behaviour and that it wasn't acceptable what I was saying or doing and that basically I shouldn't be there anymore." (t 3664)

Ms Wallwork then told Mr Wilkinson and the lady that if they were going to "kick her out" then she "was going to stir up more trouble for them". She then said what her mother had told her to say, namely that her aunt was a friend of the Minister for Education and that she and her mother would make sure that there would be an investigation.

This statement was met by a "stunned silence for a bit" followed by a change in view by Mr Wilkinson and the lady as to whether or not Ms Wallwork would have to leave the Hostel. In the end, Mr Wilkinson said words to the effect that Ms Wallwork would be allowed to stay at the Hostel "on a week by week basis as to my behaviour as to whether I was going to be staying there or not" (t 3665).

However following that meeting Ms Wallwork's behaviour did not really change. She continued to "bad mouth" McKenna but was not ever called to his office for a disciplinary session again (t 3665-6).

Ms Wallwork's mother, Hellen Chamberlain has provided a written statement corroborating her daughter's evidence including the fact that:

"I used to always tell Debbie that if Dennis ever threatened her with expulsion that she was to tell him that a member of our family was the Minister for Education and that I would have him personally intervene."

11.14.2 Mr Wilkinson's evidence

Ms Wallwork first came forward to the Inquiry after Mr Wilkinson had been called to testify. Accordingly, once Ms Wallwork had herself testified, Mr Wilkinson had a further opportunity to give evidence concerning her assertions if he wished to do so. Mr Wilkinson declined this opportunity and instead submitted a written statement in which he asserts that:

- *"He does not recall any meeting or disciplinary proceedings in relation to Ms Wallwork*
- *He does not recall ever participating in a meeting which took place in the lounge room of Dennis McKenna's flat*
- *If Ms Wallwork had ever made the assertions to him that she claims he would have responded by making contact with both other Board members and the Country High School Hostels Authority to seek counsel and direction*
- *If he had been present at the meeting alleged by Ms Wallwork he would also have presented a report to the Board at its next meeting which would have been recorded in the minutes of that meeting*
- *He notes that Ms Wallwork described him in evidence as being in his late 40s and having wavy hair. In 1986 he was 35 years of age and had straight hair with a receding hairline."*

11.14.3 Jennifer Ireland's evidence

Jennifer Ireland was the only female member of the Board at St Andrew's Hostel in 1986 and was interviewed by the Inquiry's investigators on 1 June 2012.

Mrs Ireland stated that she has no recollection of any meeting as described by Ms Wallwork. She is also "confident, given the serious nature of the allegations raised by Ms Wallwork, that I would clearly remember the conversation had I been present (t 3694).

This being so, Mrs Ireland is also certain that she was not the woman who was present at the meeting as described by Ms Wallwork.

11.14.4 Findings

Ms Wallwork was a credible and convincing witness and I am satisfied that she has given a truthful account of relevant events to the best of her recollection. She may be mistaken as to some of the details of what happened but I accept the accuracy of the substance of what she has had to say.

I am also satisfied that McKenna found Ms Wallwork very difficult to handle but ultimately threatened to suspend her and to have her expelled. McKenna then arranged for the meeting at his flat which Ms Wallwork has described in her evidence. Despite the possible error in Ms Wallwork's description of Mr Wilkinson I am satisfied that as the Chairman of the Board of the Hostel (and the person primarily responsible for dealing with issues of expulsion) he was present at that meeting. As to the identity of the woman present it is clear

that if she was a Board member then it could only have been Mrs Ireland (who was the only female Board member in 1986). However, given the uncertainty in this aspect of Ms Wallwork's evidence, I am unable to make that finding.

I am also satisfied that in the course of that meeting Mr Wilkinson indicated to Ms Wallwork that she would have to leave the Hostel if she did not apologise to McKenna. Ms Wallwork refused to apologise, but Mr Wilkinson changed his mind about having her expelled. That change of mind was brought about by her assertion that her aunt was a friend of the Minister of Education and would arrange for Ms Wallwork's allegation against McKenna to be investigated.

Although I cannot be certain why Mr Wilkinson took this course, I consider it probable that he did not believe that McKenna had been sexually interfering with boys. Nevertheless, he wished to protect the Hostel from any damage to its reputation likely to be caused by an investigation of the type indicated by Ms Wallwork.

Mr Wilkinson may well have thought at the time that he was acting in the best interests of the Hostel in the circumstances. However, it was not the first time that he had heard allegations of this type¹ and any reasonable Board Chairman in his position would have taken steps to have the validity of Ms Wallwork's assertions investigated. By failing to act appropriately in this way Mr Wilkinson also failed in his fundamental duty to look after the wellbeing of the students at the Hostel. That failure directly contributed to McKenna's ongoing ability to sexually abuse Hostel students up until 1990.

11.14.5 Conclusions

Len Wilkinson (in his capacity as Chairman of the St Andrew's Hostel Board) failed to respond appropriately to an allegation by Deborah Wallwork that McKenna had been inappropriately touching boys at the Hostel in that he:

1. Did not arrange for any investigation of that allegation.
2. Deferred the proposed expulsion of Ms Wallwork from the Hostel as a means of avoiding any investigation of that allegation by the Education Department.

¹ See Chapters 11.6 and 11.12

11.15 1986: Tom Fisher and Robert Hendry – a conversation at a tennis tournament

11.15.1 Tom Fisher's evidence

Tom Fisher is the farmer from Upper Kalgan (referred to in Chapter 11.6) who was one of the few people to believe Noel Parkin's allegation that Dennis McKenna was a paedophile. He is also the man who ensured the safe passage of his two sons through St Andrew's Hostel by warning McKenna that if he ever touched them inappropriately he would spend a great deal of time in hospital.

It is Mr Fisher's evidence that in "either November 1986 or very early 1987" he was at a tennis tournament when he had a conversation with Robert Hendry who he believed to be an "ex-Board member" of St Andrew's Hostel Board:

"Q. ...I approached him with the allegations that Noel had been making, and although he couldn't comment, and I believe he had absolutely no knowledge of those allegations at the time, he did tell me that, as advised, I should believe whatever the boys told me and act on what they said, and then sort out whether they were telling the truth later with regards of actions of anyone in the Hostel, but particularly Dennis McKenna.

...

Q. And just to be clear, it seems you're saying that from that chat with Bob Hendry, he had no direct knowledge?

A. I believe he had no direct knowledge of any impropriety, yes." (t 843)

11.15.2 Robert Hendry's evidence

At that time Mr Hendry was not an "ex-Board member" but a member of the Board of St Andrew's Hostel. (He commenced as a Board member on 19 March 1986 and continued until 22 February 1990).

Mr Hendry was a farmer at Bremer Bay south of Jerramungup and he had two children who boarded at the Hostel for overlapping periods between 1984 and 1990. He saw his role on the Board as being a delegate for parents from the Jerramungup area.

It is Mr Hendry's evidence that he does not remember having a conversation with Mr Fisher at a tennis tournament in 1986 or 1987. He knew Mr Fisher at that time and thought then (as he does now) that he "is a very nice guy". Mr Fisher had also known Mr Parkin as a player in the Ongerup football team when he had played for Jerramungup in his younger years (t 1937-8). However, Mr Hendry is very certain that he had no conversation with Mr Fisher about McKenna sexually interfering with boys:

"Definitely not. I would remember that. I would remember that. I would have acted on it." (t 1940)

Mr Hendry explained why he would remember an allegation about McKenna sexually interfering with boys when he was interviewed by investigators on 6 April 2012 prior to giving evidence:

"...I may have heard things like, oh you know he's a bit hard on this or...you know he's picked on one kid for something not for another. But I never heard any complaints, um, of a paedophile type nature...because you know, that sort of complaint is...that's like...rape, that's - - that's - - that's murder, that's up there, right up there." (interview t page 32)

He conceded the possibility that Mr Fisher may have approached him at a tennis tournament. The advice that Mr Fisher claimed to have been given namely that "you should believe your kids first before everyone else and then figure it out" also sounded like what Mr Hendry would have said in response to the alleged information. However, Mr Hendry maintained that he definitely would have remembered such a conversation (t interview 25-6).

It is also Mr Hendry's evidence that he was unaware during the 1980s of any allegations (whether by Mr Parkin or anyone else) that McKenna was sexually interfering with boys at the Hostel (t 1941). The only concern that he had during that time was that for various reasons he considered McKenna to be manipulative and a liar (t 1942-3). Even so when McKenna was first charged with offences in 1990 Mr Hendry "didn't believe it":

"...because as much as I felt he told lies, and as much as I thought he tried to control parents and kids and that sort of thing...I just did not believe that he was a paedophile." (t 1949)

11.15.3 Findings

I have found the conflicting evidence of Mr Fisher and Mr Hendry to be one of the more difficult issues to resolve. Both men impressed me as being honest witnesses and it is unlikely that either of them would be mistaken about the subject matter of the conversation which Mr Fisher said took place, even though it occurred more than 25 years ago.

It is significant that Mr Fisher believes that at the time of that conversation Mr Hendry had no knowledge of any allegations against McKenna. The evidence generally shows that by 1986 Katanning was rife with rumours about "kiddie fiddling" (as it was commonly described at the time) by McKenna with boys at the Hostel. There is also evidence to show that prior to Mr Hendry becoming a Board member the St Andrew's Hostel Board was specifically made aware of these allegations (see Chapter 11.6).

A possible explanation for Mr Hendry being ignorant of these matters is that he lived at Bremer Bay which was a considerable distance from Katanning and more than a three hour drive away. Mr Fisher's evidence of the conversation at the tennis tournament also shows that there was no attempt by Mr Hendry to reject or avoid what was being put to him. I accept Mr Fisher's opinion that Mr Hendry had no previous knowledge of the allegations when he first spoke to him on this subject.

While I tend to prefer Mr Fisher's version of events I am troubled by his evidence that Mr Hendry was an "ex-Board member" at the time of the conversation. If this is correct then the conversation would have had to occur after February 1990.

In Chapter 10 I have referred to the problems that can occur with the memories of witnesses after a long passage of time. There is a danger that Mr Fisher may have confused one memory with another, and in the end I am not in the position to find that the conversation took place when he said it did. (It is the type of conversation which could well have taken place soon after McKenna was arrested and charged).

After giving the matter careful consideration I am satisfied that Mr Fisher did speak to Mr Hendry at a tennis tournament as he claims, and that he has given a reliable account of the substance of that conversation. However, I am not satisfied that the conversation took place prior to McKenna being arrested and charged and while Mr Hendry was still a Hostel Board member.

11.15.4 Conclusions

The evidence does not establish any failings by Robert Hendry in his responsibilities as a member of the St Andrew's Hostel Board.

11.16 1986-1987: Kylie Haddow and Diane Renton - a note handed to a school official

11.16.1 The background

During 1986 and 1987 Kylie Haddow and Diane Renton (then Pascoe) were students in Years 10 and 11 at Katanning Senior High School (KSKS). Ms Haddow had commenced there in Year 8 in 1984, while boarding at St Andrew's Hostel. However, she was expelled from the Hostel at the end of 1986, and took up private accommodation for Year 11 in 1987. Mrs Renton had commenced at KSHS in 1986 and was living with her parents. However, for a brief period of approximately three weeks during the first term in 1987 she boarded at the Hostel.

At some stage during 1986 or 1987 Ms Haddow and Mrs Renton developed a short-term friendship which came to an end with the incident that I am about to describe. There are issues as to the date of that incident which I will refer to shortly, and the date is important because the school had different principals in 1986 and 1987. The School Principal in 1986 was Gerald Marriott whereas in 1987 the new Principal was Graham Young.

11.16.2 Diane Renton's evidence

It is Mrs Renton's evidence that on a date in 1986 which she cannot remember she was in a science class with Ms Haddow. They were writing notes to each other and Mrs Renton wrote a question along the lines of: "is it true that Dennis is molesting the boys?". Her reasons for asking that question and her evidence as to what then happened is as follows:

"Q. How was it then that you came to write that particular note to her?"

A. Because I heard whisperings, I heard rumours and I felt concerned. I remember the hostel boys and just remembering how naïve and sweet and nice they were, and so I was concerned because of what I was hearing.

Why was it that you wrote that note to Kylie?"

A. Because she was at the Hostel and she was friendly...with me and would talk with me. It was quite difficult to talk to other Hostel kids, but Kylie was forthcoming and friendly and nice.

.....

Did you get a response back from Kylie via the note?"

A. Yes, I did and I cannot recall the exact details but I can remember that Kylie had written a lot and I can remember responding back, asking more questions and Kylie responded back again, and so there were lots of details in the note and I just remember feeling this is so explosive, what am I going to do with this. That was my feeling.

.....

At the end of the class, who had the note?

Me."

Q. You left the class, did you?

A. Well, because I think it was time for recess, it could've been lunch – it was a break – and I just had this sense of urgency that something should be done and so I took it to the front administration area and asked to see the principal.

Q. Can you remember who the principal was that year?

A. I recall it to be Mr Marriott.

.....

Q. Tell us then what happened?

A. Then I went into his office, he stayed seated at his desk and I said, "I think I have something that you should see.", and he sat there and looked at the note and as he was looking at it, he asked me who I was writing it with and I told him, and then he said I could go and so I left and I didn't hear anything else from him about it.

.....

Q. Had you said anything to Kylie about the fact that you were going to take this note to the principal?

A. Absolutely not, no.

Q. Was there any reason for that?

A. Because I'm sure she would have been terribly upset. She was writing a note to me, in confidence, not thinking that anybody else would see it and I betrayed her.

Q. But the reason why you took it further?

A. I did it because I felt that the information in it – I couldn't just sit back and do nothing. And I felt that it was for the greater good and I didn't think that Kylie would get into trouble at the end...I was thinking he might call a department in Perth, or something, and have them investigate. I thought that something like that would happen.

Q. Did he say to you, when you had that meeting in his office, what he was going to do?

A. No.

Q. Was there any follow-up from Mr Marriott or any other teacher?

A. None.

Q. To you?

A. None. None. The only aftermath from that would have been – I'm pretty sure it was that day – at some point in class where Kylie would normally be in class she was not in class and then she came into the class looking terribly upset and angry and gave me a look.

Q. And what sort of look was that?

A. One of dismay and very upset.

Q. Did you speak to her again after that?

A. Kylie and I didn't say a word after that. (t 347-350)

11.16.3 Kylie Haddow's evidence

Ms Haddow did not enjoy her three years at St Andrew's Hostel. Although her parents had been very good at disciplining her sister and herself while she was growing up on the family farm at Ongerup, McKenna's form of discipline was "extremely controlling", inconsistent and demeaning:

"As a child going into this you had no idea whether you were right or wrong, what you were going to be told off for. You were well and truly in trouble, victimised, criticised, abused in all sorts of mental, emotional ways for something that the week before everyone else did" (t 357-8)

Ms Haddow was also troubled by McKenna's behaviour towards boys:

"A. ...for the whole time I was there, he was very open in his physical contact with the boys. He would mainly have junior boys sitting on his knee, quite openly, when there was all students sitting around when we would gather around for different events, just whether it's meals or sit in the office, passing by, he would have his hands up the boys' shirts, he would have it up their back rubbing their back. He would have his hand inappropriately placed on their legs, near their groin.

A. ...for any man, whether a parent or not, to have their hand placed high up on the leg near the groin of a boy, it never felt right. It never looked right. It made anyone who saw it uncomfortable.

.....

Q. Would he see you on these occasions when you saw that?

A. Yes. He quite openly had other girls or other boys coming and going around those events. He certainly did nothing to hide it from us, the students.

Q. Were there times when you made an observation as to how the boys' reactions were to this when this happened?

A. Yes, I did, which I guess added to my innate sense that something was wrong and something wasn't – they weren't okay with it. It was more often than not the look in their eyes. The boys would either hang their head in shame and couldn't look at you, or when they did it was almost a pleading look of "Get me out of here. Stop this". And I still remember that look." (t 360-1)

McKenna also had favourite boys who were given special favours including invitations to his flat after hours. Sometimes other boarders including girls were also invited back to the flat and Ms Haddow went there on two occasions. Each time a horror movie was shown, and the first time it was the "Rocky Horror Picture Show":

"A. I believe I was in year 8 when I saw that. It turned my gut. It disgusted me. I couldn't – I did not know what to do with what I was seeing. I was way too naïve and innocent to even comprehend what I was watching, and I couldn't watch the thing in its entirety.

The second movie I know I watched in Dennis' presence on one of these special occasions was the Texas Chainsaw Massacre. And again I had to get up and leave and not watch it all. I, to this day, cannot watch horror movies." (t 363)

When Mrs Pascoe arrived at the KSHS in 1986, Ms Haddow "tried to forge a bit of a friendship" with her. This was an awkward thing for her to do because "Dennis didn't allow anyone to have proper friendships" (t 364). According to Ms Haddow, it was in about second term of 1986 that the incident involving the note occurred. It started with a conversation in class when Mrs Renton asked Ms Haddow why she was unhappy at the Hostel. Mrs Renton also asked about the "weird stuff" that she had heard was happening there. Ms Haddow responded by telling Mrs Renton that McKenna was "doing bad things to the boys" and that there was "stuff happening" (t 367).

While they were in the middle of this conversation the bell went and the two girls had to shift to another classroom. When they arrived at the other classroom Mrs Renton sat behind Ms Haddow and they continued their previous conversation by exchanging notes. Mrs Renton handed a note to Ms Haddow asking "what sort of things?" Ms Haddow then responded with her own note:

"...in that note I expressed in possibly point form...the things he was doing. The boys were sitting on his knee, he was rubbing his hands up their back, he was touching them where he shouldn't be, he was having them in his flat, the secret parties, he was, you know, going on secret holidays and trips with these boys and there is something really bad happening, you know, and I expressed some detail about the things I had seen and gave the note to Diane." (t 367)

Mrs Renton ended up with the note at the end of class, and it was later that day (or perhaps the next morning) that Ms Haddow was summoned over the PA system to attend at the front office of the school. She went there in some trepidation because to be summoned in that way usually meant that the student was in trouble. When Ms Haddow arrived at the office she waited in reception until she was called into the principal's office. The principal Mr Marriott was sitting behind his desk and McKenna was alongside him in another chair. According to Ms Haddow:

"A. I felt very intimidated instantly because Dennis was there because it was never good when Dennis was in any situation. He was always on the attack to me. So I took a deep breath...and I walked in and stood there and Mr Marriott asked me to sit down. I sat down and he passed the note across to me and said "Did you write this note?". It was then immediately I had a whole heap of thoughts and feelings because my initial thought was that Diane had set me up, because that's what happened at the hostel constantly, you would be set up to get into trouble. I was devastated because I thought she was someone who could be a good friend and was valuable, so I felt betrayed...I quite consciously took a deep breath and slowly read the note to give myself time to collect my thoughts, and I read it, and being just the honest person that I am, I looked Mr Marriott in the eye and said "Yes, I did write that".

Q. Did Mr Marriott respond to that?

A. Yeah, it was quite an interesting meeting after that...I remember...Dennis sitting there with a smug look on his face the whole time. Mr Marriott said... "This is slander. You cannot write this about people. You are – the things you are saying are terrible" and I just...sat there and nodded and went "Yep", and that continued because I didn't give a lot back, what continued was a whole lot of threats.

Q. Can you recall what they were?

A. Yes, 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 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.

HIS HONOUR: Q. Who said that?

A. Mr Marriott.

Q. All of those things?

A. Yes. I was 14 and I was terrified.

....

Q. -- did you say anything in response to that.

A. I do recall saying "Not if it's true". I may have been scared but I was not going to be bullied and lied to and I knew the truth.

Q. Can you recall whether Mr Marriott said all of those things at once or was it there was an exchange?

A. It was kind of a – a bit on a continuation and certainly he was very gruff and, you know, from my point of view he was very – he was trying to intimidate...he ran out of steam after the threats came out and then he looked at Dennis and Dennis looked at him, and I continued to sit there and say not a lot, and he said "Well, Dennis, it's up to you. This is about you. What do you want to do about it? This young lady is, you know, in a lot of trouble here" and Dennis went "Yes, she is and it's terrible but I guess if she's willing to apologise and assure (me) that this is not going to happen again and she will not say these sorts of terrible things about me again we may be able to let it go this time"...and Mr Marriott went "Well, what do you have to say about that?".

.....

Q. So what did you do with respect to this offer for you to apologise?

A. Given that I felt like Diane had betrayed me and given my two and a half years at the hostel already and the amount of torment and bullying and victimisation I had suffered there already, and I had just survived and survived, I decided I had nowhere to go with this...So I just decided my best option was to apologise.

Q. Can you remember what you said?

A. Yes, I do. Because I remember thinking about it before I said it and I looked Dennis squarely in the eyes and I said "I am sorry if what I wrote offended you".

Q. Can you recall his reaction to that apology?

A. Yes, he got quite pissed off...his smug look had gone, which was nice, and he coughed a little and went "Well, all right then. Let that be it then" and I got sent out of the office." (t 368-371)

11.16.4 Gerald Marriott's evidence

Mr Marriott's first posting as a Principal was to Katanning Senior High School, and he was there for the three school years of 1985, 1986 and 1987. During that time Mr Marriott had a lot to do with McKenna who was not only warden of the Hostel (of which Mr Marriott was a Board Member) but also president of the P&C Association. According to Mr Marriott, McKenna "wasn't slow in letting people know that he was held in high regard", and in that respect:

"He was quick to say that the hostel was regarded now as the best Hostel in the State, and he made it clear that that was not an accident, that his wardenship of the Hostel was the reason why it had done so well, and I went along with that, I thought he did a great job with the Hostel." (t 2651)

Although Mr Marriott got on well with McKenna at a professional level he considers that their personal relationship was "rather cool". This was because Mr Marriott thought that McKenna "was rather obsequious and...keen to tell me things that he thought that I might like to hear" (t 2647-8).

Throughout Mr Marriott's time at Katanning he had a system of personal record keeping which was very meticulous and thorough. He had commenced this system in 1984 after attending a time management course. As a result he kept a Filofax diary which he carried with him at all times. He used this "planner" to record frequent cryptic notes of everything of note that happened to him in his working life.

While he was at Katanning the notes that Mr Marriott made in his planner were recorded under subheadings of "staff – teaching personnel", "staff – teaching meetings", "staff – non teaching", "students", "finance – buildings, grounds equip", "P&C", "parents", "Hostel", "external relations – education", and "external relations – not education".

When Mr Marriott was first summonsed to appear at the Inquiry he had no recollection of the names Kylie Haddow or Diane Renton (Mrs Pascoe). After reading the transcript of their evidence he still could not recall any occasion when he had met either of the two girls.

However, Mr Marriott then searched through his 1986 "planner" to see if he had any notes of a meeting with either of these two students. He found three notes of meetings which related to Diane Renton. On 3 November 1986 he met with Diane's mother Sue Pascoe and the note reads: "concern not working in the evenings". On 10 November he met with Mrs Pascoe herself and the note includes the comment: "expect improvement". On 24 November there was a note that Mr Marriott contacted Sue Pascoe again to report on his discussions with Diane's teachers (Exhibit 95).

Mr Marriott was unable to find any note in his 1986 planner of a meeting with Ms Haddow. However, on 29 October under the subheading "Dennis McKenna" there was a note:

"Kylie had been suspended for shouting at D McKenna. Parents want back Monday. Other Board Members want permanent exclusion. I recommend Board Meeting after Monday" (Exhibit 96)

With regard to the assertion that he was the principal who received the note from Diane Pascoe, it is Mr Marriott's evidence that:

"If a note along the lines that this one was had come to my attention, it certainly wouldn't have been swept under the carpet and I would have recorded that in my planner without doubt. So I am in the strong belief that I never saw a note along those lines or anything similar. Because that would definitely be something that I would have recorded and I'm sure that that would have been an item that I would have remembered to this day. So I am absolutely confident that that note didn't come to me. And the meeting subsequently described by Kylie Haddow in my office where I had McKenna in there, allegedly, and then brought the girl in, is quite preposterous. I would never set up a student of mine like that. I've spent my entire career being caring and compassionate to students and I would never slaughter someone like was described by Kylie Haddow, and the sorts of things that she accused me of saying to her about expulsion, which is out of the question, or being reported to the police and the police would gaoil her, are bizarre. Nothing like that could possibly happen, while I was principal at that school, with me." (t 2662-3)

It is also Mr Marriott's evidence that he never used the PA system at Katanning High School to summon students to his office, because "that would just disrupt the whole school and be extraordinarily embarrassing to the students" (t 2663). Instead, he had a system of eight students rostered in turn for half a day at the front office. Whenever he or his deputies wanted to fetch a student, one of the rostered students would be sent as a runner with a message to the appropriate classroom (t 2663).

11.16.5 The issue whether it was Mr Marriott who received the note

In light of Mr Marriott's interview with the Inquiry's investigators I requested that the investigators contact Mrs Renton and Ms Haddow once again (after they had testified) to clarify their degree of certainty that their meetings with the School Principal took place in 1986.

Significantly, Mrs Renton advised that when she had first tried to recollect the relevant events (in late 2011) her initial thought was that the incident had happened while she was at St Andrew's Hostel in 1987. However she had changed her mind after meeting Ms Haddow and being shown the 1986 school yearbook. As a result of seeing Mr Marriott's photograph in the yearbook she remembered him as the Principal to whom she had handed the note.

It is also significant that when Ms Haddow was first interviewed by the Inquiry's investigators she indicated at one point in her narrative that the incident occurred while Mrs Renton was at the Hostel.

However Ms Haddow maintains that she has “always believed the note passing incident occurred during a maths class and before I was suspended from the Hostel in Year 10 which was 1986”. Nevertheless, Ms Haddow also concedes that:

“Whilst my memory is that I spoke to Dennis McKenna and the principal in his office, it may be possible the principal was away and I was spoken to by a deputy principal but I cannot remember who the deputy was” (t 2606)

Given these uncertainties I considered that it was prudent to hear evidence from Mr Graham Young who was the Principal of Katanning Senior High School in 1987. When Mr Young testified he had read the transcript of Mrs Renton’s and Ms Haddow’s evidence, and he was “certain it was not me”. In that regard it was his practice as Principal at Katanning to discuss school matters with his two Deputy Principals every day. He has remained in regular contact with those former Deputy Principals ever since, and it is his evidence that all three of them have no recollection of the matter (t 2633). As to the manner in which Ms Haddow was dealt with, it is Mr Young’s evidence:

“It is very inappropriate. I feel sympathy for the principal concerned, that he got hoodwinked into believing Dennis couldn’t have done this, but it shouldn’t have been done the way it was done.” (t 2634)

11.16.6 Findings

Although there is clearly room for Mrs Renton and Ms Haddow to be mistaken about the dates and details of what happened I consider that they are honest and credible witnesses. Accordingly, I am satisfied that Ms Haddow wrote a note detailing the behaviour of Dennis McKenna towards male Hostel students and that she handed this to Mrs Renton. I am also satisfied that Mrs Renton then took the note to a person in authority in the administration area of the school, and that that person then summoned Ms Haddow to a meeting in the presence of McKenna. Ms Haddow has given a very compelling account of what happened at that meeting, and I am satisfied that it proceeded substantially in the way that she describes.

However I am not satisfied that either of those witnesses have correctly identified Gerald Marriott as the Principal involved. In that regard I have found Mr Marriott’s evidence to be convincing and I am in no doubt that he was not the School Principal or other official who met with either Mrs Renton or Ms Haddow in the circumstances that they describe.

In that regard, it is significant that Mrs Renton cannot recall any principal at Katanning other than Mr Marriott even though Mr Young was her Principal during 1987 (t 352). She also acknowledges that after looking at the 1986 yearbook it was by way of a process of deduction that she remembered going into his office. She has no memory of the meeting on 10 November 1986 as recorded in Mr Marriott’s “planner” (t 353) and therefore it is possible that her memories of two separate meetings have merged into one.

Although Ms Haddow is certain that her meeting with the Principal and McKenna took place prior to her expulsion from the Hostel at the end of 1986, she cannot be certain that it was not a Deputy Principal who was present. Mr Young has given a credible denial of being the Principal involved, and in the end I am unable to determine who it was that received Ms Haddow’s note from Mrs Renton.

Whether it was a Principal, a Deputy Principal or some other person in authority, it is clear that the incident was handled in a highly inappropriate way. It was wrong of that individual to first contact McKenna and then invite him to be present at the meeting. It was also very wrong to berate and threaten Ms Haddow with criminal proceedings on the assumption that what she had written was untrue.

Although the Education Department had not then issued any guidelines for the handling of complaints about sexual matters, common sense required that the individual who received the note should have taken a neutral stance on the truth of its contents. Quite obviously the first appropriate step would have been to meet with Ms Haddow on her own. If she had maintained that what she had written was true then at the very least the school official should have sought advice from his District Superintendent as to how the matter should be handled.

The school official unwittingly played into the hands of McKenna and allowed him to manipulate the situation to his advantage. Regrettably another opportunity to investigate a well-founded allegation was lost, thus enabling McKenna to continue with his offending.

11.16.7 Conclusions

1. An unknown school official failed to respond appropriately to written notes of allegations made by Kylie Haddow to the effect that McKenna was behaving inappropriately with boys at the Hostel, in that the official:
 - 1.1 Immediately informed McKenna of the allegations.
 - 1.2 Summoned Ms Haddow to a meeting with McKenna and himself.
 - 1.3 Berated Ms Haddow for making the allegations without (him) first enquiring whether or not they were true.
 - 1.4 Threatened Ms Haddow with the prospect of criminal defamation proceedings.
 - 1.5 Intimidated Ms Haddow into apologising to McKenna.
2. These actions by the school official were a significant contributing factor to McKenna's ongoing ability to offend.

11.17 1983-1987: Jody Brown and Rhonda Moore – two girls tell their teachers

11.17.1 The background

Jody Brown (formerly Haddow) and Rhonda Moore (formerly Goode) both attended Katanning Senior High School between 1983 and 1987. For most of that period they both also boarded at St Andrew's Hostel although Mrs Brown left at the end of 1986, and Mrs Moore did so a few weeks before her final exams in 1987. They had a great deal in common and shared a similar outlook; so they became close friends.

From the very beginning of their time at the Hostel the two girls regularly witnessed inappropriate behaviour by McKenna towards boys. Mrs Moore particularly remembers one of the first occasions in Year 8 when she saw a boy on McKenna's lap:

"He was sitting on his lap, and Dennis had his hand right on the crease between the crotch and the thigh, and he was rubbing it up and down, sort of towards the boy's private parts, and I remember looking at that and I just thought, "Oh, that's not normal."...I just thought, "Well, my dad doesn't do that to my brother, so that mustn't be right", and that was the first really big thing." (t 407)

Mrs Brown on the other hand considered that it was very friendly of McKenna to have boys sitting close to him and thought "isn't this like a family environment" (t 386). However, after a while Mrs Brown began to realise that some boys sitting on McKenna's lap didn't look like they wanted to be there. She also saw that particular boys would "physically cringe" when McKenna walked into the dining room and try to "put themselves out of harm's way" (t 386-7).

By Years 9 and 10 both girls were concerned about the effects of McKenna's behaviour on the boys but felt they could not discuss this matter with other Hostel staff because they were all McKenna family members (t 387). Nevertheless they separately decided to tell their parents what they had seen. It is Mrs Brown's evidence that when she did this:

"Mum was probably a little bit head in the sand about it. Dad was aware that things was happening...Dad was aware that Dennis was a bit of a loose cannon and he didn't trust him. He was very glad that we were girls and we weren't boys. My now husband was at the hostel at the same time. My family's known him since he was 10 years old, and basically from my husband's second year onwards my father would ask him leading questions to make sure he was out of harm's way." (t 387-8)

When Mrs Moore told her parents:

"...mum and dad said, "Well, unless the boys come forward, you know, what can we do to help, and it's not specifically you that's being abused, so we can't do anything", and then our focus became our younger brother...to make sure that he was protected and fully aware of what Dennis was doing, and what he needed to do to get himself

through to Year 12 without actually being abused. And we often did this as a group of girls anyway, talked to the boys...specially if they were the young sibling or the cousin or something like that, you'd say to them quietly, "Don't go into Dennis's flat alone", you know, "Never go in there at night", and things of that nature to warn them, so that they became more aware of protecting themselves...My parents as well told my brother that he should not go into Dennis's flat under any circumstances." (t 418-9)

It was not until the two girls were in Year 11 that they gathered up enough courage to speak to someone else outside the Hostel. By that time Mrs Brown was particularly concerned about four boys who she believed were being sexually interfered with by McKenna. Over the space of four years she had seen one of these boys "disintegrate before my eyes" (t 391).

11.17.2 Jody Brown's evidence

According to Mrs Brown it was in 1986 that she and Mrs Moore became "brave enough" and decided that something needed to be done. They agreed to speak to three teachers whom they respected and trusted, and who they believed would be receptive to their approach. These three teachers were their year coordinator Ian Lockhart, Jody's math teacher Andrew Bourke, and their economics teacher Stuart Jones.

It is Mrs Brown's evidence that she and Mrs Moore managed to meet with the teachers all at once, but she is not "one hundred per cent sure that Mr Jones was there" (t 389). The meeting took place in the physical education office, and according to Mrs Brown:

"A. We said that we were very concerned that Dennis was sexually interfering with boys at the hostel and that something needed to be done and, "What do we do?" "Where do we go?" "Can you help us?"

Q. Can you recall whether there was a response to that?

A. ...I can recall them not being shocked at our allegations. They didn't shut us up. They didn't say, you know, "You're being stupid. Go home". I can't say who said it, but they went, "We know something is happening but..." "we don't know what to do", or "yeah, we know something is happening but we need proof".

Q. Did they say anything further about what that proof would require?

A. They did, because...I was a very indignant young lady at that stage. I went, "What sort of proof do you want?" Like, "You've got to be joking! What proof do you want?" They said, "Until the boys come to us and tell us that something is happening we can't do anything."

MR URQUHART: Q. ...Did you give the names of anyone to them?

A. I gave them names of people we were concerned about.

HIS HONOUR: Q. How many names were there?

A. I gave four names that I am willing to lay my life on. There was – there was a possible list of 50, but there were four people that I was very concerned about - -

...

Q. Can you recall on what basis this meeting finished?

A. I came away from the meeting relieved that someone had believed us.” (t 390-2)

Mrs Brown hoped that as a result of raising the issue with the teachers something would happen, but she had not heard anything further by the end of 1986. When Mrs Brown returned to school in 1987 she was no longer at the Hostel and felt “more free to have informal chats with teachers”. It is her evidence that she spoke to the teachers again a number of times:

“A. It came up...two or three times informally, probably with one or two teachers. Only with either...Mr Bourke or...Mr Jones. Not necessarily with Mr Lockhart.

Q. How clear are you about these particular informal discussions?

A. Not a hundred per cent clear on these ones.

...

A. It wouldn't have been in-depth talks, it was along the lines of “Remember what we said before? Are you watching out for? Have you been watching?”

Q. ...can you recall what they said?

A. It's a long time ago...I didn't get anything back going “Yes, we are watching them”...it was like “We are onto it. Don't worry about it. We are doing the best we can”.

Q. Did they say anything about what would be required for the matter to move forward?

A. That they're just waiting for the boys to come forward.” (t 393-4)

According to Mrs Brown there was a final conversation involving herself, Mrs Moore, and all three teachers at the year 12 graduation party in 1987:

“We basically went into it again, like, you know, “This is still happening, what are we doing”. The teachers expressed sympathy with our situation. They...expressed concern but again were saying “There's not much we can do until we have cold hard evidence and the only way we can have cold hard evidence is if someone owns up to it”.” (t 396)

11.17.3 Rhonda Moore's evidence

Mrs Moore's recollections are quite different to those of Mrs Brown. According to her she and another female student went to see Mr Lockhart in either 1985 or 1986. She believes that the other student was Jody but is only “80 per cent certain” of that. The meeting with Mr Lockhart was in the physical education office, and although Rhonda feels in the “back of my mind” that someone else may have been there she cannot recall if any other teachers were present (t 421).

Both girls spoke to Mr Lockhart about boys being abused by McKenna, as well as the “way that Dennis was treating the girls”, and asked him for some help or direction.

According to Mrs Moore she raised the issue of the treatment of the girls because McKenna was “psychologically twisting the girls around”. However, the main focus of the discussion was on how the boys were being treated and in that regard:

"...I remember one of the boys coming up to me and saying that, you know, Dennis would get them...to masturbate him, and I am sure I would have mentioned that to Mr Lockhart, but I can't recall, but I am sure I would have made some reference to things of that nature..." (t 422)

As to Mr Lockhart's response to what she told him, it is Mrs Moore's evidence that:

"I can't remember specific things that Mr Lockhart said...I have a feeling that he said something about...going home and speaking to his wife about it. For some reason there's something in the back of my mind that his wife may have been a social worker or something of that nature. I don't know why I think that, and I cannot substantiate it in any way. It's just something that has sort of popped back into my memory...I do recall him saying that he had to...think about what we were saying, and get back to us, and there was no real response from him that I can recall..." (t 422)

Mrs Moore does not remember any other teacher being involved in that meeting, and the only other relevant conversations with teachers that she can recall were with Mr Jones:

"Mr Jones was my economics teacher. I do recall having conversations with Mr Jones, but I didn't feel like they were very specific, but I did feel that he had an understanding that there was a problem with the way the boys were being treated at the hostel, which is what I said before. Often the teachers were aware that things were happening, but because none of the boys came forward, they felt that – maybe they felt like they didn't have any – it was all innuendo and rumour." (t 427)

11.17.4 Ian Lockhart's evidence

Mr Lockhart commenced his career as a physical education teacher in 1981 and was transferred to Katanning Senior High School in 1983. By 1986 he was 25 years of age and still relatively junior in the teaching hierarchy.

While Mr Lockhart was at Katanning he developed a close friendship with his fellow teacher Andrew Bourke, and that friendship continues until the present day. Therefore it is not surprising that before giving evidence Mr Lockhart and Mr Bourke discussed the matters the subject of the Inquiry "half a dozen or so" times, and "brainstormed" on the various possibilities of what might have happened (t 2033-5).

In 1986 Mr Lockhart was the Year Coordinator for Years 11 and 12 at Katanning High School. His role in this position was largely one of pastoral care and he describes it as being a "sort of father figure for the kids" (t 2008).

Mr Lockhart vaguely remembers Mrs Brown and Mrs Moore as students but cannot recall any specific situation when he spoke to those girls. His reading of the transcript of their evidence has not jogged his memory in this regard (t 2015). Although Mr Lockhart has no recall of the alleged conversations he cannot "categorically deny" that they occurred:

"...I don't imagine that these two ladies, women as they are now, would have come forward to the Inquiry and said that they've had some conversations with us if there hadn't of been some sort of conversation with someone at some point in relation to matters regarding the hostel. I guess there's a lack of clarity around when some of these things occur, who was there, what was said, who said it and who responded in

a particular way. It's very difficult to be certain about anything, but if these conversations occurred, I suspect maybe they didn't carry with them the magnitude that – certainly I didn't take away the magnitude of the situation that it was obviously intended to carry. I mean, that's the only thing I can kind of add to it, hypothesise, speculate, I suppose...I feel that if this information had of been conveyed in the way that it was intended to be, or has been reported to be, it just seems so unlikely that I or any of the teachers that have been named wouldn't have done something about it... it would seem to me that the magnitude of the situation wasn't clear...if the conversations occurred.” (t 2019-2020)

Mr Lockhart also considers that if the two girls had clearly asserted that McKenna was sexually abusing boys, then this is something that he would almost certainly recall, even with the passage with time (t 2021). Furthermore if Mrs Moore had mentioned masturbation (even in colloquial terms) this would have set off “some pretty serious alarm bells” (t 2022).

Accordingly, Mr Lockhart believes that if he was told these things he would have responded very differently to what Mrs Brown and Mrs Moore have said. He probably would have spoken to his Senior Master or a Deputy Principal and taken advice on what he should do (t 2024).

11.17.5 Andrew Bourke's evidence

Mr Bourke commenced his career as a maths teacher in 1980. He was at Katanning Senior High School from 1983 until 1987, and he confirms that while there he became a close friend of Ian Lockhart.

For much of that period Mr Bourke tutored at the Hostel on some evenings. From his observations of McKenna he considered that he was “a bit of a bully” and that things were “not quite right” with his persecution of some students (t 1964, 1966).

Mr Bourke also recalls an incident when he saw a boy sitting on McKenna's knee. This was in the Hostel office and it “didn't look right” because the boy was in Year 11 and very tall (t 1968-1970). However Mr Bourke did not think that there was anything sinister about the boy sitting on McKenna's knee because they appeared to be sharing a joke at the time. Mr Bourke simply regarded what he saw was unusual because the boy was so tall.

Accordingly Mr Bourke did not think it necessary to discuss the incident with the boy and he was not concerned for his welfare (t 1972). He probably talked about what he had seen with fellow teachers but did not raise it officially with anybody (t 1971).

Mr Bourke remembers Mrs Brown as “a great kid, lovely to teach” (t 1973). She was in a maths class of only half a dozen students, and another student in that class was the boy he saw sitting on McKenna's knee (who was also the same boy that Mrs Brown describes as having “disintegrated in front of her eyes”).

Mr Bourke got along well with Mrs Brown and he does not consider it odd that she might have confided in him about any matter. However, having read her evidence and that of Rhonda Moore he has “absolutely no recollection” of the conversations that they refer to (t 1974).

If they did meet in the physical education office, Mr Bourke thinks this would have occurred by chance rather than by arrangement (t 1975). If he had been told in clear terms that McKenna was sexually abusing boys he thinks that he would have gone straight to the Principal Mr Marriott (t 1976). As to the assertion that he and the other two teachers said that the boys being abused needed to come forward, it is Mr Bourke's evidence:

"A. I think regardless of whether it's 26 years ago or five years ago or one year ago, a victim really needs to come forward before anything serious can be done. I think hypothetically if we were told about sexual interference and sexual abuse, then hopefully our response would have been different, and the fact that you had not just one person told, but three people told who are hopefully reasonably competent teachers with common sense, if one of us was a dill, that at least one of the others would have come forward and raised the matter somewhere else. That's what I feel would have, you know, happened. To my way of thinking we didn't hear those terms, and for a girl – a young female student 26 years ago to sort of bring these taboo subjects up with male teachers, that's a pretty courageous thing to do.

Q. Yes, I wouldn't argue with that. So just on that...do you have a view...if this conversation did take place, whether she might not have necessarily been that explicit about her description of what was happening?

A. That would be my guess.

A. And the reason I say that is because I don't think Jody would be a person to make things up. I can't recall what was said. And so to my way of thinking...a possible scenario is that we heard about bullying, but the terms of sexual bullying and that weren't used." (t 1977-8)

Nevertheless, Mr Bourke accepts the possibility that he was told by Mrs Brown and Mrs Moore that McKenna was sexually interfering with boys (t 1993-4). This is so even though he has no recollection of that conversation or of the other conversations said to have taken place in 1987 (t 1982).

As to the question whether (as a young teacher) he would have baulked in taking on a man with McKenna's reputation, it is Mr Bourke's evidence that:

"A. Probably back then I wouldn't have thought of taking him on for anything, but if...I had to, it would have meant you'd have to have clear evidence and then approach the appropriate people to sort of deal with it.

Q. ...you would be more inclined to take him on if you can make sure your side of the argument was compelling?

A. Yes.

Q. And a compelling argument in this instance, if, in fact, sexual abuse allegations were being made...would require the boys who were being sexually abused to actually come forward?

A. A victim to come forward, yes, because otherwise you're hearing secondhand information." (t 1987)

Mr Bourke also points out that unlike today, teachers in 1986 and 1987 were not provided with any training or guidance on how to handle such situations.

11.17.6 Stuart Jones' evidence

In 1980 Mr Jones commenced a career as an economics and social studies teacher. He was posted to Katanning Senior High School in 1986 and 1987. Although he recalls the former names of Mrs Brown and Mrs Moore, he has no recollection of the alleged conversations with them.

It is Mr Jones' evidence that he would expect to remember two students asserting that the Warden had been sexually interfering with boys at the Hostel (t 2052) and also doubts that he would have failed to act if told that this was happening (t 2065). However, he can understand why a teacher would say in this situation that it was necessary for the boys to come forward before anything could be done:

"A. I can actually see the logic in a teacher saying that, and especially in the environment that people were working there...(then)...I mean, not like now, where there's a very set and specific policy, and you're trained in it, and you know what you're meant to do at each stage. I can actually see teachers making that comment in terms of, "Look, I need some first-hand information"." (t 2053-4)

If Mr Jones did have the conversations with the two girls as alleged, he considers there is a distinct possibility that there were crossed wires or some ambiguity about what was being said:

"If a student was to say something to the effect that they're being mistreated or abused, that – I mean, people might not interpret that as sexual abuse, they might interpret that as bullying or that sort of behaviour." (t 2057)

However Mr Jones believes it most unlikely that he would have forgotten any reference by Mrs Moore to McKenna masturbating boys (t 2058).

If Mrs Brown did provide Mr Jones with the names of the four boys being sexually abused he believes that he would have made efforts to speak to each of them. He does not believe that McKenna's "strong presence in the town" would have deterred him from taking that step (t 2059).

11.17.7 Findings

Although I consider that Mrs Brown and Mrs Moore are each honest and credible witnesses there are some significant differences in their recollections. While Mrs Brown remembers a meeting with three teachers, Mrs Moore's memory is of only one teacher (Mr Lockhart) being present or involved in the discussions. As to the outcome of that meeting, it is Mrs Brown's evidence that the teachers said that the boys would have to come forward, whereas Mrs Moore thinks that Mr Lockhart said he would go home and talk to his wife.

With regard to subsequent conversations, Jody has a fairly clear recollection of at least one occasion when the teachers again said that they were unable to do anything without the boys coming forward. Rhonda on the other hand can only recall some conversations with Mr Jones which were not "very specific". Accordingly, Mrs Moore's evidence is to the effect that she never made any clear assertion to Mr Jones that McKenna was sexually interfering with boys.

After carefully assessing all of this evidence I am satisfied that Mrs Brown and Mrs Moore did each attempt to tell their teachers that McKenna was sexually molesting boys at the Hostel. However, it may well be that Mrs Brown is mistaken in her recollection that this happened at a meeting between the three teachers and the two girls at the one time. I have no doubt that each girl kept the other informed at the time of what she was doing, and perhaps it is because of that that Jody remembers it as a joint move by the two of them.

Whether or not the two girls spoke to the teachers at the one time, I consider it possible that they did not clearly convey what they wanted to say in explicit terms. It was a very sensitive topic for 15 or 16 year old girls to raise with adult male teachers and it would not have been easy for them to make allegations of a sexual nature in very specific terms. I cannot be satisfied that any of the teachers clearly understood that the allegations being made were of sexual molestation. Because of what Andrew Bourke had seen at the Hostel he may have been in the better position to understand what the girls were trying to say. However, I accept his evidence that in the particular circumstances in which he saw a boy sitting on McKenna's knee and "sharing a joke", this did not arouse his suspicions.

Even if the teachers did understand that the girls were making allegations of sexual abuse, they were very junior in the teaching hierarchy and had received no training or guidance on how they should handle such a situation. The most appropriate course would have been for them to report the allegations to their principal. However in all of the circumstances I do not consider they should be condemned if they told the girls that they were unable to act on the allegations until the boys came forward to confirm firsthand that they were being sexually abused. For junior teachers uncertain about how they should respond to the information that may have seemed a reasonably sensible way of dealing with the situation.

11.17.8 Conclusion

The evidence does not establish that the conduct of Ian Lockhart, Andrew Bourke, and Stuart Jones fell short of what reasonably could have been expected of them in their official capacities as school teachers.

11.18 1987: Rhonda Moore tries to tell her principal

11.18.1 The evidence of Rhonda Moore and Graham Young

In 1987 Rhonda Moore (formerly Goode) was in Year 12 at Katanning Senior High School and she participated in a special project which was conducted Australia-wide by the Prime Minister's office. As I understand the evidence, various schools including Katanning Senior High School were asked to send a paper to the Prime Minister on the future of the education system through to 2020.

At Katanning, the project was led by the Principal Graham Young and he conducted a series of seminars in the staffroom at the school with a group of students including Mrs Moore. Mrs Moore considered Mr Young to be "quite an austere principal" and "very much an administrator". She did not feel inclined to go to him with any "pastoral care issues or anything like that" (t 424). However, Mrs Moore recalls that as one of the seminar meetings was breaking up:

"A. ...he took me aside and asked me how...things were going at the hostel, and how I was being treated by Dennis, and I had a very loose conversation with him about Dennis' behaviour with the boys because...I just didn't trust this guy at all...I wanted to vent and get this stuff out so that something would happen about it, but as I'm saying it I'm thinking to myself at the back of my brain, "I'm going to be in really deep trouble with this. This is going to get back to Dennis. So I then extricated myself and just went out, and he sort of pushed me out too. He really didn't want to know what I was saying."

Q. Can you recall what words to the effect of that you were saying?

A. I would have said something like – that Dennis was touching the boys, something of that nature. That is usually what I would say.

HIS HONOUR: Q. Now, this is in response to a question by him. He had initiated the discussion on this topic?

A. He initiated the topic. I had no relationship with him, other than having these meetings...and he just asked me about how things were going with Dennis and the hostel.

Q. ...can you suggest any explanation why he was asking you this?

A. No, perhaps because he got to know me a little bit better. It may have been in response to things that he heard, I don't know. He didn't explain himself. And once I sort of vented a little bit, he then just sort of shuffled me out. So it was almost like too much information that I was giving him, and he didn't really want to deal with that. It may have just been my response to a question, you know, "How are things going?", and then I've gone 'blerrr'." (t 424-6)

Mr Young's evidence of what he can remember about this matter is as follows:

“A. I can’t recall exactly what happened, but there’s a vague recollection that I spoke to Rhonda about having difficulties with Dennis.

Q. And that vague recollection, is that just conversations you had with her on one occasion or more than one occasion?

A. Just one occasion.

Q. And can you clarify anything further about that?

A. I feel that if she had been forthcoming we would have taken things further perhaps, but she sort of brushed it off and that was that...My recollection is that I asked her how things were going, and she more or less said, ‘Okay’, or ‘All right’, or whatever, and left.” (t 2621-2622)

11.18.2 Findings

I consider that Mrs Moore and Mr Young are both honest witnesses, and that they have each done their best to remember these events which occurred 25 years ago. However, Mrs Moore’s evidence does not satisfy me that she clearly communicated to Mr Young that McKenna was sexually interfering with boys at the Hostel.

Mrs Moore did not feel as comfortable with Mr Young as she did with her year coordinator Mr Lockhart. When Mr Young unexpectedly asked how things were going at the Hostel she is likely to have experienced some difficulty in articulating her concerns on such a sensitive topic to her “austere” principal. Therefore I am unable to find that Mr Young was in any way alerted to the possibility that McKenna was committing sexual offences at the Hostel.

11.18.3 Conclusion

The evidence does not establish that Mr Young was informed of an allegation of sexual abuse at St Andrew’s Hostel.

11.19 1988: Nikola MacLennan - the clash between a school psychologist and her principal

11.19.1 The background

In 1988 Nikola MacLennan was the Department of Education's newly appointed Guidance Officer (or School Psychologist) for the Katanning region. To perform her work she was required to attend for two days each week at primary schools throughout the region, and for the remaining three days at Katanning Senior High School (KSHS).

Ms MacLennan had first qualified as a teacher in 1974, but because of the change in direction of her career into school psychology work, she was on probation in her new position in Katanning and subject to regular reviews of her performance. The three person panel who conducted these reviews usually comprised the Principal KSHS (Ian Murray), Ms MacLennan's District Supervisor (Larry Hamilton), and the Education Department's District Superintendent (Murray Gatti).

At the beginning of 1988 Mr Murray was also new to his position as Principal of KSHS. It was his first posting as a School Principal having previously served positions as Deputy Principal at Cunderdin Agricultural District High School and Acting Principal at Swan View Senior High School. Because of his position as Principal Mr Murray was also a member of the Board of St Andrew's Hostel (the Hostel).

Early in 1988 and about a month after the commencement of the school year Mr Murray and Ms MacLennan had a difference of opinion over her handling of an incident involving a Hostel student. The student was a boy in Year 8 who had come to Ms MacLennan's office at KSHS considerably distressed and "sobbing his heart out". He wanted to ring his mother and Ms MacLennan permitted him to use her telephone so that he could do so. While the boy was speaking to his mother Ms MacLennan stepped out of her office to allow him some privacy (t 437-8).

When the boy left Ms MacLennan's office she "followed up" on his background. She ascertained that he was in a support class for children who lacked literary skills and were unable to cope with the full curriculum. Such children were generally identified by school psychologists as requiring a "fair amount of work", and it was Ms MacLennan's assessment that "clearly, this child was having difficulties at school" (t 439).

However, it is Ms MacLennan's evidence that she got into trouble with Mr Murray simply because she had allowed the boy to use her telephone. Mr Murray was aware of the fact that this had happened because when using the telephone the boy had first spoken to the school nurse on an internal line, and (according to Mr Murray and Ms MacLennan) the nurse had informed the Principal of the call. (The school nurse, Shirley Marshall, has been too ill to testify to the Inquiry. However she has told an investigator that she would have had no reason to inform the Principal of such a call).

11.19.2 Ms MacLennan's evidence as to what then happened

According to Ms MacLennan Mr Murray "sought her out" within half an hour of the boy making the telephone call. He told her that he had been alerted to the phone call by the School Nurse and he directed her to go to the Hostel to "see Mr McKenna and the boy's mum". Ms MacLennan then went to the Hostel where she met with Dennis McKenna, the boy, and the boy's mother. By then it was around lunch time, and it is Ms MacLennan's evidence that:

"The conversation was not really directed to me, but the conversation was from Mr McKenna. He looked patronisingly to the boy and the mum, and he said – the words I cannot recall exactly, but to the effect to the mum, "We look after your child. We can make him happy here. We look after him if there's any difficulties. We go on camps, we have fun. Don't worry about his emotional happiness," and Mr McKenna was most reassuring to the mum. The boy said absolutely nothing." (t 441)

Ms MacLennan did not play any role in that conversation and when it finished she left the Hostel. It was either later that day, or on the next day that Mr Murray asked her to come to his office. It is Ms MacLennan's evidence that when she went there Mr Murray said:

"A. ... "You don't need to have anything to do with the hostel students." I looked blankly, and Mr Murray went on to say, "It's the best-run hostel in the State." I don't remember making any comment at all, but he went on to explain that Mr McKenna was a very good psychologist, and I looked blankly at him. And then he said, "He's a very good amateur psychologist." I did not respond - I don't remember what I said if I did respond, but I must have said, "Well, what do I do if hostel students want to come - to use my services, so to speak?" I was there as the school psychologist, the counsellor, who has slightly separate and our own professional responsibilities and our own professional code of conduct - code of ethics that children, people, staff, students, parents can see us confidentially. That's what the job is. And Mr Murray said for hostel students I should let Mr McKenna know first, and that was probably the end of our conversation.

Q. So, as I understand it, if you were to see a hostel student --

A. I should let them know first.

Q. -- you should let Mr McKenna know first.

A. That was my instruction." (t 442)

Very soon after that meeting with Mr Murray Ms MacLennan received a visit from McKenna at her office. He came in without invitation, sat down and said "you don't need to have anything to do with Hostel students". McKenna also said that if students were homesick it was his job to counsel them (t 441-2).

As Ms MacLennan was very unhappy with Mr Murray's instruction concerning Hostel students she telephoned her Professional Supervisor (Mr Hamilton) in Albany and sought his advice. He instructed her that she had to do what Mr Murray said (t 442).

11.19.3 Ian Murray's evidence

Mr Murray agrees that following the incident involving the boy using the telephone in Ms MacLennan's office, he gave her instructions as to the services she was to provide to Hostel students. Those instructions were based on his understanding of Ms MacLennan's role at that time as a "Counselling Assistant" or "Guidance Officer":

"A. At the time fundamentally a guidance officer was to make sure that students' education was being followed according to their ability and capacity. They would help the selection of student courses, they would help guide the students into future locations, and a future away from the school, and if there were any learning difficulties, they would work on the learning difficulties to see if they could improve - - the learning difficulties for that child.

Q. Behavioural difficulties?

A. Behavioural difficulties they were a little bit involved in. They were just starting to get involved in that sort of thing in that particular period." (t 2245-6)

Accordingly when he spoke to Ms MacLennan following the incident he did not require her to make any distinction between Hostel students and day students at the school:

"The distinction I asked her to make was to make a distinction between those domestic behavioural experiences of the hostel, or the home, compared to the school. At the school...we could not interfere with the way parents did their work at home with their children. If there were any difficulties with the home, with their children, we could not interfere with that, and the hostel was the student's home." (t 2246)

It is Mr Murray's evidence that these limitations in Ms MacLennan's role were "standard operating procedures" which had "grown up over the years". These procedures were not in writing but had been confirmed by instructions he was given by the Country High School Hostels Authority (the Authority) and the District Guidance Officer. He received the Authority's instructions from its "Chief Executive Officer" when he visited its Head Office in Perth prior to taking up his appointment at KSHS. He similarly obtained verbal instructions as to Ms MacLennan's role from the District Guidance Officer (Mr Hamilton) who told him that her role was "in the school" and she was "not to be involved in Hostel matters" (t 2247).

It is Mr Murray's evidence that McKenna also had a view on this issue and "wanted the Hostel students to be controlled by him for their behaviour in the Hostel" (t 2247). In this regard the Hostel "had superb systems in place to manage things like homesickness" and problems with children doing their homework. There were also staff at the Hostel the students could go to with these problems (t 2247-8).

Mr Murray agrees that he would have described McKenna to Ms MacLennan as either a "great amateur psychologist" or "good amateur psychologist". The people at the Authority's Head Office in Perth had described McKenna in these glowing terms, and that description was consistent with Mr Murray's own personal observations:

"Well, he handled the hostel extremely well, yes. He hoodwinked me, yes. He conned me, yes. He conned the Hostel Authority, yes. He conned all of us, but he appeared to be a great amateur psychologist. Well, he was, because he handled the situation

brilliantly. I mean, he conned us all into thinking things were going great, and there was this evil underneath. He did a brilliant job.” (t 2249)

11.19.4 Larry Hamilton’s evidence

In 1988 Mr Hamilton was the District Guidance Officer stationed at the Albany District Education Office. The Albany District took in the town of Katanning, and Mr Hamilton was Ms MacLennan’s Professional Supervisor.

It is Mr Hamilton’s evidence that during 1988 he was aware that there were problems in the relationship between Ms MacLennan and Mr Murray which he did not think could be easily resolved. He also had concerns about Ms MacLennan’s professional performance as well as her capacity to meet the standards required for permanency (t 4261). Furthermore, Mr Hamilton disagrees with the evidence of both Ms MacLennan and Mr Murray as to the conversations that he had with each of them:

“With regards to hostel students no such conflict was ever brought to my attention by either Nikola or Ian Murray and I certainly did not instruct Ian Murray verbally or otherwise that Nikola was not to deal with hostel matters as stated in his evidence to the Inquiry.

Nikola never raised any issue with me in regards to conversations she may have had with Ian Murray relating to hostel students and contrary to her public evidence she was not autonomous in her role.

Given that she was a probationary staff member I had concerns that she far too infrequently sought my advice and counsel.

Had Nikola come to me and told me she had received an instruction from Ian Murray that she was to first get permission from Mr McKenna before dealing with any student who self-referred, I would have told her that was not required, especially if it was a social or emotional issue and would have taken this up with Mr Murray. I would much more likely have involved the child’s parents regarding the referral than I would have the hostel manager and would have guided Nikola similarly.

It is important to note that whilst Mr McKenna was in loco parentis if parental permission was needed it should have been sought from the student’s actual parents.” (t 4264)

Mr Hamilton has also confirmed that Ms MacLennan’s role as a School Guidance Officer was not limited in the way as suggested by Mr Murray and that she was required to deal with “social or emotional issues” as well as the “behavioural or academic issues” of students (t 4263).

11.19.5 The issues arising from the review panel’s appraisals of Ms MacLennan’s performance

Prior to Ms MacLennan commencing her duties in Katanning she had completed her first year of guidance work at primary schools in Narrogin while under close supervision. The

appraisal of her performance upon completing the 1987 school year had resulted in marks in the upper ranges of achievement (vis: “highly satisfactory” and “outstanding”).

The appraisals of Ms MacLennan’s work during the 18 month probationary period following her appointment to Katanning were conducted by a different review panel which included Mr Murray. These appraisals resulted in significantly lower marks than before. Ultimately, her probationary status as a Guidance Officer was terminated at the end of the first semester in 1989. The essential reason that she was given for this outcome was her “unsatisfactory communication skills with parents and teachers” (Exhibit 7.2).

An analysis of the documentation associated with the performance appraisals throughout 1988 and 1989 reveals that the negative results were largely due to assessments from KSHS rather than from the primary schools where Ms MacLennan worked. The Principal of Brayside Primary School in fact sought an extension of Ms MacLennan’s appointment following her termination because of the high regard that he had for her performance (Exhibit 7.2).

It is Ms MacLennan’s evidence that towards the end of 1988 she was informed by Mr Hamilton that she was “not going to get a favourable report in Katanning with Mr Murray, such that it would be more suitable to move” (t 456). She was then offered an alternative position in Albany for 1989 but did not accept it because she lived at Wagin which was about two and a half hours drive away.

Accordingly, Ms MacLennan continued in Katanning until her probationary period came to an end. There was then a final appraisal by a different panel comprising Mr Murray, the Brayside Primary School Principal (Mr Maclean), and Mr Hamilton. This panel made an assessment of “really substandard performance” which was sent to the District Superintendent Murray Gatti for approval. Mr Gatti then travelled to Katanning where he interviewed Ms MacLennan over the course of a day. The ultimate outcome was his report upholding the decision of the panel which resulted in Ms MacLennan ceasing to be employed as a Guidance Officer and School Psychologist (t 460).

Although Ms MacLennan does not directly assert that the review and appraisal process was tainted by Mr Murray’s participation, the implication from her evidence is that he was biased against her because of the incident involving the Hostel student in early 1988. Mr Murray strenuously denies that he was anything other than objective in his appraisals of Ms MacLennan’s performance and he has given very lengthy explanations as to the factors that he took into account in arriving at his assessments (t 2260).

11.19.6 Findings

The critical issue to be determined is the precise nature of the instructions that Mr Murray gave to Ms MacLennan on how she should deal with Hostel students who came to her with problems. There was no written record made of those instructions, and the issue turns on the content of conversations which took place almost 25 years ago. Obviously there is room for the witnesses to be mistaken as to their recollections, and in my view there is also the possibility that there was a degree of misunderstanding between Mr Murray and Ms MacLennan at the time. Therefore it is perhaps not surprising that there are conflicts amongst all three witnesses as to the relevant conversations.

Mr Hamilton was an entirely neutral party in respect of the problems between Mr Murray and Ms MacLennan, and it is unlikely that he would have advised either of them in a way which was contrary to Education Department policies at the time.

For that reason I accept his evidence that he did not advise or instruct Mr Murray that Ms MacLennan was not to deal with Hostel students. He also did not advise Mr Murray that her role as a Guidance Officer was limited in the ways that Mr Murray claims. Similarly, I accept Mr Hamilton's evidence that Ms MacLennan did not seek his advice on the instruction she was given by Mr Murray, and he did not tell her that she had to do what Mr Murray said. I am satisfied that if Ms MacLennan had sought Mr Hamilton's advice he would have stepped in and satisfactorily resolved the issue between her and Mr Murray along the lines that he has indicated.

It is common ground that Mr Murray's instruction to Ms MacLennan came about as a result of her allowing the distressed Hostel student to use her telephone. The instruction was to the effect that she was not to deal with such matters without first referring the student to McKenna. Mr Murray claims to have given that instruction because he believed that the role of the School Guidance Officer did not include any dealings with students concerning "domestic behavioural experiences" in the Hostel or at home.

Mr Hamilton's evidence shows that Mr Murray was completely wrong with that belief. When a Hostel student self-referred with a social or emotional issue, it was not necessary for Ms MacLennan to first get permission from McKenna before dealing with it. For this reason it was entirely appropriate that she dealt with the distressed boy in the way she did by allowing him to ring his mother at home.

With the benefit of hindsight it is also clear that Mr Murray unwittingly played into the hands of McKenna by closing off one possible avenue of complaint for the students who were being sexually abused. However, it is easy to be wise in hindsight and Mr Murray would have had no idea that he was doing that at the time.

The unfortunate aspect of what happened is that neither Mr Murray nor Ms MacLennan sought the intervention of Mr Hamilton to have the issue resolved. Had they done so Mr Hamilton would have put Mr Murray straight, and the Hostel students would not have been denied the opportunity of utilising Ms MacLennan's services.

There are some obvious flaws in Mr Murray's evidence as to the reasons why he gave Ms MacLennan the instruction that he did. However I do not consider these flaws to be due to any untruthfulness on his part, and in that regard I have commented in Chapter 11.2 on how his age and failing memory have impacted on the reliability of his evidence. There is nothing to suggest that Mr Murray deliberately departed from Education Department policy and as a newly fledged Principal it is reasonable to find that he made a genuine mistake. In all of the circumstances I consider it to be enough that I have determined the facts as I have. I do not propose to make any formal adverse finding against Mr Murray in respect of his instruction to Ms MacLennan.

With regard to the issues arising from Ms MacLennan's performance appraisals it is significant that the assessments were made by a three person panel and not by Mr Murray alone. The ultimate assessment that Ms MacLennan was unsuitable for permanency was made by a panel which included two members who had no involvement in her issues with

Mr Murray. The panel procedures appear to have been fair, and the ultimate assessment was the subject of a review by the District Superintendent before being adopted.

There is no evidence to show that Ms MacLennan's failure to gain permanency was in some way linked to the incident involving the Hostel student. Mr Murray's views as to Ms MacLennan's performance as a Guidance Officer were shared to some extent by Mr Hamilton, and there is no evidence which proves that his assessment was motivated by malice. For these reasons I do not consider that there is any basis for an adverse finding against Mr Murray in relation to the manner in which he participated in the appraisal of Ms MacLennan's performance.

11.19.7 Conclusion

The evidence as to Ian Murray's interactions with Nikola MacLennan does not justify any adverse finding against him.

11.20 1990: Todd Jefferis - the brave young lad who stood his ground

11.20.1 The background

Todd Jefferis boarded at St Andrew's Hostel between February 1989 and August 1990 while in Years 11 and 12 at Katanning Senior High School. Mr Jefferis' parents had separated when he was young, and he had been living with his father and stepmother (Catherine Jefferis) on a farm at Wagin prior to going to the Hostel. His mother (Lynley Day) lived with her partner at Burracoppin (near Merredin) which was a long distance from Katanning.

Once Mr Jefferis moved into the Hostel he was subjected to a long period of grooming by Dennis McKenna. This started with McKenna accustoming Mr Jefferis to the idea that his touching of boys was normal behaviour. Accordingly McKenna would frequently touch boys in Mr Jefferis' presence by putting his arms around them, putting his hand up their shirts, or having them sit close beside him. Mr Jefferis was also included in the group of boys that McKenna would regularly invite into his flat after hours. On most of these occasions McKenna would wear a bathrobe without anything on underneath. McKenna's usual touching and feeling of boys would then continue and he would sometimes take off his bathrobe and get into bed while the boys were still there. McKenna would also ask boys (including Mr Jefferis) to lay alongside him on the bed.

Whenever McKenna took Mr Jefferis and other boys on trips to Perth he would arrange the accommodation so that at least one boy would have to share his double bed. This had the result that upon arrival at the accommodation the boys would always rush to be first to claim one of the limited number of single beds. On those occasions when Mr Jefferis missed out and had to share the double bed he would make sure that he slept on top of the covers or in a different layer of sheets from McKenna. Even so, McKenna "used to put his arm across you and that sort of thing" and Mr Jefferis would "just try and ignore it".¹

Saturday 4 August 1990 was another night at the Hostel when Mr Jefferis went with other boys to watch television in McKenna's flat. Later as the boys were leaving McKenna instructed Mr Jefferis to go and get ready for bed and then come back so that he could talk to him.

Mr Jefferis did as he was told and when he returned McKenna was naked in bed under the covers. McKenna asked Mr Jefferis to lie on the bed next to him which Mr Jefferis did. The two of them then chatted about football and umpiring, as well as what Mr Jefferis would be doing when he left school. While discussing these matters McKenna pulled Mr Jefferis's right arm across his chest and started to rub Mr Jefferis's back under his shirt. McKenna went on to remove Mr Jefferis's shirt, pull down the bed sheets, manoeuvre Mr Jefferis into a position on top of him and then pull back the sheets over both of them. By then Mr Jefferis was wearing only tracksuit pants.

¹ *The Crown v Dennis John McKenna*: Trial in District Court at Albany 1991, p.122.

McKenna then began to behave in an overtly sexual manner by putting one of his legs between Mr Jefferis's legs, rubbing Mr Jefferis's arms and legs, and "pushing around a bit". While this was happening Mr Jefferis could feel McKenna's erection pressing against him.² Mr Jefferis felt "really scared" and after a while he:

*"...didn't worry about the consequences. I just got up and said it wasn't for me and said I was going to bed."*³

On the following day (a Sunday) Mr Jefferis telephoned his mother and told her what McKenna had done to him. He also told her that he "wanted to get out of there", and she agreed to come and collect him on the following afternoon. (Mrs Day could not come immediately because of the time of day she received Mr Jefferis's call and the fact that it would take a four and half to five hour drive to reach Katanning).

Mrs Day arrived at Katanning in the early afternoon of Monday 6 August 1990. While driving there she had decided that she should take her son to see the School Principal Ian Murray. Accordingly, when she collected Mr Jefferis after school they went immediately (without prior appointment) to Ian Murray's office.

11.20.2 The first meeting with Ian Murray

It is Mrs Day's evidence that she "informed Mr Murray that I was there with my son to report a sexual abuse by McKenna". When she said this to Murray he was "angry and just didn't want to hear what I was saying". He said straight away to Mr Jefferis "why would you want to be lying about a thing like this" (t 747). Mr Jefferis's evidence of Ian Murray's initial reaction is that he was:

"..aggressively defensive. You know it was almost like I had accused him. He was very put out, obviously disturbed about the accusation, and he didn't like it". (t 714)

According to Mrs Day Ian Murray went on to say "well this is a major allegation that you're making here and I have no interest in taking it further" (t 747-8). It is also Mr Jefferis' evidence that "as far as he was concerned, that was the end of the matter. He didn't want to know about it. It wasn't going to leave his office and it was up to us to think very carefully about where - what we were going to do" (t 714). Mr Jefferis and his mother both assert that Ian Murray did not provide any guidance on where they should go or what they should do with his complaint.

Ian Murray has given a very different version of that first meeting with Mr Jefferis. According to him:

"I thought that he was telling me that he had been physically abused...and I told the boy and his mother to go to the police...I was told (there) had been grabbing, pushing and shoving. It was so confusing. I had a boy who was very...very, very upset. I had a mother who was very angry, very, very aggressive...To tell you the honest truth, I really didn't quite know what he was alleging, but I had the impression, a very strong impression that he was alleging physical abuse and I didn't know how far that went... (E)very time I tried to ask a question I was told by either mother or son "You don't

² *The Crown v Dennis John McKenna*: Trial in District Court at Albany 1991, p.125.

³ *The Crown v Dennis John McKenna*: Trial in District Court at Albany 1991, p.126.

believe me, you are on Dennis McKenna's side". They told me that many times, that I did not believe them...Now, the words "sexual abuse" may have come up. I don't recall that." (t 2089-2090)

However, Mr Murray had a much fresher recollection when he testified at McKenna's trial in 1991, and his evidence at that time was as follows:

*"At the first meeting, Todd and his mother...came to the school at approximately 4:30 in the afternoon. I was working in my office and they walked into my office, and they said they wished to discuss something...They sat down and I sat down with them, and then she said that she wanted to complain about the hostel and the behaviour of the warden, and I said that really we were at the school and it was (not) a school matter, but I was prepared to hear what they had to say as a member of the board; a secretary of the hostel board. Then Todd...told me a story about Dennis McKenna making **sexual advances** to him"⁴ (emphasis added)*

Mr Murray acknowledges that during that first meeting he "repeatedly" said that he could not deal with Mr Jefferis's complaint. However he also said "over and over again" that Mr Jefferis should go to the police (t 2112).

The unreliability of Mr Murray's present recollections about that first meeting is further demonstrated by the following comments that he made to an ABC reporter on 28 September 2011 when interviewed for the "7.30 Report":

"Todd came to me with allegations that – that – not about sexual behaviour. If I remember, Todd came to me with allegations that he was being picked on, and discriminated against. And so I went to the board of the hostel, and just mentioned to them that he had made these allegations. I also told Todd that if he had any further allegations they must be taken to the police because I was not a person who could deal with any allegations of harassment at the hostel. I was on the board of the hostel, but I ran the school not the hostel, and that's the information I told Todd that he should go to the police...I think he did go to the police too I think, if I remember correctly." (Exhibit 68)

In fairness to Mr Murray it is necessary to point out that I accept his evidence that he does not have a good recollection of his first meeting with Mr Jefferis, and that at the age of 74, he is starting to experience memory problems (t 2096). I also accept that Mr Murray has experienced considerable stress in appearing before the Inquiry (as have a number of other elderly witnesses who have been required to testify). I have had regard to these matters along with Mr Murray's good reputation, his record of service to the community and the character references he has provided when assessing his credibility.

11.20.3 Events between the two meetings

After Mr Jefferis and his mother left that first meeting with Ian Murray, they immediately went to a public phone box and called his father's home. His father was not there, but they explained to Mr Jefferis' stepmother what had happened. Arrangements were then made for Mr Jefferis' father and stepmother to collect him from the Hostel that same night.

⁴ *The Crown v Dennis John McKenna*: Trial in District Court at Albany 1991, p.234.

In the meantime Mr Jefferis' mother drove him back to the Hostel and accompanied him inside. While doing so she made a point of going to the glass window of McKenna's office and "giving him the glare". She did this because she was "one mad mother". McKenna's response was to glance at her, look away and then busy himself. He made no attempt to come out of his office to enquire why she was there (t 749).

As soon as Mr Jefferis returned to the Hostel it became rapidly apparent that other students, and particularly Year 12 boys, "knew that something was going on". When Mr Jefferis had left the Hostel earlier that day it had been "just business as usual", but upon his return "it was obviously clear they had been told something". In this regard, other boys commented to Mr Jefferis along the lines "why would you do that to Dennis?", and said "that I should pack my bags and piss off" (t 717-718). This happened even though Mr Jefferis had not told anyone in the Hostel about the incident on the previous Saturday.

(Mr Jefferis was later informed by a fellow student that prior to him returning to the Hostel from his first meeting with Ian Murray some Year 12 students had been told that "I was making up a story to get back at McKenna for the fact that he reckoned he had caught me out stealing from the canteen" (t 719)).

Because of this hostility from the other students Mr Jefferis decided that he should leave the premises as soon as possible. Accordingly he went to a telephone that students were not supposed to use and called his father. His father agreed to come and collect him straight away. Mr Jefferis then went and told Neil McKenna that his father would be arriving shortly to take him home.

11.20.4 The second meeting between Todd Jefferis and Ian Murray

When Mr Jefferis' father and stepmother arrived to collect him from the Hostel, Ian Murray and the Hostel Board chairman Garth Addis were already there. There was then a meeting in McKenna's office between Mr Murray, Mr Addis, Todd's father and stepmother and Todd. Todd's father has since passed away, but he and his stepmother have given broadly consistent evidence. According to Mr Jefferis:

"We went through the allegations again. Once again all we got hit with was rebuke. It was like, you know, didn't believe us, didn't want to know about it...there was...healthy discussion about...the fact that they thought I was making this allegation up...to square up with McKenna over some previous minor issues..." (t 721-722)

Throughout this discussion McKenna remained in his flat which was only a few metres away. It is Mr Jefferis' evidence that his father and stepmother said:

"Well, you know, if the kid's making it up and this is all some sort of concocted story, then there must be a reason, so let's get to the bottom of it, so how about we get McKenna in here and let's work it out and let's get to the bottom of it, find out the truth, whether I'm making this up or whether there's a reason" and, you know, dad and Cathy made the point that, you know, if they'd been accused of something of that nature, the first thing you'd want to be doing, if you're innocent, is defend yourself. You know, you wouldn't want to be running off hiding in a room, and so dad made the point...quite boldly, "Get him in the room. If he's got nothing to hide, get him in

the room", and Ian said, "Oh, no...he's too upset. He's crushed by the accusations..." (t 723)

According to Mrs Jefferis she asked Ian Murray if he was going to investigate the truth of what Mr Jefferis was saying but her question was ignored. It is Mr Jefferis' evidence that either Mr Murray or Mr Addis suggested that he should take his allegations to the police, but this was said in a tone which indicated that it was not "serious advice or anything of that nature, it was simply a case of, you know, take your problems somewhere else" (t 722).

Mr Jefferis and his stepmother also say that they were warned of the possibility of defamation proceedings if the allegations were unfounded. According to Mrs Jefferis: "they were both talking about defamation. It was the whole feel of that meeting" (t 767).

It is Mr Murray's evidence that he has no recollection of that second meeting at all (t 2121, 2130-1). However at the 1991 trial of McKenna, Mr Murray testified that:

*"I went to the hostel at approximately a quarter past 8, and Mr and Mrs Jefferis were present at that meeting with Todd and we went into the warden's office at the hostel. Again the same allegations were made. The story varied in a few details, minor details, from what had been given to me in the afternoon, but the story was essentially the same; that Dennis had made sexual advances towards Todd. I repeated again – I don't know how many times I repeated; 3, 4, 5, 6 times – that this was a most serious allegation and must be taken to the police forthwith. Mr Addis said that it should be put in writing and given to the board, but he echoed my sentiments that it should be taken to the police."*⁵

Based on the evidence he gave in 1991 Mr Murray now believes that he attended the Hostel that evening after a Rotary meeting. He went to the Hostel for a Board meeting and while there told McKenna of Mr Jefferis' complaint (t 2125). Mr Murray has no memory that McKenna was devastated by the allegations against him (t 2134). As to the assertion that he and Mr Addis accused Mr Jefferis of making up the allegations it is Mr Murray's evidence that he knew about "the money stealing accusation" beforehand (i.e. prior to the first meeting with Mr Jefferis). However, he cannot recall whether or not he had this in his mind during his meetings with Mr Jefferis (t 2131-2).

As to the assertion that Mr Murray warned the Jefferis family of possible defamation proceedings, it is his evidence that:

"...whenever...a person...came to me as a principal and made allegations against teachers or anybody of any sort, I would always warn them not to make the allegations public because if it was not true...they could stand at the risk of defamation. I've said that 20, 30 times in my teaching career, especially when they are making comments about teachers and – parents are making comments about teachers and alleging – or not proper things." (t 2135)

Regardless of whether it was one or two meetings that Mr Murray had with Mr Jefferis, he was asked to comment on whether he had followed the Ministry of Education's guidelines for such situations. These "Guidelines for the Identification and Notification of Child Abuse and Neglect" were issued by the Ministry of Education in December 1987 (Exhibit 59) and they included the following advice:

⁵ *The Crown v Dennis John McKenna*: Trial in District Court at Albany 1991, p.234

When responding to a disclosure:

- *Discuss the matter in private within the school.*
- *DON'T panic or express shock.*
- *Express belief that the student is telling the truth.*
- *Reassure the student that it was right to tell; he or she is not to blame and it is not his or her fault.*
- *DON'T pressure for details; collect the minimum information required for action.*
- *DON'T make a judgment about the perpetrator.*
- *Determine the student's immediate need for safety.*
- *DON'T promise not to tell.*
- *Use appropriate vocabulary.*
- *Tell the child that support will continue at the school, but that someone may come to talk to him or her – probably an officer of the Department for Community Services or the Child Care Unit of the Police Department.*

Mr Murray accepts that he did not act in accordance with those guidelines, but states that he was unaware of them at the time. The Department claims to have circulated the guidelines while he was Acting Principal at Swan View High School, but he does not recall receiving them there nor seeing them while at Katanning Senior High School. For these reasons Mr Murray did not follow the guidelines but it is his evidence that:

"...when people make allegations of any sort to me, I have never really expressed an opinion one way or another. That's one of the things I try – I've always tried to (be) neutral." (t 2144)

It is also Mr Murray's evidence that with the benefit of hindsight:

"If we'd have known fully that he had been sexually abused, he was treated badly, and we should have done something about it...I have immense sense of regret that we couldn't have done things differently. It's the first time I've ever come across anything like that in my life, the first time I'd been totally and utterly duped, totally and utterly conned, and I have an immense regret." (t 2162-3)

11.20.5 Events subsequent to the two meetings

After spending approximately one week home from school, Mr Jefferis returned to Katanning to continue his education (his family having arranged private accommodation). He then learned that a story was being spread that he had been expelled from the Hostel after being caught stealing from the canteen. He was also dismayed to discover that nearly all Hostel students were shunning him, and that all but two of his teachers were treating him in a way which made him "feel like I was the villain" (t 727).

Not long afterwards Mr Jefferis was summoned to the office of the Deputy Principal (Patricia Pringle), and it is his evidence that:

"...she took me to task over why I was making up such absurd allegations and that, you know, "How do you think it's going to look for you?", you know, rah, rah; "You've been expelled for stealing" and rah, rah, rah. And I just, you know, I said, "Well, I'm not making it up and I didn't get expelled for stealing", so – and that was the end of that conversation." (t 728)

Patricia Pringle was summoned to give evidence to the Inquiry but regrettably was unable to do so because of a serious illness. However she did participate in an interview with the Inquiry's investigators, and the following is her version of what occurred between her and Mr Jefferis:

"MS PRINGLE: Todd came with his mum and was interviewed by Ian Murray. When they went, Ian came and told me that Todd had accused Dennis of – now, I don't know whether he said "assault" or "sexual assault", but I think it was sexual assault. And I thought, "Why would he do that?" I knew that his mum lived a long way away and I knew that he – when he wasn't at the hostel, he lived at home with his dad and didn't get along with his stepmother, so when I heard this I thought, "No, that can't be true." And I immediately thought, being a child of divorced parents, he's trying to get the attention of his parents. So I didn't really believe what he said. He was never in my office ever, unless I enrolled him with his mum or dad, which I don't recall. He said it was the day after he – the day after, I think, and that he was in my office. That's not true. He was on the verandah waiting for his English class to go in, and I walked over to him and I said, "Todd, can you tell me why you accused Dennis?", and he said, "Ms Pringle, it's all true, it's all true." And he says on that statement, "But she didn't believe me." Well, I didn't, but I didn't tell him that. And I certainly didn't rant and rave or accuse him of being a liar or a thief. I don't know where that came in until I read the transcripts; but, you know, I was feeling for him because he had parents that, you know, weren't loving him enough, that's what I thought.

INVESTIGATOR: Why didn't you believe him?

MS PRINGLE: Because there had been – in three years I'd been there, there'd been no question of anything like that happening, and he was – he was a Year 12 student and I thought, "How could Dennis sexually assault him?" I mean – but anyway. I regret now I didn't believe him...

INVESTIGATOR: I think in his evidence he talked about you – he said that you took him to task for making up such absurd allegations.

MS PRINGLE: No, I didn't do that, and I would never have called a child a thief and a liar, never." (interview t 9-10)

Mr Jefferis's evidence that he was shunned by fellow students after he had complained to Mr Murray is corroborated by two other witnesses. Anissa Williams was another student at the Hostel, and it is her evidence that after Mr Jefferis left she and the other students were made aware that he had been expelled for reasons which were not clearly explained. There was also a directive from McKenna that Hostel students were not to speak to Mr Jefferis or to have anything to do with him (t 506). At that time Ms Williams had a previous arrangement with Mr Jefferis to accompany him to the Year 12 school ball, but McKenna

directed that she was not to do so and instead arranged a replacement partner whom he “deemed appropriate” (t 507). According to Ms Williams it was not just the Hostel students who ostracised Mr Jefferis:

“So many turned a blind eye or were brainwashed into believing that Dennis was wonderful. Cathy (Todd’s mother) and Todd, I call them my bravest of the brave. They went against everything – entire communities – to bring this to light. You know, they were ostracised by everyone.” (t 510)

Dean McKenna (a distant cousin of Dennis who was then a teacher at Katanning Senior High School) confirms that at the time of Mr Jefferis’ complaint there was some “low level bullying” directed against him. This came from non-Hostel students in his class who accused Mr Jefferis of being a “faggot” or gay, and suggested that “you’re all into it over there”. There wasn’t any level of support from Hostel students for Mr Jefferis who “seemed to be a little bit alienated from both groups at that stage” (t 1061-3).

Dean McKenna decided that he should speak to the class as a whole when he overheard students taunting Mr Jefferis with allegations about Hostel staff “being involved”. He spoke to the whole group and said that “if you are going to make allegations like that you either need to take it to the relevant authorities or take it to the principal, or not make statements like that” (t 1062).

Soon afterwards Dean McKenna attended a staff meeting called by Ian Murray. Mr Murray advised the staff that there had been “unsubstantiated allegations against member(s) of the management of the Hostel”. He also suggested that the staff “shouldn’t sensationalise it, that we should keep it in-house” (t 1064-5).

Dean McKenna understood from what Ian Murray said that he was speaking in support of McKenna, but at that time all staff were quite incredulous about the alleged conduct (t 1064). In that regard:

“Ian always spoke very highly of Dennis. Ian was right into his Rotary and the community links, so I think he prided himself that he professionally had aligned himself with Dennis in the way in which he ran the hostel, because I think he saw it as a very effectively run business. He was clearly fond of him on (a) professional and, I think, a personal level.” (t 1064)

(Mr Murray describes his relationship with McKenna at that time as that of a close colleague and “professional friend” – t 2082)

On 27 September 1990, McKenna was arrested and charged with three offences of gross indecency in relation to Michael Hilder. (The identity of the complainant was not known at that stage and Mr Murray assumed that it was Mr Jefferis – t 2203). This event was a great shock to the local community and in particular to the Hostel students and their parents. When the Hostel students attended at school the following day Mr Murray made an announcement over the PA system that they were to return to the Hostel. When they did return to the Hostel Mr Murray conducted a meeting in the dining room. It is the evidence of Tania Edwards who was one of the students present that when Mr Murray spoke to the meeting:

"A: I don't recall his exact words, but my interpretation of it, I guess, was basically he said that Dennis had been falsely accused; that we were to throw our support behind him. We were encouraged to write letters of support for Dennis, yes.

...

Q: Did he say what he had been falsely accused of?

A: No, I don't believe he did. I don't think I actually realised for a long time what Dennis had done wrong, and what he had been charged for.

...

Q: And the letters of support, what were they supposed to be?

A: I think just advocating Dennis and how good he was and – yes, and all the students were encouraged to write them. We were asked to give them to Neil McKenna, and not to seal the envelopes.

...

Q: So with respect to this asking of students to write letters of support, did you write such a letter?

A: Yes.

Q: And why did you do that?

A: I was terrified of Dennis and wholeheartedly believed that he would come back and I think – I knew that if I wrote the letter of support, you know, hopefully I might stay on his good side. I was terrified to be on the other side, and that's why I wrote the letter." (t 689-690)

It is Mr Murray's evidence that he called the meeting of Hostel students because they were very upset about McKenna being charged. It is his recollection that he said "straight out that McKenna had been charged with sexual offences" which was received "with a fair amount of shock by the kids". Students then asked if McKenna had been "set up" and Mr Murray replied to the effect of "well he could have been set up but he could be guilty" (t 2204).

According to Mr Murray another student asked what could be done to help McKenna and one of the mothers present also said "can I write to Dennis?". Mr Murray then replied that yes they could write to McKenna and "tell him of your support and give it in to the Hostel" (t 2205).

Mr Murray denies telling the meeting that McKenna had been falsely accused and also denies that he directed that the letters of support be placed in unsealed envelopes. He agrees that in hindsight a more balanced approach to the advice he gave to the students would have included a suggestion that they could also write a letter of support to Mr Jefferis if they wished (t 2206-7).

Most parents simply did not believe that McKenna could have committed such offences and they decided to organise a public meeting to express their support. This meeting was held at the Hostel on 15 October 1990 and was attended by approximately 150 parents, students, and other members of the public. The Authority was represented by Colin Philpott and he agreed to chair the meeting.

Mr Jefferis' mother also attended, and it is Mrs Day's evidence that she attempted to tell the gathering the story of her son's sexual abuse and how his "character had been sullied by McKenna to cover his own dirty track". This latter statement was a reference to the false story then being circulated that Mr Jefferis:

"had been accused of stealing from the canteen, that he had lied about the sexual abuse from McKenna and that he had been expelled, which he hadn't, because we had taken him out of the (Hostel)." (t 751)

It is also Mrs Day's evidence that she was unable to give this account uninterrupted because there were murmurings and boo-ings around her and Mr Philpott abruptly told her to sit down. Nevertheless, she was determined to do something to combat the false rumour about her son, and when the meeting concluded she and her partner went to the school office "to confront Ian Murray yet again". There she spoke to Mr Murray:

"...about the fact that Todd had this terrible accusation that he had stolen from the canteen, that he had been expelled and that he had lied about the sexual abuse from McKenna and I wanted to know what he was going to do about it and I expected an apology to be made publicly to Todd about this." (t 752)

According to Mrs Day, Mr Murray's reaction to this was very aggressive. He said "(I) don't want to know any more about it. I am not discussing it. Now leave my office" (t 752).

At some stage after returning to school, Mr Jefferis telephoned his stepmother and told her that he was being given a hard time by his teachers, and was not allowed to attend the school ball which was to be held at the Hostel. Mrs Jefferis then telephoned Mr Murray to remonstrate with him about these matters. She told him that Todd felt as though he was being victimised, that the teachers were giving him a hard time, and that he was not allowed to go to the school ball. She also said that she wanted something done about Todd's complaint against McKenna, and that Mr Murray was the one who should be processing it. According to Mrs Jefferis Mr Murray responded in a very dismissive manner and simply said "the boy's lying" (t 769).

Not long after that telephone call Mrs Jefferis received the following letter dated 20 November 1990 from McKenna's solicitors:

"Dear Mrs Jefferis,

I act for Mr. Denis McKenna.

It has come to our client's attention that at a public meeting in Katanning on the 15th October 1990 and about the 7th November 1990 in a telephone conversation with Mr Ian Murray of Katanning Senior High School, you said words which implied that Mr. McKenna has taken part in activities involving child molesting of a sexual nature in relation to Mr Todd Jefferis and others.

It has also come to our client's attention that similar allegations are being spread by word of mouth around the community in which you live and there is a possibility that you may be the source of such allegations.

These allegations are completely untrue and constitute grave defamation upon our client.

We are therefore writing to demand that you –

- (i) *write a letter containing a suitable withdrawal and apology in terms to be approved by us on our client's behalf to Mr. Murray;*
- (ii) *that you publish in the "Great Southern Herald", the "Wagin Argus and Arthur Dumbleyung Lake Grace Express" and "The Western Australian" newspapers a withdrawal of your allegation and an apology in terms to be approved by us on our client's behalf;*
- (iii) *indemnify our client in respect of the legal costs to which he has been put in the matter;*
- (iv) *provide us with an immediate proposal as to a sum which our client claims by way of damages he is entitled to for the injury to our client's reputation.*

We must ask that you let us have your reply by the 23rd November 1990. In the meantime, it must be clearly understood that our client reserves all rights to take legal proceedings in respect of the matter.

Yours faithfully,

CORSER & CORSER" (Exhibit 17)

Mrs Jefferis did not respond to this letter (which in any event allowed less than three days to respond), and McKenna never commenced any legal proceedings against her. Mrs Jefferis had only ever had one telephone conversation with Mr Murray and it is reasonable to assume that this must have occurred on 7 November 1990 as stated in the solicitor's letter. Mrs Jefferis does not recall speaking at the meeting on 15 October 1990, but Mr Jefferis' natural mother (Mrs Day) did speak and did refer to the sexual abuse by McKenna. Therefore it is probable that there was some confusion in the solicitor's instructions as to the identity of the parent who had spoken at the meeting.

It is Mr Murray's evidence that he has no memory of the telephone call from Mrs Jefferis on 7 November 1990, but he does not deny that it occurred (t 2152). According to Mr Murray:

"I was getting so many telephone calls and being pushed and hammered by so many people urging me to do all sorts of things; so, you know – and I recall very few of them." (t 2155)

Mr Murray accepts that if he had heard any rumour or assertion that Mr Jefferis had been expelled from the Hostel for stealing, he would have known this to be false (given that he was on the Hostel Board and well aware that there had been no such expulsion). However he denies that he ever heard of any such rumour (t 2157). Mr Murray also maintains that even if he had been told of such a rumour it was not up to him to do anything to correct it. This is because the school was not accusing Mr Jefferis of anything or telling any lies (t 2161). (Although not specifically put to Mr Murray, he clearly does not accept Mr Jefferis' evidence that the Deputy Principal Patricia Pringle was one of those who had accused him of being expelled from the Hostel for stealing – t 2162).

Mr Murray denies that he was responsible for the defamation letter being sent to Mrs Jefferis by McKenna's solicitors, but accepts that it would be "totally inappropriate" if he was (t 2164-7). His explanation for the reference in the letter to the phone call she had made to him is that he may have mentioned this matter to the Board and one of the Board members may have passed that information on to McKenna (t 2167).

According to Mr Murray the fact that the minutes of Board meetings did not record any such disclosure is not significant, because “we often chatted and things weren’t put in the minutes” (t 2168).

Mr Murray also denies that he was very supportive of McKenna after the latter was charged. However this evidence is contradicted by a number of contemporaneous documents including the following letter dated 29 October 1990 (an unsigned copy of which was found on Hostel files):

“Dear Dennis,

The Board of Saint Andrews Katanning Residential College wishes to express its complete support for you in your current personal situation.

The Board has full confidence in you and trusts that you will be able to clear your name in the very near future before returning to your position as Warden of the College.

The Board has accepted the Country High School Hostels Authority’s decision to suspend you pending the resolution of the action but wishes to advise you that such suspension will be “with pay”.

It is hoped that you will commence work immediately with the Authority so that some of your experience and knowledge can be passed on to others.

We trust that you know that the Board’s thoughts are with you and individual members have expressed the wish that you should feel free to contact them if the need arises. If you need help, please ask.

Have courage Dennis. Clear your name and then get on with your life.

Good Luck,

Yours sincerely,

Ian W MURRAY

Secretary of the Board” (Exhibit 61)

It is also clear that McKenna believed he had Mr Murray’s continuing support, because following his arrest (and shortly prior to Christmas 1990) he sent an undated circular letter to “Dear friends” which contained the following statement:

“I know if it wasn’t for these people, your letters, Ian Murray, Colin Philpott, the Authority staff and my family I would not have made it to the present time” (Exhibit 64)

However Mr Murray doubts that it was him who sent the letter dated 29 October 1990 to McKenna, and suggests that someone else may have written the letter and put his name to it (t 2217, 2221). His reasons for suggesting this are that he always signed letters with the names “I W Murray” or “Ian Murray” and has never used the formulation “Ian W Murray”. Furthermore his tendency is to write “fairly short, terse letters”, and the letter dated 19 October is not in his style (t 2217).

However the minutes of the previous Hostel board meeting on 25 October 1990 (Exhibit 65) recorded a resolution that a "letter to Dennis from Board outlining support to be written by secretary". Furthermore, those minutes were signed by Mr Murray as secretary in the name of "Ian W Murray".

The minutes of the subsequent board meeting on 22 November 1990 (Exhibit 62) confirmed that the "correspondence outwards" since the last meeting included "Mr D J McKenna - letter of support". Notwithstanding this contemporaneous documentation confirming that he was the author, Mr Murray maintains that:

"I don't accept that I sent that letter" (t 2239)

Further evidence that Mr Murray continued to support McKenna following his arrest comes from two circular letters which he sent to parents of Hostel students (extracts of which were quoted verbatim in the Great Southern Herald newspaper of 7 Aug 1991 - Exhibit 63). In the first circular letter dated 28 Sep 1990, Mr Murray stated that McKenna:

"intends to vigorously defend the charges and I, the board and the chairman of the hostel authority are certain as we can be that Dennis will be found innocent.....You can show Dennis you care by making this hostel work as well in fourth term. You can take other action. You can give Dennis your support"

In the second circular letter dated 30 October 1990 Mr Murray asked parents to "devote your energy into providing character references etcetera from current and past students and parents".

11.20.6 Findings

The contents of these various contemporaneous materials lead to the inevitable conclusion that McKenna had the active and continuing support of Ian Murray after he was arrested and charged. I am also satisfied that Mr Murray was the author of the letter to McKenna dated 29 October 1990. His refusal to acknowledge this obvious fact tends to undermine the credibility of his evidence as a whole.

The significance of this ongoing support for McKenna is that it is evidence of Mr Murray's likely attitude toward Mr Jefferis' complaint at the time it was made. The vehemence of Mr Murray's subsequent expressions of support for McKenna is entirely consistent with the evidence from the Jefferis family that he was aggressively dismissive of Mr Jefferis' complaint.

Mr Jefferis, Lynley Day and Catherine Jefferis all impressed me as honest and credible witnesses. I am satisfied that there were two meetings on Monday, 6 August 1990 between Mr Murray, Mr Jefferis, and members of the latter's family. I am also satisfied that Mr Murray made statements during those meetings which were substantially along the lines as claimed by the Jefferis family witnesses.

I accept Mr Jefferis' evidence that when he returned to the Hostel on 6 August 1990 soon after his first meeting with Mr Murray he was met with hostility from fellow students. The comments made by some students indicated that they were aware of Mr Jefferis' complaint against McKenna even though he had not disclosed this information to anyone at the Hostel.

The only reasonable inference in these circumstances is that Ian Murray had communicated with McKenna about the complaint prior to Mr Jefferis returning to the Hostel.

I am satisfied that when McKenna was informed of the complaint he circulated a false allegation that Mr Jefferis had been caught stealing from the Hostel canteen. He did this in accordance with his usual modus operandi of fabricating an allegation of stealing against any victim who was causing him trouble. The effectiveness of this stratagem is demonstrated by the fact that there are people in the Katanning district today who still believe the lie that Mr Jefferis was expelled from the Hostel for stealing (t 821). (It is perhaps for this reason that those responsible for the treatment that Mr Jefferis received in 1990 have never offered him any apology, and why he still feels a stigma which has “never really cleared itself” - t 730)

The Board’s belief that Mr Jefferis was making a false allegation because he had been caught stealing from the canteen was probably the main reason why it expressed “complete support” for McKenna when he was arrested and charged. At that time the Board members including Mr Murray mistakenly believed that those charges against McKenna arose from Mr Jefferis’ complaint (when in fact they related to Michael Hilder). The Board had at no time investigated the truth of Mr Jefferis’ complaint but had simply accepted McKenna’s assurances that no sexual abuse had occurred.

Notwithstanding the arresting and charging of McKenna, Mr Jefferis continued to be isolated and ostracised at school. On 7 November 1990 Mrs Jefferis telephoned Mr Murray to remonstrate about these matters, and in the course of that conversation referred to Mr Jefferis’ complaint against McKenna.

As a result of that telephone conversation Mrs Jefferis received a letter from McKenna’s solicitors threatening defamation proceedings. I am satisfied that the solicitors would not have sent that letter unless informed by Mr Murray of the date of the telephone call and the details of the conversation.

When Mr Jefferis complained to Mr Murray about what McKenna had done he was only 16 years old and McKenna was one of Katanning’s most admired and respected citizens. It required considerable courage to take this step and he was entitled to look to his School Principal for support and to have his complaint taken seriously. However, he was rebuked and told he was lying. He was also vilified and ostracised by his peers. Instead of the Hostel Board and the School Principal supporting Mr Jefferis, they allowed him to become a pariah within the school and the local community and they publicly supported the alleged offender. With the benefit of hindsight even Mr Murray concedes that “it would have been extremely difficult for that lad” (t 2214).

The evidence shows that Mr Murray and the other Board members behaved as they did because they disbelieved Mr Jefferis’ allegation. In that regard I accept Mr Murray’s evidence that he and the others were “conned” by McKenna. Nevertheless Mr Murray, the former Hostel Board members, and the others in the local community who treated Mr Jefferis so badly should be ashamed of what they did to him.

The difficulties that Mr Jefferis had to endure, and the angry response that he received to his complaint were positive proof of what all of McKenna’s other victims had always known. They knew that if they were to complain about his sexual abuse to any person in authority they would not only be disbelieved but would also be punished in some way for having done so. That factor was one of the main reasons why McKenna was able to continue his sexual

offending unabated for 15 years. In the end it was only one young lad with the courage and endurance to withstand the pressures applied against him who triggered a train of events which brought the offending to an end.

11.20.7 Conclusions

1. Mr Ian Murray (in his capacities as the Principal of Katanning Senior High School and the Secretary of the St Andrew's Hostel Board) failed to respond appropriately to the allegation from Mr Jefferis that he had been sexually abused by Dennis McKenna, in that he:
 - 1.1 Rejected the allegation as a lie and responded in a partisan way in support of McKenna.
 - 1.2 Immediately informed McKenna of Mr Jefferis' complaint.
 - 1.3 Actively organised support for McKenna amongst students and parents but provided no support to Mr Jefferis.
2. The St Andrew's Hostel Board as a whole failed to respond appropriately to Mr Jefferis' allegation that he had been sexually abused by Dennis McKenna, in that it:
 - 2.1 Made no effort to investigate the truth of the allegation.
 - 2.2 Instead, provided active and public support of McKenna.

11.21 1991: The events surrounding the removal of Neil McKenna from the Hostel

11.21.1 The relevant background

On 27 September 1990 Dennis McKenna was arrested and charged with three offences of gross indecency (which had been committed against Michael Hilder in 1979). He was then released to bail subject to conditions that he was not to contact Mr Hilder and was “not to have Hostel boarders at his flat at the Hostel”. The St Andrew's Hostel Board (the Hostel Board) initially suspended McKenna from his position as Warden, but he was reinstated by the Authority on 9 October 1990 on conditions that he was not to have any supervisory role and was to live “off campus at night”. Ultimately, and as a result of legal advice Dennis McKenna was transferred to the Authority's Head Office in Perth where he was assigned the task of compiling a Pastoral Care Handbook.

In the meantime, (and as from 12 October 1990) the Authority had appointed Neil McKenna as the Acting Warden. It is Colin Philpott's evidence that the Authority had little choice but to make this appointment because there was no other suitable person who was immediately available (t 2568).

Neil McKenna remained the Acting Warden for more than 11 months until 9 September 1991 when Cornelius Burro was appointed to fill the position (t 1762). Mr Burro had transferred from Amity House Hostel in Albany where he had been Warden since 1987. Mr Burro also had previous experience as a Head of Residence at a private college (t 1762-3). Soon after arriving at St Andrew's Mr Burro identified some behavioural issues which he believed were due to substandard supervision and management of the boarders by Neil McKenna. These behavioural problems included some instances of consensual sex between male and female students, the supply of alcohol to students by Neil McKenna, bullying amongst boarders, and the smoking of marijuana (t 1774-6).

Given these problems Mr Burro could not understand why Neil McKenna had been appointed as Acting Warden (t 1777). To his credit he informed the Hostel Board of the student misbehaviour and of Neil McKenna's poor standard of supervision. He also implemented disciplinary measures and closely monitored Neil McKenna's continuing supervision of students (t 1777-8).

The St Andrew's Board at that time was chaired by Garth Addis (now deceased). Another Board member was the then Principal of Katanning Senior High School, Bernard Clayton. Although it was the first time that Mr Clayton had ever served on any board, he had received no guidance or training, and initially was unaware of who was responsible for the running of the Hostel (t 3133-5).

11.21.2 The suspension of Lance Hart from the Hostel

In either September or October 1991 there was an incident involving Neil McKenna and a Year 12 male boarder, Lance Hart. As a result of this incident, Neil McKenna telephoned Lance Hart's father Thomas Hart who was a farmer at Ongerup. He told Mr Hart that his son had been "stealing and sneaking out to parties" and for that reason had been suspended from the Hostel. Mr Hart was also told that he should immediately drive to Katanning to collect his son and take him home. (Notwithstanding that the telephone call was at 11 o'clock at night).

Mr Hart was not happy with this suggestion and immediately telephoned the Board Chairman Garth Addis and got him out of bed. Mr Addis was not at all receptive to this call and told Mr Hart that Lance Hart was "a disgrace to the Hostel" and that he should go and pick him up. Mr Addis then hung up the phone.

Mr Hart was outraged by these comments but after discussing the matter with his wife, telephoned Neil McKenna and arranged that they would meet at a halfway point between Katanning and Ongerup so that Lance Hart could be taken home (t 851).

When Mr Hart collected Lance Hart and asked him about the allegations his son told him that they were "rubbish". Lance Hart also told his father that his suspension had come about because he had walked into Neil McKenna's office while the door was shut. When he walked inside he found Neil McKenna in a compromising situation with a young girl and "things were going on that should not have been going on" (t 853).¹

11.21.3 The Hostel Board meeting on 23 October 1991

Following Lance Hart's suspension he and his father were required to attend a Hostel Board meeting on 23 October 1991, and the Board confirmed that Lance Hart would be suspended until the end of the year. As Lance Hart was about to commence his Year 12 exams this effectively meant that he was expelled from the Hostel (however he was able to complete his exams after finding private lodgings). It is Mr Hart's evidence that after this decision was made by the Board he said "I hope you are aware that Neil McKenna is interfering with the girl students". The reaction of the Board members to this statement was that:

"They all stared at me in stunned disbelief, as though I had two heads. I was some creature from outer space" (t 853-4)

Mr Burro was present at that Board meeting, and his version of what happened is a little different:

"...I think we had just expelled his son and he'd come to pick up his son and the gear from the college. He asked to see us, because we were having a Board meeting, and he came inside, we welcomed him in and he said, "This may sound like sour grapes,

¹ Lance Hart has since elaborated on these matters in a statement provided to the police in 2011. It is clear from the contents of this statement (if correct) that prior to being suspended from the Hostel Lance Hart had been aware that Neil McKenna was in a sexual relationship with a girl at the Hostel. Apart from the incident in the office Lance Hart had also disturbed Neil McKenna at the back of the Hostel cinema while he was rubbing the inside leg of another girl.

but the person you should be worried about is Neil McKenna.”, and then he explained that a certain student there was terrified of him, he had control over the boys because the boys knew what he was doing with the female students; that was basically the line of what he advised us.” (t 1772)

Mr Clayton has no memory of that Board meeting, but it is clear from the evidence overall that the Board members did not question Mr Hart about his allegations or resolve to do anything about them. All that happened was that (in Mr Hart's words) he was “shown the door” (t 854).

11.21.4 The action then taken by Mr Burro and Mr Clayton independently of the Board

At that time Neil McKenna was away from Katanning temporarily relieving in a position of supervisor at St Michael's Hostel in Merredin. It seems that immediately following the Board meeting, Mr Clayton and Mr Burro jointly decided that they should do something about Mr Hart's allegations. Mr Clayton does not have a good recollection about the sequence of events (t 3135) but I accept Mr Burro's evidence of what happened:

“Well, we went into my office after the meeting because nothing had been discussed at the Board meeting to alter that, and we had a chat and we said, “Listen, you know, we've got to do something about this, we can't do what people have been doing and ignoring things, so let's get the girl and mother and have a chat and just find out”...we both came to the consensus of we had to do something immediately, and even if it was a false rumour, to do something about it.” (t 1779)

Either Mr Clayton or Mr Burro then telephoned the mother of the girl they believed to have been the subject of the allegation made by Mr Hart. They arranged for the mother (Barbara Groves) and her daughter to come to the Hostel that same night. They then conducted an informal interview of the girl and Mr Clayton did most of the talking (while also keeping notes):

“...He asked her if she was happy, if she had any issues at the Hostel; did she get on all right with Neil McKenna – those sorts of questions. I don't remember all of them, but basically along those lines, because we didn't want to give the girl a hard time, but we wanted to give her the opportunity, if there was something, because she was away from the college, she would let us know if she didn't.” (t 1782)

All that the girl said in response to these questions was that she felt “uncomfortable around Neil McKenna”. The girl and her mother then left but she returned to the office about ten minutes later, this time in company with another girl. The two girls were “very distressed” and started making allegations about Neil McKenna. Mr Clayton and Mr Burro then “stopped them in their tracks” and asked that they await the return of Mrs Groves before continuing (t 1787). When Mrs Groves returned the two girls went on to make a number of allegations concerning sexual misconduct by Neil McKenna. Mr Clayton had the foresight to reduce each girl's statement into writing and to have those statements signed. Arrangements were also made for another Board member (who was a Justice of the Peace) to witness the two signatures (t 1791, 1794, 3149).

In essence, each girl alleged that she had been sexually assaulted by Neil McKenna. However, Mr Clayton, Mr Burro and the other Board member did not immediately report these alleged offences to the police. They decided that it was necessary to have a special Board meeting to decide what should be done. This was because it was “up to the Board to follow through” (t 1794).

Mrs Groves has testified that by the end of the second meeting her husband as well as the mother of the second student were also present (t 676). Although Mrs Groves cannot recall what was said word for word, her evidence is to the effect that she and her daughter didn’t want the matter to go to the police. The girls wanted to “get on with their lives and just complete their TEE exams”. However they did make it “very clear that they didn’t want to face Neil McKenna, and they wanted him out of the Hostel” (t 678).

11.21.5 The special Board meetings held on 24 and 25 October 1991

On the following day the Hostel Board held a special meeting in Mr Clayton’s office at the high school. The written statements from the two girls alleging sexual misconduct by Neil McKenna were read out, and after much discussion the Board passed the following resolutions:

“(1) On his return from Merredin Neil McKenna was to be made aware of the allegations against him regarding sexual misconduct

(2) Another special full Board meeting was to be held on 25 October 1991

(3) That Mr Burro was to advise Neil McKenna that he was not permitted onto Hostel premises until he had attended the next meeting

(4) That Neil McKenna was to be informed that he had to vacate his flat on the night of 25 October, and that he and his family were to be booked into a local motel at the Hostel’s cost”

The minutes of the second special meeting of the Hostel Board on 25 October 1991 recorded the following:

“Mr Addis welcomed all the Board Members and Mr Neil McKenna and thanked them for once again coming in on short notice.

Mr Addis then asked Mr B Clayton if he would explain to Mr Neil McKenna the allegations made against him.

Mr Clayton explained to Neil the allegations were of a sexual nature.

Mr McKenna was told there were two statements written under oath in the presence of a J.P. by two female students of the Hostel.

Mr McKenna was then invited to answer the allegations, which he denied and stated that he thought it was victimization against him, mainly because of Dennis.

Mr McKenna asked the Board what his prospects for the position at Merredin would be if he resigned and he was informed that it is was up to the Authority to make their decision.

The Board offered Mr McKenna time to leave the meeting to think over the situation before he made any decisions, but Mr McKenna decided to resign and voluntarily wrote out his resignation which the Board accepted and Neil was advised that he was no longer employed by the Board or the Authority.

The Board advised Neil that accommodation in a local motel would be arranged for him and his family for the night at the Board's expense, and would he please organise an agent so as his possessions can be collected from the Hostel." (Exhibit 112)

One of the Board members present (Reverend John Taylor) has testified that when the allegations were put to Neil McKenna he started weeping and crying. According to Reverend Taylor he then said to Neil McKenna:

"... "Look, mate, if you are guilty you are guilty" or words to that effect. I said "If you are guilty you are guilty", I said, "And if you claim you are innocent", I said "I think we will have to bring the police in to verify that", I said, "But if you're, you know, guilty", I said "It seems to me that it is the parents' wish that you resign, get out of it and that's the end of the matter"." (t 801)

It was as a result of that advice that Neil McKenna agreed to resign. In answer to the question whether in hindsight the matter should have been reported to the police, it is Reverend Taylor's evidence:

"Well, not really because the parents – I was given the impression that the parents wanted no fuss at all and they were quite happy with McKenna out of the way." (t 802)

11.21.6 Findings

Although obvious in hindsight, it should also have been readily apparent in 1990 that Neil McKenna was an inappropriate choice for appointment as Acting Warden of the Hostel while his brother was facing charges of sexually abusing some of its students. Apart from anything else it should have been apparent to the Board that Neil's appointment would make it difficult for any other victims of Dennis McKenna to come forward. (No doubt this decision was made because the Board members simply did not believe the allegations against Dennis McKenna).

The evidence shows that the Hostel Board and the Authority collaborated in that appointment (t 2568) and that it was made because there was no one else immediately available who might be suitable (t 2568). Assuming that there was that difficulty in immediately finding a suitable and qualified replacement for Dennis McKenna the reason why the Board and the Authority were in that situation was that they had allowed all of the Hostel's supervisory positions to be filled by his close relatives. In any event, Neil McKenna continued to act as Warden for nearly a year, and during that time little effort was made to find an alternative replacement.

The way in which Neil McKenna manipulated the Board into expelling Lance Hart was very reminiscent of the methods that had been used by his brother Dennis when ridding himself of any student likely to cause trouble. Although Lance Hart has not given evidence to this Inquiry it seems very probable that he was expelled on the basis of a false allegation of

stealing. This suggests that at some time there may have been some collaboration or sharing of tactics between Neil and his brother Dennis.

At its meeting on 23 October 1991, the Hostel Board let the Hostel students down badly by failing to act on the allegations made by Mr Hart. After its recent experiences with Dennis McKenna it could be expected that the Board would have learnt its lesson and have realised that any allegation of sexual misconduct against a staff member could not go unaddressed. But for the unexpected and very commendable initiatives of Mr Burro and Mr Clayton, it is highly probable that Neil McKenna would have remained at the Hostel indefinitely and continued to sexually offend.

Mr Burro and Mr Clayton deserve great credit for deciding to act promptly and independently of the Board in an endeavour to discover the truth of the allegations. They are also to be commended for the very sensitive way in which they handled their meetings with the complainants and obtained the written statements. Although it could be argued that they should have gone to the police with those statements, I accept that it was reasonable for them to heed the wishes of the parents and to place the matter before the Board for determination.

The Board in the end did at least achieve the removal of Neil McKenna from the Hostel. Yet again, a decision was made not to go to the police but to heed the wishes of the two girls and their parents. Given the legal environment of those times and the likely trauma that the two girls would have faced in pursuing their complaints through to conviction² I do not think that it was unreasonable for the Board to make that decision.

(Furthermore, it is in the public interest that child complainants and their parents should have a say in what happens to their complaints. If this was not to happen there would be a tendency for children who have been sexually abused to become reluctant to make complaints).

The Board's decision to allow Neil McKenna to resign rather than be dismissed increased the prospects of him finding employment elsewhere which might involve supervision of young girls. However in circumstances where there was no clear admission of wrongdoing the Board's options were limited. A dismissal may have resulted in proceedings in the Industrial Commission, and in the absence of any complaints to the Police there was no point in taking a middle course such as a suspension. In my view there are no reasonable grounds for criticising the Board for taking the action that it did.

11.21.7 Conclusions

1. At its meeting on 23 October 1991 the Hostel Board failed in its obligation to ensure the wellbeing of its students by ignoring Thomas Hart's allegation that Neil McKenna had been sexually interfering with female students.
2. Nevertheless the Hostel Warden Cornelius Burro and the Board member Bernard Clayton took commendable action by independently investigating the allegation and bringing about an outcome which resulted in Neil McKenna's removal from the Hostel.

² See Chapter 18

12. St Christopher's Hostel, Northam

12.1 Background and history

In 1941 the Anglican Church established the St Christopher's Hostel at Northam to provide residential accommodation for boys attending Northam High School. Because of the nature of the buildings in which the Hostel was originally housed it was nicknamed by its boarders as "the hut", and it continued to be known by that name during the 1970s. Girls attending at Northam High School were accommodated in a separate hostel (established in 1938) known as Adamson House. When St Christopher's Hostel closed in 2003 it was replaced by Adamson House which became a co-educational hostel for both girls and boys.

The Anglican Church continued to administer St Christopher's Hostel after the Country High Schools Hostel Authority (the Authority) was formed in 1960. The Authority used its powers under its Act to delegate responsibility for this continuing administration of the Hostel to the Anglican Church. Accordingly the Church remained responsible for the Hostel's day-to-day management, and also selected the members of the St Christopher's Board.

The Board members were chosen in accordance with a statute of the Synod of the Anglican Diocese of Perth. Its Chairman was the Archdeacon of Northam and other ex-officio members were the Principal of Northam Senior High School, and a nominee of the Northam Town Council. The parents of students boarding at the Hostel were entitled to elect two Board members, and the remaining two members were elected by Synod (t 3456).

By 1976 the title of Archdeacon of Northam had merged with a position of greater authority known as "Archdeacon of the Country". The holder of that title was responsible for overseeing the management of all five Anglican country hostels in the Diocese (at Esperance, Moora, Merredin and Northam) and also was Chairman of each of their Boards. The incumbent in that position from 1976 until 1979 was the then Archdeacon (and now Bishop) Michael Challen who was also a Board Member of the Authority. It is Bishop Challen's evidence that there was never a clear boundary line between the responsibilities of the Authority and the responsibilities of the Church. The Authority was responsible for basic matters such as land, buildings, and finances, and while it also had an interest in all other matters, these remained within the purview of the Church. Certainly Bishop Challen regarded any appointment or dismissal of the Warden of St Christopher's as a matter within his responsibility as Chairman of the Hostel Board (t 3519-3520).

However, it would seem that in the early 1960s the power to appoint wardens to Anglican hostels had belonged to the Archbishop. On 7 October 1963 the St Christopher's Board recommended to the Archbishop that Roy Wenlock be appointed as Warden of its Hostel, and in November that recommendation was approved. Mr Wenlock was then a single man aged 31 years working as a bank officer in Merredin where he was also part-time Warden of the St Michael's Hostel. In order to transfer to Northam he had to resign from his employment with the bank and he then became the full time Warden at St Christopher's. He had strong connections with the Anglican Church and had been appointed a lay reader (entitling him to wear robes during services) at the age of 18.

As Warden of St Christopher's Mr Wenlock soon gained a high reputation in the Northam community. The general view was that the Hostel was being run well, and its students gained high academic results. Mr Wenlock also was a member of the local Rotary and Repertory clubs, a regular participant in community events, and mixed with prominent people in the town. He was regarded as "a man of presence" who was good at public speaking and very pleasant and cordial towards people generally. Mr Wenlock also required Hostel students to participate in activities such as community fundraising, and collecting rubbish from the sides of roads. By the 1970s he had become "revered in the community" and was widely considered to be a man beyond reproach (t 3242, 3253, 3274, 3398, 3413).

12.2 Mr Wenlock's reputation amongst Hostel students

For most of the time that Mr Wenlock was Warden, St Christopher's Hostel had a complement of approximately 150 students. He applied high standards of discipline, ensured that students did their homework, and encouraged them to achieve high academic results. He also encouraged students to participate in sporting and leisure pursuits, and coached the Hostel cricket team. Accordingly, some former students have very good memories of their time at St Christopher's Hostel (t 3324, 3336, 3468-9).

However the great majority of former students from St Christopher's who have contacted the Inquiry have expressed very negative sentiments towards Mr Wenlock (nicknamed "Snoz"), and the following is a typical example:

"Wenlock was a powerful man with an intimidating presence. I would describe him as calculated and cunning.

He was someone that you could never say "No" to. Whatever he said you had to do or you knew there would be consequences.

If you fell into Wenlock's bad books so to speak he would set about making life hard for you.

He would get his chosen Prefects to single you out and bully you or remove privileges like being able to go into town on weekends. Things that don't seem much to an adult but to a kid at boarding school, it was a big deal." (t 3328)

Wenlock also either encouraged or tolerated the practice of "nuggetting" which involved boys being stripped of their clothing by fellow students and then having their genitals rubbed with shoe polish, toothpaste, or sometimes more harmful substances (t 3238-3240, 3334). (Of my own knowledge nuggetting was a fairly common practice at most secondary schools up until that time). Wenlock also had what most former students regarded as an obnoxious habit of watching boys while they were showering each morning:

"Wenlock...watched all the boys shower every morning.

Wenlock's excuse for watching the boys shower was to do a daily roll call.

There was no privacy in the showers. About fifteen boys at a time lined up alongside each other and showered in an open bathroom.

This has always stood out in my mind as weird as it was pretty obvious to all the boarders that Wenlock did the roll call in the showers each day for the sole purpose of perving on the boys while they were naked.

On the odd occasion that Wenlock was unable to do the morning roll call, he gave the task to one of the House Masters.

When a House Master did the roll call they always faced away or stood outside the shower room and ticked us off while we were in our dressing gowns as we walked into the bathroom area.” (t 3329)

12.3 The system of discipline including caning

Wenlock imposed a strict system of discipline within the Hostel including fairly detailed rules which students were required to obey. The prefects appointed by Wenlock would monitor compliance with these rules. Upon observing any breach a prefect would either inflict some form of punishment himself (including caning) or report the matter to Wenlock so that it could be dealt with (t 3342).

Up until at least 1971 the cane would be applied either to a boy's bare buttocks while bent over (t 3329, 3342), or to an extended hand (t 3330, 3340, 3405, 3406). However in his later years as Warden, Wenlock restricted caning to boys' hands.

The cane was used frequently and even for very trivial breaches such as arriving five minutes late for study (t 3275, 3295, 3330, 3340). Wenlock had an unusual variety of “canes” including at one time a straightened out piece of plastic hula hoop (t 3244, 3741). When punishing a student he would raise the cane to a great height and bring it down with such force that it caused many who saw it to cringe (t 3330, 3340). A boy who received this punishment sometimes had difficulty afterwards in using the affected hand to hold a pen or cutlery (t 3340).

There were at least two instances of caning by Wenlock which caused permanent injury to the boy's hand (t 3284, 3746). One of these happened to a 14 year old boy in 1971:

“Somewhere in the middle of the year, I was caught smoking again. The next day I had to go see Wenlock. He said he'd been told I'd been smoking. That's when I got the caning of all canings. Snoz, made me pick one of his canes. I picked the smallest one.

Wenlock kept caning me, trying to make me cry but I wouldn't break. I couldn't tell you how many times he hit me but he kept going and going until he couldn't anymore and had to stop.

During the caning I could see my little finger was bent into an “L” shape. Wenlock broke my finger. He shit himself. He told me to get dressed out of my pyjamas and he drove me in his personal car to the Northam Hospital.

Wenlock said something like...just tell them you did it at football.

When we got to the hospital...I told the Nurse or Doctor I'd hurt it at football, like Wenlock told me...Either the Doctor or Nurse said I had to go to Perth to get it fixed.

On the way back to the Hostel, Wenlock said it was my fault for smoking. He said he would have to tell my parents and they wouldn't be happy if I got expelled. So I said I would just leave it.

As a result of the caning by Wenlock my little finger was badly damaged and is still bent and twisted.” (t 3746, 3747)

There were also occasions Wenlock would cane numerous students all at the one time. “C” has described an incident which happened when he was 12 years old when he was one of a large group of boys, some of whom had “caused a commotion”:

“...Wenlock responded and insisted on the boys providing the culprits, and everybody refused to talk so he started caning, and we just kept on walking through and getting onto the back of the line until he gave up, so I think probably on that occasion I would have ended up being hit about a good dozen times...There would have been close to 25 to 30 boys just continually going through the cycle...” (t 3245)

Ultimately, the Hostel Board decided to ban the use of the cane by prefects, and to restrict its use by Wenlock himself. The minutes of 15 September 1975 recorded that:

“The Board was glad to hear the report from the Warden on the subject of caning of students. The cane could be used by the Warden only and only when absolutely necessary”

When Bishop Challen first visited the Warden's Office (upon becoming Chairman of the Board) he noticed a cane on Wenlock's desk. He asked Wenlock what it was for and was told “for punishing boys”. Bishop Challen then said to Wenlock “well I don't want you to use that” (t 3467).

There is also evidence which shows that Wenlock was sometimes inconsistent in his application of discipline, and an example was with students caught smoking. It was a rule of the Hostel that students were not to smoke cigarettes, and those caught doing so were often caned (t 3244, 3284, 3366, 3746). However on other occasions, and particularly when Wenlock invited students to his flat, he would sometimes offer them a cigarette (e.g. t 3269-70, 3279, 3405-6, 3745, 3849).

12.4 Wenlock's “wrestling” (also known as “bruting”)

It was against the background of this brutality and discipline that Wenlock regularly directed individual boys to report to his flat on some pretext and then required them to engage in “wrestling”. For reasons which will become apparent, the boys gave Wenlock's wrestling the different name of “bruting” (and given that it was not really wrestling I will call it by that name). None of the boys enjoyed being “bruted” and there was regular speculation and teasing about who would be the next one to be summoned to Wenlock's flat. It was also well known that Wenlock would insist on a boy being bruted upon his birthday, and for that reason students who celebrated a birthday while at home on a weekend considered themselves very fortunate to have missed out.

The bruting always involved the same bizarre and ritualistic form of physical contact which the boys had to perform for Wenlock's sexual pleasure. He invariably made the boy strip down to his underpants while he did the same. Sometimes there was then a pretence of

some form of normal wrestling but it would always end up with Wenlock on his back on the floor. Wenlock would then require the boy to straddle him across his pelvic area so that the boy's buttocks were resting on top of his groin. The boy then had to lean forward and grip Wenlock very hard under each of his armpits. Once the boy was in this position Wenlock would bounce around and pretend to try to buck the boy off while at the same time continuously moaning and repeating the words: "you brute", "you brute" (t 3297, 3332).

The effect of this was that the boy's anal area would bump and grind against Wenlock's groin. Some former students distinctly recall Wenlock's erect penis rubbing against their bodies (t 3270-1, 3266, 3332, 3364) and of him ejaculating as a result (t 3250). Others recall him immediately going off to his bathroom once the bruting had finished (t 3266, 3745-6). The bruting itself could last for up to one or two hours (t 3250, 3266), and Wenlock's up and down motions would cause the two of them to move around the room. One witness remembers one particular bruting when he was moved through Wenlock's lounge room and into the bedroom (t 3297).

Sometimes there were variations to Wenlock's normal bruting procedure. Occasionally more than one boy was present and they took it in turns to straddle Wenlock (t 3247, 3249, 3331, 3348). Wenlock often required particular boys to change into "leopard skin jocks" or "jock-style bathers" before the bruting commenced, and he also sometimes changed into something similar (t 3266, 3270, 3272, 3275, 3323, 3332, 3742). On a few occasions boys were not required to remove any clothing at all (t 3346, 3952), and there were also two instances when the bruting occurred in the Hostel's music room (t 3343-7).

A total of 18 former students of the Hostel have come forward to the Inquiry to give plausible accounts of being bruted in this fashion (t 3249-50). There are also many others who have not come forward but who were seen to go off to Wenlock's flat and to return at a later time complaining of having been bruted or looking upset (t 3318, 3371). Some boys were chosen by Wenlock to be bruted only once or twice, but others had to attend such sessions very frequently. The witness "C" experienced his first session at the age of 12 and the brutings then continued as frequently as once a week for the whole of his five years at the Hostel (t 3249). For other students it would seem that their brutings ceased once they became prefects (t 3323).

Nearly all of the witnesses who were subjected to this treatment have stated that they did not enjoy the bruting sessions, and some say that after each session they felt disgusted and upset (t 3301, 3333). (One describes dry-retching as a result – t 3333). As to the reasons why they complied with Wenlock's wishes, the following is a good summary:

"...I was 13 or 14 years old. It was a different era in those days. Kids...in those days weren't encouraged as perhaps children are now to have rights and be forward about those rights. We were taught that adults told you what to do and you complied. Further to that, I was 100 miles away from my parents. I had to live there and this person had...any power he liked over you...I didn't feel as if I had any alternative." (t 3297)

A further compelling reason to comply was that any failure to do so resulted in punishment. One 14 year old boy who suddenly decided that he had had enough of bruting put Wenlock in a headlock during his last session, and "really hurt him". After that Wenlock caned him for "anything and everything", made his life "unbearable", and ultimately expelled him from the

Hostel. As the boy had nowhere else to stay he ceased his secondary schooling and joined the navy (t 3271).

Another boy, “W”, who rejected Wenlock’s sexual advances (see 32.5 below) received similar treatment. Wenlock victimised him and used the “smallest possible excuse” to berate or to cane him. An example was when he was punished for allowing a small portion of a coloured t-shirt to be visible above the collar of his outer shirt. This incident escalated and the boy was expelled, but the expulsion was later rescinded as a result of his mother’s intervention. “W” had been academically bright and at the top of his class when he commenced his secondary schooling. However as a result of Wenlock’s victimisation he became despondent, gave up, and failed his junior exam (t 3285-9).

12.5 Evidence of sexual misconduct other than bruting

There is evidence of two separate instances when Wenlock’s sexual predation went beyond that involved in mere “bruting” sessions (and it is reasonable to infer that these were not the only instances). The first involved the witness “W” who commenced boarding at St Christopher’s Hostel in 1970 when he was 13 years of age. After he had been at the Hostel about three months he was instructed to go to Wenlock’s flat, and “W” went there with some trepidation because he thought he was in trouble. However when he knocked on the door of the flat he was invited in and asked by Wenlock to sit next to him on a couch. Wenlock then chatted with “W” amiably, and provided him with initially a cigarette, and then a glass of beer. “W” finished the beer very quickly hoping that he would be allowed to leave, but Wenlock filled the empty glass from a bottle and topped it up again.

While continuing to chat to “W” Wenlock placed his hand on the boy’s leg and left it there for a while. Wenlock then moved his hand up to the boy’s genital area and started rubbing him through his clothing. “W” panicked and stood up, but didn’t know what to do. When he said that he would like to go back to his dormitory Wenlock responded that “everything was okay”. “W” then insisted on returning to the dormitory but before he was allowed to go Wenlock obtained his assurance that he “wouldn’t mention this to anybody” (t 3279-3280). However that did not stop Wenlock from later victimising the boy in the manner I have outlined above.

The second instance of such misconduct was much more serious. The witness “Q” commenced to board at St Christopher’s in 1971 in his second year of high school while aged 14. He describes himself as being a “good looking, quiet kid who always had a fit body”. One day he was caned for smoking and later told to report that night to Wenlock’s flat.

When “Q” arrived at the flat Wenlock told him that “you shouldn’t be smoking and let’s forget it”. Wenlock also said “let’s do a little bit of wrestling”. “Q” was then made to change into some “leopard skin jocks” that Wenlock produced, and Wenlock did the same. Wenlock then lay down on his back on the floor and instructed “Q” on how to participate in his first bruting session. It ended with Wenlock ejaculating and telling “Q” that it was time to go (t 3742). It is “Q”’s evidence that thereafter:

“Wenlock had either a Prefect or House Master call me up to his flat every time after he caned me. It felt like he caned me every week, sometimes 3 times a week, sometimes less. He seemed to have all sorts of reasons to cane me and then offer ‘solace’ in his flat afterwards by wrestling me.” (t 3742-3)

"Q" also had to undergo "wrestling" sessions whenever he reported to Wenlock after playing sport or going into town. Wenlock also introduced "Q" to alcohol and allowed him to smoke cigarettes (which confused "Q" because he was caned whenever he was caught smoking outside Wenlock's flat).

One day "Q" asked Wenlock about the purpose of the wrestling sessions and "what he was doing". Wenlock responded by saying "it's all about the birds and the bees". He went on to say that when you become a man you have erections and also spoke of "discharge and a feeling of nirvana". Wenlock then pulled his penis out of his pants and said "it's easier if someone else strokes it". He also instructed "Q" on how to masturbate him to ejaculation and did the same to "Q". From then on:

"The routine was a quick wrestle after a smoke or a drink, sometimes both, then I would masturbate him and he would do the same to me. Then he would wash me in the shower." (t 3746)

This routine was briefly interrupted for about four weeks as a result of the caning incident when "Q" broke his little finger (as outlined in 32.4 above). After that, on the many occasions that "Q" was called to Wenlock's flat:

"We didn't wrestle for as long anymore. I think the wrestling was the way he could covertly get me into the shower with him after the wrestling got him a little bit excited. I would masturbate him and he would do the same to me and then he would wash me in the shower." (t 3747)

This routine progressed to mutual oral sex and ejaculation while they were both in the shower. However once this had happened: "he couldn't get you out quick enough. He would have a look of shame on his face" (t 3748). Importantly, it is also "Q's" evidence that:

"Again, towards the end of the year, I can't remember when it started, Wenlock asked me to wash his car with him. Then I went with him to his flat. There was a knock on the door and a bloke turned up.

Wenlock said this bloke was a friend of his who liked to watch our wrestling matches. I was uncomfortable that the bloke was there and that he wanted to watch Wenlock wrestle me.

I recognised this bloke as a person who addressed us at St Christopher's School Assemblies. He was the head honcho. By that I mean he was a high profile person from the local Church. He was always in a suit and collar. He was the one in power, even over Wenlock.

He wore glasses, had black hair which was thinning at the sides. I can't remember if he had an accent and I'm not sure if I would recognise him again after such a long time.

I have seen Michael Challen on the news and I didn't recognise it to be him or remember if he was at the Hostel at any stage.

Wenlock introduced me to the bloke as Michael and the bloke said he was also called Michael.

He said something like, 'It's a lovely name. It's the same as mine, St Michael.'

He never spoke after that or participated. The bloke just sat on a single chair while Wenlock wrestled with me.

Wenlock lay down on the floor. He told me to sit on top of him and put my hands under his armpits and squeeze. He bucked his hips around to try and get (me) off him. He got excited as he usually did and then told me to get off. Wenlock said I can go now. I left straight away. Nothing else happened.

This bloke watched about 7 or 8 times. It became a Sunday ritual.” (t 3749)

All of these events occurred in 1971 when “Q” was either 14 or 15 years old. It is “Q’s” evidence that he was relatively naïve when the sexual abuse started and did not understand its significance at that time. At a later stage he became uncomfortable about what Wenlock was doing but continued to participate because of threats that were made to him. The threats from Wenlock were to the effect that “Q” could get expelled for smoking and that if this happened his parents would be unhappy and he might be made a Ward of the State (t 3750). Because of particular circumstances in “Q’s” background (of which Wenlock was aware) there was reason for him to believe these threats.

12.6 Evidence as to the possible identity of the other priest

The Archdeacon of Northam in 1971 was the Venerable Norman Apthorp who had been ordained as a priest in 1951 on Michaelmas (i.e. St Michael’s Day). Venerable Apthorp is now 87 years of age and in a fragile condition, and living in a retirement home.

For the purpose of assisting “Q” to identify the priest who sat in on some of his “wrestling” sessions with Wenlock, he was asked to participate in a rudimentary process of identification. He was shown a series of five photographs taken from the period around 1971 depicting groups of people including priests. Three of these photographs included Venerable Apthorp, one of which showed him face on in an open collared shirt, another being a side view whilst conducting a service, and the last a full face photograph of Venerable Apthorp alone. “Q” identified (only) the side view of Venerable Apthorp as the priest who had attended the wrestling sessions, but did not identify him in the other photographs. In all of the circumstances this is not a reliable identification.

Venerable Apthorp has been interviewed by the Inquiry’s investigators and denies that he ever sat in on any wrestling sessions between Wenlock and any boys. During the interview, the Venerable Apthorp was also asked to respond to the evidence that in 1977 he told Bishop Challen that he had been aware of rumours of “misbehaviour” by Wenlock (see further detail in 12.9). Venerable Apthorp responded that it was “quite untrue” that he had said that to Bishop Challen and he was then asked:

“INVESTIGATOR: ...we’ve had a lot of people giving evidence about the kind of wrestling sessions. Did you ever hear anything about the wrestling?”

REV APTHORP: Well, I heard that – I knew that when, you know, they’d been doing school all day and then prep at night, they just needed to let off steam, and they had some romping about.

...

REV APTHORP: And then lights were out. So I only knew it as a cheerful rough and tumble to let off steam at the end of a boys' school day.

INVESTIGATOR: And can I ask how did you hear about that?

REV APTHORP: Well, that was, I think, known at the time, that, you know, they needed a break.

INVESTIGATOR: So, like, when you say it was "known at the time", I suppose what I'm wondering is how would you know that something like that was going on.

REV APTHORP: Well, I was Chairman of the Board, and it came out at Board meetings I expect.

...

REV APTHORP: But nobody suspected anything out of order; simply a human experience of letting off steam after a busy day with a crowd of boys." (transcript of interview 2 July 2012 p 8-9)

While I accept "Q's" evidence that a "head honcho" priest did sit in on approximately seven or eight of the "wrestling" sessions between him and Wenlock, there is insufficient evidence for me to reliably determine who that priest was. Regrettably, that is a question which will have to remain unresolved.

12.7 1975: The first known complaint against Wenlock

The Inquiry's investigations reveal that the witness "P" (who boarded at St Christopher's Hostel from 1975 onwards) was the first boy known to have made a formal complaint against Wenlock. "P" grew up on his family's farm in the central wheatbelt and during his final year of primary school tended to "hang around" with older boys from the Hostel when they were home on holidays. These older boys warned him "not to mess with Wenlock" and to make sure that he was never alone in a room with him. As a naïve 12 year old "P" really didn't understand what the older boys meant when they teased him by saying:

"You'll be fresh meat, he likes young blonde haired blue eyed boys" (t 3340).

Soon afterwards "P" commenced his first year at St Christopher's and he was unaccustomed to the regime of strict rules and discipline. He was caned numerous times by Wenlock who "wielded the cane like he was fencing". On one occasion the lashings from the cane were so severe that "P" was unable to hold cutlery to eat his dinner that night. Another time when he was caned in the morning before school he was unable to hold a pen in his hand (t 3340).

There were a number of handpicked prefects who exercised a supervisory role, and according to "P" they "danced to Wenlock's tune well and truly". One of these prefects was a "huge lad, much bigger in build and taller than any of the other boarders" who would cane junior students whenever he felt there had been a breach of a Hostel rule. Prefects would cane boys for the most trivial of breaches such as talking to each other after lights out. Prefects also threatened younger boarders that they would force them to commit homosexual acts with each other (masturbation and "head jobs") if they continued to breach any rules. The intimidation and fear that this caused to "P" was "horrific" (t 3342).

One day during "P's" first few months at the Hostel a senior prefect forced him to stand at the end of his bed while he was repeatedly punched in the stomach and ribs. As a result of the injuries received "P" was in agony that night and his parents were contacted by someone at the Hostel. His parents collected him from the Hostel on the following day and he was taken to a doctor who treated him for broken ribs and bruising (t 3342-3).

"P's" parents were outraged by what had happened, and during a confrontation at the Hostel his father warned Wenlock that "it better not happen again". According to "P" there is "no doubt that Wenlock knew about the beatings prefects dished out to boarders" and he does not recall that any reprimand was ever given to the prefect who had beaten him (t 3343).

During "P's" first term at Northam High School he commenced piano lessons. The Hostel had a sports pavilion with a room attached where the musical instruments were stored. "P" was keenly interested in music and would go to this room whenever he could to play around with the instruments.

One Saturday morning in 1975 "P" was in the music room alone with the door closed while tinkering around with instruments. Wenlock came into the room without warning and locked the door from the inside. Wenlock then told "P" that he would show him some ways to defend himself if he ever had any trouble with bullies. "P" was very wary of Wenlock given the warning he had received before coming to St Christopher's but felt that he had no choice but to comply with this demand. According to "P":

"Wenlock initially showed me shoulder restraint type moves then after a short time, took off his shirt and wrestled me to the ground. He lay flat on his back and told me to sit on top of him with my backside seated over his groin. There was no doubt that his penis was knocking on my back door so to speak.

I could feel that he had an erection.

He told me to pinch him under his armpits while I was sitting on him and repeatedly said to me "A boy like you could hold me down, you have to fight harder."

After a while of me straddling Wenlock and pinching his armpits, he flipped me over so that I was lying with my back on the ground and he was on top of me.

From this position, he pinched me under the armpits and basically rubbed his erect penis against my groin.

Wenlock placed his face very close to mine and looked right at me as he did this. It was very freaky.

The situation Wenlock put me in was just awful. I was a thirteen year old kid and I felt like he was looking for some sort of positive reaction from me to what he was doing.

It's sick that the Warden of a hostel of school aged boys would sit a thirteen year old on his erect penis.

This so called wrestling with Wenlock went on for about fifteen or twenty minutes. I think he realised I was afraid of him so he stopped, got up off the floor and said "Keep practicing those moves."

Wenlock was standing in front of me and I was still seated on the ground. I vividly recall seeing him standing there with a full blown erection. He was wearing long slacks and a white singlet.

I felt awful. It was like my whole world had changed. I learnt that day what other boarders meant when they spoke about Wenlock's bruting.

Wenlock put his shirt on, unlocked the door and left the room." (t 3344-5)

"P" felt very scared by what had happened but did not know what to do, and did not inform anyone of this first bruting session with Wenlock. Later that same year (while "P" was still 13 years old) he experienced a second bruting in very similar circumstances. He was playing with some musical instruments when Wenlock once again walked into the room and locked the door. This time Wenlock stripped down to his underwear and forced "P" to participate in a bruting session for nearly an hour. "P" was then made to position himself on his hands and knees facing away from Wenlock while "he rubbed his erect penis against ("P's") backside" (t 3346).

This ceased when Wenlock was disturbed by people knocking on the door of the music room wanting to come in. Wenlock then got up, dressed himself, opened the door and left. "P" gave up playing music from that day forth so that Wenlock would never have the opportunity to get him again (t 3347).

When "P" next went home on holidays he told his mother what Wenlock had done. He informed her of all of the details, and she was so outraged that she went to the Northam Police. Accordingly, when "P" returned to school at the beginning of the next term, he was taken out of class and spoken to by a Northam detective. "P" cannot recall the detective's name, but remembers being taken to the front of the school, and talking to him inside a police car. It is "P's" evidence that:

"I was questioned intensively by the Detective. I told him what Wenlock did to me and he told me he'd heard about Wenlock's behaviour but that "It wasn't enough" and to call him if Wenlock did anything more.

I didn't hear of any further Police inquiries into Wenlock's behaviour but about three or four months later the same Detective came to the school to deal with a spate of thieving.

A lot of students were spoken with and when it came to be my turn, the Detective asked me if Wenlock had done anything more to me or other boarders that I knew of.

I told the Detective nothing more had happened. He gave me his business card and again said to call him if I had any further issues." (t 3347-8)

The Hostel records show that Wenlock was on long service leave during the second term of 1975 and went overseas on a world trip visiting schools and hostels (with a letter of introduction from the Minister of Education). The first term ended on 9 May and Wenlock was away between 26 May and 22 August 1975. The third term commenced on 8 September 1975 which means that there was no time for the second bruting to have occurred between 22 August and the commencement of the fortnight's school holidays. The only reasonable inference in these circumstances is that both brutings occurred during first term and that "P" must have informed his mother during the school holidays which commenced on 9 May

1975. “P’s” birthday was on 26 January 1962, which means that he was 13 years old at the time of each bruting.

Regrettably no records have been found which refer to the 1975 police investigation or which identify the Detective who was involved. Assuming that “P” informed the detective of the same facts that are now the subject of his evidence, then these facts established that there had been two offences of indecent dealing with a child under 14 years of age (contrary to section 183 of the then Criminal Code). However, from what the Detective said to “P” he obviously did not consider that the evidence was sufficient to prosecute Wenlock. No doubt the Detective came to this view because of the lack of any evidence to corroborate “P’s” story. (See Chapter 18)

Given the passage of time it is not now possible to determine whether or not the Detective exercised a sound judgment in deciding not to prosecute Wenlock. However, it is clear that the Detective did care about “P’s” wellbeing because he followed up a few months later to check whether there had been any further episode of abuse. That unknown Detective is to be commended for his caring attitude and for treating “P’s” complaint seriously.

12.8 Evidence of further complaints during 1976 and 1977

12.8.1 Background and general comments

During 1976 and 1977 there were three separate instances when an individual student who had undergone bruting sessions with Wenlock made complaints to authority figures either inside or outside the Hostel. There are issues on the evidence as to precisely when each of these complaints was made. In this regard, it is very apparent that some witnesses are confused about the sequence of events and that their memories of separate incidents may have merged into one.

Whenever the relevant events occurred, the complaints that were made ultimately resulted in the resignation of Wenlock as Warden of the Hostel. This resignation occurred in December 1977 and it was effectively forced on him by Bishop Challen acting as Chairman of the Hostel Board.

I will now summarise the evidence of the witnesses in what I consider to be the most appropriate chronological order given the likely sequence in which the relevant events occurred.

12.8.2 The evidence of “L”

After completing his first three years of secondary schooling at another high school, “L” commenced as a fourth year student at Northam Senior High school in 1975. He boarded at St Christopher’s Hostel during 1975 and 1976.

When “L” arrived at the Hostel he was well aware of Wenlock’s bruting sessions because he had been informed of these by his elder brother who had commenced the previous year. His elder brother had also warned him that if he was ever summoned to Wenlock’s flat he should decline any offer of a soft drink because if he did accept a drink “he would grab you and give you a bruting” (t 3361).

Accordingly, when "L" was first summoned to Wenlock's flat, he refused the offer of a can of cool drink and thought that he was "safe". To his dismay he was not safe because Wenlock "jumped off his chair, grabbed me, threw me on the ground" and made him undergo a bruting which lasted one or two hours:

"He lay there and he was writhing - you know, his head was going back and he was going "You brute, you brute, you brute" and at the same time he was bucking from his hips and I could feel his penis pushing into my back...buttocks area." (t 3364)

Afterwards Wenlock left "L" alone until his last year at the Hostel (1976). "L's" second bruting occurred when he reported to Wenlock's flat upon his return to the Hostel after an outing. It was a rule of the Hostel that a student had to check-in in this way, and the checking in process usually involved only a brief exchange at the doorway to Wenlock's flat. However on this particular occasion "L" was taken inside and subjected by Wenlock to another "attempted bruting session".

"L" cannot remember all that happened but he recalls feeling Wenlock's penis while he was on top of him, and then losing control. He knew that Wenlock had a weak heart so he started "smashing him on his chest". "L" struck Wenlock hard about three times in the area of his heart, and then jumped up and ran out of the flat. As he did so Wenlock ripped the cheesecloth shirt that he was wearing (t 3369-3370).

"L" then ran to the unit of one of the housemasters Timothy Blee, and told Mr Blee what had happened. At that time he was feeling very upset because he had "tried to kill" the Warden. Mr Blee invited him inside his unit and played some music to settle him down. In the course of this "L" went into "one hundred per cent" detail and told Mr Blee "exactly what's going on" (t 3371). "L" then left the unit and he has no recollection that Mr Blee said anything about taking the matter further (t 3372).

"L" later complained to his mother about what Wenlock had done but she did not "really believe" him. "L" also told his friend Brett McIver (a student at Northam High School who was not a Hostel boarder) about the bruting (t 3373). "L" also remembers that another Hostel student (Ted Thompson) was bruted "later on" and that he "went to the McIvers" (t 3376).

12.8.3 William ("Ted") Thompson's evidence

William Thompson boarded at St Christopher's Hostel between 1972 and 1976 for all five years of his secondary schooling. During the whole of his time at the Hostel he experienced many bruting sessions.

These brutings by Wenlock always made Mr Thompson feel "very uncomfortable for somebody of my upbringing and I hated every minute of it" (t 3301). As he grew older he became increasingly upset by what was happening and he decided to speak to a friend who was not a Hostel student and lived nearby. In that regard:

"I was in my last year there and there was very little for me left to lose and Roy Wenlock's hold on me was going to be gone very shortly and I remember being very angry and very upset" (t 3304)

Mr Thompson's friend was Brett McIver who was the son of the local Member of Parliament Mr Ken McIver MLA. Mr Thompson had been to the McIver house socially a number of times

and knew where Brett Mclver's bedroom was. Accordingly, one night he crept out of the Hostel via the fire escape, went to Brett Mclver's house, and tapped on his bedroom window. Brett Mclver allowed him to climb inside and Mr Thompson then "discussed the matter with him at great length" (t 3303-4).

A few days later Brett Mclver approached Mr Thompson at school and told him that he had spoken to his father about the matter. He also said that his father wanted to meet Mr Thompson to discuss what had happened. A meeting was then arranged and Mr Thompson is fairly sure that he took another student with him whom he believes was the Head Boy at the Hostel, Adrian Gamble (t 3305).

Mr Thompson also believes that the meeting took place at Mr Mclver's house, and he recollects that apart from Mr Mclver "a member of the clergy" was there. He was told (either at the meeting or by Brett Mclver beforehand) that the other person present was a "prominent member of the clergy and he would be listening and he would do something about the situation" (t 3306-7).

Mr Thompson's "best memory" of the meeting is that it was the clergyman who asked most of the questions. As he considered himself to be in the position of "in for a penny, in for a pound" he told them everything he knew. He also gave Mr Mclver and the clergyman the names of at least half a dozen other Hostel students who would be able to confirm what he told them (t 3308-9). Mr Thompson had gone to the meeting expecting not to be believed, but left it one or two hours later feeling that he had been given a good hearing:

"I remember being very impressed. I was a bit in awe of Ken Mclver. He was a very important man, and I was very impressed that he would even take the time to meet with me, let alone take what I had to say seriously, but I was very happy with the reception I got from both men, and my impression was that they listened to me and they made no indication that they disbelieved me." (t 3309)

When the meeting finished Mr Thompson was not told by either of the men what they intended to do. It was not his expectation that they would tell him because back then "adults didn't tell you what they were going to do next. You were dismissed and they did what they wanted to do" (t 3310). Mr Thompson is certain that these events occurred during 1976 which was his last year at school. He is also "convinced" that his meeting with Mr Mclver and the clergyman took place late in that year (t 3310).

12.8.4 Michael Kalajzic's evidence

Michael Kalajzic attended St Christopher's Hostel for the whole of his secondary schooling between 1974 and 1978. Mr Kalajzic was not subjected to any bruting during his first three years at the Hostel, and it was only during his fourth year in 1977 that such an incident occurred.

It happened after Mr Kalajzic returned late to the Hostel after a weekend in Perth with his girlfriend. It was the first time that he had ever arrived late to the Hostel and he was required to check-in with Wenlock at his flat. When he did so, Wenlock invited him inside the flat.

Wenlock then started an arm wrestle with Mr Kalajzic which turned into a "friendly grandfather type wrestle". At some stage Wenlock was "only wearing his jocks and a robe" (t

3390). When Wenlock asked Kalajzic to take off his shirt the latter said “no”.

The wrestling continued for about ten minutes until Mr Kalajzic felt that he had had enough. He told Wenlock that he was going, and “raced out of his room”. Wenlock ripped Mr Kalajzic’s shirt as he was leaving (t 3391).

It is Mr Kalajzic’s evidence that he felt “freaked out” by what had happened, and when he returned to his dormitory he immediately told some other boys. The housemaster Mr Blee then came to the dormitory and said to Mr Kalajzic that he looked as “white as a ghost”. When Mr Kalajzic described what had happened he recalls Mr Blee saying “that’s enough” (t 3390).

Mr Blee then took Mr Kalajzic to see the Deputy Warden Mr Walter Dennison and his wife, and also described to them what had happened. Mr Kalajzic does not have a clear recollection of subsequent events but remembers that a meeting was held. He believes that those present apart from himself were his mother, Mr and Mrs Dennison, Mr Blee, and Michael Challen who was “a member of the Anglican Church”. The next thing he knew was that, not long after the meeting Roy Wenlock resigned. This was done “very quietly”, and Mr Kalajzic believed that it was the meeting involving him which had “instigated Roy leaving town” (t 3391-2).

An Inquiry investigator has spoken to Mr Kalajzic’s mother Patricia Kalajzic and she does not have a good memory of these events. All she can recall is that her son complained about an incident involving an “arm wrestle” with Wenlock, and that she then attended a meeting. She does not have any memory of the details of the meeting or who else was there. However she does remember that Wenlock resigned “almost straight after the meeting or a short time after” (t 3392).

12.8.5 Timothy Blee’s evidence

Timothy Blee was a teacher at Northam Senior High School for all of the school years from 1974 until 1978. When he arrived at Northam he arranged free accommodation at St Christopher’s Hostel in return for being a “housemaster” supervising Hostel students during the evenings.

Later in 1974 Mr Blee moved out of the Hostel into private accommodation following a disagreement with Mr Wenlock about the latter opening his mail. However in February 1976, at Wenlock’s request, he shifted back into the Hostel and resumed his housemaster duties. While at the Hostel he heard rumours about Wenlock wrestling with students which he thought was “a bit odd”. He also heard “jokes and sniggers amongst the students about the wrestling but had no concerns that anything sexual was happening” (t 3409-3411).

Mr Blee is able to recall only a single incident when he attended to a distressed boy with a torn shirt who had complained of an incident involving Wenlock. His “best guess” is that the incident occurred in 1977, but it may have been 1976, and he does not think that it was 1978 (t 3413). His recollection is that he answered a knock on the door of his unit to be confronted by a very angry and distressed boy with a torn t-shirt. It is his recollection that this boy was accompanied by Michael Kalajzic who was “hovering in the background”, and that they had both been involved in the one incident (t 3414-5).

Mr Blee does not remember inviting the boy into his unit or playing some music to try and calm him down. He does not think that he was told of any detail of what had happened but recalls saying that it was a “serious matter and I would send it on to the next line of command”. He also told the distressed boy:

“This could get rough because Roy is a very powerful person but, you know, if you want to proceed, proceed we shall” (t 3415)

Mr Blee then remembers “passing this information on to Wally Dennison and having a discussion with him about it”. The next thing he remembers is that he was asked to go to a meeting which he believes was attended by the School Principal (David Carlson) and Bishop Challen. He does not remember whether anyone else was present at the meeting but does “seem to recall” that Bishop Challen said something along the lines of “it’s all over, he’s been warned before”. He was also told that Wenlock would be leaving the Hostel and he thinks that this happened “pretty quickly” after the meeting (t 3416-3418).

It is important to note that David Carlson did not become the Principal of Northam Senior High School until 1977.

12.8.6 Brett McIver’s evidence

Brett McIver’s father, Ken McIver, was the Member of the Legislative Assembly for Northam from 1969 until 198 and passed away in 1988. Brett McIver attended Northam Senior High School between 1971 and 1976 (which included a repeat year). With regard to the timing of the events described by Mr McIver it is important to note that he left Northam on the day that he completed his schooling in November 1976, and that he never returned to live there again.

During Brett McIver’s time at Northam Senior High School he was friendly with many Hostel students and heard gossip about “bruting sessions” involving the Warden, Roy Wenlock, wrestling with boys. However he was not provided with any details of what happened during these bruting sessions until his final year at school in 1976. It was then that he was visited at home by some Hostel students who told him what had happened to them.

The first Hostel student to do so was “L”, and the second student who visited him was Ted Thompson. Each of them came to his house at night and knocked on his bedroom window. He then let each of them in without disturbing his parents. Brett McIver’s evidence as to what happened (starting with the visit by “L”) is as follows:

“A. Well, he came around one night and tapped on the window and he was pretty upset. He was shaking and, you know; so he came in and we sat down and he told me what had happened to him, that he’d had, you know, had one of these sessions, and he was really upset about it.”

Q. So “L” was the first one?

A. Definitely. Well - he was the first person...that directly said to me what had happened to him, rather than just being general gossip and rumour, okay. He was specific in what he was talking about, you know. It was from the horse’s mouth so to speak.

Q. And roughly how much later was it that Ted Thompson came around, do you think?

A. I'm not sure...But it wouldn't have been long - a matter of days, weeks maybe.

Q. Now, once "L" had told you about that, did you ask him anything? Did you say anything to him?

A. I don't remember exactly what was discussed...

Q. Following that conversation you had with "L", did you then speak to any other students --

A. Yes. Well, subsequent to that night, another night Teddy Thompson came over and did the same thing and tapped on the window and he was telling me how he was upset and what had happened to him. And we discussed what we could do about it, and I said, "I'll tell dad".

Q. You didn't have any of that sort of discussion with "L"?

A. ...I don't really remember, but sort of my recollection is that he wasn't that interested because of the trouble that he could get into taking it formally any further. I might be wrong on that.

Q. ...So you spoke to Ted about raising this with your father and anybody else?

A. Adrian Gamble I also spoke to about that. He was the head boy at the hostel...And when I spoke to my father about it. He asked for me to set up a meeting with Adrian, as the head boy.

Q. ...And how clear is your recollection on that?

A. Not very clear at all because it actually might have been Ted Thompson who had the meeting with dad...in my mind it's always been Adrian, and I just think of it that way, but it could have been Ted, come to think of it.

Q. What was your father's reaction when you told him what they'd had to say?

A. Well, he was pretty taken aback and he just said "Leave it with me and I'll sort something out".

Q. Can you recall whether anybody else was involved in this that was in authority?

A. From my memory, he set up a meeting with himself and Adrian and the minister...the Anglican minister at the time who was...the head of the board, chair of the board, whatever, of the hostel.

Q. And you didn't know what happened as an outcome of that meeting because your dad didn't mention it to you?

A. No..." (t 3383-6)

Brett McIver is certain that these events occurred in 1976 because of the fact that he left Northam for good in November 1976. He also thinks that it was during his last spring in Northam "perhaps around September" that he was visited by "L" and Ted Thompson and when the meeting with his father was arranged.

Mr McIver also (wrongly) believes that it was in 1976 that Wenlock resigned as Warden of the Hostel, but he concedes that he may be mistaken about that because he visited Northam "quite a bit" during 1977 and kept up-to-date with local gossip (t 3387-8).

12.8.7 Adrian Gamble's evidence

Adrian Gamble boarded at St Christopher's Hostel between 1971 and 1976. In 1975 he became the Head Boy of both the Hostel and the Northam Senior High School.

During his third year at the Hostel Wenlock would sometimes invite him to have a "wrestle" with him. Wenlock required him to wear a pair of swim trunks "so my clothes would not get ripped". Wenlock would also wear swim trunks and they would wrestle on the floor of his lounge. Although at the time Mr Gamble did not have it in his mind that any sexual contact was taking place, he realised years later that it may have been done for the purpose of Wenlock gaining sexual satisfaction. When Mr Gamble became Head Boy his relationship with Wenlock changed and the "wrestling" stopped (t 3323).

Mr Gamble remembers that during his last year at the Hostel in 1976 there was an incident involving a student who had his shirt ripped while leaving Wenlock's flat one night. He does not recall the student's name.

Following that incident there was an "informal discussion" between some of the prefects about the bruting sessions and "how, if shirts were being ripped, it would need to stop". Mr Gamble was also aware at that time that "L", Ted Thompson and perhaps another student had spoken with Brett McIver who was the son of Ken McIver the local Member of Parliament.

Mr Gamble did not himself attend any meeting but he understood at the time that a meeting had taken place with Mr McIver and the Anglican Minister who was the Chairman of the Hostel Board. It was also his understanding that the Anglican Minister had then spoken to Roy Wenlock and told him that he was to stop having students in his flat unsupervised. These events were common knowledge among the prefects at the Hostel but perhaps not amongst Hostel students generally (t 3325).

After this happened Mr Gamble does not recall Wenlock ever inviting students to his flat. At the end of 1976 Mr Gamble left the Hostel and went to the USA for a 12 month Rotary exchange program. It is his evidence that while overseas during the following year:

"I heard that there had been another problem with Wenlock having a student in his flat and the student made a complaint. I believe that Wenlock was asked to move on as he had reneged on his arrangement to not have students in his flat. I heard that he left the Hostel" (t 3325-6)

12.8.8 Walter Dennison's evidence

Walter Dennison and his wife Margaret emigrated to Western Australia from England in 1975 when they were both aged in their early 50s. Approximately nine months after their arrival in Perth they obtained employment as the Deputy Warden and Matron respectively at the St Christopher's Hostel in Northam. They took up those positions in the latter part of 1975.

Mr and Mrs Dennison had a positive working relationship with Mr Wenlock but did not socialise with him after hours. They were completely unaware of Wenlock's behaviour and ill-treatment of boarders until an incident which happened towards the end of 1976. Mr Dennison does not recall the date or month of that incident but it occurred late one evening between 9 and 10pm. It is his evidence that:

"Tim Blee, a teacher at Northam High School and housemaster at the hostel, came to our door in company with a student.

I don't remember the lad's name, but I recall he had been out for an evening meal with his parents and was under instruction from Wenlock to report to him when he returned to the hostel from his outing.

I clearly remember this boy was a small framed but good looking boy. He was wearing a white shirt that was torn from the collar down one side.

Margaret spoke with this boy and gave him some comfort and reassurance. He seemed very frightened and somewhat upset.

I spoke with Tim Blee who told me that the boy had gone to his flat shortly before Blee brought him to our flat.

Our flats were right next door to one another. The boy told Blee that he reported to Wenlock's flat to let him know he was back at the hostel after his outing with his parents.

When he spoke with Wenlock...he was invited into his flat...

The boy refused to go into the flat and told Wenlock he was going to go to his dormitory.

As he turned to walk away, Wenlock grabbed him by his shirt and a struggle of some sort occurred. The boy was of the impression Wenlock was trying to force him inside the flat.

The boy broke free and ran straight to Tim Blee's flat to tell him what Wenlock had done.

I didn't speak directly with the boy and I didn't press Blee for further details.

I was satisfied that something significantly wrong had occurred for the boy to turn up to our flat with a torn shirt and in such a frightened state.

The next morning Tim Blee and I alerted Fred Killick, who was the Secretary of the St Christopher's Hostel board, of the incident involving the boy and Wenlock.

Killick was also the Mayor of Northam. He held the position of Mayor for a great number of years.

Killick advised us he would contact Bishop Challen and alert him of the matter. Challen was the Chairman of the St Christopher's Hostel board at that time.

Within a few days of this incident, Bishop Challen sacked Wenlock as the Warden of the hostel." (t 3430-2)

It is important to note that Mr Dennison is clearly wrong in his recollection that Bishop Challen "sacked" Wenlock at the end of 1976, as Wenlock's resignation was in December 1977. It is also relevant that in his written statement Mr Dennison mistakenly asserted that he and his wife emigrated to Western Australia in 1976 when in fact the minutes of Hostel Board meetings show that they commenced their duties as Deputy Warden and Matron during 1975.

12.8.9 Claude Riordan's evidence

Claude Riordan was the Principal of Northam Senior High School during the school years of 1975 and 1976. He recalls that towards the end of his final year at Northam his two sons (who were students at his school) spoke to him about Roy Wenlock. They told him that they had heard stories that Roy Wenlock was inviting boys to his flat and making them wrestle with him in underpants. His sons also said that this would happen on the boys' birthdays. It is Mr Riordan's evidence that after being told this:

"I contacted Bishop Challen who was the head of the hostel board. We had a meeting in my office and I told him about what my sons had said.

I explained that there might be something of concern but I did not have any other evidence other than the stories my sons had told me about.

I did not think it was for me to look into these concerns but if it had been, I would have gone to the Police. I am not certain if the Police would have done anything as I did not have any evidence other than what my sons told me.

Bishop Challen told me that "we are aware of the situation and we have it in hand".
(t 3356)

Not long afterwards Mr Riordan was diagnosed with cancer and had to leave the school. When he left, Roy Wenlock was still Warden at the Hostel, but he later heard that Roy Wenlock had been transferred to work in Perth.

12.8.10 Gary Bradley's evidence

In 1976 Gary Bradley was in his final year at Northam Senior High School (but was not a boarder at St Christopher's Hostel). His father was an engineer with Westrail and also a volunteer ambulance officer.

As an ambulance officer Mr Bradley had been provided with a special "open phone" which was separate to the normal home phone line. The open phone was a telephone system which allowed simultaneous communication between the houses of a number of key people in the event of an emergency. Accordingly, everyone connected to the open phone line could speak to each other at the one time. This also meant that it was possible to eavesdrop on anyone using the open phone line for a normal telephone call.

Gary Bradley recalls a particular occasion just before dinner one day in 1976 when his father (who has since passed away) told him of a conversation he had overheard on the open phone earlier that day.

His father told him that after hearing the open phone "dinging" (which was the noise it made when someone was using the line) he had picked up his telephone to listen in. Mr Bradley's father went on to say that he had overheard the local church minister talking to a church representative in Perth about "how Wenlock was dealing with the boys and that he needed to be moved from Northam" (t 3505).

Gary Bradley did not remain in Northam after completing his schooling in 1976. He went to Perth for a short time before moving to Karratha where he became employed by MMA

Airlines. He recollects that when he left Northam in 1976 Wenlock was still the Warden at St Christopher's Hostel.

12.8.11 Jennifer Leggoe's evidence

Jennifer Leggoe is a former school teacher and retired primary school principal. She grew up in Northam where her father was an earth moving contractor. Her father (who passed away in 1992) was a good friend of Fred Killick who was a long-term member of the St Christopher's Hostel Board as well as the Mayor of Northam. Mr Killick (who is also now deceased) was a regular visitor to the family home and Mrs Leggoe was accustomed to calling him "Uncle Fred".

Mrs Leggoe left Northam for good when she completed her schooling in 1958. However she frequently returned to Northam to see her parents, and during the 1980s she had a regular routine of visiting her parents' home on Sundays. On most of those Sundays, "Uncle Fred" was also a guest at the family home.

It would seem that Mrs Leggoe's parents enjoyed traditional arrangements within their household which are far less common in present times. Each Sunday morning her father and Uncle Fred would go off to the "session" at the local hotel while her mother and herself stayed home to cook the roast dinner and await their return. When the men eventually arrived back home the roast would be served and they would all sit down around the dining table for the meal.

It is Mrs Leggoe's evidence that she remembers one particular Sunday during the 1980s when her father and Uncle Fred returned from the Hotel while in the middle of a conversation about Roy Wenlock. Her father at that time was a member of the Northam Rotary Club, and the subject of the conversation was that Roy Wenlock had been the guest speaker at a Rotary meeting earlier that week to talk about cricket at the WACA. Their conversation continued at the dining table and it was clear from what her father said that he had walked out of the Rotary meeting when Wenlock had arrived. The reason why he had done that was the subject matter of the discussion. In that regard:

"They were talking about the fact that Roy Wenlock had been dismissed from St Christopher's House for being...too familiar with the boys" (t 3440)

There was no doubt in Mrs Leggoe's mind that the expression "too familiar" as used by the men was code for interference of a sexual nature by Wenlock with the boys. She was amazed to hear such a discussion at the dinner table because her father normally "didn't speak about these sorts of things in front of women" (t 3439). It also happened to be a subject on which Mrs Leggoe held very strong views because of her recent experiences as a primary school teacher with children who had been sexually abused (t 3445).

For this reason Mrs Leggoe was "not shy" in putting her own thoughts forward and there was a vigorous discussion mainly between her father and herself while Mr Killick listened quietly (t 3439-3441). In the course of that discussion her father and Mr Killick both said that "they couldn't leave (Wenlock) there because of the way he was carrying on with the boys". The reason that Mr Killick gave for the decision to have Wenlock dismissed was:

"...that for the sake of St Christopher's, it was better to just get him out of the way, make sure he couldn't do it anymore, and that would sort the thing out." (t 3441)

The main point that Mrs Leggoe made in response to this assertion was that it had not been enough simply to get him out of the way because:

“These people do it habitually and they don’t stop, and if you don’t tell somebody about it, this man will go on doing what he’s doing.” (t 3440)

Mrs Leggoe also told the men that Wenlock managing the junior cricket at the WACA seemed to be a “perfect scenario”. She said to her father and Mr Killick: “what do you think he’s doing at the WACA now?”. It is her evidence that she “just wanted them to know that men who interfere with little boys don’t stop doing it” (t 3443).

Mr Killick responded to Mrs Leggoe’s argument with the statement that “it had been done and dealt with as far as he was concerned”. He also said that for the sake of the Hostel he had not wanted “to bring a bad reputation down on St Christopher’s” and that to have dealt with it quietly had been “the best way to go” (t 3442-3).

12.9 Bishop Challen’s evidence

At the time of becoming Chairman of the St Christopher’s Board the then Archdeacon Challen did not know Roy Wenlock but was well aware of his reputation. In that regard St Christopher’s was considered to be a very well-run hostel and it was held up as a good example to other Anglican Hostels (t 3466).

When Bishop Challen visited St Christopher’s Hostel his first impressions confirmed what he had heard about Roy Wenlock. There was a good routine at the Hostel, the boarders had “interesting and satisfying weekends”, and apart from Wenlock’s use of the cane, he appeared to be doing everything that he would have wanted in a Warden (t 3467-9).

It is Bishop Challen’s evidence that it was not until 1977 that he first became aware of Wenlock’s “inappropriate wrestling” with boys. He learned of this as a result of Ken McIver MLA contacting him to request that he meet the parents of a boy who had made a complaint. The complaint was that Wenlock had wrestled with the boy while the boy was in his underpants (t 3471). Bishop Challen agreed to the meeting which took place in 1977 and not 1976. The meeting was held at Mr McIver’s business office and not at his home. As to what Bishop Challen was then told, it is his evidence that:

“It was always in terms of wrestling, and I did ask a specific question as to whether there was any sexual activity and, of course, it is a bit difficult for the parents to answer that but, as far as they were aware, it all depends upon what the boy - did someone shower with him. There had not been any, but as far as I was concerned, to invite boys into the lounge, granted often in pairs, but to ask them to strip down to their underpants and for him to be in just a pair of black shorts only and to wrestle, and that's how it was put to me...”(t 3473)

It is also Bishop Challen’s evidence that the parents of the boy made it very clear that they did not want the matter to become public or for it to be reported to the police. Bishop Challen felt bound by this request for confidentiality, and this had an impact on his subsequent actions including his decision not to report the matter to the Hostel Board (t 3474).

Bishop Challen considered that as Chairman of the Board he had the authority to dismiss Wenlock but decided that he should first consult with someone more senior in the Church. As his Archbishop was then overseas he raised the matter with the Bishop temporarily in charge of the Diocese and said "I want to dismiss him". The Bishop advised that he should "sleep on it for 24 hours". After doing so, Bishop Challen remained of the view that he should confront Wenlock and bring about his removal from the Hostel (t 3474).

Bishop Challen arranged for a former Board member (Connie Smith - who is now deceased) to accompany him to the confrontation with Wenlock. He did this because Connie Smith was well known and respected in the Northam region and he wanted her to be present to witness what happened. He confronted Wenlock about three working days after the meeting at Mr McIver's office. It is Bishop Challen's evidence that:

"I just simply asked him "Have you been behaving like this: Having boys in your room, wrestling with them, wrestling with them with only your shorts on and asking them to leave (on) only their underpants or their togs?". He said "Yes". I said "Well, here's a piece of paper. You could write your letter of resignation". And...I either gave him 24 hours or 48 hours to get out but I immediately appointed the deputy warden, Walter Dennison, as the acting warden. I then informed the board at its next meeting - I didn't call a special meeting, I just informed them what had taken place and gave them reasons and asked them to keep it all confidential because of the parents' and boys' wishes and subsequently I informed the Authority informally at one of its meetings." (t 3474)

The minutes of the Hostel Board meeting on 12 December 1977 recorded that Wenlock had resigned on 2 December 1977 and that "the action of the Special Committee is endorsed". The resignation was to take effect on 16 December 1977 and Wenlock was to be paid until 2 January 1978.

It is Bishop Challen's evidence that following that Board meeting he was approached by two Board members (including Venerable Apthorp) who advised him that they had previously heard rumours of "misbehaviour" by Wenlock. They also said words to the effect that "it had been going on for some time". Bishop Challen was very angry to hear this because he believed that the Board should have investigated these rumours to see if there was any substance to them (t 3475-6).

As to Bishop Challen's reasons for allowing Wenlock to resign rather than be dismissed it is his evidence that "I thought it was a nice way of doing it" (t 3479) and he "did not want to prejudice unnecessarily his employment future" (t 3538). In that regard:

"I wasn't protecting the Hostel, really. I thought it was a better thing for him. At least if he goes to another job, he doesn't have to say he's dismissed" (t 3479)

Furthermore Bishop Challen's "dominating motivation" in pursuing the matter in the way that he did was to respect the wishes of the victim's family that it not be publicised nor any report be made to the police (t 3537).

Bishop Challen is adamant that he was not made aware of any complaint against Wenlock during 1976, and that he did not give him any warning about his conduct in that year (t 3492, 3514). In this regard, he agrees that the only appropriate action when he first found out about Wenlock's behaviour was to have the Warden removed (t 3513).

Bishop Challen was not concerned at that time (nor is he now) that the resignation (as distinct from a dismissal) may have made it easier for Wenlock to move to another position which involved contact with teenage boys:

“...I make the assumption that a potential employer would ask for the applicant's work history, in particular, the last appointment. And then I would expect the employer, if he or she had concerns, would contact that employer and, in effect, seek a reference, which nobody has ever contacted me about Mr Wenlock's employment after the hostel. I would have gladly given them a report if it was to do with...young people.

Q. What would that report have been?

A. That he has this disposition of wrestling with young boys in a semi-naked condition.

Q. You would have done that?

A. Yes.” (t 3494)

Bishop Challen is similarly unconcerned that in his 1978 report to the Synod of the Archdiocese he referred to Wenlock's departure in the following terms:

“In December 1977 the board and St Christopher's boys bid farewell to Mr R Wenlock, who had served the hostel with enthusiasm, determination and dedication for the past 13 years. His imaginative administration brought numerous improvements to St Christopher's. We wish him well in his new field of work.” (t 3495)

12.10 Wenlock's subsequent employment and activities

After Wenlock departed from Northam he continued to be actively involved in the Anglican Church. He became the Rector's Warden for the Floreat Parish (t 3756).

In 1979 the West Australian Cricket Association (WACA) created a new position of Development Officer which was filled by Wenlock. In this position he was required to engage in various cricketing activities with young teenagers, and he would sometimes invite individual boys back to his home (t 3290, 3754). There is ample evidence to show that Wenlock would engage in grooming behaviour with these boys (t 3755) and then encourage them to engage in “wrestling” (t 3755, 3760).

The reputation that Wenlock acquired as a result of these activities was such that young cricketers would warn their friends: “whatever you do, don't go to his house” (t 3759).

12.11 Events during 2002

During early 2002, Stephen Galbraith was a Perth businessman who was actively involved in the Anglican Church. He was conducting research for a paper that he was writing on “the contribution of bishops within the Anglican Church”. For this reason he had discussions with many clergy of all ranks within the Church, and on 12 March 2002 he met with Bishop Challen.

In the course of this discussion Bishop Challen revealed to Mr Galbraith that he had counselled members of the clergy of the Church who had sexually offended against people.

Mr Galbraith did not ask for any further details about these matters but expressed the strong view to Bishop Challen that he “could not collude with him on this issue and he should tell the Archbishop”.

Mr Galbraith later wrote to the Archbishop of Perth seeking action to ensure that the Church did not continue to deal with these types of matters “in house”. When the Archbishop confirmed that this was occurring in the Church Mr Galbraith (on legal advice) also wrote to the Commissioner of Police to express his concerns. His main objective in doing so was:

“To ensure the Church introduces protocols that set guidelines for the clergy within the Church to deal with allegations of a sexual nature with consistency and allow police involvement to investigate the allegations.” (written statement dated 14 May 2002)

The police then conducted an investigation to ascertain whether there was evidence of any offence having been committed as a result of the failure of the Church to bring complaints of sexual abuse to the notice of the civil authorities. As part of this investigation two detectives interviewed Bishop Challen at his home on 13 August 2002. In the course of that interview one of the detectives made the following note of what Bishop Challen then said concerning the complaint that had been made against Wenlock:

“Michael Challen is aware of only one allegation involving children. It was prior to 1978 when he was in the position of Archdeacon country. His role involved keeping an eye on the hostels run by the Anglican Church for secondary schools in Esperance, Merredin, Moora and two in Northam; St Christophers the boys hostel and Addison House the girls hostel. Michael Challen was the chair of the board for these two hostels. Michael Challen was approached by the local member for Northam. The local member (whose name Michael Challen cannot recall) called a meeting at his home address which Michael Challen attended with the deputy chair. The local member informed Michael Challen that the warden of the St Christophers hostel Roy WENLOCK has his own flat on hostel premises, would invite a couple of the boys over to watch telly and would wrestle (playfully) with the boys and would handle (fondle) the boys. Some of the boys found the behaviour unacceptable. Michael Challen called a special meeting of the committee and it was agreed that Challen should interview WENLOCK in the presence of the deputy chair. Michael CHALLEN confronted the warden who admitted this behaviour and dismissed him from his position. No children or parents ever came forward and Michael Challen never spoke to or discovered the identity of the children.”

The accuracy of this note has been verified in a formal statement by Detective Sergeant Logan, and it is self-evident that this earlier account by Bishop Challen is significantly different from his evidence to the Inquiry. (I will refer to these differences shortly). It is also significant that the description of the particular complaint by “the local Member” does not appear to bear any relationship to the conduct as alleged by any of “L”, William Thompson, or Michael Kalajzic.

12.12 Findings

In determining the facts of what happened in 1976 and 1977 it is appropriate to start with those findings which are overwhelmingly obvious and can most readily be made. Perhaps the best starting point is the evidence of Claude Riordan who was the Principal of Northam Senior High School up until the end of 1976. Mr Riordan would have no possible motive to be untruthful and it is highly unlikely that he would be mistaken about the significant event which he distinctly remembers.

I accept Mr Riordan's evidence that towards the end of 1976 and shortly prior to his unexpected departure from Northam his sons told him stories about Wenlock making Hostel boys wrestle with him in their underpants. As School Principal he took the very responsible course of passing that information on to the Chairman of the Hostel Board, the then Archdeacon Challen. Bishop Challen's response to what he was told by Mr Riordan was that "we are aware of the situation and we have it in hand".

The fact that Bishop Challen was then aware of complaints of that nature is corroborated by the evidence from each of "L", William Thompson, and Brett McIver. Further corroboration comes from Adrian Gamble's description of the conversations amongst the Hostel prefects towards the end of his last year at school. There is also the evidence from Gary Bradley of what his father told him about a conversation which had been overheard on the open telephone line during his last year at school.

Brett McIver and Gary Bradley are each very certain that the events they described occurred in 1976 because they left their parents' homes at the end of that year and never lived in Northam again. Adrian Gamble is similarly certain that the conversations amongst Hostel prefects took place in 1976 because that was his last year at school and he was in the United States during 1977.

Accordingly, I have no hesitation accepting the evidence of all of these witnesses that it was in 1976 that the events they described occurred. It follows that I am also satisfied that it was in that year that "L" and William Thompson separately visited Brett McIver to complain about what Wenlock had done to them. I consider that Timothy Blee's recollections are not entirely reliable because he has confused two separate events (involving "L" and Michael Kalajzic) and merged them together. Similarly, Mr Dennison is mistaken in his recollection that it was the incident involving "L" which was the reason why Wenlock left the Hostel.

In my view, it is also obvious that Bishop Challen's evidence of the relevant events is unreliable. In this regard, all that needs be done is to contrast the version of events that Bishop Challen gave to the detectives in 2002 with his evidence to this Inquiry. Presumably Bishop Challen had a fresher recollection in 2002, and it is significant that at that time he made the following assertions:

1. That the meeting with Ken McIver MLA was at Mr McIver's home address (and not at Mr McIver's office as stated in evidence).
2. That Bishop Challen attended the meeting with the Deputy Chair of "the Committee" (i.e. the Hostel Board). That occurred after the Board first met and agreed that Bishop Challen should interview Wenlock in the presence of the Deputy Chair. (The fact that the Deputy Chair Connie Smith resigned from the Hostel Board at the end of

1976 is further confirmation that the confrontation with Wenlock could not have occurred in 1977).

3. After confronting Wenlock Bishop Challen “dismissed” Wenlock rather than requesting his resignation. (However in fairness, the word “dismissed” could perhaps encompass either of these actions).
4. The complaint came from Mr McIver (and not from any student or parent).
5. No children or parents ever came forward to complain, and Bishop Challen never spoke to or discovered the identity of the children.

This last assertion cannot be reconciled with Bishop Challen’s evidence that when responding in the way he did to the complaint against Wenlock his “predominant motivation” was to respect the wishes of the parents of the child involved.

Having regard to the evidence as a whole I am satisfied that Bishop Challen first became aware of complaints about Wenlock’s behaviour in 1976 when he was contacted by Mr Ken McIver MLA. Bishop Challen then attended a meeting at Mr McIver’s house which was the meeting that William Thompson has referred to. It is possible that another student was also present, but the evidence does not enable me to determine who that student was.

I am satisfied that the outcome of that meeting was substantially along the lines that Adrian Gamble remembers being discussed amongst the Hostel prefects in late 1976. Essentially the decision was made to give Wenlock the opportunity to mend his ways and he was warned that he should not invite boys back to his flat. That warning was given by Bishop Challen, and it is possible that he took that step in consultation with Connie Smith who was then a member of the Hostel Board.

Wenlock failed to heed the warning that he was given, and as a result there was the incident involving Michael Kalajzic in late 1977. That incident came to the attention of Mr Dennison who notified Fred Killick, the Secretary of the Hostel Board. Given the statements that Mr Killick later made to Mrs Leggoe during the 1980s I am satisfied that he participated in the decision that was then made to request Wenlock’s resignation rather than to dismiss him. (It may well be that Killick was a member of the “Special Committee” referred to in the Board minutes of 12 December 1977).

Irrespective of whether it was the Board, the Special Committee or Bishop Challen alone who made that decision I am satisfied that the primary motivation in handling the matter in that way was to protect the reputation of the Hostel. I base that conclusion on Mrs Leggoe’s evidence of what Mr Killick told her, namely: “that for the sake of St Christopher’s it was better to just get him out of the way” and to “make sure he couldn’t do it anymore”. (Clearly the “it” that Mr Killick was referring to was his concern that Wenlock would otherwise continue to molest the students at St Christopher’s Hostel). Mr Killick also told Mrs Leggoe that for the sake of the Hostel he had not wanted to “bring down a bad reputation on St Christopher’s”.

Nevertheless, I accept Bishop Challen’s evidence that he was also motivated to make it easier for Wenlock to find future employment. He wanted to ensure that when Wenlock “goes to another job, he doesn’t have to say he is dismissed”.

Bishop Challen has conceded during evidence that the only appropriate action when he first found out about Wenlock’s “wrestling” behaviour was to remove him as Warden. By failing

to take that action in 1976 the Bishop not only failed to act appropriately but also failed in his duty of care towards the Hostel students over the intervening period until Wenlock was removed.

Wenlock's behaviour again came to notice in 1977 and the question arises whether Bishop Challen and Fred Killick acted inappropriately by allowing him to resign rather than having him dismissed. By allowing him to leave "quietly" they gave a higher priority to the reputation of the Hostel than to any concern for the future wellbeing of teenage boys with whom Wenlock might come into contact. Furthermore Bishop Challen increased the likelihood that Wenlock would be able to repeat his behaviour by providing the 1978 Synod with a misleading report as to the circumstances of his departure from St Christopher's. Even by the standards of those times, these decisions by the then Archdeacon Challen revealed a questionable sense of moral priorities for a clergyman. In my view the community could reasonably have expected higher standards of care and concern for the wellbeing of young people generally.

However these moral issues do not fall within the terms of reference of this Inquiry. The question to be determined is whether in 1975 Bishop Challen was obliged as a "public official" in his capacity as Chairman of the St Christopher's Hostel Board to have regard to the wellbeing of the wider public when deciding how to deal with Warden Wenlock. A significant factor in the consideration of that issue is that Wenlock had not denied the allegation against him but had admitted his misconduct with a student.

Bishop Challen's primary responsibility was for the wellbeing of the St Christopher's Hostel students, but he was also in the position to adopt a course of conduct which would have reduced the prospects of Roy Wenlock being able to misconduct himself in a similar fashion in the future. If he had dismissed Wenlock rather than allowing him to resign, this would have increased the prospects that a future employer would be put on notice that something untoward had occurred. Likewise, Bishop Challen could have easily avoided the possibility of a future employer being misled by his favourable references to Wenlock in his report to the Synod.

In my view, any public official who exercises statutory responsibilities is under an obligation to fulfil those responsibilities in a way which avoids unnecessary harm to members of the public generally. It is also my view that Bishop Challen failed to have regard to that obligation when he allowed Wenlock to resign rather than be dismissed and when he later gave him what was effectively a glowing reference.

12.13 Conclusions

- 1 In 1976 and 1977 Bishop Challen (as the then Archdeacon Challen) was a "public official" within the meaning of the PSM Act in his capacity as Chairman of the Board of St Christopher's Hostel at Northam.
- 2 In late 1976 at a meeting at the house of Ken McIver MLA Bishop Challen heard allegations from one or more students of misconduct by the Hostel Warden which raised reasonable grounds for a belief that the misconduct was sexual in nature.
- 3 Bishop Challen failed to respond appropriately to those allegations in that he:

- 3.1 Merely gave the Warden Roy Wenlock a warning and did not dismiss him or remove him from the Hostel.
- 3.2 Did not pay sufficient regard to the future wellbeing of Hostel students who would remain under Wenlock's supervision.
- 4 In December 1977 Bishop Challen was again informed of misconduct by the Warden which was similar in nature to that which had been reported to him before and which was admitted by Wenlock. On this occasion Bishop Challen did have regard to the wellbeing of St Christopher's students by requiring Wenlock to resign from his position and to leave the Hostel.
- 5 Nevertheless, in his position as a "public official", Bishop Challen failed in his responsibilities to the wider public by allowing Wenlock to resign rather than be dismissed, and by describing him in glowing terms in a report to the Anglican Synod. By these actions Bishop Challen increased the prospects that Wenlock would be able to sexually misconduct himself with young males in a similar fashion again.

13. The handling of other episodes of sexual misconduct

13.1 The procedures for dealing with sexual complaints against hostel staff members

The early records of the Country High School Hostels Authority show that prior to 1975 there had been a number of instances of staff members at hostels being dismissed or removed from their employment for inappropriate conduct. The details of those instances of inappropriate conduct are not available, but it can be assumed that at least some of them involved allegations of sexual misconduct against students.

It is also clear that by 1975 the then Chairman of the Authority (Mr Ernest Lange) had put in place a system to ensure that any former staff member who was dismissed for inappropriate conduct would not be reemployed at any hostel. This was achieved by means of a "forbidden list" to which the names of such staff members were added from time to time. An example of this can be found in the minutes of an Authority meeting on 24 July 1975 (Exhibit 137) which referred to a list of seven previous hostel employees who should not be employed in school hostels because of events during their employment. The Secretary was authorised to advise the Department of Community Welfare of these names so that they could be added to the "forbidden" list kept by that Department. This meeting of the Authority also restated their policy that all "administrative appointments" at school hostels were to be referred to the Secretary prior to appointment.¹

The evidence also shows that this policy of vetting all new appointments of staff to hostels not only existed in name but was actively enforced. In that regard newsletters and reports circulated by the Student's Hostels Association to its members drew attention to the following:

*"It was generally agreed that hostels must inform the Association and the Authority of the names of any staff dismissed as being undesirable for work among teenagers. No reasons were to be committed to the Association's written records but names so listed could always be referred back to the hostel supplying the name if this was necessary."*²

*"The Secretary/Treasurer has, in answer to the circular sent out last term, received the names of two persons whose past record could be referred to another hostel. These names are not necessarily 'black-listed'. However, hostels are reminded that the Authority itself possesses a 'black list' and if there are any doubts about any 'unknown' applicants, reference can be made to the Authority."*³

¹ Exhibit 137,p.2

² Report of the Conference and Annual General Meeting of the Student Hostels' Association 25-26 January, 1975

³ Student Hostels' Association Newsletter: August, 1975

“APPOINTING STAFF: Hostel Wardens and Committees are advised to check with the Authority and/or the Association before appointing new staff as there are persons (one recently seen about the environs of a couple of hostels) who should not be re-employed by certain hostels caring for teenage students.”⁴

Furthermore this system of vetting staff appointments embraced not only the nine country hostels operated by the Authority but also the metropolitan hostels (such as Swanleigh) which had representatives in the Students’ Hostel Association.

The Inquiry has made a diligent search through old government files to find any record of the “forbidden list” and has also questioned former public servants about the matter. Although these efforts have not borne fruit, Colin Philpott has confirmed that when he took over the Chairmanship of the Authority in 1976 such a list did exist. However, it is Mr Philpott’s belief that the list was kept by the Authority itself rather than by any other Department (t 3883, 3889). It is also Mr Philpott’s evidence that the Authority’s Administrative Officer (Mr Peter Bachelard-Lammas) was responsible for maintaining the list and ensuring that inappropriate staff were not engaged at any hostel (t 3884-5).

It is therefore dismaying and disappointing that Mr Lammas appears to have had no knowledge of the list’s existence:

“Q. Regarding that female supervisor from Northam, and the male supervisor in Port Hedland. Were you aware whether either or both of those names were placed on what was called a list of those people that the Authority should not employ to work in hostels?

A. No, I was not aware.

Q. Are you aware of a list that had been prepared --

A. No, I --

Q. -- that had --

A. I can’t recall that.

Q. Okay. You’ve got no recollection of that?

A. No.

Q. And that it was also with another department that --

A. No.” (t 2795)

In these circumstances the only reasonable inference is that the “forbidden list” (which may well have been the State’s first functioning if somewhat rudimentary paedophile register) had fallen into disuse by the time that Mr Lammas joined the Authority in 1982.

At all material times the Authority was in the position to utilise the resources of the Education Department to carry out any necessary investigation into complaints against staff members (t 2821). However as there was only one instance known to the Inquiry when that ever occurred it is important to examine the various ways in which the Authority did deal with allegations of sexual misconduct or otherwise inappropriate behaviour by hostel staff members during the period from 1975 until 1990.

⁴ Student Hostels’ Association Newsletter: November, 1977

13.2 1985 – Hardie House South Hedland

The first such incident of sexual misconduct known to the Inquiry occurred at the hostel known as Hardie House in South Hedland. This hostel was unique at that time because it did not have a functioning Board of management and was administered directly by the Authority (t 2765). The hostel had a female Warden (Joy Fisher), a female Senior Supervisor (Pamela Mason), and two male Supervisors (one of whom I shall refer to as “D”).

In 1985 one of the male boarders at Hardie House was 14 year old “P” whose parents lived on Koolan Island. One weekend towards the middle of the year “P” was asleep in his bed and was awoken by “D” tapping him on the shoulder. “D” then invited “P” to his unit for a “smoke”. “D” was the masseur for the hostel football team, and after arriving at the unit he suggested to “P” that he should give him a massage. In the course of what followed “D” sexually molested “P” and performed oral sex on him. “D” also tried to penetrate “P” anally, and had him masturbate him (t 3850).

“P” did not wish to participate in these activities but when he had tried to get out of the room “D” stopped him from leaving. As all other students had gone home for the weekend, “P” was the only child in the hostel. For this reason he did not try to yell or call out for help (t 3850).

On the following day (a Sunday) “P” complained about what had happened to some other students who had returned to the hostel. They then accompanied him to see the female Supervisor Ms Mason who was the most senior staff member present. (The Warden Joy Fisher was away on a tour of the Pilbara). “P” made a complaint to Ms Mason and to her credit she immediately called in the police. The police interviewed “P” and took away the underwear he had worn at the time of the incident with “D” for forensic examination (t3853, 2768).

Ms Mason also telephoned “P’s” mother “K” and informed her of what had happened. It is “K’s” evidence that she was shocked to learn that her son had been molested and said to Ms Mason that she would immediately come to Port Hedland to see him. However, Mrs Mason reassured her that it wasn’t necessary for her to do that because the detectives were handling the matter. During another telephone conversation with a detective soon afterwards, “K” was told that she “was not to come down because he had it under control” (t 3853). According to “K” she was crying on the phone and wanted to go to Port Hedland but was told “no, we don’t want you down here” (t 3853).

For this reason, “K” contacted her daughter and son-in-law who were about to fly from Perth to Koolan Island via Port Hedland. She arranged for them to stop at the hostel, pick up her son, and bring him home to her (t 3853).

Importantly (in light of what subsequently transpired), it is “K’s” evidence that she at no time told any hostel staff or the detective that she disbelieved “P’s” complaint or said anything to the effect that “he would make something like this up” (t 3854).

It is Ms Mason’s evidence that when “P” complained to her she thought the matter was sufficiently serious for her to instruct “D” to immediately leave the hostel (which he did). She then telephoned the Warden and the Chair of the local Board to inform them what had happened. As already noted Ms Mason also contacted the police, as well as “P’s” mother.

Ms Mason agrees that she told “P’s” mother that it was not necessary for her to come to the Hostel. She said this because she knew that “K” lived far away, and that her son was no longer at risk because she had removed the male Supervisor “D” from the hostel (t 4026).

Ms Mason does not recall “K” saying that “she thought her son was lying and making up the allegation, nor that the boy had done this sort of thing before when he wanted to get his way” (t 4027).

Ms Mason did not raise the matter with anyone at the Authority, and did not speak to Mr Lammas about the incident. It is her evidence that when the Ms Fisher returned to the hostel a day or so later “it is highly probable that we did speak about it” (t 4027). Ms Fisher is now deceased, but it is Ms Mason’s evidence that:

“Joy Fisher was an extremely good Warden. She was very honest and straight by the book...I do not believe that Joy would have told any person that the boy’s mother told her that her son was lying about what had happened to him” (t 4025,4027)

However, it is Mr Lammas’ evidence that he particularly remembers the Hardie House incident because “it turned out to be a false alarm, a bit of an embarrassment” (t 2764). The reason for this was that his initial assumption had been that the boy was telling the truth, but it later turned out that he had made a false complaint because he wanted to get back home (t 2770).

It is Mr Lammas’ evidence that when he was first informed of the incident by telephone he was told that the police were already involved (t 2764-5). Nevertheless he decided that he should fly there himself “just in case it got ugly” and was authorised by the Chairman of the Authority Mr Philpott to do so (t 2765). When Mr Lammas arrived at the hostel the young male Supervisor “D” had been suspended. However, he interviewed “D” who denied any “association with the student”. He also spoke to the police who advised him “a couple of days” later that there was no case to answer (t 2768).

Notwithstanding this outcome Mr Lammas “didn’t like the idea of the young man “D” staying around and thought it might be best if he got off site” (t 2768). Mr Lammas discovered that at the time of the alleged incident “D” had been intoxicated which was a “dismissible offence” (t 2768) but he “couldn’t actually dismiss him or get him to actually resign without being sure that the police didn’t want him for further questioning” (t 2769). Accordingly the matter was resolved by “paying him out” and flying “D” back to Perth (t 2769).

It is Mr Lammas’ evidence that he later had cause to regret taking this action when he was informed that “P” had made a false complaint. He was told this by the Ms Fisher who telephoned him and said:

“I have just had a conversation with the mother and she’s informed me he’s done this before to get back home.” (t 2770)

Mr Lammas accepted the word of the Warden that she had been told by the mother that “P” was prone to make false complaints in order to get back home. In that regard, Mr Lammas believed Ms Fisher to be a very reliable individual (t 2770).

There is no doubt that what Mr Lammas claims to have been told by Ms Fisher was factually incorrect. I have no hesitation accepting the evidence of “P” that he was sexually assaulted by “D”. I also accept “K’s” evidence that she was very concerned for the welfare of her son when she learned of what had happened to him, that she had never known him to make

false complaints, and that she did not tell Ms Mason or anyone else that he had previously made false complaints in order to get home.

There is no evidence that Ms Fisher ever spoke directly to "K" concerning "P's" complaint, and it is difficult to understand why she might have wished to give Mr Lammas false information about what "K" had said to anyone else. It is also most unlikely that a Warden with the good qualities as described by Ms Mason would have done so. However, given that Ms Fisher is now deceased it is not possible for me to make a conclusive determination as to the truth of what was said between her and Mr Lammas. Obviously, this is a most unsatisfactory state of affairs, but it is entirely due to the lapse of more than 25 years since the events in question.

13.3 1987 – Adamson House Northam

Adamson House was the Anglican Hostel in Northam which accommodated girls attending Northam Senior High School. In August 1987 a number of girls at the hostel complained that a female Supervisor had inappropriately touched them on either their breasts or their buttocks. The evidence does not establish to whom this complaint was first made, but when the Hostel's Board of management became aware of this situation it requested the assistance of the Authority in resolving the matter.

On 31 August 1987 Mr Lammas attended a special Board meeting to discuss the alleged sexual interference by the female Supervisor ("Mrs V"). Mr Lammas later reported to the Authority on the results of that meeting as follows:

"After considering the information before the sub-committee, it was felt there was a case to answer and that Mrs V should be dismissed failing a satisfactory explanation.

To avoid the unpleasantness associated with this sort of situation, it was suggested that Mrs V be given the opportunity to bow out gracefully and, therefore, I suggested that I discuss the issue with her privately.

On meeting with Mrs V, I indicated that the discussion was unofficial and an opportunity to talk the matter through before taking it further. The alleged statement was shown to Mrs V who indicated surprise and shock. She couldn't believe the students could do such a thing, referring to the list of statements made by the students.

Mrs V protested her innocence, indicating she would fight to clear her name. I indicated that this was her pejorative [sic - prerogative] and if she so wished, she could do so.

I also indicated to Mrs V the implication of such action and in discussion she stated that she could not possibly continue to work at Northam with this sort of accusation being made. It was resolved that she needed time to think about whether she should resign or stand her ground and fight the allegations.

At no point in the discussion did I mention the term "molesting" or indicate that Mrs V should not pursue the matter if she so wished.

Mrs V requested time to think about her position as obviously her creditability would be seriously affected. Mrs V suggested that she would give an answer by Friday, September 4, as to whatever action she would take.

It was indicated to Mrs V that in this type of situation, staff are removed from the premises while an investigation takes place and in this instance, it could involve police. She was reassured that she would be on full pay.” (Exhibit 141)

Although Mrs V was offered the opportunity to “bow out gracefully” she failed to do so and within a few days complained to the media about her treatment. This resulted in considerable media publicity and on 9 September 1987 Mr Philpott as Chairman of the Authority wrote to the Minister for Education to request that the Education Department carry out an investigation into the students’ complaints.

It would seem that the complaints were also investigated by the Police but no charges were laid (t 2760). The Board also proceeded to dismiss Mrs V and she then instigated proceedings (presumably for wrongful dismissal) in the Industrial Relations Commission. In the meantime Mrs V was suspended on full pay and it was not until 13 October 1987 that the dismissal took effect (t 2760).

It is also of considerable significance that the Education Department (independently of the Authority) arranged for counselling of all of the affected students (t 2761). This is the only instance known to the Inquiry where counselling was arranged for students following an allegation of sexual misconduct by a Hostel staff member.

13.4 1989 – Inappropriate behaviour by Dennis McKenna

Between 1987 and 2001 Nicholas Christy (commonly known as “Barry” Christy) was the Warden (or Manager) of Amity House at Albany. He sometimes visited St Andrew’s Hostel in Katanning, and he has given the following evidence of one of those occasions which although somewhat sparse I accept as being accurate:

“Sometime in 1989, I do not recall the exact date, I had to visit the St Andrew’s Hostel in Katanning. Whilst there I witnessed Dennis McKenna, who was the warden there, in his pyjamas in the boys’ dorm. He was holding hands with two boys. I had to speak to McKenna to ask him to open the doors to the hostel to allow me to leave, as it was locked.

Following this, I got in touch with either Colin Philpott or Peter Bachelard-Lammas to raise my concerns about Dennis McKenna behaving in an inappropriate manner in the hostel with boys. I cannot remember if this was in writing or verbally. I had no response in relation to this.” (t 500)

It is Mr Philpott’s evidence that Mr Christy definitely did not raise this matter with him (t 2534). Mr Lammas has no recollection of it (t 2814). This being so it can be assumed that the Authority did not seek any further clarification of the allegation from Mr Christy nor respond in any way to it.

13.5 1990 – Sexual misconduct by a Supervisor at Narrogin Hostel

In 1990 Don Dixon was the Warden of the Narrogin Hostel, and another staff member there was a male Supervisor, “S”.

“S” commenced his duties at Narrogin Hostel in May 1990 after transferring from a similar position at the Swanleigh Hostel in Midland where he had been employed for approximately four years. Unbeknown to Mr Dixon “S” had left Swanleigh under a cloud following a complaint by a parent that he had indecently dealt with a male student (t 4086).

The Warden of Swanleigh Hostel at that time was Richard Stowell (now deceased) who was very well known and had a high reputation for his leading role in the hostel industry. (Mr Stowell had been instrumental in the formation of the Student Hostels Association).

Michael Schuts was one of the housemasters at Swanleigh Hostel during 1990. It is his evidence that:

“I remember that “S” had a complaint made against him by a boy’s parents.

The complaint was that “S” indecently dealt with the boy whilst driving him home to his family farm.

I cannot remember the name of the family that made that complaint against “S”.

...

I’m not exactly sure how we (the staff) came to know that “S” was offered a deal by Richard Stowell that if he (that is “S”) resigned then he (Stowell) would write him a glowing reference.

I have a sense that “S” actually told staff that he was offered the deal by Stowell.

I think Stowell spoke with the family of the boy and negotiated the deal so Swanleigh would not get a bad name.

I remember “S” left very quickly from Swanleigh and I heard he had got a job at Narrogin Hostel, which surprised us all” (t 4086)

At that time the Narrogin Hostel had coincidentally advertised for applicants to fill a vacant position as a male Supervisor. “S” successfully applied for that position with the help of the “glowing” written reference that he had been given by Mr Stowell (t 3777). (Regrettably it has not been possible to locate this reference amongst the old records at Narrogin Hostel). In his report to the first Hostel Board meeting after “S’s” appointment Mr Dixon referred to the fact that he had come “strongly recommended” by Mr Stowell (t3793). Mr Dixon had trusted this recommendation because of Mr Stowell’s good reputation (t3776).

Approximately six weeks later one of the Narrogin parents complained to Mr Dixon that her son had been molested by “S”. The boy who was in Year 8 and about 13 years old at the time had told his mother that “S” had fondled his genitals through his clothing (t 3778).

Upon being informed of this complaint Mr Dixon immediately contacted the Chairman of the Hostel Board Doug Fairclough (a prominent local citizen and Justice of the Peace who is now deceased; t 3778-9). They interviewed the boy and found his story to be quite credible. That same day Mr Fairclough and Mr Dixon interviewed “S” who denied the allegation but did so in a manner that they did not find to be very convincing (t 3779).

Mr Dixon also telephoned Richard Stowell (he thinks in the presence of "S") who "spluttered" and "was not happy that he got the call" (t 3780). Mr Stowell told Mr Dixon that he was in a hurry to get to church and that he would ring him back later.

Mr Stowell did telephone Mr Dixon later, and I will refer to that second telephone conversation shortly. However, (as I understand the evidence) prior to that second call the issue of what should be done with "S" was resolved in the following way:

"Q. ...Mr Dixon, how then was this matter resolved with "S". You said that he resigned. So when did that happen?

A. Well, at the end of it we said that we weren't happy with his explanations and he was very unconvincing and we thought that he was an inappropriate person for the job and, therefore in our – Doug and I's assessment, that he should move on.

Q. Was he dismissed or has he --

A. No, we gave him the opportunity to resign.

Q. It would seem though, would you agree, that what you had heard, that there were good grounds for actually dismissing him?

A. Yes.

Q. But you gave him the option to resign?

A. Yes, we were very keen on getting him off the premises away from the kids.

Q. But you could see there, though, that if he just simply resigned he may not necessarily have a black mark alongside his name that he would have if he was dismissed?

A. Yes, yes.

Q. So can I ask you why it was that you gave him that opportunity to resign rather than just dismissing him outright?

A. I guess I've got to go back to what I said. We wanted him out of the place and as quick as possible and away from the kids.

HIS HONOUR: Q. But you would [achieve] that by dismissal as well, wouldn't you?

A. Yes...I'm not sure why we went down that path. That's the weak point of the whole story.

MR URQUHART: Q. When you say "we", I gather you are referring to Mr Fairclough as well?

A. Mr Fairclough, yes, I am.

Q. So you got some input from him?

A. Yes.

Q. And was he of this view, that he should be offered the opportunity to resign?

A. Yes.

Q: Rather than be dismissed?

A: Yes. We just want him out of the place.

...

HIS HONOUR: Q. So just to clarify now – obviously nothing was done about reporting it to the police?

A. No.

Q. And was there any reason for that?

A. No, I can't come up with any reason at all.

Q. Was that ever discussed with the mother?

A. The mother left it to the Board to make that decision." (t 3788-3791)

In this regard, it is the mother's evidence:

"Don told us that he had rung around all the Board members and spoke to those that he managed to get hold of. They had a discussion about involving police, but the majority did not want to involve the police, and the decision was made to dismiss the member of staff.

I do not remember us being asked if we wanted police involvement, and am sure that my son was not asked about it. I do not remember anyone speaking to my son about the details" (t 3806)

When Richard Stowell rang back later he simply gave Mr Dixon the telephone number and name of the father of the boy from Swanleigh Hostel who had made the previous complaint against "S". He told Mr Dixon that if he telephoned that number "he would get the answers he was looking for" (t 3781).

It was as a result of telephoning that number that Mr Dixon learned what had happened to the another boy at Swanleigh. The father was "clearly upset" to receive Mr Dixon's telephone call (t 3782-3). When Mr Dixon asked if anything had been done about the boy's complaint he was told:

"No, because I am only just starting to get my son back and I don't want to put him through it again" (t 3782)

Mr Dixon understood the boy's father to mean by this that his son had already suffered enough trauma and that he did not want him to undergo any further trauma that may come with continuing the complaint, such as legal proceedings (t 3782).

Mr Dixon was angry to learn of "S's" past history at Swanleigh. As he saw it, Mr Stowell had "unloaded" a problem at Swanleigh by passing the problem on to another hostel. In his experience this had never happened before and has not happened since. Although Mr Dixon was completely unaware of any "forbidden list" maintained by the Authority, it is his evidence that there was an informal system amongst Hostel Wardens which enabled them to warn each other about staff from any hostel who had been removed for misconduct (t 3787).

In my view, given the lack of any guidelines in 1990 as to how hostel Wardens should handle complaints of sexual misconduct by staff, Mr Dixon did all that could be reasonably expected of him in the circumstances involving "S". In any event, he was subject to the directions of the Hostel Board via its Chairman Doug Fairclough who had made the decision that S" should be given the opportunity to resign (t 3802-3).

The problems arising from the lack of any system or standard procedure to deal with such situations was demonstrated by the fact that after “S” left the Narrogin Hostel he was employed at the Rocky Bay Village for Disabled Children (t 3798).

13.6 Conclusions

1 *Hardie House*

1.1 The initial response to the allegation at Hardie House was very appropriately handled by the supervisor on duty (Ms Pamela Mason) at the time it was made. However this was because of the supervisor’s individual initiative rather than as a result of any established procedures for handling such complaints.

1.2 The staff member the subject of the allegation was allowed to resign rather than be dismissed. Given that the allegation was denied by the staff member there was really little option other than to follow that course.

2 *Adamson House*

2.1 The Hostel Board’s initial decision to dismiss the female supervisor failing a satisfactory explanation was a very appropriate response to the allegation.

2.2 Despite the subsequent attempt to have the supervisor “bow out gracefully” the matter in the end was dealt with very appropriately. The Police were notified, the Education Department conducted an investigation, the alleged victims were counselled, and the supervisor was dismissed.

3 *The allegation by Barry Christy*

3.1 During 1989 the Authority received information from Barry Christy that he had seen Dennis McKenna in his pyjamas holding hands with two boys at St Andrew’s Hostel.

3.2 The Authority failed to take any action in response to this allegation thus breaching its fundamental obligation to ensure the wellbeing of Hostel students.

4 *Narrogin Hostel*

4.1 The Warden of Narrogin Hostel responded very appropriately to the complaint from a parent that a supervisor had sexually molested her son.

4.2 The decision to allow the supervisor to resign rather than be dismissed was appropriate given his denial of wrongdoing.

4.3 Nevertheless in the absence of any objection from the boy or his parents, the Chairman of the Board should have reported the allegation to the Police.

14. General findings concerning St Andrew's Hostel

14.1 Hostel staff members

When the parents of students at Katanning Senior High School arranged for them to be boarded at St Andrew's Hostel they were entrusting them to the care of the Warden and staff of the Hostel. That responsibility to care for the students was not one of simply accommodating and feeding them, it also extended to supervising their behaviour and so far as possible ensuring that they did not encounter any moral hazards while at the Hostel. (In that regard the staff were obliged to fulfil the Hostel's mandate to provide students with wholesome board).¹

The evidence as a whole shows that from at least 1976 through until 1990 Dennis McKenna habitually engaged in the touching and fondling of many male students who were under his care. This involved him having boys sit on his lap or knee², placing his hands up boys' shirts, rubbing their backs,³ and sometimes placing a hand inappropriately on a boy's leg near the groin.⁴ According to two former students McKenna also had a habit of flicking or grabbing at boys' genitals as they walked past.⁵ McKenna behaved in this way not only with the younger male students, but sometimes with older boys.⁶

This behaviour by McKenna was not limited to the confines of his flat or the boys' dormitory. It frequently occurred in open areas of the Hostel including his office where it could be seen through a glass window by people in the breezeway,⁷ and in the dining room.⁸ Sometimes it occurred away from the Hostel while McKenna was with the students on outings or at camps (t 3646).

Although the worst excesses of his offending behaviour occurred in private, McKenna did not try to hide his touching and fondling of boys. For this reason it was often observed by female Hostel students,⁹ teachers supervising homework,¹⁰ and even by parents and others.¹¹

¹ See Chapter 15 and Appendix 1

² Pilatti, M 2012 *Inquiry Transcript of evidence* p.3632; Wallwork D, 2012 *Inquiry Transcript of Evidence* p.3661.

³ Haddow, K 2012 *Inquiry Transcript of evidence* p.360; Brown, J 2012 *Inquiry Transcript of Evidence* p.386-7, Moore, R 2012 *Inquiry Transcript of Evidence* p.408.

⁴ Haddow, K 2012, *Inquiry Transcript of evidence* p.360.

⁵ "S" 2012 *Inquiry Transcript of Evidence* p.929; Parker, I 2012 *Inquiry Transcript of evidence* p.79.

⁶ Bourke, A 2012 *Inquiry Transcript of Evidence* p.1989, p.1970.

⁷ Bourke, A 2012 *Inquiry Transcript of Evidence* p.1969; Bentley, L 2012 *Inquiry Transcript of evidence* p.43.

⁸ Wallwork, D 2012 *Inquiry Transcript of Evidence* p.3648

⁹ Haddow, K 2012 *Inquiry Transcript of evidence* p.360; Moore, R 2012 *Inquiry Transcript of Evidence* p.407; Brown J 2012 *Inquiry Transcript of Evidence* p.386-7; Trezise, D 2012 *Inquiry Transcript of Evidence* p.536; Wallwork, D 2012 *Inquiry Transcript of Evidence* p.3647; p.3648, p.3649.

Other former Hostel staff members who were questioned about this behaviour by McKenna all deny having seen it (Wayne McKenna does admit to seeing a boy on Dennis' knee two or three times – t 2478).¹² However Kylie Haddow has testified that she can recall occasions when Dennis McKenna touched or fondled boys and one of either Neil, Wendy, or Wayne McKenna was present (t 361-362).

Irrespective of this evidence, the irresistible logic of the circumstances surrounding McKenna's inappropriate touching of boys is that any supervisory staff member who worked at the Hostel for a lengthy period must necessarily have seen it happen from time to time. It is simply not credible that so many students and teachers could have seen and been troubled or offended by the behaviour, but that staff members never saw it at all.

The full time supervisory staff were on duty for at least five days a week and worked long hours. Those of them who were employed at the Hostel for very lengthy periods of more than two or three years were all McKenna family members (Robyn from 1977 to 1984, Wayne from 1977 to 1985, Wendy from 1982 to 1992, and Christine for two separate periods totalling six and a half years). However Christine McKenna's employment was different from the others in that her first four years at the Hostel were spent in the laundry and kitchen and not as a supervisor, and from February 1990 her supervisory duties were part-time. Furthermore Christine McKenna never resided at the Hostel but lived with her family at Broomehill from where she would commute each day.

In all of these circumstances the evidence overall establishes to my satisfaction that Robyn, Wayne and Wendy McKenna must necessarily have seen Dennis McKenna touching and fondling boys on many occasions. I am not so satisfied in respect of Christine McKenna.

I am also not satisfied that Gunda McKenna was necessarily in the position to witness this behaviour by Dennis McKenna. She worked at the Hostel for less than three years and did not have any duties within the main building. No witness has given evidence that Dennis McKenna was seen touching or fondling boys in Reidy House where Gunda McKenna worked. Therefore I do not make this finding in respect of her. (Likewise I do not make this finding in respect of other staff members who were at the Hostel for significantly lesser periods than Robyn, Wayne and Wendy McKenna).

It may well be that Robyn, Wayne and Wendy McKenna became so accustomed to their brother or brother-in-law's behaviour towards boys that they saw nothing unusual in it. However, any reasonably objective person in their situation would have realised that Dennis' physical handling of the boys was inappropriate if not sinister. That this was so is shown by the number of witnesses who were troubled or offended by the behaviour and tried to do something about it. At the very least, the long term staff members who saw that behaviour should have brought it to the attention of the Chair of the St Andrew's Hostel Board or the Administrative Officer at the Country High School Hostels Authority. By failing to do so they

¹⁰ Bentley, L 2012 *Inquiry Transcript of evidence* p.43, p.44; Carmichael, B 2012 *Inquiry Transcript of Evidence* p.608; Pilatti, M 2012 *Inquiry Transcript of Evidence* p.3631, p.3632; Perris, K 2012 *Inquiry Transcript of Evidence* p.488, p.499.

¹¹ Parkin, N 2012 *Inquiry Transcript of Evidence* p.580; Christy, N F 2012 *Inquiry Transcript of Evidence* p.500.

¹² McKenna, W 2012 *Inquiry Transcript of Evidence* p.3002; McKenna, W L 2012 *Inquiry Transcript of Evidence* p.2947, McKenna, R L 2012 *Inquiry Transcript of Evidence* p.2908; McKenna, C M 2012 *Inquiry Transcript of Evidence* p.3025

did not to fulfil their responsibilities for the welfare and wellbeing of the male students under their care.

14.2 Hostel Board members

In Chapters 11.3, 11.12, 11.14 and 11.20 I have made adverse findings against individual members of the St Andrew's Hostel Board in respect of particular incidents that arose during the time that Dennis McKenna was Warden. In Chapters 11.6, 11.12, 11.20 and 11.21 I have also made adverse findings against the Board members generally at the time of each of the Parkin affair, the Trezise affair, the complaint by Todd Jefferis, and the removal of Neil McKenna.

Quite apart from the culpability of individual Board members and of the Board members generally in respect of these matters, the evidence overall shows a more widespread failure by other unknown Board members in fulfilling their responsibilities towards Hostel students. I have come to this conclusion on the basis of the inevitable inferences which arise from all of the relevant circumstances.

In this regard, the evidence shows that from about 1980 there was an increasing awareness within the Katanning community about rumours which were circulating in relation to alleged sexual misconduct by McKenna at the Hostel. The reasons why these rumours came into existence are quite obvious. Commencing from at least 1976 McKenna had committed frequent, serious and serial sexual offences against chosen students. Other students were aware of this, and word of what McKenna was doing had leaked out.

The earliest example of this happening was in 1976 when Susan Cox would sit on the school oval with female students and try to pick out the boys who were being sexually abused by McKenna.¹³ It was also in 1976 that two of McKenna's victims made disclosures to their scoutmaster resulting in Peter Potter's approaches to three local religious leaders and a Katanning policeman in an endeavour to have something done.¹⁴ So it was that the rumours began to spread.

As the years rolled on new victims spoke to their friends as well as to others about what was happening, and the circle of awareness that something might be wrong grew larger. By 1982 Noel Parkin was actively telling everyone he could that Dennis McKenna was a paedophile. David Trezise has testified that by 1985:

"The old town grapevine was growing well, and it was being well fertilised, and there were rumours around that things were going on at the hostel" (t 540)

Mr Trezise's wife had also heard things. She ran a dancing school and her dance students used to tell her about "the fiddling of boys" and the way McKenna "was treating some of the kids" (t 541). According to David Trezise his daughter had also told him what was going on (as had Bruce Carmichael's daughter as early as 1980 – t 608).

When parents were told by their daughters what was happening, steps were taken to warn their younger brothers and other boys about McKenna before they commenced at the

¹³ Chapter 11.2

¹⁴ Chapter 11.1

Hostel.¹⁵ The awareness of the danger that faced young boys at the Hostel was such that one father (Tom Fisher t 842) even warned McKenna that he would end up in hospital if he interfered with either of Mr Fisher's two sons.¹⁶

During the early 1980s young teenage "townies" at Katanning Senior High School would also tease the "Head Boy" from the Hostel by telling him that he was called that name because he had to perform fellatio on McKenna (t 1375). The evidence generally shows that there was widespread awareness amongst the high school students from as early as 1976 that Hostel boys were being sexually interfered with. The same rumours were also spreading amongst the adult population of the town and in outlying areas. The evidence of "M" the barmaid at the Federal Hotel in 1985 shows that this was a very common topic of conversation and that many people were aware of "kiddie fiddling" at the Hostel. Shirley Brokenshire also heard that rumour but from conversations "around the town" and not at a Hotel. No doubt most of the local citizens who heard the rumour had the same thought as her and "just hoped that it wasn't true" (t 1351).

Given that these rumours had become very widespread within the local community by the mid-1980s one would expect that the Hostel Board members would have been amongst the first to hear them. However, out of the total of 15 former Hostel Board members still alive who were interviewed by the Inquiry's investigators only two (Alan Parks and John Peacock) were willing to admit that they had heard of such allegations or rumours prior to 1990. For obvious reasons I have great difficulty in accepting that all of the denials by the other former Board members can be correct.

Certainly, and as I have found in Chapter 11.6, the members of the Board in 1982 were made aware of Noel Parkin's allegation. The Board members in October 1986 who approved the correspondence sent to the Trezises must also have been aware that this correspondence related to allegations of sexual misconduct by Dennis McKenna. Likewise other individual Board members were specifically informed of such an allegation at various times (e.g. John Renk by Mr Carmichael in 1980 and Len Wilkinson by Deborah Wallwork in 1986).

In my view, the only reasonable inference from all of these circumstances is that from about 1982 an unknown and larger number of individual Board members must have been aware that there were allegations floating around in the local community concerning sexual misconduct at the Hostel. They chose to ignore those rumours, and did so almost certainly because (like Mr Parks and Mr Peacock) they did not believe them to be true. Nevertheless, there was one Board member who (to his credit) realised that he had an obligation to investigate the truth of the rumour even though he did not believe it to be true.¹⁷ Mr Peacock's acceptance of that responsibility displayed the standard of conduct that should have been adopted by all Board members who became aware of the allegations or rumours.

It has been submitted on behalf of one or two individuals that the standards of conduct that could be expected of them as volunteer Board members were not as high as they would have been if they had been paid for taking on their responsibilities. It is true that many community bodies and institutions such as school hostels would be unable to function if it was not for the good work of volunteers. Although volunteers cannot be expected to

¹⁵ Brown, J 2012 *Inquiry Transcript of Evidence* p.387, Moore, R 2012 *Inquiry Transcript of Evidence* p.418

¹⁶ Chapter 11.6.4

¹⁷ Chapter 11.8

observe the same stringent standards as the fully paid officers in any organisation, the conferral of any power to make decisions always carries with it certain fundamental responsibilities. In that regard and in almost every situation whether voluntary or not, authority and responsibility are two sides of the same coin.

In the case of a school hostel, the Board members who accept the authority to make management decisions also have the commensurate responsibility of ensuring that those decisions are made in the best interests of their students. When an allegation is made that a Hostel staff member is sexually interfering with students, a decision to do nothing cannot be a responsible decision. In the present instance, I am satisfied that between approximately 1982 and 1990 a significant number of the St Andrew's Hostel Board members failed to fulfil their fundamental responsibility to safeguard the wellbeing of male Hostel students by choosing to ignore the allegations of sexual abuse which they heard. That failure on their part was a significant contributing factor to McKenna's ongoing ability to offend.

14.3 Conclusions

1. The St Andrew's Hostel staff members Wendy McKenna, Wayne McKenna and Robyn McKenna failed in their responsibility to safeguard the welfare of students by ignoring Dennis McKenna's frequent and inappropriate fondling or touching of boys.
2. An unknown number of individual St Andrew's Hostel Board members between 1982 and 1990 failed in their responsibilities to safeguard the wellbeing of Hostel students by ignoring allegations and rumours of sexual abuse by McKenna.

15. General findings in respect of the Country High School Hostels Authority, its Chairman, and its staff

15.1 The Authority's statutory powers and responsibilities

Throughout the lengthy period of the sexual offending the subject of my Terms of Reference the Country High School Hostel Authority (Authority) had the primary responsibility under the *Country High School Hostels Authority Act 1960* (the CHSHA Act) for the proper supervision and management of the hostels where that offending occurred.¹

The CHSHA Act permitted the Authority to appoint "Committees" (i.e. boards of management) in respect of hostels and to delegate to those boards all or any of its statutory powers.² In the event of such a delegation of powers the Hostel board was entitled to exercise those powers as if they had been directly conferred by the CHSHA Act and not by delegation from the Authority.³ Nevertheless, when exercising those powers the board remained subject to the control of the Authority.⁴

In respect of each of the hostels referred to in this report where offending occurred (with the possible exception of Hardie House in South Hedland) the Authority had delegated its powers of supervision and management to the board of that hostel. It did so by way of a "letter of arrangement"⁵ which delegated specific powers and responsibilities including:

"3. Supervise the management and control of the hostel and to be responsible to the Authority for the provision of clean lodgings and **wholesome** board to the students residing therein" (emphasis added)

Although the CHSHA Act did not expressly provide that the Authority was responsible for the moral wellbeing of Hostel students while they were at a Hostel, this was a fundamental obligation which was necessarily implied in the legislation. That the Authority realised it had this obligation is shown by its delegation to Hostel boards of the specific responsibility to provide **wholesome** board to the students. "Wholesome" as defined in the shorter Oxford English Dictionary (1985) means:

"Conducive to wellbeing in general, esp. of mind or character; tending or calculated to do good; beneficial, salutary".

Although each hostel board was obliged to fulfil this fundamental obligation, the board was subject to the overall control of the Authority. What this meant was that each local board

¹ s7 CHSHA Act

² s7(ba)(iv) CHSHA Act

³ s9(2) CHSHA Act

⁴ s7(1)(ba)(iv), s9(1)(b) CHSHA Act

⁵ Exhibit 88

had full autonomy in the management of its hostel, but could be overridden at any time by the Authority. Accordingly, the Authority bore the ultimate responsibility for the proper operation of each hostel.

The evidence as a whole shows that there were a number of systemic failures by the Authority in its oversight of the management of Hostels generally. The evidence also shows that these systemic failures contributed to the environment within particular hostels which enabled offending by staff members to continue for lengthy periods. These failings by the Authority were in three key areas of its oversight of the hostels, which were as set out below.

15.2 The failure to provide guidelines to board members

Colin Philpott became the Chairman of the Authority in 1976 following the unexpected death of his predecessor Mr Ernest Lange in August 1975. It would seem that Mr Lange had identified some shortcomings in the way in which the Authority conducted its operations, and shortly prior to his death had implemented a process of reform. (These reforms included the establishment of the “Forbidden List” referred to in Chapter 13).

At its meeting on 24 July 1975 the Authority resolved that it would cancel its agreements with a number of Hostel Boards as from 19 December 1975. Those Boards were at Bunbury, Carnarvon, Katanning, Narrogin and Port Hedland. In place of the existing arrangements (amongst other things) the members of each of these Boards were to be appointed annually by the Authority’s Secretary.

Mr Lange died on 13 August 1975 and the next monthly meeting of the Authority was on 28 August 1975. At that meeting there was vigorous opposition to the previous recommendation that the members of the five Hostel Boards would be appointed by the Authority’s Secretary. It was instead resolved that each Hostel Board would retain responsibility for nominating its own members. Significantly however, there was a further resolution that all appointees to these Boards would receive a letter of appointment together with written guidelines about their roles and responsibilities.

Such guidelines would have been of considerable assistance to new members joining hostel boards, particularly at those hostels where there was no governance or backup available from either the Anglican Church or the Country Women’s Association. The guidelines would have been particularly useful to those new board members who came from farms which were distant from country towns. The evidence shows that many board members at country Hostels had never sat on boards before, and certainly not on any board which had the significant responsibility of managing a residential facility for large numbers of students.

However, the evidence also indicates that the Authority never implemented its resolution to provide guidelines to new Hostel board members. Most of the witnesses who were members of the St Andrew’s Hostel Board during Dennis McKenna’s time as Warden have stated that they received no training or guidance from the Authority about their role as Board members. These witnesses also had no recollection of ever receiving any guidelines or a copy of the letter of arrangement that existed between the Authority and the Board.⁶

⁶ Parks, A H (2012), *Inquiry transcript of evidence*, 10 April, pp.1396; Hendry, R L (2012), *Inquiry transcript of evidence*, 17 April , pp. 1899-1900; Murray, I W (2012), *Inquiry transcript of evidence*, 20 April, pp.2212- 2213;

Most of these witnesses claim to have had no knowledge of the letter of arrangement even though the minutes of Board meetings in 1983 and on 22 October 1986 make reference to the document. (Given the regular turnover in Board membership this lack of knowledge on the part of some of them is quite understandable).

A number of the St Andrew's Board members have also testified that they believed that McKenna as Warden was responsible for the hiring and firing of Hostel staff.⁷ (Which helps to explain why McKenna was able to appoint close members of his family as staff members). Some of these Board members also believed that the Warden had authority to expel students from the Hostel, and that their role was merely to "rubberstamp" his recommendations as to the expulsion or suspension of students.⁸ (The evidence shows that McKenna used this power, as well as the threat of this power, to great effect in removing victims who were likely to cause trouble, as well as intimidating others into silence).

It is clearly evident that from the time of Mr Philpott's appointment as Chairman of the Authority in 1976 until McKenna was convicted in 1991 that there was no system in place to advise new Hostel Board members of their functions and responsibilities. It would seem that at one stage of his Chairmanship Mr Philpott recognised that this was a problem. The minutes of the Authority's meeting on 15 May 1984 record that: "the Chairman advised that boards generally were not aware of their respective roles and some education was necessary". However, in his evidence to the Inquiry Mr Philpott has denied that the Authority had any role in providing guidance to new hostel board members:

"Yes, but I'm saying that that's not our role. The role...of the local Board is to make the person coming in welcome, to give him a letter of arrangement and any by-laws or anything they have concerning their hostel." ⁹

Mr Philpott's observation in May 1984 that "boards generally were not aware of their respective roles" was undoubtedly correct because it is consistent with the evidence that the Inquiry has heard from former St Andrew's Hostel Board members. It was therefore most unfortunate that throughout the time that McKenna was Warden at the Hostel the Authority never provided guidance to new Hostel Board members in accordance with its resolution in 1975.

15.3 The failure to provide adequate oversight of hostels

The evidence generally indicates that the Authority did not always effectively monitor the performance of boards at particular hostels in fulfilling their responsibilities under the

Marriott, G E (2012), *Inquiry transcript of evidence*, 4 May, p.2649; Stephens, L O K (2012), *Inquiry transcript of evidence*, 9 May, pp.2826-2867; Wilkinson, L A (2012), *Inquiry transcript of evidence*, 11 May, pp.3055, 3058, 3124, 3125; Laffer, J B (2012), *Inquiry transcript of evidence*, 14 May, p.3207.

⁷ Parks, A H (2012), *Inquiry transcript of evidence*, 10 April , pp.1414, 1416; Hendry, R L (2012), *Inquiry transcript of evidence*, 17 April , p.1901 ; Stephens, L O K (2012), *Inquiry transcript of evidence*, 9 May,p.2836; Wilkinson, L A (2012), *Inquiry transcript of evidence*, 11 May, pp.3057, 3058, 3067.

⁸ Peacock, S J (2012), *Inquiry transcript of evidence*, 20 March, pp.1150, 1152; Parks, A H (2012), *Inquiry transcript of evidence*, 10 April, pp. 1410, 1411; Hendry, R L (2012), *Inquiry transcript of evidence*, 17 April, p. 1906; Murray, I W (2012), *Inquiry transcript of evidence*, 20 April, p.2075; Young, G H (2012), *Inquiry transcript of evidence*, 4 May, p.2617; Stephens, L O K (2012), *Inquiry transcript of evidence*, 9 May, p.2837).

⁹ *Inquiry transcript of evidence* pp. 2553-2554.

“letters of arrangement”. Given the lack of any system of guidelines or training for incoming hostel board members, it was all the more important that the Authority should have maintained effective oversight of the operations of the various boards.

The Authority’s failure to do this is best illustrated by events at St Michael’s Hostel in Merredin during 1978 and 1979. (As these events are not directly relevant to my terms of reference I will describe them only very briefly). During those years there were at least two periods of three or four months when the Warden’s position was vacant and there was no male supervisor residing in the Hostel overnight. Consequently, there was no night time supervision of the male students, and the behaviour of some of them degenerated to the extent that a number of individual boys were brutalised and victimised. The description of some of the incidents that occurred during those times are very reminiscent of William Golding’s: “*Lord of the Flies*”.¹⁰

In fairness to the Authority it may well be that the events at Merredin escaped its notice because St Michael’s Hostel was being administered by the Anglican Church and was perhaps assumed to have good governance. Nevertheless, the absence of a Warden and the lack of any overnight supervision of male students for three or four months at a time was something that should have come to the attention of the Authority if it had been maintaining oversight in even a very basic way.

At St Andrew’s Hostel in Katanning the Authority’s lack of effective oversight (combined with the lack of any system for vetting staff appointments in accordance with its 1975 policy) contributed to the failure of successive boards to fulfil their mandate. This resulted in McKenna gaining control over decisions (such as the hiring of staff and the expulsion of students) which were properly the function of the Board. The power that McKenna was able to wield in this way assisted him in the creation of an environment within the Hostel which enabled him to continue his offending against students relatively unhindered.

15.4 The Authority’s failure to implement its own policy for investigating complaints of a sexual nature

Throughout the period from 1975 until 1990 the Authority had very minimal resources of its own with which to fulfil its responsibilities. However, it had arrangements in place which enabled it to call upon the resources of the Education Department as and when required, which included the investigative capacities within the Industrial Relations Unit of that Department. It is Mr Philpott’s evidence that in the event of the Authority becoming aware of any alleged sexual misconduct within a hostel it was able to have that allegation investigated by the Education Department.¹¹

The evidence before the Inquiry shows that there was only ever one instance of the Authority arranging for an investigation of a sexual matter by the Department. This was in 1987 at Adamson House in Northam after a number of girls had complained about sexual misconduct by a female supervisor (see Chapter 13).

¹⁰ Mouritz, B. (2012) *Inquiry transcript of evidence pp. 4204-4218.*

¹¹ *Inquiry transcript of evidence pp. 2821.*

In the case of St Andrew's Hostel at Katanning there were two instances when the Authority became aware of an allegation of sexual misconduct involving Dennis McKenna but failed to arrange for any investigation by the Education Department. These instances were the complaint in 1980 by Noel Parkin (see Chapter 11.6) and the letter received by the Authority from Coral Trezise in 1986 which referred to McKenna's "suspicious suggestions" (see Chapter 11.12).

The Authority not only failed to have these matters properly investigated, but in each instance it responded very inappropriately by conveying the substance of the allegation to McKenna and using him as its channel of communication with the Board. This had the inevitable consequence that McKenna was able to manipulate to his own advantage the way in which the Board responded to each of these allegations. This enabled him to escape scrutiny, and in relation to the Trezise incident also enabled him to engage solicitors (at the Authority's cost) to have the complainants silenced by the threat of legal proceedings.

15.5 Comments on other aspects of the Authority's conduct

It has been submitted that I should make adverse findings against the Authority in relation to its conduct immediately following the arrest and charging of McKenna in September 1990. It is submitted that the Authority failed to respond to a complaint by Lynley Day (made at a public meeting) that her son Todd Jefferis had been sexually assaulted by McKenna. (In this regard Mr Philpott was aware that the charge then pending against McKenna related to an incident in 1979 involving another complainant). It is also said that the Authority acted inappropriately following McKenna's arrest by assigning to him the task of preparing a Pastoral Care Handbook for the Authority.

Although there is some substance to these submissions I have decided that I should not make such findings because they do not fall within my terms of reference. In this regard, they bear no relationship to the question of why McKenna was able to continue his offending throughout the 15 year period up until his arrest.

15.6 Responsibilities within the Authority

At all material times the policies and decision-making processes of the Authority were subject to the control of its Board. It is clear from all of the evidence that Mr Philpott had a very robust personality as Chairman and that he was a very strong presence on the Board. However, the responsibility for the systemic failures of the Authority during the 15 years from 1975 until 1990 must rest with the successive boards as a whole over that period. As far as Mr Philpott individually is concerned he simply must live with the knowledge that these failings all occurred on his watch.

Throughout the same period the Authority's policies and decisions were implemented by initially its Secretary (Peter Hepper) and then by its Administrative Officer (Peter Lammas). While each of these two men bore responsibility for their actions within their areas of authority, their positions were the equivalent of mid-level positions¹² and their authority

¹² Hepper was a C-II—3/4 progressing to a C-II-4/5 and Lammas was C-II-7 when initially appointed in 1982 and was reclassified to a C-II-8, the equivalent of a Level 5 in 2012.

was somewhat limited. In these circumstances it would be unfair to make adverse findings against them in respect of the Authority's systemic failures. If the Authority had provided them with good policies to implement, then each of them would no doubt have "done as he was told".¹³

¹³ Bachelard-Lammas, P (2012), *Inquiry transcript of evidence*, 8 May p. 2778

16. Systemic factors which allowed Dennis McKenna's offending to continue

16.1 General comments

In Chapter 11 I have detailed many instances of missed opportunities to expose Dennis McKenna's offending during the 15 year period that it continued. Undoubtedly there were many more such instances which are unknown to the Inquiry because the people involved have not come forward.

From the evidence overall a picture has emerged which shows that there were many common factors which contributed to these failures to expose McKenna's offending. These "systemic" factors can be broken down into three categories:

1. Those factors of a general nature which at the time made the reporting of child sexual abuse very difficult.
2. Factors specific to the victims of sexual abuse which either made them unwilling, or made it very difficult for them to report what was happening.
3. Factors impacting on people who became aware of allegations of sexual abuse at the Hostel, which made them reluctant to pass that information on to the appropriate authorities.

16.2 General factors which hindered the reporting of sexual abuse

16.2.1 The legal and cultural environment prior to 1990

In Chapter 18 the Inquiry's Principal Research Officer has compiled an admirable and very thorough outline of the legal and cultural environment that prevailed throughout the period of the offending.

It is of great significance that the Criminal Code at the time made all homosexual activity illegal regardless of the ages of the participants, and did not focus on homosexual acts committed by paedophiles against teenage boys aged 14 years and over as a separate and more serious category of crime.

Boys aged 14 years or more who consensually engaged in any homosexual act with a male adult, as a matter of law were equally culpable. (Although in such a situation the courts sentencing the offenders would obviously deal with the child more leniently than the adult).

The evidence generally shows that most of Dennis McKenna's victims were enticed or lured into sexual activity and initially (at least) consented to what he did to them. In respect of the youngest boys the fact they consented to what he did was irrelevant and McKenna committed the offence known as indecent dealing with a child under the age of 14 years. However with the victims who were 14 years and older their consent made them just as

guilty as McKenna. Obviously any awareness that they had of their legal culpability would have made them unwilling to report McKenna.

In any event the community's attitudes generally were consistent with the laws at the time and tended to be hostile towards homosexuality. Many people regarded homosexual acts between adult males as being just as bad as homosexual acts between an adult male and a teenage boy. A good example of this attitude can still be found in the evidence of a witness to this Inquiry who could not see any difference between a paedophile and a "poofster" (even though he was well aware of the meaning of the term "paedophile").¹

Given this background of the laws and community attitudes at the time it is quite understandable why teenage boys subjected to sexual abuse by McKenna were very reluctant to tell their parents what was happening. It also would have been extremely difficult for them to go to the Police or to report McKenna's activities to other authority figures (such as a school teacher or their principal) without first speaking to their parents.

16.2.2 Low awareness of paedophilia prior to 1990

Prior to 1990 the community generally, and rural communities in particular, were not very aware of the propensity of paedophiles to target institutions or organisations where children gathered. The following description of how such offenders typically ingratiate themselves within a community helps to explain why the people of Katanning were so easily fooled by McKenna:

*"They groom the parents, school, church club, or any other organization where children congregate, into accepting them as upstanding citizens in the community. These child molesters are known, loved, trusted, or possibly feared, and their conduct is unfortunately, assumed to be "above reproach". As a result, these offenders obtain continued free access to victims by the very adults responsible for protection of children."*²

Most people at the time were only aware of the "stranger danger" type of paedophile. However in her evidence to the Inquiry Rosemary Cant stated "there's a clear comment in some of the literature that, in fact, this overemphasis on stranger danger has distracted attention from the very real dangers where the abuser is actually part of the child's network."³

Mrs Cant went on to say "well, essentially they find their way into an institution that gives access to children, be it a child care facility, a hostel as in this case, a school, sporting organisation, and they essentially groom that organisation to accept...them to see them in a positive light in order to ensure that they can get access to the children, and as...a defence, if you like, against complaints, you know, "This person wouldn't do that because they are such nice...such a nice person, so helpful, et cetera..."⁴

Mrs Cant also points out that McKenna had free access to the children at the Hostel during the night when they were locked in with no other adults to supervise – "That clearly leaves

¹ See Chapter 18; *Inquiry Transcript of evidence* p.606.

² Report of Rosemary Cant to the Inquiry – paragraph 19 quoting van Dam, C. (2006) *The Socially Skilled Child Molester: Differentiating the Guilty from the Falsely Accused*.

³ *Inquiry Transcript of evidence* p.872.

⁴ *Inquiry Transcript of evidence* p.869.

the children absolutely vulnerable to that person. And, you know, it's the exact situation of a fox guarding a hen house. There is absolute free access to the children without hindrance.”⁵

In my view the evidence overall supports the conclusion that when McKenna first sought employment at St Andrew's Hostel he had targeted it as an ideal environment in which to fulfil his paedophilic desires. This conclusion finds particular support in the circumstances that he commenced his offending almost immediately, and that some of these earliest offences were of the worst kind (involving anal penetration of children). Furthermore within three months of commencing at the Hostel he was provided with the opportunity of transferring his accommodation from a cramped flat adjacent to the boys' dormitory to the more spacious and comfortable Warden's house. The fact that he chose to remain in the more inferior accommodation is a clear indication that he preferred the environment in which he was free to continue his predatory activities in the dormitory.

Because the community had no real understanding of paedophilia it was also vulnerable to being “groomed” by McKenna in ways which have been identified by experts as being common to paedophiles of his type around the world.⁶ The evidence shows that McKenna was a very manipulative individual. He was able to cultivate a persona which made a very favourable impression on the many adults in the Hostel community, the school community, and the town of Katanning generally. In this way he was able to insulate himself from any criticism, and to create an environment in which any allegation or complaint about his offending was unlikely to be believed.

16.2.3 The lack of focus by government agencies on paedophilia

Given the general lack of awareness in the community about paedophilia it is not surprising that government agencies had very little focus on the problem. Certainly the evidence has shown that allegations of crimes involving the sexual abuse of children did not cause any consternation to the police officers who were informed of them.⁷ It was not until 1982 that WA Police established a Child Care Unit (later known as the Child Abuse Unit), and even then a number of years were to elapse before this Unit started to pursue crimes of the type that McKenna was committing, or for it to investigate cases in regional areas.⁸

During the early 1980s this State's Department of Community Welfare gained a justified reputation throughout Australia for the leading role it played in drawing awareness to the problems of child abuse.⁹ Nevertheless the initial emphasis in DCW programmes was on child physical abuse.¹⁰ When these programmes were later widened to include child sexual abuse the initial focus was on intra-familial rather than extra-familial cases of abuse.¹¹

⁵ Inquiry Transcript of evidence p.869.

⁶ Cant, R 2012 Inquiry Transcript of Evidence p.868.

⁷ See Chapters 11.6, 11.11, and 11.13.

⁸ WA Police 2012 *Submission to the Inquiry*, 20 March, p.2.

⁹ Maine, K. 2012, *Inquiry Transcript of Evidence* p.997, 1001.

¹⁰ Maine, K 2012, *Inquiry Transcript of Evidence* p.998.

¹¹ Department for Child Protection 2012 *Submission to the Inquiry* 19 April p.1.

16.2.4 The poor quality of sex education for children

In many (if not most) families during the 1970s and 1980s matters to do with sex were not discussed between parents and children. Children were left to fend on their own in developing their sexual awareness and the most common source of information for them was from their peers.

Formal sex education at school was also of a very low quality and usually limited to occasional warnings of the “stranger danger” variety. The standard stereotype of child molesters being old men in raincoats sidling up to the schoolyard was very misleading for children. Studies have shown that in the majority of cases of child sexual abuse the offender is someone known to the child.¹²

Accordingly McKenna’s victims were very vulnerable to his grooming behaviour. All young teenage boys are very curious about matters to do with sex, and the boys at the Hostel would have leapt at the opportunity to go to McKenna’s flat after hours to watch a pornographic movie. Once they had been sexually aroused and plied with alcohol they would have succumbed very readily to his wishes. The sexual naiveté of some younger Hostel boys in particular made them especially vulnerable, and they believed McKenna when he told them that what he was doing was “normal”.¹³

16.2.5 The power imbalance between victims and authority figures

The evidence has shown that even adult but newly qualified teachers were hesitant to approach their principal or other authority figures to voice their concerns about McKenna.¹⁴ There was also an almost universal uncertainty as to the appropriate ways of handling allegations or complaints about inappropriate behaviour at the Hostel.¹⁵

Quite obviously if adults had these problems it would have been even worse for the children involved. It is therefore unsurprising that many of the victims have testified to the effect that they “did not know where to go”.¹⁶ An added problem for the victims was that virtually all of the supervisory staff at the Hostel were close relatives of McKenna. As McKenna has frankly admitted in his evidence, his appointment of his relatives to these positions reduced the possibility of any complaint about his offending.¹⁷

The essential problem for child victims was that there was no known method by which they could safely report the abuse without retribution. Their access to telephones within the Hostel was restricted, and even if they could make a private telephone call they would not have known who to contact. Other authority figures at school were remote and distant and unlikely to be receptive to any complaint against McKenna.¹⁸

¹² Cant, R 2012 Inquiry Transcript of Evidence p.868.

¹³ Stephens, K 2012 Inquiry Transcript of Evidence p.22 Parker, I 2012 Inquiry Transcript of Evidence p.79.

¹⁴ See Chapters 11.4 and 11.10.

¹⁵ See Chapters 11.1, 11.4, 11.8, 11.9, 11.10, 11.11, 11.13, and 11.18.

¹⁶ Edwards, T 2012 Inquiry Transcript of Evidence p.701, Hilder, M 2012 Inquiry Transcript of Evidence p.133, 134, Parker, S 2012 Inquiry Transcript of Evidence p.187, 188, Stephens, K 2012 Inquiry Transcript of Evidence p.34).

¹⁷ *Inquiry Transcript of Evidence*, p. 1244.

¹⁸ See Chapter 11.20.

In any event, the professionals and other officials who might be likely to receive any such complaint were uncertain as to how such allegations should be dealt with. The Board members at the Hostel did not receive any guidance or training at all on how they should discharge their responsibilities, and McKenna was present at all Board meetings. The Authority did not have any system in place for the reporting of sexual allegations against Hostel staff members. It was not until 1987 that the Department of Education provided limited advice to teaching staff on how they should deal with allegations of a sexual nature. Even then that advice was couched in the form of only “guidelines” rather than explicit instructions to staff as to what they should do.¹⁹

16.3 Factors which made victims unwilling to complain

16.3.1 General factors

I have already referred to general factors which impacted on the willingness, or the ability of McKenna's victims to make complaints about his offending, namely the:

- legal culpability of victims 14 years and over for the homosexual acts committed upon them by McKenna which had happened consensually
- homophobic attitudes of the community generally
- unwillingness to confide in their parents about the offending
- unwillingness to complain to McKenna's close relatives who held nearly all supervisory positions within the Hostel
- power imbalance between the victims and authority figures external to the Hostel
- lack of any independent “child friendly” official external to the Hostel to whom they could confidently make a complaint
- uncertainties as to how they should go about making a complaint (vis the lack of any established procedure for doing this)

16.3.2 The shame experienced by victims

I have already referred to the sexual naiveté of some victims, and their vulnerability to grooming by McKenna which was designed to entice them into sexual misbehaviour. For many victims this enticement included the viewing of pornographic movies which aroused them sexually. It is a well-known phenomenon that when child sex offences are preceded by the normal involuntary physical responses to sexual stimulation the victim (particularly a boy who experiences an erection) will feel responsible for what happened. Consequently, it is very common for a child subjected to sexual abuse to feel considerable shame and guilt about what happened. If no immediate complaint is made and the offending is repeated, the child feels trapped in a situation from which there is no escape.

At St Andrew's Hostel many victims were subject to repeated offending by McKenna. It is highly probable that the shame they experienced because of their continuing participation in

¹⁹ Exhibit 59

these homosexual acts resulted in a situation in which they felt they were in no position to complain.

16.3.3 The lack of any established terminology for sexual abuse

Even if a student wanted to complain, there was the problem of how he should describe the sexual abuse when making the complaint. In this regard, the term “sexual abuse” was coined by academics and professionals in about the late 1970s, but was not a term which was widely used in the community prior to 1990.

The law at the time provided little assistance in describing the activities involved in sexual abuse. For example the Criminal Code gave the act of anal sexual penetration the very colourful and anachronistic name of “carnal knowledge against the order of nature”.

Prior to 1990 the terms commonly used in the community to describe sexual activity of the type which was happening at St Andrew’s Hostel included “molesting”, or “interfering”, “fiddling”, and “mucking around” with boys. Although the perceived meaning of each of these terms probably varied from person to person, it was generally understood that they referred to some form of sexual interaction between the individuals involved.

In a society where there was very little open discussion between adults and children about matters to do with sex, it would have been extremely difficult for a young boy subjected to sexual abuse to go to some seemingly gruff official to articulate his complaint. For such a complaint to be effective it almost certainly would have required the adult hearing the complaint to display some patience and sympathy. Even so, for a 14 year old victim like “S” all he was able to convey to a sympathetic female case officer was a complaint along the lines that McKenna was “doing something bad” to him.²⁰

16.3.4 Fear of Reporting

Many of McKenna’s former victims have testified that at the time of the offending they were fearful of making any complaint. The environment within the Hostel was such that they were always anxious to please McKenna, and they knew that if they went against his wishes they would be humiliated or punished in some way.²¹

The ultimate fear for any victim was that he would be expelled from the Hostel, thus disappointing his parents and possibly bringing to an end his secondary education. The victims also knew that it was McKenna who wielded the power of expulsion and that if he exercised that power his decision would be “rubber-stamped” by the Board. McKenna would boast of his power to expel students from the Hostel²² and he arranged for expulsions to happen sufficiently often for his victims to know that this power was real.²³ McKenna also made it clear that he had considerable influence with the Authority and with other hostels and was able to determine whether or not an expelled student would be able to re-enrol elsewhere.²⁴

²⁰ See Chapter 11.7.

²¹ Parker, I 2012 Inquiry Transcript of Evidence p.82.

²² Parker, I 2012 Inquiry Transcript of Evidence p.82.

²³ Parker, I 2012 Inquiry Transcript of Evidence p.104-106 Haddow, K 2012 Inquiry Transcript of Evidence p374-377 Hilder, M 2012 Inquiry Transcript of Evidence p127-128.

²⁴ Parker, I 2012 Inquiry Transcript of Evidence p.82, 83 Williams, A 2012 Inquiry Transcript of Evidence p.510

Many former victims have also testified that they knew they would not be believed if they made any complaint.²⁵ In this regard they were aware of McKenna's high reputation in the community generally and with the Hostel Board, parents, and high school staff. They also knew that if they made a complaint and were not believed, then they were likely to suffer retribution²⁶ (the experiences of Todd Jefferis following his complaint confirms the validity of these fears).²⁷

16.4 Factors which hindered people who heard allegations from passing information on to appropriate authorities

16.4.1 Disbelief of the allegations

When Dennis McKenna was appointed Acting Warden in 1974, St Andrew's Hostel had been through a difficult period of instability within its Board, constant turnover of staff, and a decline in student numbers resulting in conjecture that it might have to be closed.²⁸ Once McKenna was appointed Warden there was a significant turnaround in the Hostel's fortunes²⁹ in that there was a steady increase in student numbers,³⁰ new facilities were added³¹ and it gained a reputation for being one of the best run hostels in the state.³² Irrespective of whether McKenna was fully responsible for these improvements he was certainly given the credit for what had been achieved.³³ It was important to the economic and social wellbeing of the town of Katanning that the Hostel should continue to be viable and successful.³⁴ McKenna's grooming of the community also played its part and by 1984 he had become so widely admired in Katanning that he was appointed Citizen of the Year.³⁵

McKenna's high standing in the community had the effect that most people who were told of allegations or who heard rumours of sexual abuse at St Andrew's Hostel simply did not believe them to be true.³⁶ Only a very few people who heard the allegations or rumours

²⁵ e.g. Stephens, K 2012 Inquiry Transcript of Evidence p.34

²⁶ Hadlow, B 2012 Statement in possession of the Inquiry p.1; Brown, J 2012 Inquiry Transcript of Evidence p3697-3698; Brown, K 2012 Inquiry Transcript of Evidence p.74

²⁷ See Chapter 11.20

²⁸ See Chapter 5

²⁹ See Chapter 9

³⁰ *ibid*

³¹ *ibid*

³² *ibid*

³³ *ibid*

³⁴ Evans, A 2012 Inquiry Transcript of Evidence p.1673, 1713 Norrish G 2012 Statement in possession of the Inquiry p.2-3

³⁵ see Chapter 9

³⁶ Dawkins, M 2012 Inquiry Transcript of Evidence p.238-240, Jefferis, T 2012 Inquiry Transcript of Evidence p.714, 721-722, Pringle, P 2012 Inquiry Interview p.9-10 Evans, A 2012 Inquiry Transcript of Evidence p.1696 Parks, A 2012 Inquiry Transcript of Evidence p1434 Sherlock P, 2012 Inquiry Transcript of Evidence p.1554,1565

were willing to give them any credence.³⁷ Some other people who heard the rumours simply “hoped that they were not true”.³⁸

The evidence shows that with the exception of one person,³⁹ everyone who positively disbelieved the allegations or rumours took no steps to alert the appropriate authorities, or to investigate or pursue the truth of what they had heard. Nearly all Hostel Board members who heard the allegations were in this category, and even though they were responsible for the wellbeing of the Hostel students they took no action in response simply because they did not believe those allegations to be true.⁴⁰

Accordingly, McKenna’s successful grooming of the Katanning community and his high standing amongst its citizens were significant contributing factors to his ability to continue offending up until 1990.

16.4.2 Desire to uphold reputation of hostel

As already noted, the continued success of the Hostel was important to the economic and social wellbeing of the Katanning community generally. The parents of the students who were boarding or who might board at the Hostel in future were also anxious that the Hostel should remain viable for the sake of their children’s secondary education.

The success of the Hostel was largely dependent upon it maintaining a good reputation amongst the parents of children in the farming communities surrounding Katanning. In the event that the rumours or allegations of sexual abuse were given any credence then this would potentially have damaged the Hostel’s reputation and had a devastating impact on its continuing viability. Although there is no direct proof of the fact, I am satisfied that the desire to avoid any damage to the Hostel’s reputation was one of the reasons why people who heard allegations or rumours of sexual abuse failed to take any steps in response to them.

16.4.3 Fear of defamation proceedings

A very significant factor which inhibited the reporting of allegations of sexual abuse was that many people who otherwise would have done so were fearful of the risk that they would be sued for defamation if they did. (The submission from Professor Michael Gillooly⁴¹ which is appended to this report shows that those people had good reasons for their fears).

Chapter 18 refers to 11 specific instances where people were either threatened with defamation proceedings because of something they said or did, or were explicitly warned of defamation proceedings if they did anything in response to allegations of sexual abuse at St Andrew’s Hostel. The evidence shows that McKenna used these threats as a very effective weapon to prevent exposure of his sexual abuse. He even successfully manipulated the Authority into paying the legal costs for his solicitor’s letters threatening defamation proceedings against four parents who had circulated correspondence referring to his

³⁷ Dawkins, M 2012 Inquiry Transcript of Evidence p.238-240 Fisher, 2012 Inquiry Transcript of Evidence p.841-848

³⁸ Brokenshire. S 2012 Inquiry Transcript of Evidence p.1347, 1351

³⁹ See Chapter 11.8

⁴⁰ See Chapter 14

⁴¹ Appendix 7

“suspicious suggestions”. This strategy had the outcome he intended, and all further mention of the “suspicious suggestions” ceased.⁴²

But for this fear of defamation proceedings it is probable that McKenna's offending would have been exposed in 1976.⁴³ It was only because of that fear that Peter Potter abandoned his efforts to have the complaints of two of McKenna's victims properly addressed.

⁴² See Chapter 11.12

⁴³ See Chapter 11.1

17. The impact of the abuse

Throughout this Inquiry it has received evidence and information from former Hostel students concerning not only the sexual abuse they endured, but also the impact that this has had, and continues to have on their lives. For many former St Christopher's students their participation in the Inquiry was the first time that they had spoken about their experiences since leaving that hostel, and some of them had not even discussed these matters with closest members of their families. These former students were also now in the situation of not being able to progress a complaint with the Police because the perpetrator of their abuse is deceased.

From the Inquiry's perspective (and as detailed in Chapter 3) it was important that victims and their families should be supported while coming to terms with what had happened to them so long ago. Crisis Care has provided this high level of support throughout the Inquiry, and it has been of great assistance to many of the witnesses. Crisis Care has always remained independent of the Inquiry and has not disclosed any confidential information to Inquiry staff without permission from the relevant witness. However the evidence generally as well as the feedback received from Crisis Care does indicate that many former victims of sexual abuse continue to experience:

- feelings of anger, fear, depression and anxiety
- difficulty in relationship development and nurturing because of betrayed trust issues
- confusion of sexual relationships and sexual identity
- addictive and compulsive behaviour
- guilt and self-blame
- feelings of isolation and dissociation.

Some victims have expressed guilt and remorse that they were unable to report their abuse at the time that it happened. In this regard some were also unaware at the time that there were other victims and they feel great regret that they did not take steps to prevent the abuse from continuing. Others who witnessed inappropriate behaviour by Dennis McKenna towards students feel guilty because they consider that they did not do enough to report their concerns at the time.

Rosemary Cant's statement to the Inquiry summarises the reasons why male victims tend to under-report sexual abuse. These reasons include the victims' confusion about what is happening to them as well as feelings of guilt, shame and embarrassment in relation to their experiences.¹

These feelings and behaviours can continue indefinitely and impact on every part of an individual victim's life, and in many cases also impact on the lives of their families. In that regard the Inquiry is reliably informed that the abuse suffered by some former St Andrew's students has impacted on their family members who acknowledge feeling:

¹ Cant, R 2012, Statement in possession of the Inquiry, p.8

- Shock, guilt
- Bewilderment and denial
- Anger, anxiety, sadness and depression.

Some parents who have testified to the Inquiry have confirmed that the abuse suffered by their children continues to impact on them to this day.²

When interviewed by the Inquiry's investigators some former students have also said that the abuse has significantly affected their schooling, academic achievements and further education. In addition (and ironically given that one of the objectives of Hostels was to create a mechanism which kept young people within regional areas) some former students have stated that as a result of the abuse they departed the region where they grew up as soon as they could.

In her expert evidence, Rosemary Cant has also summarised research into the potentially destructive behaviours and feelings of those who suffer child sexual abuse. This research confirms certain matters and propositions that have been regularly raised with the Inquiry since its commencement. In this regard the Inquiry has heard anecdotal evidence of destructive behaviours among former St Andrew's students and of the fact that a number of them have died prematurely from suicide or through recklessly dangerous and self-destructive behaviour. The Inquiry has followed this information through where possible but is unable to establish the precise number of former students who have died in these ways.

Certainly the results of recent research confirm that there is a nexus between child sexual abuse and the rates of subsequent suicides. Mrs Cant, in her evidence draws on figures relating to the prevalence of suicide ideations in a 2010 study which concluded that "male child sexual abuse victims were 14 times more likely to commit suicide or die of a fatal drug overdose".³

Nevertheless many of the former students who testified at the Inquiry were academically successful despite their experiences at the Hostel. Some have gone on to become doctors, lawyers, teachers and successful business people. Most have raised their own families and many have continued to be involved in farming. They have managed to live what might be considered successful lives despite the profound impacts that the same or similar Hostel experiences have had on other former students' lives.

One former male student has described the continuing impacts of his Hostel experiences in the following terms:

*"Still to this day I have problems being able to get rid of those demons that grabbed me at the boarding school for the three years that I went there. I am not willing to let the hurt continue. I feel that it has affected me for the rest of my life. I have tried a lot of things to get over the effects of what happened, but they are always in the background. One thing that I have problems with is that I should have done something about it, said something to someone, but the problem was there was no-one that I could trust."*⁴

² Parkin, N 2012, Inquiry Transcript of Evidence p.598

³ Inquiry Transcript of Evidence, p. 892

⁴ Inquiry Transcript of Evidence, p.61

Apart from the evidence of sexual abuse there is ample proof that a large number of students suffered emotional abuse during their time at St Andrew's Hostel. Emotional abuse can be described as the sustained, repetitive, inappropriate ill treatment of a child through behaviours such as threatening, humiliating, teasing or bullying.

One former student was so affected by this emotional abuse that she attempted to commit suicide whilst living at the Hostel in 1986. She has stated that she continues to feel the impact of what happened to her at the Hostel to this day.⁵ Another former student still suffers from nightmares and insomnia and underwent several years of counselling as a result of the emotional abuse that she endured at the Hostel. She has been unable to return to Katanning for more than 30 years.

Another student at St Andrew's Hostel during the mid-1980s has testified:

*"Many children - girls and boys - suffered sexual abuse and hundreds also suffered bullying at its worst, torment, marginalisation, victimisation and we were belittled, vilified and treated as worthless human beings. Because of this disgusting and disgraceful treatment of hundreds of innocent children the ripple effect it has (had) on families and communities is unquantifiable. Siblings haven't spoken to each other for decades. Parents are dissociated from their children. Whole communities hold beliefs about children - who are now adults - and their families that (were) completely fabricated by Dennis McKenna and his cohorts. Us as children now - we're adults - we have our own cause and effect of broken marriages, lost jobs, inability to function within authorities. Our children suffer the scars. There are many with addictions and ongoing psychological issues. Parents who paid for us to be there are now in shock and distress at learning the enormity of it all and there are those of us who have taken our lives."*⁶

Feedback from Crisis Care indicates that some of the victims have found that their participation in the Inquiry has been a positive process in that it has allowed them to tell their story, to be listened to, and to be taken seriously. For some this was the first time they had revealed what had happened to them. Others have found that the support that they have been able to give to each other in the course of the Inquiry has generated beneficial feelings of camaraderie. Mr John Hammond, the lawyer who acts for 25 of Dennis McKenna's victims, stated in his closing submission that the Inquiry had been of "enormous benefit" to his clients. He also described the Inquiry as being part of the healing process for his clients.⁷

The effects of the abuse are likely to continue for many of the victims and their families; and it is important for their future wellbeing that those who have rejected them in the past⁸ should begin to show them some empathy. Until this happens the wrongs that were done to them will continue to fester and Katanning will remain a broken community.⁹

I acknowledge that each individual is different and that there are many who have not spoken of their experiences because they feel uncomfortable in doing so. Nevertheless, I am

⁵ Inquiry Transcript of Evidence, p.3696

⁶ *ibid*, p.382

⁷ *ibid*, p.4143

⁸ Perhaps the worse example of this was the death threat made to one of the initial complainants (t 133)

⁹ Inquiry transcript of evidence p.3607

buoyed by those people who have come forward and I can only encourage the others, when they are willing, to do the same. They should also bear in mind that assistance is always available through services like Crisis Care and other Government service providers.

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 ICPA⁵ 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 Haddow¹³ and Dale and Catherine Jefferis¹⁴). 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 official¹⁵ 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

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

"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 1985²⁹ 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 matters³¹ 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 1987⁴² 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

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-familial). 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-familial 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.

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.

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:

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-recording 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

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 Easta, 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 legislation⁸⁰ 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 “poofster”?

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.

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:

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...

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.

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's² 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

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 specialists¹¹. 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 reforms¹⁵:

- 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

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 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

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

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 Gillooly⁶⁴ 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

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.

⁷⁰ Department for Children Protection 2011, *Factsheet 6: Information for Employees and Volunteers*, viewed 18 July 2012, <http://www.checkwwc.wa.gov.au/NR/rdonlyres/D0FDBCA5-BDD8-496F-BE72-B6EE9343B340/0/Factsheet6InformationforEmployeesandVolunteers062011.pdf>.

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

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, policies, 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.

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Appendix 1

Accolades and Amateurs¹ – Hostel Governance 1975-1990

A1.1 The role of the Country High School Hostels Authority - A state of flux

When Dennis McKenna was first employed at St Andrew's Hostel, Katanning in September 1975, the Country High School Hostels Authority (Authority) was in a state of flux. In July 1975, under the long-serving Chairman, Mr E O Lange MBE OStJ, the Authority had implemented some significant reforms. By the next meeting in August he was dead, having died suddenly at the age of 65.

At its meeting on 24 July 1975, and for the second time since its establishment in 1960,² the Authority terminated its arrangements with a number of local hostel boards.³ This action followed the report of a sub-committee established at the meeting the month before to investigate local board structures and appointment.⁴ There is no record of what prompted this rather dramatic development, but it appears that the hostel boards involved were “not controlled by an organisation”.⁵ The hostels were in Bunbury, Carnarvon, Katanning, Narrogin and Port Hedland.

In place of existing arrangements, the Authority resolved that from 19 December 1975:

- Boards were to be appointed annually by the Authority's Secretary

¹ See the submission from Ian Parker, quoted in section A1.7.

² A number of agreements with hostel local boards had been terminated previously, in 1969 and late 1970. The dispute was originally with the Country Women's Association (CWA), but subsequently also extended to hostels run under the auspice of the Anglican Diocese of Bunbury, including St Andrew's Hostel, Katanning. The dispute was over how any surplus funds derived from running the hostels were to be used: the CWA believed those funds belonged to the CWA and the Anglican Bishop of Bunbury believed that clergy who were hostel board members or chaplains should receive a fixed honorarium. The Chairman of the Authority, Mr Lange, and the local boards under the auspice of the CWA believed any additional funds should be reinvested in the hostels. The CWA withdrew from the management of any hostels, as the retention of funds by the hostel would be contrary to its constitution, and Mr Lange decided that all hostels, irrespective of the role of the Anglican Church, would be run under a Letter of Arrangement (see section A1.3). The Secretary of the Authority explained that the Anglican Church could still nominate the board to administer the hostel, that control would remain with the Diocese and that the powers of the Authority under the Act would be delegated to the board. However, the Anglican Church would not have the same power as it had previously and the board would be approved by and responsible to the Authority. (CHSHA 1969, Minutes of Meeting, 9 October; Bunbury Diocesan Trustees 1969, Minutes of Meeting, 8 December; Bunbury Diocesan Trustees 1970, Minutes of Meeting, 25 May; CHSHA 1970, Minutes of Meeting, 23 July; Great Southern Herald 1970, *Diocesan Control of Hostel is Revoked*, 11 December, pp. 1-2.)

³ CHSHA 1975, Minutes of Meeting, 24 July, p. 4.

⁴ The sub-committee was established after a decision had been made to terminate the Authority's arrangements with Narrogin hostel (CHSHA 1975, Minutes of Meeting, 26 June).

⁵ CHSHA Secretary 1975, Letter to Secretary Katanning Hostel Board, 29 August.

- Board membership would consist of representatives of the local High School, Country Women's Association (CWA), Local Government, WA Council of State Schools Organisation, Ministers Fraternal, and parents.
- Annual General Meetings were to be held before the 1st June each year and a full report on the hostel to be forwarded to the Secretary of the Authority in July together with the relevant financial statements.
- Boards were to appoint a Chairman, Vice Chairman, a Secretary and Treasurer.
- The warden and matron were to have the right to be present at all ordinary meetings - but to hold no voting powers.
- Meetings were to be held monthly unless otherwise determined.
- No expenditure was to be undertaken by wardens and matrons without authority from the board.
- No administrative staff appointments were to be made without reference to the Secretary of the Authority.

The last of the requirements above was part of another significant reform. At the same meeting, in July 1975, the Authority's Secretary submitted a list of seven individuals who should not be re-employed in school hostels because of events that occurred during their hostel employment. The Minutes record that the Secretary was authorised to advise the Department of Community Welfare of this position and to have the names added to the "forbidden" list held by that Department.⁶ The Authority also decided that the names of persons appointed to administrative (supervisory) positions in hostels should be submitted to the Secretary to the Authority for approval before the appointment was confirmed.⁷

By the next meeting of the Authority, on 28 August 1975, Mr Lange was dead.⁸ He had died suddenly on 13 August 1975,⁹ after serving as the inaugural Chairman of the Authority since its inception in December 1960. Within days of Mr Lange's death, St Andrew's Hostel advertised the housemaster position and, less than two weeks later, gave that position to McKenna.¹⁰

It was not until 30 June the following year that the then Minister for Education, Hon Graham MacKinnon MLC, appointed Colin Philpott as Chairman of the Authority.¹¹ Although the

⁶ The Department of Child Protection has advised that it has no records relating to this "forbidden" list (Senior Legal Officer (Department of Child Protection) 2012, email to Inquiry Executive Officer, 4:11 pm 21 June). Keith Maine, Director General of the then Department of Community Welfare (and its other iterations) from 1968 to 1984 (*Inquiry Transcript of Evidence*, p. 996), advised the Inquiry that he was unaware of the existence of such a list. Mr Maine indicated that he would have had concerns if such a list had been held without due process being followed and questioned the legality of keeping a list like this (Inquiry Investigator 2012, File note of conversation with Mr Keith Maine, 15 May).

⁷ CHSHA 1975, Minutes of Meeting, 24 July, p. 7; see Chapter 13.1.

⁸ CHSHA 1975, Minutes of Meeting, 28 August, p. 1.

⁹ The West Australian 1975, *Death Notices* – E O Lange, 14 August.

¹⁰ Job applications retained among St Andrew's Hostel records refer to job advertisements being published on 16 and 17 August 1975 in The West Australian. Letters to applicants advising they were unsuccessful for the position, also retained among St Andrew's Hostel records, are dated 25 August 1975.

¹¹ Minister for Education 1976, Government Gazette WA, 9 July, p. 2404; Minister for Education 1975, Letter to P Hepper (Secretary, CHSHA), 3 November; see Chapter 15.

paperwork relating to Mr Philpott's appointment is not on the relevant Departmental file,¹² Mr Philpott's background as Chairman of the St Andrew's Hostel Board and committee member of the Student Hostels Association is referred to in the section on the Authority, in the Education Department's 1976 Annual Report.¹³

Mr Philpott was to continue in the role of Chairman of the Authority for the next 23 years. For the majority of this time, Mr Philpott's substantive employment was as a land valuer and auctioneer for Wesfarmers, and his job included auctioning farming properties due to default.¹⁴ Mr Philpott obtained Wesfarmers' permission before agreeing to take the role with the Authority and he was effectively paid by Wesfarmers for his work with the Authority until he retired from Wesfarmers in 1996.¹⁵ When he retired as Chairman of the Authority in 1999¹⁶ Mr Philpott was appointed as its patron; a position that he holds to this day. On 26 January 2003 Mr Philpott was awarded a Medal of the Order of Australia for his service to the rural communities of Western Australia, particularly as Chairman of the Authority, but also citing his role as "Co-Founder, Students Hostels Association".¹⁷

A1.1.1 The Student Hostels Association

The Student Hostels Association of WA(SHA) was established following a meeting of "interested persons" initiated by Mr Philpott in October 1973.¹⁸ At that time, Mr Philpott was the Chairman of the St Andrew's Hostel Board.

Mr Philpott began his career with Wesfarmers as a stockman in Katanning and became a manager there in about 1966.¹⁹ He joined the Hostel Board in about 1967,²⁰ when he accepted the position from the Anglican Church.²¹ Mr Philpott was one of the few members to remain on the Hostel Board after the Authority took ultimate control over the management of the Authority hostels previously managed by the Anglican Diocese of

¹² Education Department 8 January 1962-3 October 1990, File No 184/63, *CHSHA – Appointment of Members*.

¹³ Education Department 1976, *Annual Report 1976*, Education Department, Western Australia, p. 29. No reference is made to Mr Lange's death or his long service with the Authority.

¹⁴ Philpott, C L *Inquiry Transcript of Evidence*, p. 3899-3900.

¹⁵ Philpott, C L *Inquiry Transcript of Evidence*, pp. 3899. Until his retirement Mr Philpott was only reimbursed travelling and other costs by the Authority (approximately \$2,500 p.a. between December 1987 and December 1996). (CHSHA December 1987-December 1992, Minutes of Meeting 'Payments for Ratification Attachments'; CHSHA 2012, 'Payments to Colin Philpott Dec 92-Dec 96'). After he retired from Wesfarmers, the Authority paid Mr Philpott a sitting fee from 1 July 1997, initially of \$250 per day (Acting Chief Executive Officer (Department of Education Services) 1997, Letter to Minister for Education, 8 April) until he resigned in 1999.

¹⁶ Philpott, C L *Inquiry Transcript of Evidence*, p. 2406; Minister for Education 1999, Letter to C Philpott, 29 September; CHSHA 2003, *Annual Report 2003-2004*, CHSHA, Western Australia, p. 14; CHSHA 2011, *Annual Report 2010-2011*, CHSHA, Western Australia, p. 5.

¹⁷ Australian Honours and Awards Secretariat 2012, It's an Honour – Colin Lindsay Philpott, viewed 9 July 2012 www.itsanhonour.gov.au/; Office of the Official Secretary to the Governor-General 2003, Media Release - Mr Colin Lindsay Philpott. The media release also cited Mr Philpott's role as a Delegate of the East Avon Football, among other things.

¹⁸ Stowell, R H LaM 1975, 'The big stirrer', *Develop your potential, Report of the Conference and AGM of the SHA, Albany, 25-26 January 1975*, p. 20; Sibson, Hon J (MLA) 1974, Letter to Minister for Education, 17 October.

¹⁹ Great Southern Herald 1974, *Two well known families leaving*, 11 January, p. 1.

²⁰ Philpott, C 1974, 'The Hostels Authority and its Relationship with the Hostels', *The Needs of the Hostel Student as a Person, Report of the Conference of the SHA, Swanleigh, 18-20 January 1974*, p. 33.

²¹ Philpott, C 2010, Letter to Chairman of Katanning Residential College, 25 May.

Bunbury in 1970.²² He is likely to have become Chairman of the Hostel Board in June 1971 when Reverend Stanley Threlfall, who was the previous Chairman, left Katanning.²³ Mr Philpott remained as Chairman until he left Katanning in January 1974.²⁴

The SHA's first conference was at Swanleigh, an Anglican Church run metropolitan hostel for regional school students,²⁵ and coincided with Mr Philpott's departure from Katanning. Minutes of resolutions passed at the conference record the election of an inaugural committee comprising of Roy Wenlock, Chairman (Warden at St Christopher's Hostel, Northam²⁶); Richard Stowell Secretary/Treasurer (Director (Warden) at Swanleigh²⁷); Mrs Maughan (the CWA representative on the Authority; Mr Philpott (Chairman of St Andrew's Hostel Board, Katanning) and Hon John Sibson MLA (Chairman of Craig House Board, Bunbury²⁸). The SHA described itself as "An association of persons and organizations concerned for students in high-school hostels in WA". Other than Swanleigh, and certain co-opted members, the membership was limited to the staff and board members of the Authority hostels. Mr Philpott gave a presentation at this conference, "The Hostels Authority and its Relationship with the Hostels". The presentation was about the "time tried areas of [concern] Men, Money and Materials" and in the course of it Mr Philpott recommended either Mr Wenlock or Mr Stowell as possible candidates for membership with the Authority.²⁹

The origins of the SHA appear to relate to a 1973 Crown Law opinion that the Authority's hostel employees were "government workers".³⁰ Hostel administrators had concerns about the status of supervisory staff, in particular the financial implications of paying such staff as government workers.³¹ The establishment of SHA coincided with a State election campaign

²² See footnote [2]. See also Great Southern Herald 1970, *Three hostel board members continue in office*, 18 December, p. 2; CHSHA 1971, Minutes of Meeting, 28 January.

²³ Great Southern Herald 1971, *Farewell to Rector*, 4 June, p. 1.

²⁴ Great Southern Herald 1974, *Two well known families leaving*, 11 January, p. 1.

²⁵ Swanleigh was not a CHSHA hostel.

²⁶ On 28 July 2000, Mr Wenlock was awarded the Australian Sports medal for his "Lifelong dedication to junior/country cricket umpiring/involved in creating WA cricket museum" (Australian Honours and Awards Secretariat 2012, *It's an Honour – Roy Wenlock*, viewed 9 July 2012 www.itsanhonour.gov.au/); see Chapter 12.

²⁷ On 26 January 1994, Mr Stowell was awarded a Medal of the Order of Australia for service to youth from isolated areas, particularly as Director of Swanleigh from 1972-1992 (Australian Honours and Awards Secretariat 2012, *It's an Honour – Richard LaMothe Stowell*, viewed 9 July 2012, www.itsanhonour.gov.au/; Office of the Official Secretary to the Governor-General 2003, Media Release - Mr Richard LaMonth Stowell). The media release also refers to Mr Stowell's involvement with the Duke of Edinburgh's Award; his association with the Anglican Church, including as a pastoral Assistant in the Diocese of Perth; and his involvement with Scouting for 43 years including as an Assistant District Commissioner; see Chapter 13.5.

²⁸ SHA 1974, *The Needs of the Hostel Student as a Person, Report of the Conference of the SHA, Swanleigh, 18-20 January 1974*, p. 35; see Chapters 11.7.6 & 11.7.7.

²⁹ Philpott, C 1974, 'The Hostels Authority and its Relationship with the Hostels', *The Needs of the Hostel Student as a Person, Report of the Conference of the SHA, Swanleigh, 18-20 January 1974*, p. 32.

³⁰ Westcott, C 1973, Memo to Acting Chief Industrial Officer, 20 February.

³¹ "Domestic staff" (kitchen, office, grounds and maintenance staff) were already under miscellaneous awards. A piece of correspondence from Mr Stowell as Secretary of the SHA to the Public Service Board in September 1974 states that employees under awards normally work 40 hour weeks but:

"...salaried staff [such as wardens, matrons, housemasters and housemistresses] are working more in the nature of a vocation involving the whole lives of students. Most of these people work a minimum of 60 hours a week; some work an 80 hour week and in some cases it is virtually a '7-day-week, 24-hours-

in which financing of country hostels was an issue. The incumbent State government had withdrawn its subsidy to hostels when the Commonwealth started paying an allowance and it was an Opposition election promise to increase State funding to hostels.³²

After an Opposition victory at the election in April 1974, and an increase in hostel subsidies,³³ SHA began lobbying to be represented on the Authority³⁴ as did a number of other non-government agencies.³⁵ This lobbying resulted in the Minister convening a meeting in May 1975 of nominated persons³⁶ who appear to have been regional State politicians.³⁷ Shortly after the meeting, on 6 June 1975, the Minister wrote to SHA advising that should the membership of the Authority be expanded beyond what was provided for in the exiting legislation, it, and other interested organisations, would be invited to make nominations.³⁸

Shortly after Mr Lange's death in August, an SHA newsletter noted his death as well as his services to the Authority and elsewhere.³⁹ It also reported on the creation of a liaison officer position for the Authority, but, contrary to Mr Lange's intentions, supported the appointment of a person outside the public sector.⁴⁰ It advocated that the services of Mr

a-day' job. If a teenage student knocks on your door at 2 am in the morning because he has acute appendicitis you cannot say 'Go away, I don't start work till 8 am in the morning'...

I would like to emphasise that uncertainty in this matter, and divided opinion, is causing a great many enquiries and a great deal of unpleasant speculation. A ruling or an indication from you as to the nature of the real position would greatly assist realistic planning." (Stowell, R H LaM 1974 (Secretary, SHA), Letter to Public Service Board, 5 September 1974).

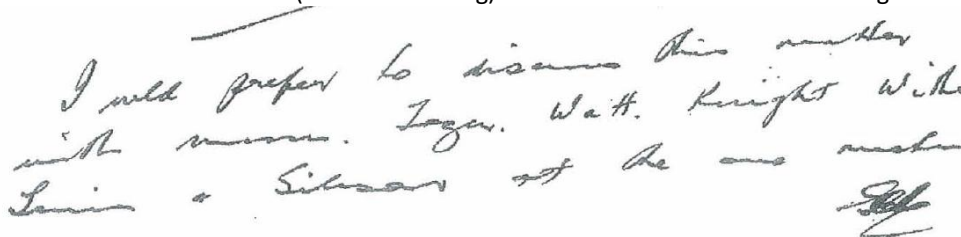
³² The West Australian 1974, *Hostels to get higher subsidies*, [page number not available].

³³ *ibid.*

³⁴ SHA 1975, Minutes of the AGM 26 January 1975 (15(b)), *Develop your potential, Report of the Conference and AGM of the SHA, Albany, 25-26 January 1975*, p. 22.

³⁵ Tozer, Hon J (MLC) 1975, Letter to the Minister of Education, 19 March.

³⁶ MacKinnon, Hon G C (MLC) 1975, Handwritten note, 13 May. The note states "I would prefer to discuss this matter with Messers Tozer, Watt, Knight, Withers, Lewis and Sibson at the one meeting". NB. Initially the reference to Tozer in this note (in cursive writing) was mistaken for a reference to Logan – see below:



I would prefer to discuss this matter with messrs. Logan, Watt, Knight, Withers, Lewis & Sibson at the one meeting

³⁷ Parliamentary Library WA 2010, Legislative Council Members since 1890, 29 March; Parliamentary Library WA 2005, Legislative Assembly Members since 1890, 20 October; Planning Ministry of Western Australia.

³⁸ Minister for Education 1975, Letter to SHA, 6 June.

³⁹ SHA 1975, 'Liaison Officer' SHA Newsletter, August, p. 2.

⁴⁰ In 1974 Mr Lange had proposed that:

"an officer of the Authority [should] regularly visit hostels to advise on hostel management including budgeting and accounting procedures, hostel staffing, supply of equipment, standardisation of accounting methods and to keep members of the Authority fully informed on hostel affairs."

Mr Lange recommended the then Secretary Mr Hepper, with more than 12 years' experience, as ideally suited provided he was relieved of his secretarial tasks (Lange, E O 1974, Letter to the Minister, 17 September).

Wenlock, Mr Stowell and Mr and Mrs Jones⁴¹ be utilised in the short-term, until the position was filled.

By 21 October 1975, two months after Mr Lange's death, the SHA noted that the Authority's Secretary was acting CEO and again writes to the Education Minister:

"The Executive of this Association is aware that the Country High School Hostels Authority, since the death of the late Mr E O Lange, JP, is without a Chairman.

The Executive of this Association sympathetically feels towards the Authority in this period when its members and Executive Officers must be hard-pressed to make up for the gap; but at the same time, has expressed sentiments about that Chairmanship. The Executive of this Association is of the opinion that members of the Authority itself should be allowed to choose their own Chairman and that such a Chairman should be more responsible to parents and public rather than to a government department..."⁴²

The Minister wrote to both the Authority and the SHA on 3 November 1975, advising of his intention to appoint the Education Department representative on the Authority, Mr J A Black, as Chairman.⁴³ For reasons which do not appear in Departmental records, the appointment of Mr Black did not occur and instead, by 30 June 1976, the Minister appointed Mr Philpott as the Chairman.⁴⁴ On the same date, the Minister also appointed Archbishop Michael Challen⁴⁵ as representative of the Anglican Church on the Authority.⁴⁶

The SHA circulated a newsletter to its members in August 1976 advising of Mr Philpott's appointment:

"NEW CHAIRMAN OF THE AUTHORITY 'THE BIG STIRRER'"

It has now been confirmed that the new Chairman of the Authority is Mr Colin Philpott, a member of this Association's executive committee. Mr Philpott was Chairman of St Andrew's Katanning... when he initiated moves to call together Wardens and Committee members of all the hostels. The first meeting was held in October 1973 and this led to the first Conference and General Meeting at Swanleigh in January 1974. At the Albany Conference in 1975 at which the Association adopted its constitution, Colin was presented with a large wooden spoon and dubbed "The Big Stirrer". No longer a member of a particular hostel's committee

⁴¹ Fred Jones and his wife were the warden and matron of Narrogin Hostel. After being appointed as a part time liaison officer for the Authority in 1980, and continuing in his role as Warden, it appears that Mr Jones allegedly embezzled substantial funds from the Narrogin Hostel and absconded (Philpott, C 1979, Letter to CHSHA Member, 5 November; Hon Bill Grayden MLA, Minister for Education, 1981, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 26 March, p. 260; Dixon, D J *Inquiry Transcript of Evidence*, p. 3800-3801; Philpott, C L *Inquiry Transcript of Evidence*, pp. 3914-3915)

⁴² Quoted in Stowell, R H LaM 1975, 'The Country High School Hostels Authority', *SHA Newsletter*, December, p. 2.

⁴³ Minister for Education 1975, Letter to P Hepper (Secretary, CHSHA), 3 November; Minister for Education 1975, Letter to Mr R H LaM Stowell (Secretary, SHA), 3 November.

⁴⁴ Minister for Education 1976, Government Gazette WA, 9 July, p. 2404; Minister for Education 1975, Letter to P Hepper (Secretary, CHSHA), 3 November.

⁴⁵ On 26 January 1988, Bishop Challen was made a Member of the Order of Australia "In recognition of services to religion" (Australian Honours and Awards Secretariat 2012, [It's an Honour](http://www.itsanhonour.gov.au/) – Michael Boyd Challen, viewed 9 July 2012, www.itsanhonour.gov.au/; Office of the Official Secretary to the Governor-General 1988, Media Release – Right Reverend Michael Boyd Challen). The media release refers to Bishop Challen's then role as Assistant Anglican Bishop of Perth since 1978, his membership of the General Synod Anglican Church of Australia since 1973 and of the General Synod's Social Responsibilities Commission since 1969, among other things.

⁴⁶ Minister for Education 1976, Government Gazette WA, 9 July, p. 2404; see Chapter 12.

*Colin has nevertheless remained as a valuable member of the Executive of the Association as a Co-opted member. Colin is Administration Manager of the Rural Division of Wesfarmers, and in this position he manages to travel around the country and so keeps in touch with the needs of isolated and rural communities... The Executive of the Association has unanimously applauded Colin's appointment as chairman of the Authority and wishes him well as he takes on this new responsibility."*⁴⁷

Speaking at the first SHA conference following his appointment as Chairman of the Authority, Mr Philpott highlighted the need:

- to shift priorities for the Authority from a "building era" to one of "improving the facilities needed to occupy students' time outside their academic pursuits"
- for equity in the improvements and expenditure allocated to each hostel
- for continuity of competent staff, particularly at Warden-Manager level
- for hostels to become more business-like, in that they are generally "big business", and for board members not "just [to] become rubber stamps".

Mr Philpott concluded his presentation by exhorting the Association to "tackle the future with confidence and to enter the field of P.R."⁴⁸

A1.2 The relationship of the Authority with the local boards

At the time that Mr Philpott took over as Chairman of the Authority, the nature of the relationship between the Authority and local hostel boards had changed markedly since its inception in 1960.

High school hostels had been operated by church groups and the CWA long before the establishment of the Authority.⁴⁹ The Authority was established so that additional or improved hostel infrastructure for rural high school students could be funded by government. When the Country High School Hostels Authority Bill (CHSHA Bill) was introduced to Parliament in 1960, Hon Leslie Arthur Logan MLC, Minister for Local Government, made it clear that the intended role of the Authority was to be a means by which government could "go outside of the loan fund":

"It is necessary to consider the original reason for the introduction of this [CHSHA] Bill. Over the years ... the Country Women's Association has requested the Government to establish high school hostels in certain country centres.

Considerable time and thought has been devoted to finding ways and means to meet that request. The reason why the request has not been implemented up to the present is the lack of finance...

The greatest number of new schools and classrooms on record are being provided by the Government. Because there was no finance available after all the money had been allocated,

⁴⁷ SHA 1976, 'New Chairman of the Authority - "The Big Stirrer"', *SHA Newsletter*, August, p. 1.

⁴⁸ SHA 1977, *Interaction and development, Report of the Conference and AGM of the SHA, Bunbury, 21-23 January 1977*, pp. 37, 38.

⁴⁹ For example, Adamson House and St Christopher's House in Northam started as a girls' hostel established in 1938 by the CWA and a boys' hostel established in 1941 by the Anglican Church (Northam Residential College 2012, A Brief History, viewed 4 July 2012 at www.northamresidential.com.au/history.htm; Anglican Diocese of Perth 1967, Report to Synod, p. 108).

the Government had to find some other way to finance the establishment of country high school hostels. So it decided to go outside of loan funds and borrow the money; because that money has to be repaid a limit had to be set on the amount borrowed. That amount was fixed at £100,000 for a start.”⁵⁰

With government policy from the 1960s focussing on opening up “a million acres a year” of new land for farming in the south-west,⁵¹ there was a burgeoning increase in farming families with a growing need for their children to have access to higher education.⁵² If families could not afford to board their children at private schools in Perth, the absence of country hostels could have effectively precluded their children from attaining high school and further education. In the second reading speech for the CHSHA Bill, the Minister stated:

“It is hoped that it will be the means of making it possible for a greater number of our children in the country to attain a higher level of education, which is so readily available to metropolitan children.”⁵³

As in the past, however, the function of government was understood in terms of the provision of hostel infrastructure; the only change was that this function would be undertaken by the Authority rather than the Education Department. This was reflected in the terms of the “indentures” (agreements) that were entered into by the Authority in the early 1960s:

“The Authority will initially build (or provide) and equip hostels and will enter into an agreement with an approved organisation which will conduct the hostel on behalf of the Authority.”⁵⁴

These agreements were drafted on the basis that the Authority would contract with an organisation (a church or the CWA which had a corporate identity), and included the requirement for the organisation to appoint a local board “from its members to supervise the management and control of the hostel”.⁵⁵

⁵⁰ Hon Leslie Arthur Logan MLC, Minister for Local Government, 1960, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 21 September, p. 1282.

⁵¹ Australian Bush Heritage, Making a living off the land - The Charles Darwin Reserve Community History, viewed 3 July 2012, www.bushheritage.org.au/cdr_history/economy/opening_land.html

⁵² Parker, I 2012, *Submission to the Inquiry*, 29 May; Saunders, N and Rijavec, F 2003, *A Million Acres A Year – study guide*, pp. 4, 5:

“Following the success of the War Service schemes [implemented by the Commonwealth for soldiers returning after WWII] the state government of WA expanded its Conditional Purchase Scheme to open up vast tracts of public land to agriculture. Hundreds of farms were allocated to applicants who came predominantly from the eastern states to take up what was the cheapest land in Australia. In Western Australia a million acres of bush was released to agriculture every year during the 1960s. Those who worked the land under these schemes were known as Newland Farmers... After World War Two Western Australia launched one of the heaviest assaults on virgin land in Australian history. More land was released to agriculture in just three decades than in the previous 130 years of white settlement.”

See also www.cultureunplugged.com/play/6479/A-Million-Acres-A-Year, as viewed 3 July 2012.

⁵³ Hon Sir Arthur Frederick Griffith MLC, Minister for Mines, 1960, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 15 September, p. 1162.

⁵⁴ CHSHA [undated], *Rules and Regulations for the Guidance of Hostel Management Committees*, p. 16.

Although undated, these rules and regulations appear to pre-date the legislative amendments made to the *Country High School Hostels Authority Act 1960* [CHSHA Act] in October 1966.

⁵⁵ CHSHA [undated], *Rules and Regulations for the Guidance of Hostel Management Committees*.

The relationship between the Authority and local boards was to change significantly in 1966, precipitated by the successful prosecution of a hostel warden in Merredin for the unlawful assault of students at the hostel.

In September 1965, Alfred Francis Steele and his wife Doreen commenced as Warden and Matron of St Michael's Hostel in Merredin.⁵⁶ They had been employed from Fairbridge Farm, Pinjarra.⁵⁷ After just one term at St Michael's Hostel, Mr Steele was on criminal charges for unlawful assault of two male students.⁵⁸ He was subsequently convicted, but the conviction was not recorded "in view of his previous character and the attending circumstances".⁵⁹

At its meeting on 24 February 1966, and apparently in response to the incident involving Mr Steele, the Authority dealt with a letter that it had received from the St Andrew's Hostel Board, Katanning enquiring about wardens administering corporal punishment. The Minutes record that over the last five years there had been four police actions against staff appointed to hostels.⁶⁰ Subsequently, when the Authority decided to draft regulations about the disciplining of boarders, Crown Law advised that the Act did not allow either for regulations to be made about discipline or for the Authority to direct the enforcement of discipline in the hostels.⁶¹ It was agreed that an enlargement of the Authority's functions under the Act should be developed by Crown Law.

While corporal punishment was allowed in public schools⁶², it appears that the Authority was attempting to rein in the use of corporal punishment in the hostels with regulations on corporal punishment enacted in 1968⁶³, regulation 7 required that "The discipline enforced in a hostel shall be mild but firm and any degrading or injurious punishment shall be avoided". There were also specific restrictions on the use of corporal punishment. Regulation 9 stated:

"(1) Corporal punishment may as a last resort only be inflicted on boys by the Warden of a hostel or by the Principal of the High School or his Deputy, and a person who so inflicts

⁵⁶ St Michael's House Board (Merredin) 1965, Minutes of Meeting, 8 September.

⁵⁷ The Chairman of St Michael's House Board, Archdeacon Bothamley, wrote to the Rector of Merredin stating that he knew:

"from Archdeacon Bronislaw[?], rector of Pinjarra what Christian influence and great support you will receive from the Steels both at St Michaels and in the parish.. God has answered out prayers and I am truly thankful... I trust that the future of St Michael's will be strengthened in the purpose of our life and work for the Church and the parish." (Bothamley, L 1965, Letter to Rector of Merredin, 7 July).

⁵⁸ St Michael's House Board (Merredin) 1966, Minutes of Meeting, 7 February. The Board's "Considered Statement", appended to the minutes and possibly prepared for the court case, states that Board was unanimous in its support of Mr Steele and that he:

"acted correctly in the circumstances and delivered a justly deserved punishment in the best interest of the Hostel and the boys concerned. There is no hesitation in the mind of the Board, that whether Mr Steele be convicted or acquitted of the charge, to continue [sic] to employ him in his position of trust and responsibility as Warden".

It extols Mr Steele's transformation of the Hostel in the one term he had worked there "from a state of dangerous laxity of discipline to a controlled order." After Mr Steele was convicted, the Steeles offered to resign, but remained at the St Michael's Hostel until the end of 1966.

⁵⁹ Ilbery, Toohey & Barblett 1966, Letter to Committee for St Michael's House Merredin, 29 March.

⁶⁰ CHSHA 1966, Minutes of Meeting, 24 February.

⁶¹ CHSHA 1966, Minutes of Meeting, 22 April.

⁶² Corporal punishment in public schools was allowed under the Education Act Regulations 1960 until 24 July 1987 (Minister for Education 1987, Government Gazette WA, 24 July, p. 2829).

⁶³ Lange, E O 1968, 'Country High School Hostels Authority Act Regulations 1962', Government Gazette, 25 June, pp. 1846, 1847.

corporal punishment on a student shall immediately after so doing enter particulars thereof and details of the offence in the hostel punishment book.

(2) Corporal punishment may be inflicted for offences against morality, for gross impertinence, for wilful and persistent disobedience, or for conduct to the prejudice of good order and discipline of a hostel.

(3) Corporal punishment shall only be inflicted with a cane on the palm of the hand but not more than 2 strokes on each hand shall be administered.

(4) No corporal punishment shall be inflicted on girls.”

In comparison to the behaviours prevalent at some hostels at the time, and also much later, the restrictions the Authority sought to impose on corporal punishment in hostels might be regarded as particularly enlightened.⁶⁴ The regulations appear to have been modelled on the Education Act Regulations 1960, gazetted on 26 July 1960, but were more restrictive in limiting the punishment to two strokes on each hand. Regrettably, as the evidence to this Inquiry attests, there is little to indicate that such restrictions were adhered to in a number of Authority hostels, in particular at St Christopher’s Hostel in Northam, where former boarders reported a brutal regime.⁶⁵

Although not altogether successful in controlling physical discipline in the hostels, the amendments giving the Authority the legal power to implement those regulations were to have far reaching consequences. Of particular significance, the amendments for the first time granted the Authority power “to undertake and carry out or cause to be carried out the general management of hostels”, including the power to engage and dismiss staff, to determine their duties and to provide for discipline in hostels. The amendments also expressly enabled the Authority to delegate its powers to boards (committees) without being restricted to members of the Authority as had previously been the case.⁶⁶ Local boards were to exercise “those [delegated] powers in the same manner and with the same effect as if they had been directly conferred on that [board] by this Act”, that is, as if the local board was a government statutory body.⁶⁷ This was subject only to any general or special directions given by the Authority.⁶⁸

Although the legal implications of the amendments were arguably clear, it appeared to take some time before these were fully understood. Many hostels had operated for many years on the basis of a partnership between the government and non-government organisations.

⁶⁴ Croft, I B 2012, *Inquiry Statement*, in possession of the Inquiry, 27 June (Northam 1964-1966); Parker, I 2012, *Submission to the Inquiry*, 29 May; Parker I 2012, Email to Inquiry Investigator, 6:47 pm 3 July (Swanleigh 1977).

⁶⁵ “C” *Inquiry Transcript of Evidence*, pp. 3244-3245 (Northam 1968-1972); Earl, B J *Inquiry Transcript of Evidence*, pp. 3271 (Northam 1969-1972); “W” *Inquiry Transcript of Evidence*, pp. 3283-3285 (Northam 1970); Underwood, G C *Inquiry Transcript of Evidence*, p. 3315 (Northam 1971-1974); Trindall, D J *Inquiry Transcript of Evidence*, p. 3330 (Northam 1972-1976); “P” *Inquiry Transcript of Evidence*, pp. 3340-3343 (Northam 1975-1976); Blee, T S *Inquiry Transcript of Evidence*, pp. 3405-3406 (Northam 1974-1978); “Q” *Inquiry Transcript of Evidence*, pp. 3741-3748 (Northam 1971); see Chapter 12.3.

⁶⁶ CHSHA Act, s.7(ba)(iv). NB. The terminology under the legislation is “committees”, but for the purposes of this Report I have adopted the term “board”.

⁶⁷ CHSHA Act, s.7(ba)(iv), 9.

⁶⁸ *ibid*, s.9(2).

The legislative changes, if acknowledged, had the potential to radically alter the division of responsibilities between the parties to this partnership.⁶⁹

It might have been expected that the issue would have been put beyond doubt in 1973 by the Crown Law legal opinion,⁷⁰ referred to previously, which identified the Authority's hostel employees as "government workers" for industrial relations purposes. However, despite there being no apparent legal basis for it, a distinction between the status of wage (domestic) and salaried (supervisory known as administrative at the time) hostel workers persisted until 1979.⁷¹ Even after that date, although there was apparent clarity in the legal and industrial arrangements, the question of who retained ultimate responsibility and control over the Authority's hostels remained, in practice, ambiguous.

Arguably the ambiguity about just who was responsible for what contributed significantly to the failure to ensure the wellbeing of students residing at hostels that has been demonstrated so strikingly in the evidence before this Inquiry. Moreover, with the last hostel constructed by the Authority in 1974, the question posed by one Inquiry witness, Bernie Mouritz, who described graphic incidents of violence between unsupervised male students at Merredin hostel in the late 1970s, is worth asking:

*If [the Authority] say they didn't know we had no one on-site to look after us then what did they exist for? To me they should have made it their business to know what was going on in Merredin during these times.*⁷²

A1.3 Guidance for the local boards

The Anglican Church Hostels Statutes provided guidance to local boards about what hostels were to achieve, the composition and appointment of boards and the role of the warden and matron. In particular the Church Hostels Statute 1972-77 (Perth Diocese) and the Church Hostels Statute 1961-1967 (Bunbury Diocese) both clearly articulated that:

"The object of the hostels is to provide for the spiritual, mental, moral and physical well-being of the students admits thereto and for their maintenance under proper discipline and control".

⁶⁹ For example, a letter from the Authority to the Chief Industrial Officer, on 1 August 1973, advises that a scheduled meeting was no longer required as the Anglican Church's representative on the Authority, Bishop Bryant's concern, was about employees not covered by industrial awards (wardens etc) and as the recent ruling did not apply to them it was not necessary; see also CHSHA 1979, Minutes of Special Meeting, 6 February, in which it is noted that Bishop Challen indicated that the Church would withdraw from the administration of hostels if the Authority appointed wardens and matrons as it had proposed. See also Stowell, R H LaM 1974 (Secretary, SHA), Letter to Public Service Board, 5 September 1974, at footnote [31].

⁷⁰ Westcott, C 1973, Memo to Acting Chief Industrial Officer, 20 February.

⁷¹ The Country High School Hostels Award No 7A of 1979 was approved in 1979 and included hostel supervisory staff. Mr Philpott wrote to the Minister in October 1979 arguing that the changes to the Act in 1966 were only directed to bringing in regulations relating to discipline. He was seeking a meeting given what he described as the Public Service Board's "capitulation" over the Award (Chairman (CHSHA) 1979, Letter to the Minister, 2 October). Following this, legislation was drafted to amend the CHSHA Act – it included a provision which made it clear it was the Authority which would determine the terms and conditions of service of officers and servants of the Authority with the approval of the Public Service Board. This was to apply even where the employment of staff was delegated (Notes for Hon Minister for Education for Second Reading Speech – proposed section 10(4), 6 December 1979).

⁷² *Inquiry Transcript of Evidence*, pp. 4216-4217.

Although the Inquiry has not identified any equivalent material from the CWA, it is likely given its long involvement in managing country hostels prior to 1969, that it also had documented guidelines available for those of its members who constituted the boards for country high school hostels.

After the Authority terminated arrangements with a number of hostels in 1969 and 1970, those hostels began to operate with a board constituted largely by community members and without the supervision of a non-government organisation. It seems that, for those boards, the Letter of Arrangement became the primary tool to establish the division of responsibilities between the Authority and the boards. A copy of the Letter Arrangement from 1988 can be seen at Attachment 1.1.⁷³ Significant provisions in the Letter of Arrangement included that the local board were to:

“1. Engage or dismiss staff and pay all accounts incurred in connection with the control and conduct of the Hostel, including the wages and salaries of all members of the staff.

3. Supervise the management and control of the hostel and to be responsible to the Authority for the provision of clean lodgings and wholesome board to the students residing therein.

6. Refer all matters in dispute, or in respect of which the Committee may require a direction, to the Authority for determination or adjudication.

12. Not to make any structural alterations to the hostel nor install therein any fixtures or fittings without the consent in writing of the Authority first had [sic] and obtained.

14. Charge student fees at such rate as the Authority from time to time approves.

15. Endeavour to run the Hostel on a non-profit making basis, any surplus accruing to be used for the benefit of the students either by reducing fees or providing amenities.

16. Submit financial statements to the Authority annually.

The attention of the Committee is drawn to Regulations made pursuant to the Country High School Hostels Authority Act, which deal specifically with the maintenance and enforcement of discipline in hostels.

...

It is MUTUALLY AGREED AND DECLARED by and between the parties that this agreement may be determined by either party giving to the other, three calendar months written notice expiring at the end of the school term of its intention in that behalf and upon the expiration of the period mentioned in such notice, this arrangement shall cease and determine and the Local Committee shall vacate and deliver up the hostel and chattels and leave the hostel in a clean and tidy condition.”

The Letter of Arrangement replaced the far more extensive agreement that had been developed by the Authority in the early 1960s, “Rules and Regulations for the Guidance of Hostel Management Committees”. That previous agreement, to be signed by committee members, appears to draw on guidelines that had been developed by private hostels existing at that time. The document specifically set out:

- that the Authority was the proprietor of the land and hostel, which it furnished, and a schedule listing those furnishings was to be attached

⁷³ Tendered as Exhibit 88 to the Inquiry. This Letter of Arrangement appeared as an Appendix to a Parliamentary Committee’s published report in 1988 (Standing Committee on Government Agencies 1988, *A Review of the County High School Hostels Authority*, Parliament House, Legislative Council, pp. 53, 54).

- that the other party agreed to “conduct and manage the Hostel for the purpose of providing accommodation for the students therein in accordance with the terms and conditions contained in this agreement”
- similar undertakings to those in the “Letter of Arrangement” but with an additional term that:
“If the [local board] shall fail to properly manage and control the Hostel to the satisfaction of the Authority or if any covenant on the Association’s part herein contained shall not be performed or observed then in any of the said cases it shall be lawful for the Authority without notice at any time thereafter to re-enter the Hostel or any part thereof in the name of the whole and there upon this Indenture shall determine but without prejudice to the right of action of the Minister in respect of any breach of the covenants therein contained.”
- a suggested two-page “enrolment form” for students
- that the Authority met the cost of providing and equipping new hostels; subsequent replacement of equipment was to be paid for by the Education Department; and the expectation that parents would make good any damage caused by their children (which was also specified in the suggested enrolment form)
- that the Authority had no legal power to provide finance for running costs, meaning this was the sole responsibility of the board: “For this reason the financial control of a hostel needs careful attention and the position of the Treasurer is a most important one”
- a number of suggested rules for the board on budgeting (including monthly reports to the committee by the treasurer, as well as the tabling of all accounts for approval of payment); cash controls; administrative control; and expulsion of students
- a suggested extensive list of “house rules”
- the powers of the Authority under section 7 of the *Country High School Hostels Authority Act 1960* (CHSHA Act)
- additional Authority policies:
 - requiring that there be no restriction on the admission of students based on religion
 - requiring Authority approval prior to purchases of equipment
 - explaining that the Authority did not provide playing fields or sporting equipment
 - requiring hostel financial statements to be submitted from time to time.

This agreement appears to have predated the amendments to CHSHA Act in 1966 and the issuing of the regulations on discipline, as no reference is made to them. It is likely that these “Rules and Regulations for the Guidance of Hostel Management Committees” had fallen into disuse by 1970 when Mr Lange intervened to cancel the arrangement with the St Andrew’s Hostel Board, Katanning. The Diocese of Bunbury Trustees noted that “the leasing arrangement for the Katanning Hostel would be cancelled on 31st December 1970, and a

Committee set up to manage the Hostel under a Letter of Arrangement from the Authority [underlining added].”⁷⁴

It might be expected that boards would struggle without any supervising organisation. A Letter of Arrangement might be thought to provide scant guidance for board members who did not have the benefit of documentation such as the Anglican Church Statute or CWA’s Constitution, and the continuity and access to institutional support and oversight available through membership of a significantly larger organisation.

It may have been this that prompted the Authority to act on its sub-committee’s report on “the formation of [local boards] controlled by government” in July 1975 by resolving to cancel its arrangements with a number of hostel boards by the end of the year and for the Secretary to appoint new boards. In any event, as described, after an outcry from the existing boards and the death of Mr Lange, the Authority resolved to leave the nomination of members to the hostel boards but for the appointment of members to be by the Authority. It also resolved that all new members of the boards would receive a letter of appointment with guidelines about their functions. The Authority may have contemplated providing new board members with something like the “Rules and Regulations for the Guidance of Hostel Management Committees” it had issued previously. However, as indicated below, it appears this resolution, if it was ever implemented, soon fell into disuse.⁷⁵

A1.4 St Andrew’s Hostel Board 1975-1990

It appears from the limited records available that Mr Philpott was the last of the St Andrew’s Hostel Board members to have experience managing that Hostel under the auspices of the Anglican Church. When Mr Philpott departed Katanning in early 1974, the link was broken. Although it seems that a number of practices institutionalised under the Anglican Church Hostels Statute continued, the underpinning rationale was absent. For example, the Hostel ceased to operate as an Anglican run hostel, it continued to have the local Anglican rector on its Board. Reverend Threlfall had agreed to stay as Chairman despite the falling out between the Anglican Diocese of Bunbury and the Authority in 1970, being quoted as stating that “he was most concerned that the children at the hostel did not suffer with the change”.⁷⁶ When Reverend Threlfall left Katanning in early 1971, he was replaced by Reverend Michael Harford. His evidence to the Inquiry was that:

“...I was roped into being a Board member of the St Andrew’s Hostel Board.

This was an ex officio appointment [automatic due to one’s employment] as the St Andrew’s Hostel premises was owned by the Anglican Church at the time.”⁷⁷

It seems that Reverend Harford was mistaken in relation to his obligation to be on the Board given the premises was never owned by the Anglican Church and, as described earlier, the Anglican Church’s management was terminated in 1970.⁷⁸ Reverend Harford in fact suddenly

⁷⁴ Bunbury Diocesan Trustees 1970, Minutes of Meeting, 25 May. Also see footnote [2].

⁷⁵ See Chapter 15.2

⁷⁶ Great Southern Herald 1970, *Diocesan control of Hostel is revoked*, 11 December, p. 1.

⁷⁷ *Inquiry Transcript of Evidence*, p. 3614.

⁷⁸ This can be confirmed by the Anglican Diocese of Bunbury Synod Reports which cease to include reports on the Hostel after 1970 (Anglican Diocese of Bunbury, *Submission to the Inquiry*, 28 March).

and angrily terminated his own Board membership in late 1974, in circumstances he does not now recall.⁷⁹ The appointment of a local Anglican rector to the Board appears to have never been re-established.⁸⁰

The high school principal's involvement as a Board member also appeared to be "ex officio", as throughout the period examined the Principal at Katanning Senior High School (KSHS) is recorded as being a member of the Board. This was consistent with the arrangements under the Anglican Church Hostels Statute but the Inquiry has not identified any other formal documentation of this arrangement. It also appears that principals were given no specific notice or advice about their role as a board member by the Education Department. Neil Thomson, Principal at KSHS from 1980 to 1982, gave evidence that:

*"Well, I had no understanding of [my role in relation to the board]. I was just rung by Dennis McKenna and said that "The principal usually comes to the board meeting", and I had no constitution of the board meeting or anything like that."*⁸¹

It is also of note that the duration of the school principals' term on the Board was dependent upon their posting to the high school and generally, in Katanning between 1975 and 1990, this was for one to three years.⁸²

In earlier times, there had also been a number of local bank employees on the Board (three in 1974) and a Department of Community Welfare Officer.⁸³ Over time the involvement of bank personnel reduced and the Departmental officer's role was not filled after 1979.

However one local bank employee, John Renk, was a critical and continuing presence on the Board for many years from 1973.⁸⁴ Mr Renk would have exercised significant influence within a rural community as a Commonwealth Bank regional rural officer whose role was to value properties and make recommendations on loan applications.⁸⁵ He would also have been a significant figure on the Board not only because of his position in the community, but because of his lengthy tenure, his roles as Secretary and, later, as a member of its finance sub-committee. According to a parent representative for the Frankland area on the Board, John Peacock:

"...he was a very intelligent man, that Mr Renk, and he had a fair bit to do with [the Hostel], and Dennis, they'd be into it there and I ... mainly went up there to ... look after my area.

*...they were higher up into the Board with finance and stuff like that and, you know, we'd listen to what they'd have to say and then we'd have to agree. They were higher up the Board than what I was."*⁸⁶

Unfortunately the lapse of time and illness has prevented Mr Renk from assisting the Inquiry in trying to understand the functioning of the Board while McKenna was Warden.⁸⁷

⁷⁹ Harford, M *Inquiry Transcript of Evidence*, p. 3615.

⁸⁰ St Andrew's Hostel Board, Minutes of Meeting 1969-1990 (incomplete).

⁸¹ *Inquiry Transcript of Evidence*, p. 2175. See also Marriott, G E *Inquiry Transcript of Evidence*, p. 2649;

⁸² KSHS 2012, Photograph of KSHS Principals Notice Board from 1950 to 2010, 24 February.

⁸³ Percival, I (Warden, St Andrew's Hostel) 1974, Letter to Parents, 24 November.

⁸⁴ Renk, J A (Secretary, St Andrew's Hostel Board), Letter to CHSHA, 28 July.

⁸⁵ Renk, J A *Inquiry Transcript of Evidence*, p. 1734.

⁸⁶ *Inquiry Transcript of Evidence*, pp. 1140-1141.

⁸⁷ See Chapter 11.5.

Other members of the Board generally were involved on a more ad hoc basis. Based on the Board minutes that were available to the Inquiry, there were 54 members over the 15 years from July 1977.

Minutes for Board meetings from July 1977 until December 1990 show a total of 44 Board members, other than McKenna. Some Board members who have given evidence to the Inquiry had a lengthy involvement:

- Mr Renk, referred to previously
- Alan Parks, for 13 years⁸⁸
- Alice Harris, for a total of five years, but who was also an Authority member and liaison for the Hostel for an additional five years in the interim
- Keith Stephens, for seven years
- Len Wilkinson, for seven years.⁸⁹

However, most had a shorter involvement as a Board member. Between July 1977 and December 1990 most members' terms were two years or less. Two years is a considerable amount of time, of course, but it should be noted that the Board, generally, would only have had ten meetings a year and individual Board members did not always attend every meeting.

Individuals who became Board members, other than McKenna and the school principals, were volunteers in the sense that they were under no obligation to do so. Board members who were self-employed farmers or farm workers (possibly unlike professionals or salaried workers) were also volunteers in the sense that they were unpaid. In addition the parents of the boarders would often have to travel significant distances to attend the monthly Board meetings. Those parents who gave evidence to the Inquiry on this point said that they became members because their children boarded at the Hostel;⁹⁰ they were elected parent representatives;⁹¹ because of dissatisfaction with how the Hostel was run;⁹² or because they enjoyed "being part of the system".⁹³

Many Board members were unlikely to have ever sat on a board before; certainly not a board with serious responsibility for the management of a residential facility for large numbers of students. While arguably longer-term Board members could have been in a position to provide guidance to newer recruits, their capacity to do so would depend on whether they ever acquired knowledge about the Board's proper role and responsibilities in the first place. As already outlined, the Anglican Church stopped managing the Hostel in 1970; in 1974 the last Board member to have been "schooled" in managing the Hostel under the auspice of the Anglican Church, Mr Philpott, left.

⁸⁸ See Chapters 11.6, 11.7, 11.12 and 18.2.

⁸⁹ See Chapters 11.6.4, 11.12 and 11.14.

⁹⁰ Hendry, R L *Inquiry Transcript of Evidence*, p. 1899; Parks, A H *Inquiry Transcript of Evidence*, p. 1392; Peacock, S J *Inquiry Transcript of Evidence*, p. 1129.

⁹¹ Brown, E *Inquiry Transcript of Evidence*, p. 1048.

⁹² Stephens, L O K *Inquiry Transcript of Evidence*, p. 2825.

⁹³ Parks, A H *Inquiry Transcript of Evidence*, p. 1393.

By 1983, the Board was in dispute with the Authority over its purchase of washing machines without the Authority's prior approval, contrary to term 12 of the Letter of Arrangement.⁹⁴ The Board instructed the Secretary, Mr Renk, to write to the Authority and

*"advise that the "letter of arrangement" had not previously been sighted by our Board, and in that circumstance it seems a bit tough that we should suddenly be bound by it, (past experience suggests that this has not previously been the case)."*⁹⁵

Many of the witnesses who appeared before the Inquiry in 2012, who had been on the Board during McKenna's wardenship, either expressed similar views, or had no recollection,

⁹⁴ The Board had requested payment by letter dated 2 March 1983. At its meeting on 8 March the Authority declined approval because the Board had not sought approval prior to incurring the expenditure; a letter was sent to this effect on 15 March and the Chairman of the Authority visited the Hostel prior to 12 April 1983 (CHSHA 1983, Minutes of Meeting, 8 March; Secretary (CHSHA) 1983, Letter to Secretary St Andrew's Hostel Board, 15 March). The Board considered the Authority's response at its meeting on 20 April; it did not resolve to respond but did resolve to invite the Premier to visit the Hostel when he visited Katanning (St Andrew's Hostel Board 1983, Minutes of Meeting, 20 April). On 14 June the Authority wrote again to the Board drawing its attention to clause 12 of the Letter of Agreement which in fact refers to not making structural alterations or installing fixtures without the approval of the Authority (Secretary (CHSHA) 1983, Letter to Secretary St Andrew's Hostel Board, 14 June). The Minutes of the Board's meeting the next day note that a letter about the washing machines had been sent to each Board member by the Authority but there was no record of any documentation being signed and returned to the Authority (St Andrew's Hostel Board 1983, Minutes of Meeting, 15 June). From examining an internal Authority memorandum, it seems that this letter is a copy of correspondence dated 20 May 1983 from the Chairman of the Authority providing a copy of a speech he presented, the week before at the SHA Annual Meeting, on "the dividing line between the local Committee and Warden roles" with an unsigned copy of the Letter of Arrangement attached. In the letter the Authority Chairman suggested that "the [Board] Chairman may see fit to have this document read at least once a year at a board meeting so that members may become familiar with their responsibilities" ([Secretary (CHSHA) 1983], Memo "Katanning" to CHSHA Chairman) [undated]; Chairman (CHSHA) 1983, Letter to Chairman St Andrew's Hostel Board, 20 May). At that meeting, the Board resolves to respond to the Authority still seeking reimbursement for the expenditure on the washing machines and indicating that the matter is to be raised with the Premier (St Andrew's Hostel Board 1983, Minutes of Meeting, 15 June). A letter from one of the Board members, Mr Len Wilkinson, to the Authority is sent on 20 June pointing out that verbal approval had been adequate in the past and that he would discuss the matter with the Premier when he visited (Wilkinson, L (St Andrew's Hostel Board member) 1983, Letter to CHSHA, 20 June). Four days later the Board wrote to the Authority, as quoted above, and attached a copy of correspondence with the Premier's Parliamentary Secretary (Renk, J (Secretary, St Andrew's Hostel Board) 1983, Letter to Secretary CHSHA, 24 June). By 17 August 1983, after the Authority receives a letter from the Minister about this issue and the Authority Chairman attends a 3 ¼ hour meeting with the St Andrew's Hostel Board, the Authority agrees to pay for the washing machines out of the 1983/4 budget and to advise the Minister the matter was amicably resolved (CHSHA 1983, Minutes of Meeting, 17 August). At this time, and although the Authority specifically notes that local boards are not incorporated (CHSHA 1983, Minutes of Meeting, 21 June), it appears no attempt was made to have Board members endorse or sign the Letter of Arrangement. Although the Authority had been informed of board members' lack of awareness of the Letter of Arrangement it accepted no ongoing responsibility for ensuring new board members were made aware of or endorsed its terms.

⁹⁵ Renk, J A (Secretary, St Andrew's Hostel Board) 1983, Letter to Secretary CHSHA, 24 June.

of a Letter of Arrangement or of any training or guidelines about their role on the Board.⁹⁶ Two of the former Board members believed that the Board had more of an advisory role.⁹⁷

More than three years after the Board's 1983 correspondence, both the Authority's and St Andrew's Hostel Board's meeting Minutes record that the Board entered into a Letter of Arrangement in late 1986.⁹⁸ Within five meetings (over the next seven months) of the Letter of Arrangement being signed, there were only two Board members left who were present at the meeting when it was signed, other than McKenna.⁹⁹

A number of Board members testified that they believed that the Warden was responsible for the hiring and firing of Hostel staff members.¹⁰⁰ This is supported to the extent that the Board Minutes show that the Board was informed by McKenna of staffing changes. This was not only contrary to the Letter of Arrangement but gave McKenna the licence to employ large numbers of his family at the Hostel and to wield control over Hostel staff members. When notifying the Board of the appointment of another sister-in-law to fill a vacancy arising because of a supervisor's departure in 1981, McKenna was sufficiently confident to note in his warden's report: "She has been replaced by Christine McKenna (yes, another one)... Her husband, Graham, is working at the Broomehill Shire, and will help out when required [underlining added]".¹⁰¹ At the time McKenna already had two other relatives employed at the Hostel.

A number of Board members also thought that it was the Warden who had the authority to expel or suspend students from the Hostel, and that the Board's role, at least when McKenna was Warden, was to merely "rubber stamp" his recommendations as to the expulsion or suspension of students.¹⁰² The power to expel or suspend students from the Hostel was such an important one that it had in fact been regulated by the Authority under Mr Lange, through regulation 10 of the CHSHA Act Regulations 1962:

"10. (1) No student shall be expelled from a hostel by a Warden, but if the Warden considers that circumstances so warrant he may suspend a student from the hostel and refer the

⁹⁶ Parks, A H *Inquiry Transcript of Evidence*, pp. 1396-1397; Hendry, R L *Inquiry Transcript of Evidence*, pp. 1899-1907; Thomson, N H *Inquiry Transcript of Evidence*, p. 2176; Murray, I W *Inquiry Transcript of Evidence*, pp. 2212-2213; Marriott, G E *Inquiry Transcript of Evidence*, p. 2649; Stephens, L O K *Inquiry Transcript of Evidence*, p. 2826; Wilkinson, L A *Inquiry Transcript of Evidence*, pp. 3055, 3058, 3124-3125; Laffer, J B *Inquiry Transcript of Evidence*, p. 3207.

⁹⁷ Marriott, G E *Inquiry Transcript of Evidence*, p. 2650; Murray, I W *Inquiry Transcript of Evidence*, p. 2073, 2075. Note that Peter Bachelard-Lammas denies he would have told Ian Murray that the Board was advisory (*Inquiry Transcript of Evidence*, p. 2722). At the same time, however, Mr Bachelard-Lammas' evidence that he would have given Mr Murray a copy of the Act and Letter of Arrangement (*Inquiry Transcript of Evidence*, p. 2723) is not altogether consistent with the views of the Chairman of the Authority, Mr Philpott, that the local boards were responsible to inform new members of their roles and responsibilities (examined later in this section).

⁹⁸ St Andrew's Hostel Board 1986, Minutes of Meeting, 22 October; CHSHA 1986, Minutes of Meeting, 11 November.

⁹⁹ St Andrew's Hostel Board 1987, Minutes of Meeting, 12 June. That Board member is now deceased.

¹⁰⁰ Parks, A H *Inquiry Transcript of Evidence*, pp. 1414, 1416; Hendry, R L *Inquiry Transcript of Evidence*, p. 1901; Stephens, L O K *Inquiry Transcript of Evidence*, p. 2836; Wilkinson, L A *Inquiry Transcript of Evidence*, pp. 3057-3058, 3067.

¹⁰¹ St Andrew's Hostel Board 1981, Minutes of Meeting, 18 February.

¹⁰² Peacock, S J *Inquiry Transcript of Evidence*, pp. 1150, 1152; Parks, A H *Inquiry Transcript of Evidence*, pp. 1410-1411; Hendry, R L *Inquiry Transcript of Evidence*, p. 1906; Murray, I W *Inquiry Transcript of Evidence*, p. 2075; Young, G H *Inquiry Transcript of Evidence*, p. 2617; Stephens, L O K *Inquiry Transcript of Evidence*, p. 2837.

suspension to the committee appointed for the purpose under paragraph (ha) of section 7 of the Act.

(2) The committee to which the suspension of a student is referred may expel the student or confirm or remove the suspension, and if the suspension is removed the Warden shall permit the student to be re-admitted to the hostel.

(3) Where the suspension of a student is confirmed, the Warden of the hostel shall permit the student to be readmitted to the hostel at the expiration.

The Inquiry heard compelling evidence about how the power to expel students was wielded by McKenna to intimidate, control and silence students.¹⁰³ Partial Board records available for 1979-1990, however, show only four instances of "expulsions".¹⁰⁴ This is likely to be misleading to the extent that on average there were six instances a year of expulsion, suspension, withdrawal or absconding recorded. Nonetheless the data does to an extent corroborate Board members' recollection that expulsions were rarely brought to the Board.¹⁰⁵ This is interesting given that a number of Board members who gave evidence to the Inquiry in fact had their own children expelled or threatened by McKenna – Mr Stephens,¹⁰⁶ Bob Hendry¹⁰⁷ and Mr Parks;¹⁰⁸ the latter noting that it was done "probably just to keep the other students in line".

It should be made clear here that these records and the Board members' evidence do not counter many boarders' recollections of McKenna's regime of threats and actual expulsions. Only partial records were available (for example many Warden's Reports are missing) and also those that are available only record what McKenna wanted the Board to know. As noted by Mr Wilkinson:

*"I think there was a fair bit of filtering - obviously, in hindsight, a fair bit of filtering by Dennis McKenna as to what he brought to the board and in what sort of format he brought things to the board."*¹⁰⁹

Moreover, while it is in fact the case that there are few "expulsions" recorded, there was a significantly higher number of what McKenna described as "withdrawals".¹¹⁰

Compounding this, the impact of the removal of a student from the Hostel was not just confined to the individual student. As has been noted elsewhere, removal from the Hostel had the potential to end a young person's access to education. When it was implemented by McKenna on the pretext of unfounded and malicious accusations, such as theft or "bullying" or, for females, promiscuity, it could bring even further damage to the student, their

¹⁰³ See for example, Parker, I G *Inquiry Transcript of Evidence*, pp. 82, 93, 103-106; Hilder, M F *Inquiry Transcript of Evidence*, pp. 127-128; Haddow, K J *Inquiry Transcript of Evidence*, pp. 376-377; Williams, A M *Inquiry Transcript of Evidence*, pp. 506, 509-511; Carmichael, B D *Inquiry Transcript of Evidence*, pp. 614-615.

¹⁰⁴ St Andrew's Hostel Board, Minutes of Meetings and Warden's Reports [incomplete], 1979-1990.

¹⁰⁵ Parks, A H *Inquiry Transcript of Evidence*, p. 1401; Hendry, R L *Inquiry Transcript of Evidence*, p. 1949;

¹⁰⁶ *Inquiry Transcript of Evidence*, pp. 2836, 2837.

¹⁰⁷ *Inquiry Transcript of Evidence*, p. 1932.

¹⁰⁸ *Inquiry Transcript of Evidence*, pp. 1407- 1410

¹⁰⁹ *Inquiry Transcript of Evidence*, p. 3061.

¹¹⁰ It is difficult to identify any substantive difference between an expulsion and a withdrawal, other than perhaps the level of Board scrutiny. Amongst the Hostel records a letter was located in which McKenna writes to a parent "with deep regret" asking her to withdraw her son from the Hostel. "This decision is not made lightly, but there comes the time when we have to think of the overall situation of all the students." (McKenna, D (Warden, St Andrew's Hostel) 1989, Letter to [a parent], 27 September).

relationship with their family and community, and all of the Hostel boarders who were witness to this. For example, one former boarder was expelled by McKenna less than an hour after reporting McKenna for sexually abusing him to the head boy and another prefect. He was immediately driven home to his parents and accused of stealing by McKenna. The boarder wrote to the Inquiry that he subsequently had problems with his relationship with both of his parents “as they were very ashamed that I had been expelled ... as we lived in a small country farming area and everybody knew that I had been expelled from [the] school hostel.” He also began to drink alcohol to excess.¹¹¹

This is the context in which there are 160 recorded references to individual boarders as being in some sense a problem in twelve years of (incomplete) Board Minutes or Warden’s Reports. At Board level, that translates into a reference to approximately every one in ten students out of the Hostel population. These were students who were noted, by others, for their exceptional (and according to some almost unnatural¹¹²) diligence, good manners and reserved manner.¹¹³

Clearly, the failure of Board members to understand and give effect to their role and responsibilities contributed significantly to how McKenna’s offending was able to continue for so long. Mr Philpott, Chairman of the Authority for almost the whole time that McKenna was Warden, gave evidence to the Inquiry on how local board members should have been advised of their role and responsibilities:

“Q. ... can you recall reading evidence from ex-Board members at Katanning... It seems that they - at least the ones that we've called, were quite confused about what the role of the Board was?”

A. Yes, and it's hard to understand why, because ... there isn't any doubt that says that each new Board member should receive the letter of arrangement to know exactly what they ... have been employed to do.

Q. Yes, yes, I think that was an edict that was determined by your predecessor.

A. Probably.

...

Q. -- and I was actually going to ask you... was that a policy that you continued to adopt - or edict rather?”

A. Yes, it's a policy I would have had.

...

Q. ... did you believe now, with hindsight, that it would have been appropriate for the Authority, given the fact that the Authority was overseeing the role of hostels, that it ought to have been the Authority that had prepared some guidelines to local board members?”

¹¹¹ [Name withheld] 2012, *Submission to the Inquiry*, 13 March.

¹¹² Dixon, D J *Inquiry Transcript of Evidence*, pp. 3771-3772.

¹¹³ For example: Renton, D R *Inquiry Transcript of Evidence*, p. 348; Peacock, S J *Inquiry Transcript of Evidence*, p. 1135; Lockhart, I R *Inquiry Transcript of Evidence*, p. 2011; Young, G H *Inquiry Transcript of Evidence*, p. 2612; Clayton, B J *Inquiry Transcript of Evidence*, p. 3132; Marriott, G E *Inquiry Transcript of Evidence*, p. 64. Although Gerald Marriott posed the question: “Now is that because they're hostel kids and Dennis's influence, or is that they come from isolated farming areas where they've been to a very small primary school and they've had strong influence from their parents, and brought up in a different atmosphere to town kids in Katanning.”

A. No, I think a properly run board will do that quite capably and I think nearly every other hostel, in fact, does do that.

...

Q. But if this process was confined to the Authority to arrange, it would have been quite easy, though, for the Authority, upon receiving advice of appointment and approving that appointment, that a copy of the letter of arrangement and some sort of guidelines could have been sent to a new board member?

A. It could have but that's not the way we operate. We operate as a fully autonomous board. It [the local board] had all the rights and responsibilities to do things like you are saying.

Q. You see, using Katanning, for example, it might reach a point where the board members have all never received a copy of the letter of arrangement or any guidelines as to what their roles were. Can you see that --

A. It is possible, yes, and I'm alarmed.

Q. Yes. Well it is a cause of some concern, isn't it[?]

A. Well, it would be, yes.

Q. And, in those circumstances, where a voluntary board is not quite aware of its roles or responsibilities, can you, therefore, see the potential for a warden, who has been around for a number of years, of exploiting that situation?

A. ... I wouldn't expect so if there were capable people running the board.

Q. But do you see the potential for that eventuality?

A. There's potential but I don't think that ... a well run board would, in fact, allow a warden to take over.

Q. From what you followed of the evidence ... given at the Inquiry, it looks like that may well have happened at Katanning. I'm not suggesting that you knew back then but from what you have read now of the evidence at the Inquiry?

A. It's possible.¹¹⁴

Mr Philpott was subsequently referred to the CHSHA Minutes of its meeting on 15 May 1984 which record that:

*"The chairman advised that Boards generally were not aware of their respective roles and some education was necessary."*¹¹⁵

Mr Philpott responded:

"A. Let me make a statement on education ... why I came to the Authority is to - it was just a higgledy-piggledy of 10 or 12 hostels totally divorced from one another and when I came into it I could see that we needed to have education. We raised this issue with the government, saying that if we were in deficit funding we didn't have the funding to be able to train the people that were running these hostels, and it wasn't until the deficit funding came in that now they meet every 12 months for educational purposes.

...

Q. But was some education carried out?

¹¹⁴ *Inquiry Transcript of Evidence*, pp. 2419-2450.

¹¹⁵ CHSHA 1984, Minutes of Meeting, 15 May.

A. No, there was no money for education. It wasn't until a change of financial arrangement that we immediately put in, like today, education's a key element of the Authority.

...

Q. If there wasn't the appropriate funds to educate, could you not have advised the administrative officer just to prepare what I have spoken about before, a booklet setting out some fundamental guidelines of the responsibilities of a hostel board and that that be distributed to the boards?

A. It could have happened but that would have been interfering with the running of every individual hostel, when, in those days, the boards had the total - and basically now, still have the full responsibility to run. So that's their role.

Q. But, Mr Philpott, you are identifying here, in fact you are the chairman ... that the boards generally were not aware of their respective roles?

A. Yes, I don't disagree with that.

Q. So, therefore, a potential way of avoiding that was to at least provide them with some written material from the Authority?

A. I think the only ... accountability to the Authority was a letter of arrangement which everyone should have been given.

Q. But, Mr Philpott, if you're identifying a problem, don't you want to fix it?

A. Yes, I do.

Q. Even if it's not the perfect solution, if you can't undertake an educative process, then there are other options available, and one that I'll identify, which seems to be a pretty obvious one.

A. Yes, but I'm saying that that's not our role. The role ... of the local Board is to make the person coming in welcome, to give him a letter of arrangement and any by-laws or anything they have concerning their hostel.¹¹⁶

Mr Philpott's evidence was that local boards were autonomous and the Authority had no responsibility to advise new board members about their role. As indicated, this view was contrary to the proposals adopted by the Authority prior to Mr Philpott's appointment. It is of note that this view is also contrary to the findings of a Parliamentary Committee in 1988. That Committee did not accept the view of the Authority that local boards themselves should take responsibility for advising new members.¹¹⁷ It found widespread confusion among local boards about what their role was:

*"Given the crucial role which local boards do in fact occupy within the hostel system, this confusion should never have been allowed to develop. In the Committee's opinion this is one of the Authority's major failings."*¹¹⁸

The Committee described a draft management manual which was being developed by the Authority as being "too little too late" and was reliant upon the Act and Letter of Arrangement when neither "is of any great assistance".¹¹⁹

¹¹⁶ *Inquiry Transcript of Evidence*, pp. 2451-2454.

¹¹⁷ Standing Committee on Government Agencies 1988, *A Review of the County High School Hostels Authority*, Parliament House, Legislative Council, p. 18.

¹¹⁸ *ibid*, p. 16.

¹¹⁹ *ibid*, p. 18. In March 1989 there is reference made to the distribution of draft guidelines for the responsibilities for boards of management to Board chairpersons and that it is likely to provoke some

Given Mr Philpott's evidence, the evidence of Hostel Board members to this Inquiry about their lack of understanding about their role and responsibilities is not surprising. The Hostel had ceased to operate as an Anglican Church managed hostel in 1970. In the absence of any institutional support it might be expected that an ad hoc group, predominantly of volunteers who met for a few hours a year, could come to lose any "corporate knowledge" about their roles and responsibilities over time.

With the Authority's *laissez faire* approach after 1975, the only institutional continuity for the Board came from the KSHS, although its representatives had no instructions and were not involved for any extended time, and of course from the Hostel itself through McKenna.

A1.5 McKenna's involvement with the St Andrew's Hostel Board

The Warden of a Hostel was its most senior staff member. The practice of St Andrew's Hostel, and other hostels, was to have the Warden attend board meetings, report to other Board members about the events at the Hostel over the previous month and contribute to discussion, but not to vote. This practice was, again, consistent with the Anglican Church Hostels Statute, and appeared to have been adopted at the Hostel and other hostels generally, irrespective of the role of the Anglican Church.

Mr Stephens was on the Board from 1974 to 1981, including five years as Chairman. His over-riding recollection of the Board is:

*"I just remember happy times. I can right now visualise Dennis's smiling faces and all the smiling faces around the Board."*¹²⁰

Mr Stephens also described the relationship between the Board and McKenna as follows:

*"...they all liked him. They all got on well with him. He was running a brilliant hostel. The kids seemed happy. The town liked him. He had kids going around to the old aged people weeding their gardens and they would give them some money, and that would go into the pot for them to go on a holiday to New Zealand, America, or wherever it was that a group would go. He was well liked, yeah."*¹²¹

Both Mr Stephens and Elaine Brown were on the Board at the time of McKenna's appointment as acting, and then substantive Warden at the Hostel, and refer to McKenna as initially lacking in confidence and requiring a significant amount of support.¹²² But over time, it seems, this changed. Mr Stephens refers to McKenna as becoming increasingly confident and initiating "whispering" campaigns with other Board members that eventually led to him finishing as Chairman of the Board.¹²³ Board Minutes indicate that Mr Stephens lost the

discussion at the next meeting (CHSHA 1989, Minutes of Meeting, 14 March). No further reference to the guidelines could be identified in the minutes. It was not until October 1990 that the Authority sought to retain an extra position so that a number of projects could be undertaken one of which was: "Policy/Procedural Manuals for the purpose of providing direction and guidance to new Authority members, especially a new Chairman, local boards of management, Wardens and Supervisors." (CHSHA 1990, Minutes of Meeting – Attachment C, 9 October, pp. 9, 10)

¹²⁰ Stephens, L O K 2012, *Inquiry Interview*, in possession of the Inquiry, 24 April, p. 24.

¹²¹ *Inquiry Transcript of Evidence*, p. 2833.

¹²² Mr Stephens quoted in Fraser, P 1991, *Great Southern Herald McKenna gets seven years – parole in less than three*, 31 July; Brown, E *Inquiry Transcript of Evidence*, p. 1049.

¹²³ Stephens, L O K *Inquiry Transcript of Evidence*, p. 2863; Stephens, L O K 2012, *Inquiry Interview*, in possession of the Inquiry, 24 April, pp. 22, 26, 34, 35; see chapter 11.3.

position of Chairman of the Board in 1979 and attended his last Board meeting on 28 August 1981.

Mrs Brown's evidence was that she and Mr Renk would make McKenna do things "by the book";¹²⁴ however Mrs Brown resigned from the Board in 1980. Although he left the Board in 1981, Mr Stephens believes that over the 15 years that McKenna was Warden "things just got freer and freer as time went on".¹²⁵ This is consistent with the evidence of other Board members who generally were on the Board later than Mr Stephens and Mrs Brown, and who indicated that the Board rarely exerted any control over McKenna.¹²⁶ Even when they tried, this was not always effective.¹²⁷

It is apparent from the records that McKenna maintained close control over the Board. Of the 123 Board meeting minutes which the Inquiry was able to locate for the period from July 1977 until McKenna was charged in September 1990, McKenna was present at 121.¹²⁸ Nevertheless, it does not appear from Board members' recollections that McKenna overtly dominated these meetings. According to Mr Wilkinson, McKenna was not an imposing figure:

"He was very, very defensive. And imposing - no, I wouldn't personally use that term. But he was very ... quite quick to, sort of, defend himself. Whether that ... comes across as "imposing" I'm not sure. But that's the description I would more use, that he was quite quick to defend himself and quite quick to justify situations or whatever..."

*It is not as though he came into board meetings and dominated and demanded and sort of stood over."*¹²⁹

This is consistent with other's recollections; for example, Graham Young's:

"Q. Can you recall how he [McKenna] conducted himself at those meetings?"

*A. I'm not certain of this but I think that he gave a verbal report of any student problems that had arisen and any other problems that had occurred but I think he was generally in the background, apart from that."*¹³⁰

McKenna had a number of characteristics that would have distinguished him from an imposing figure such as Roy Wenlock, for example, in terms of the authority he would bring

¹²⁴ *Inquiry Transcript of Evidence*, p. 1049.

¹²⁵ *Inquiry Transcript of Evidence*, p. 2834.

¹²⁶ As indicted previously, two Board members thought it had only an advisory role. See also Parks, A H *Inquiry Transcript of Evidence*, pp. 1393, 1412, 1414; Hendry, R L *Inquiry Transcript of Evidence*, p. 1902; Peacock, S J *Inquiry Transcript of Evidence*, p. 1141; Wilkinson, L A *Inquiry Transcript of Evidence*, pp. 3055-3056.

¹²⁷ Parks, A H *Inquiry Transcript of Evidence*, pp. 1418; Marriott, G 1986, Planner, 28 August (Entry: "Len W discussed with me a concern about financial management of the hostel (e.g. \$6500 to pay for a film projector").) Difficulties in relation to the financial management at the hostel are examined in detail in section A1.6.

¹²⁸ McKenna is absent from a special meeting convened on 28 August 1981 for a lawyer to address the Board on the negligence case brought by Mr Stephens over an incident in which McKenna ran a bus into his son, causing serious injury. The other meeting, on 23 March 1983, is attended by an Authority member and its Administrative Officer, and concerned the Hostel's overspending and "unexpected deficit" (CHSHA 1989, Minutes of Meeting, 10 January).

¹²⁹ *Inquiry Transcript of Evidence*, pp. 3060-3061.

¹³⁰ *Inquiry Transcript of Evidence*, p. 2613.

to his position as Warden.¹³¹ Even someone who at the time was evidently very supportive of McKenna, the Authority's Administrative Officer, Peter Bachelard-Lammas, described McKenna in an official report as follows:

*"Again, visit after visit to Katanning indicates the excellent pastoral work being carried out is not just a one off. The Hostel and the student themselves are a credit to the movement. Such excellent work outweighs hassles that occur from time to time with the erratic and somewhat rash personality of the Warden. Katanning remains a leading Hostel."*¹³²

Physically, McKenna was not an imposing a figure. A former boarder who resided at the hostel in the early 1980s described McKenna as follows:

"I would describe Dennis as balding, dark hair, medium build and in his 40's.

He had a habit of touching himself and always rubbed around his mouth. Dennis had a very peculiar walk and would wear his pants pulled up and ugg boots on his feet.

*Dennis wore a silver chain with a round pendant."*¹³³

Later McKenna had a hair transplant and had "this gunk on his head like he had fallen into Peanut Butter jar to sort of try and keep that going".¹³⁴ McKenna was not athletic.¹³⁵ He had been a salesman in a menswear shop and acting grocery store manager.¹³⁶ While the examples of McKenna's writing that are available to the Inquiry indicate a very good standard of literacy for someone who, as he now states, finished schooling at 13,¹³⁷ it is of a noticeably different standard to the former bank employee's, Wenlock.¹³⁸

It seems that McKenna had other techniques he employed to persuade those not confined to the Hostel to do what he wanted. Gerald Marriott recalls that, probably on first meeting McKenna, McKenna told him about receiving the Citizen of the Year Award; "He wasn't slow in letting people know that he was held in high regard".¹³⁹ Mr Marriott also stated:

*"From my point of view, I thought [McKenna] was rather obsequious and was keen to tell me things that he thought that I might like to hear, "The schoolkids are looking much better dressed this year now that you're principal, Gerry", or, "The hostel kids all respect you, Gerry", and I just didn't feel that he was always as sincere as he could be."*¹⁴⁰

Nevertheless Mr Marriott found McKenna to be a fluent and persuasive speaker. Mrs Brown, and others, recall McKenna as being charismatic. Even those Board members, like Mr

¹³¹ Gillies, G C *Inquiry Transcript of Evidence*, p. 3274; "W" *Inquiry Transcript of Evidence*, p. 3278; Thompson, W E *Inquiry Transcript of Evidence*, p. 3297; Trindall, D J *Inquiry Transcript of Evidence*, p. 3330; "Q" *Inquiry Transcript of Evidence*, pp. 3742, 3751.

¹³² CHSHA 1984, Minutes of Meeting (Attachment CHSHA Administration Officer Report Oct/Nov 1984), 11 December.

¹³³ WA Police 2012, *Response to Summons No. 2* (Investigation files).

¹³⁴ Bourke, A J *Inquiry Transcript of Evidence*, p. 1968;

¹³⁵ Parker, W 2012, *Submission to the Inquiry*, 2 March.

¹³⁶ McKenna, D J 2012, *Inquiry Interview*, in possession of the Inquiry, 19 March; WACA 2007, Obituary – RH (Roy) Wenlock, *The Western Cricketer 2006-2007*, p. 119.

¹³⁷ McKenna, D J 2012, *Inquiry Interview*, in possession of the Inquiry, 19 March. When he was Warden, McKenna informed students that he had a "psychology background" (Parker, S K *Inquiry Transcript of Evidence*, p. 179).

¹³⁸ Wenlock, R 1974-1977, St Christopher's Hostel Northam, Warden's Reports.

¹³⁹ *Inquiry Transcript of Evidence*, p. 2651.

¹⁴⁰ *Inquiry Transcript of Evidence*, p. 2648.

Marriott, who said they did not particularly like McKenna believed that he ran “a tight ship”, a good hostel.¹⁴¹

There were also undoubtedly those Board members who thought very highly of McKenna personally.¹⁴² Highly enough for two of them, Ian Murray and Mr Parks, to give character evidence on McKenna’s behalf at his 1991 trial,¹⁴³ and indeed highly enough for another Board member, Mr Stephens, to continue to praise McKenna’s contribution to the Hostel even after his conviction.¹⁴⁴

But, of course, Board members were not the only ones impressed by McKenna. No less than a Premier of the State, Sir Charles Court, praised McKenna. After first visiting Hostel’s plant nursery, with a bevy of politicians and other officials in April 1977,¹⁴⁵ the Premier returned for the opening in August 1977. The Premier was reported as stating:

*“the Warden of the Hostel, Mr Dennis McKenna, had been able to enthuse the students magnificently, and it was largely due to Mr McKenna’s commitment to the welfare and spiritual needs of the students that the hostel had achieved so much.”*¹⁴⁶

In 1984, McKenna was made Katanning’s Citizen of the Year. In bestowing the award, the then Shire of Katanning President praised McKenna as bringing to his job as the Hostel Warden the “rare gift of understanding and being able to relate to the teenage group in particular ... It is from the trust and respect of that age group that all his achievements have come”.¹⁴⁷

In 1985, the Hostel was awarded by the then Federal Minister for Education, Hon Kim Beazley MP, for its outstanding community involvement which was described as being “largely ... fostered by its warden McKenna”.¹⁴⁸

In 1988, a multi-party Parliamentary Committee reviewed the Authority.¹⁴⁹ The Committee’s report recommended that the Katanning system of trainee supervisors be extended to other hostels.¹⁵⁰ It also noted:

¹⁴¹ Marriott, G E *Inquiry Transcript of Evidence*, pp. 2647; Wilkinson, L A *Inquiry Transcript of Evidence*, p. 3073.

¹⁴² Peacock, S J *Inquiry Transcript of Evidence*, p. 1135; Thompson, N H *Inquiry Transcript of Evidence*, p. 2178.

¹⁴³ *Queen v Dennis McKenna* 1991, Transcript of Proceedings, 19 June, pp. 231-241,

¹⁴⁴ Quoted in Fraser, P 1991, Great Southern Herald *McKenna gets seven years – parole in less than three*, 31 July.

¹⁴⁵ [Unavailable] 1977, *Sir Charles Court visits St Andrew’s Hostel Katanning*, [circa 16 April].

¹⁴⁶ [Unavailable] 1977, *Sun Shines for Premier’s Visit*, [circa August]; see also The Gnowangerup Star 1977, *Premier opens hostel nursery in Katanning*, August 25; [Unavailable] 1977, *Katanning Students stage Premier Event*, 11 August. At the SHA conference in January 1978, the Premier also praised the Hostel for developing its gardening and nursery ventures ([Unavailable] 1978, *Premier praises hostel venture*, [circa January 1978]; SHA 1977, *Programme and Application Form for SHA Residential Conference at Swanleigh, 27-29 January 1978* (Flyer)).

¹⁴⁷ Fraser, P 1991, Great Southern Herald *Deception the paedophile’s forte*, 26 June, p. 1.

¹⁴⁸ Great Southern Herald 1985, *Honour for St Andrew’s*, 24 October, p. 1.

¹⁴⁹ Standing Committee on Government Agencies 1988, *A Review of the County High School Hostels Authority*, Parliament House, Legislative Council.

¹⁵⁰ At recommendation 14, the report notes that the Hostel had implemented a system under which: “...some students resident at the hostel are invited to stay on at the conclusion of their high school studies to serve as trainee supervisors. To date, some of these trainees have stayed on to join the hostel staff on a permanent basis...” (ibid, pp. xi, 20).

*"Katanning Hostel is a magnificent example of self help, with many of the facilities being the result of the initiative of the warden and students (an example being the very well set out cinema which serves as a community entertainment facility)."*¹⁵¹

The Parliamentary Report prompted a newspaper article "St Andrew's the State's top hostel". It reports that the Hostel is named as the leader in supervisor training and in the provision of top quality recreation facilities, and cites McKenna "whose work over the past 13 [years] is widely acknowledged as contributing to the hostel's success".¹⁵²

In September 1990, the same month in which McKenna was to be charged with criminal offences, the Authority's Administrative Officer tabled a report which included the following:

*"What can one say about Katanning? It is still the leader in providing a "complete" service to the isolated child. A pastoral care programme has been in existence for years and end product is evidence to this. Such programming should be encouraged by all centres... Dennis McKenna will be acting Warden for Geraldton during [its Warden's] Long Service Leave. This type of movement could be most beneficial to the movement as a whole. To place Dennis at different centres could be one way of developing "programmed pastoral care" in a very positive way..."*¹⁵³

If the accolades were not enough to encourage those beyond the Hostel walls to comply with McKenna's requirements, he had other means of getting what he wanted. Mrs Brown, who was on the Board from the end of 1974 until June 1980 gave evidence that:

"Dennis always wanted to take shortcuts with these things and John Renk and I always told him he had to do things by the book.

Whenever you tried to challenge Dennis he would say 'be careful, I have friends in high places'.

*I would tell him not to threaten me and he was [sic] say "I'm not threatening you little Elaine Brown", which is how he used to refer to me."*¹⁵⁴

Later, in 1985, McKenna was to assert his "friends in high places" in an attempt to coerce Maggie Dawkins out of pursuing concerns about his abuse of boys at the Hostel.¹⁵⁵

There can be no doubt that McKenna had connections with significant people, both locally and more generally. Through his role as Warden he had relationships with key community members such as senior bank officials (like Mr Renk), local businessmen (like Mr Wilkinson) and all of the KSHS Principals. The economic significance of the Hostel and extensive community use of its facilities (described at Chapter 9.5) meant McKenna also had connections with the Shire and its Councillors such as Ainslie Evans. McKenna was able to provide accommodation at the Hostel not just to teachers, who would tutor students, but also to police cadets. More generally the relationship with Mr Philpott, as both a senior manager at Wesfarmers and Chairman of the Authority, who promoted McKenna as a "guru", was of critical importance. Finally McKenna's connections with politicians, likely to have been initially acquired through his involvement with the SHA (see section A1.1.1),

¹⁵¹ Standing Committee on Government Agencies 1988, *A Review of the County High School Hostels Authority*, Parliament House, Legislative Council, p. 33.

¹⁵² Fraser, P 1988, *Great Southern Herald St Andrew's the State's top hostel*, 19 October.

¹⁵³ CHSHA 1999, Minutes of Meeting (Attachment – Administrative Officer's Report September 1990), 11 September.

¹⁵⁴ *Inquiry Transcript of Evidence*, pp. 1049-1050.

¹⁵⁵ Dawkins, M A *Inquiry Transcript of Evidence*, p. 240.

resulted in some highly publicised endorsements by “people in high places”, as already described.

It is evident that McKenna enjoyed, and exploited, his associations with “people in high places”. Again, however, he did not enjoy this patronage to the same extent as Roy Wenlock, who for example, was given a letter of introduction by the then Minister for Education, Mr Graham MacKinnon MLA, in 1975 so he could visit hostels and school on an international tour paid for by St Christopher’s Hostel.¹⁵⁶

Significantly, McKenna was also an “outsider” at that time for a rural community and in particular amongst the hostels network. He was both a Catholic and a man who many simply assumed was, or could have been, homosexual or a “poofter”; someone who struck witnesses as having a mincing way of speaking, being camp or flamboyant.¹⁵⁷

The question therefore arises of how an “outsider” came to exercise such power over the children at the Hostel and, beyond that, anyone including Board members, who sought to question his conduct. Rosemary Cant’s evidence to the Inquiry explained how McKenna was able to groom both the hostel residents and the community.¹⁵⁸ There were also the threats to pursue defamation proceedings.¹⁵⁹ Another significant factor in explaining how McKenna was able to exercise power and influence was that, as Warden, he was in a position to exploit the economic significance of the Hostel in a rural town, its facilities and public monies. As might be expected, McKenna used it all to further his own interests. What is less obvious is how he was allowed to do this.

A1.6 St Andrew’s Hostel finances

The Inquiry received evidence from a number of witnesses which raised questions about McKenna’s mismanagement and possible misappropriation of the Hostel finances.¹⁶⁰ The financial audit materials for the Hostel available from the Authority give no reason to discount that evidence, highlighting numerous deficiencies in the Hostel’s financial accountability. That a significant Board member also had convictions for embezzlement related offences both before and after serving on the Board further heightened the risk that there had been financial mismanagement or worse at the Hostel.

¹⁵⁶ SHA 1975, *Roy Wenlock back from overseas*, *SHA Newsletter*, December, pp. 6, 7; St Christopher’s Hostel Board 1970, Minutes of Meeting, 9 March.

¹⁵⁷ Parkin, N E *Inquiry Transcript of Evidence*, pp. 589, 590, 595, 599, 605; Peacock, S J *Inquiry Transcript of Evidence*, pp. 1154, 1155; Brokenshire, S J *Inquiry Transcript of Evidence*, pp. 1347, 1351; Gill, P A *Inquiry Transcript of Evidence*, pp. 1376, 1385; Bourke, A J *Inquiry Transcript of Evidence*, pp. 1968, 1994; Lockhart, I R *Inquiry Transcript of Evidence*, p. 2012; Murray, I W *Inquiry Transcript of Evidence*, pp. 2271, 2272, 2281; Young, G H *Inquiry Transcript of Evidence*, p. 2612; Galluccio, J L *Inquiry Transcript of Evidence*, p. 2399; Trezise, C *Inquiry Transcript of Evidence*, p. 2401; Laffer, J B *Inquiry Transcript of Evidence*, p. 3200; Shiner, R A *Inquiry Transcript of Evidence*, p. 3642; WL & KJ Everett (representing Mr Alan Parks) 2012, Letter to the Special Inquirer, 22 June. See Chapter 18 for a discussion of the anti-homosexual legal and social environment at the time and the law’s approach to homosexuality and paedophilia involving male children.

¹⁵⁸ *Inquiry Transcript of Evidence*, pp. 862-897; see also Chapter 9.

¹⁵⁹ See Chapters 16.4.3 and 18.2.

¹⁶⁰ McKenna, D J *Inquiry Transcript of Evidence*, pp. 1297-1298; Stephens, L O K *Inquiry Transcript of Evidence*, p. 2863-2864. Groves, B *Inquiry Transcript of Evidence*, pp. 666-670.

What was identified by numerous audits at the time, however, were clear deficiencies in the Hostel's financial systems. Although the auditors who reviewed the Hostel's financial records in 1984 were able to say they found no evidence of misappropriation,¹⁶¹ in the absence of records of income and expenditure for a range of activities, it seems to be equally the case that there was no evidence that misappropriation was not occurring.

Auditors did identify overspending by the Hostel time and time again. Arguably the almost profligate expenditure on operating the Hostel and expanding its facilities advantaged both the Hostel, and also the broader Katanning community which was able to gain access as a result of McKenna's apparent community mindedness – another word for which might be McKenna's patronage. Nevertheless any such advantage came at the cost of further entrenching McKenna as part of the Katanning community and deflecting any scrutiny of his conduct.

While it is clear that the Hostel as a business would have had significant economic impact on the economy of Katanning it is important to be cautious of uncritically adopting the assessment of those who were supporters of McKenna at the time, such as Mrs Evans.

Mrs Evans' evidence to the Inquiry was as follows:

"Q. Am I right in saying, Mrs Evans, that the economic benefits of a large and successful hostel were considerable for the town?"

A. Oh, they certainly were and the town was appreciative of that.

Q. Was that a view you held of the hostel at a time during the 1980s?

A. It's a view I hold about any commercial venture in Katanning. We need them.

Q. Yes. Is it fair to say that the success of the hostel was largely attributable to its warden, Dennis McKenna?

*A. Yes, I believe that."*¹⁶²

Later Mrs Evans stated that "Dennis was the epitome of the hostel, [and] I saw the hostel being under threat if Dennis wasn't part of it."¹⁶³

The economic significance of the Hostel was recognised before McKenna's time. When the Authority revoked its arrangements with the Anglican Diocese of Bunbury in 1970, the *Great Southern Herald* reported that the operation of the hostel at Katanning is "a great economic boost for the town and the parents of children at the hostel", with 96 students attending in 1969 and 103 expected in 1971.¹⁶⁴ In 1974, the *Great Southern Herald* reported on a walkathon by Hostel students to raise monies for the bare common room. Jim Gilmour is quoted referring to the Hostel being a good customer in Katanning – with the hostel patronising local businesses, students spending their pocket money and parents shopping when visiting the Hostel.¹⁶⁵ As Mr Philpott noted in his inaugural speech to the SHA as Chairman of the Authority in January 1977, "Hostels are generally big business" and he cites

¹⁶¹ Clerk in Charge (Internal Audit) 1984, Audit Report, 11 May.

¹⁶² *Inquiry Transcript of Evidence*, p. 1673.

¹⁶³ *Inquiry Transcript of Evidence*, p. 1713.

¹⁶⁴ *Great Southern Herald* 1970, *Diocesan Control of Hostel is Revoked*, 11 December, pp. 1, 2.

¹⁶⁵ *Great Southern Herald* 1974, *Hostel Students Walk for Funds*, 30 August, p. 1.

one as turning over in excess of \$1 million per annum,¹⁶⁶ a very considerable sum at the time.

Contrary to those who claim McKenna contributed to Katanning's economy, however, Peter Potter's evidence as a long-term resident of Katanning was that in fact McKenna:

"...actually destroyed a lot of the town's business and community spirit...

Before Dennis came you couldn't get a park on Friday night or a Monday morning/Friday afternoon. People would come to pick up their kids from the out centres ... as far as out as Corrigin, Flat Rocks, Cranbrook, Darkin, Kojonup, Frankland - they would ... come and pick their kids up, take them home for the weekend...

HIS HONOUR: Q. That was obviously good for business though, was it?

A. Yes.

Q. So they'd do their shopping while they come to pick up the kids?

A. Yes, but also the machinery places and all that stuff. They were quite flourishing, but when Dennis come, the kids seemed to be kept in the hostel and parents were encouraged to stay away, so [there wasn't] that influx on the weekends and start of the week coming and going.

Q. And you noticed that at the time, did you?

A. I noticed it suddenly stopped.

Q. And this was what, starting from the mid '70s onwards?

A. Yes, is the late '70s or mid '70s.¹⁶⁷

A similar degree of caution needs to be exercised in attributing high student enrolments wholly to McKenna's capability as the Warden and to the reputation of the Hostel, although these were undoubtedly factors.¹⁶⁸ Interestingly, the turnaround of fortunes at the Hostel was not quite as remarkable as many thought. For example, Mr Marriott's evidence was that:

*"They really thought that he [McKenna] was the reason why the hostel numbers have grown from maybe 50 or 60 when he first came, up to 120, which was very good for the town, and his reputation was such that ... there was often a waiting list to get into the hostel, so keen local citizens thought that that was great."*¹⁶⁹

While these numbers were accurate (61 enrolled in 1976 and 119 in 1984¹⁷⁰), it should be noted that there had been 100 students enrolled in 1970.¹⁷¹ As Ian Parker pointed out in a

¹⁶⁶ SHA 1977, *Interaction and development, Report of the Conference and AGM of the SHA, Bunbury, 21-23 January 1977*, p. 38.

¹⁶⁷ *Inquiry Transcript of Evidence*, pp. 3606-3607.

¹⁶⁸ Stephens, K R *Inquiry Transcript of Evidence*, pp. 18-20; Haddow, K J *Inquiry Transcript of Evidence*, pp. 356, 357; Brown, J A *Inquiry Transcript of Evidence*, p. 385; Parker, D M *Inquiry Transcript of Evidence*, p. 630; Edwards, T M *Inquiry Transcript of Evidence*, p. 709; Smart, D N *Inquiry Transcript of Evidence*, p. 1035; Gill, P A *Inquiry Transcript of Evidence*, p. 1370; Evans, A V *Inquiry Transcript of Evidence*, p. 1671; Gatti, M J *Inquiry Transcript of Evidence*, pp. 1815, 1816, 1818; Jones, S M *Inquiry Transcript of Evidence*, p. 2046; Murray, I W *Inquiry Transcript of Evidence*, p. 2075; Young, G H *Inquiry Transcript of Evidence*, p. 2611; Marriott, G E *Inquiry Transcript of Evidence*, pp. 2647, 2649; Bachelard-Lammas, P *Inquiry Transcript of Evidence*, p. 2710.

¹⁶⁹ *Inquiry Transcript of Evidence*, p. 2649.

¹⁷⁰ Beecham, A 1984, *Investigation into Country High School Hostels provided by the State of Western Australia*, p. 10.

¹⁷¹ Anglican Diocese of Bunbury 1970, *Year Book 1970*, p. 49.

submission to the Inquiry, there were much broader factors at play in the increasing Hostel numbers over McKenna's time as Warden, such as the "One million acres a year" policy for new farming land from the 1960s referred to previously.¹⁷² Much has also been said elsewhere on the volatility of factors affecting farming life (weather conditions, market prices, economic recession) and this clearly would have had a flow on effect for Hostel enrolments.

Furthermore, by June 1977, the Hostel was chastised for charging fees that were too low in an attempt to attract students from other hostels and accruing a deficit of \$3,577 in 1976 as a result:

*"The Secretary advised that a hostel with 78 students should be self-supporting and that Katanning's problems stemmed from charging unrealistic fees (\$325) in an effort to attract students. Their main competitors were Albany (\$350) and Narrogin (\$375)."*¹⁷³

It would seem that the deficit was not only the result of charging fees lower than was required to cover its costs. Almost immediately upon his appointment as Acting Warden, McKenna began implementing some significant initiatives, particularly in the development of recreational activities for boarders at the Hostel.

By 12 March 1976 the *Great Southern Herald* reported that the Hostel had purchased its own bus for the first time, and that students were going on a camping trip to King River.¹⁷⁴ According to a newspaper report of Sir Charles Court's visit in the following year, "the Hostels Authority had paid half the cost of the bus and the students were left to raise \$4,800. To date \$1,400 had been raised."¹⁷⁵

By 25 June 1976 the newspaper reported that a swimming pool was being constructed at the Hostel, with funds raised by the students, and it was to be opened by Lady Kyle, the Governor's wife.¹⁷⁶ This appeared odd, because according to various other newspaper reports, the building of a Shire swimming pool had been a community project for some years – funding being raised through the Shire, Rotary etc.¹⁷⁷

Nevertheless, this shift of priorities for the Authority from a "building era" to one of "improving the facilities needed to occupy students' time outside their academic pursuits" had been strongly promoted by Mr Philpott upon his appointment as Chairman of the Authority as indicated earlier.

Indeed after visiting the Hostel, Mr Philpott reported to the Authority on 24 March 1977 that the "transformation he witnessed was remarkable".¹⁷⁸ But like so much associated with McKenna, the reality was quite different to appearances. Since July 1976 the Authority had in fact spent almost \$41,000 on the Hostel – providing amongst other things, new carpets, heating, structural additions and half the cost of the bus.

¹⁷² Parker, I 2012, *Submission to the Inquiry*, 29 May.

¹⁷³ Secretary CHSHA 1984, Letter to Chairman of the St Andrew's Hostel Board and Attachment, 22 March.

¹⁷⁴ Great Southern Herald 1976, *Camping Trip*, 12 March, p. 4. Appallingly, as is now well known, McKenna was to exploit the opportunities provided on trips of these kinds to abuse students in his care.

¹⁷⁵ [Unavailable] 1977, *Sir Charles Court visits St Andrew's Hostel Katanning*, [circa 16 April].

¹⁷⁶ Great Southern Herald 1976, *Lady Kyle will open pool*, 25 June, p. 3.

¹⁷⁷ For example, articles appearing in the *Great Southern Herald* report: 'Referendum for New Pool' (19 October 1973); 'We are starting a pool fund' (21 December 1973); 'Quiz Night for Pool Fund' (13 March 1974); 'Swimming pool to be new' (22 March 1974); and 'Work starts on new Shire pool' (2 April 1976).

¹⁷⁸ CHSHA 1977, Minutes of Meeting, 24 March.

Despite this, however, the Hostel's finances were in deficit, and in April it sought deficit funding from the Authority for \$3,577.¹⁷⁹ This prompted the Secretary of the Authority to write to Treasury pointing out that he was "concerned that a Committee which has been treated generously by the Authority is endeavouring to extract further funds from the State Government."¹⁸⁰

It appears that the \$3,577 deficit was (slightly more than) the balance that the Hostel was supposed to contribute towards the cost of the bus (\$4,800 less \$1,400 raised by the students). The Secretary noted in his letter to Treasury:

*"If the deficit is as stated the Committee should not have entered into an arrangement to purchase a bus and it is clear that in future the Authority will have to obtain specific evidence that sufficient funds are available and that the application will not result in a deficit at the end of the year."*¹⁸¹

Nevertheless by 1978, the Authority had allowed the recouping of half of the Hostel's deficit for 1976 and 1977 – effectively paying the full cost of the Hostel bus.

A significant component of the Authority's \$41,000 expenditure on the Hostel was on the construction of the recreation shed. In November 1977, the Authority had approved payment of \$27,500 for its construction.¹⁸² By May 1978, the Authority had spent \$30,000 on the Hostel's shed and a quote for a further \$7,000 was tabled for construction of the shed floor.¹⁸³ A month later another quote for almost \$2,000 for electrical work on the shed was considered by the Authority.¹⁸⁴ By January 1980, the Authority received a letter from the Shire stating that there was such wide community use of the Hostel's recreation shed that toilets needed to be constructed. The Authority wrote requesting that half funding be provided by the Shire.¹⁸⁵ By March, the Shire advised that it could not afford to pay and the Authority's Minutes note that this was now an urgent project for the Public Works Department.¹⁸⁶

As for the swimming pool, by 1979, the Authority approved installation of a 50x20 concrete swimming pool at the Hostel to replace the fibreglass pool which had "given considerable trouble". This was, again, supposed to be paid for by the Board but with the on-going deficits accrued by the Hostel (examined below) the extent of the Hostel's contribution to the cost cannot be confirmed.

It seems evident that the "transformation" of the Hostel that was associated with McKenna was in fact largely publicly funded. That is not to doubt the enormous amount of work that the boarders of the Hostel put into fund-raising and improving the Hostel facilities – indeed so much that, together with the demands for providing services to the community it adversely impacted upon students' ability to study.¹⁸⁷ However, contrary to the public

¹⁷⁹ CHSHA 1977, Minutes of Meeting, 28 April.

¹⁸⁰ Secretary CHSHA 1978, Letter to State Treasury, 12 May.

¹⁸¹ Secretary CHSHA 1978, Letter to State Treasury, 12 May.

¹⁸² CHSHA 1977, Minutes of Meeting, 24 November. Narrogin had already had a recreation shed constructed, largely from Authority funding, however that was on the basis that it was a restricted site with 232 students (CHSHA 1975, Minutes of Meeting, 24 July).

¹⁸³ CHSHA 1978, Minutes of Meeting, 25 May.

¹⁸⁴ CHSHA 1978, Minutes of Meeting, 23 June.

¹⁸⁵ CHSHA 1980, Minutes of Meeting, 29 January.

¹⁸⁶ CHSHA 1980, Minutes of Meeting, 4 March.

¹⁸⁷ For example, see Parker, S K *Inquiry Transcript of Evidence*, pp. 186, 192.

image, public funding for many improvements was not being matched by the Hostel. It is somewhat ironic that when he returned to the Hostel in August 1977 the Premier was to remark on the self-help efforts of the students at St Andrew's, stating:

*"Too often these days people sit back and wait for government, or perhaps I should say the tax payer, to supply everything. But this is a wonderful example of young people getting out and raising money for the things they want."*¹⁸⁸

As briefly outlined below, the state of the Hostel finances throughout the years of McKenna's wardenship was to continue as it had started:

- An audit report for the Hostel dated 11 December 1980 advised that vouchers were not available for expenditure totalling \$15,740.88 and that no records were available in respect of postage and petty cash.¹⁸⁹
- By the end of 1981 the Hostel was seeking funding for a total operating deficit of \$32,467.68. The Authority advised that it had made no provision in its budget for the reimbursement of the deficit and in any case the Hostel was expected to run at a break-even point with 100 students in residence.¹⁹⁰
- An audit in 1984 identified that "In 1982 the Hostel figures revealed an operating profit of \$29,005.92, this surplus was decreased by a bus A/C variance of \$18,392.81 and amenities of \$17,839.03 resulting in an overall deficit of \$6,908.47 for the period." It also identified that an operating loss of \$43,128.00 would have resulted in a \$78,264 deficit in 1983 if not for a \$35,000 loan.¹⁹¹
- Another audit conducted that year because of the large deficit initially identified, calculated the real deficit for the Hostel as being \$84,827. Although the Auditor found no evidence of misappropriation he did find overspending on non-operational activities: bus, cinema, building and canteen.¹⁹²
- In 1987, a further audit identifies: "As a result of this investigation a number of procedural and accounting anomalies were detected. In addition, a number of items of a significant capital nature were found to have been purchased which require comments or explanation from the Board of Management." The year to date food costs at Katanning was \$245.84 [per student] compared to Northam \$128.73 (which was a similar size hostel). "According to the Warden, the long term viability of the Cinema and Indoor Cricket programmes is in jeopardy because of the lack of sustained interest in the town ... I am of the opinion that the Warden has come to the realization that large scale project undertaken contribute substantially to the financial difficulties."¹⁹³

¹⁸⁸ [Unavailable] 1977, *Katanning Students Stage Premier Event*, 11 August.

¹⁸⁹ Secretary CHSHA 1984, Letter to Chairman of the St Andrew's Hostel Board and Attachment, 22 March.

¹⁹⁰ *ibid.* Within two weeks, the Minister for Education wrote to McKenna stating: "I must say that I have heard nothing but praise for the efficient manner in which the Hostel is administered and I congratulate you for your efforts in developing what is the most impressive hostel in Western Australia." (Clarko, Hon J G (MLA), Minister for Education 1982, Letter to D McKenna, 30 November).

¹⁹¹ Clerk in Charge (Internal Audit) 1984, *Katanning Hostel Audit of Accounts*, March 22.

¹⁹² Clerk in Charge (Internal Audit) 1984, *Audit Report*, 11 May.

¹⁹³ Acting Administrative Assistant (CHSHA) [undated], *Report on Expenditure Items 1986-87*, St Andrew's Hostel Katanning.

- In October 1988, following the positive assessment of the Hostel by the Parliamentary Committee, the newspaper article identifying it as “St Andrew’s the State’s Top Hostel” quotes McKenna “listing the swimming pool, recreation shed, buses, canoes and front additions to the recreation shed as just some of the facilities which had relied on hostel self-funding and not government hand-outs”. McKenna went on to state: “At St Andrew’s we break even but if put the numbers up another 20 [students] we would make a profit.”¹⁹⁴ By January 1989, however, the Authority noted that the Hostel “appears to be overspending” and has an “unexpected deficit”.¹⁹⁵
- On 11 April 1989 the Authority noted that the Hostel’s 1988 deficit of \$67,403 would need to be traded out of that year, as no funding would be available from Head Office.¹⁹⁶
- By the end of 1989, the Hostel Board issued a notice advising of a change in policy. It stated that:
“Students have fund-raised all the amenities and equipment, internal furnishings, buses, pool etc without Government or outside help. It will be extremely hard to replace many of these in the future, with so much use by outsiders, many items are being damaged... Catering, hire of buses, equipment, canoes, halls, Cinema, buildings for camps can no longer be available [for free].”
Charges were implemented for the hire of some of those facilities.¹⁹⁷
- The Authority’s Administrative Officer has a meeting with St Andrew’s warden and others in February 1990 about the Hostel’s \$109,503 overdraft; at the time the total food costs for Katanning were higher than the total food costs for Narrogin which had an additional 100 students in residence.¹⁹⁸

Witnesses representing the Authority were asked at Inquiry hearings about the management of the Hostel finances while McKenna was Warden. Mr Bachelard-Lammas was the Authority’s Liaison Officer from 1982 until 1990. When interviewed by Inquiry investigators his recollection, quite startlingly, was as follows:

“... when I was appointed, that was one of my chief concerns ... monitoring the deficit funding ... Katanning was never in deficit.”¹⁹⁹

When Mr Philpott was examined about the continuing deficit funding of the Hostel he indicated that many hostels had problems operating within their budget. He was rather unperturbed about McKenna’s expenditure in the face of the mounting deficit:

“Q. ... he [McKenna] wasn't managing it very well, was he?”

A. It doesn't appear to be so, except he wasn't putting it away. It didn't seem that he was ever putting it away.

¹⁹⁴ Fraser, P 1988, Great Southern Herald ‘St Andrew’s the State’s top hostel’, 19 October.

¹⁹⁵ CHSHA 1989, Minutes of Meeting, 10 January.

¹⁹⁶ *ibid.*

¹⁹⁷ St Andrew’s Hostel Board 1989, Minutes of Meeting, 14 December; Chairman (St Andrews Hostel) 1989, Notice ‘To Whom It May Concern’, 14 December; St Andrew’s Hostel 1989, *1990 Policy Proposal*; St Andrew’s Hostel 1989, *For Katanning Senior High School Only*.

¹⁹⁸ CHSHA 1990, Minutes of Meeting (Attachment - Administrative Officer report February 1990) 23 April.

¹⁹⁹ Bachelard-Lammas, P 2012, *Inquiry Interview*, in possession of the Inquiry, 11 April, p. 8.

*He was doing it for the benefit of the children.*²⁰⁰

As it turned out, what McKenna was doing with government funding was far from being “for the benefit of the children”.

It is true that the facilities were made available for the broader Katanning community, apparently for much of the time without charge. However, there are many examples of how this placed McKenna in a position where he could leverage a great deal of good will from the community. In that respect, Mr Marriott's planner for 1985, when he was a new Principal at KSHS, records numerous meetings with McKenna – over cricket equipment, the buses, the recreation shed and the pool; this was in addition to his involvement with McKenna through McKenna's role as Warden and as President of the Parents and Citizens Association for KSHS.²⁰¹

Another insight into the position McKenna was able to secure in the community as a result of this largely unchecked expenditure can be seen when he organised a band at the Hostel's recreation shed, which played to about 600 people.²⁰² McKenna provided the Hostel bus to the school for sporting activities,²⁰³ he provided canoes free of charge to the community, the cinema provided new release movies (prior to their availability for commercial theatres) at reduced prices,²⁰⁴ he provided the Hostel cinema to the school nurse to host health seminars,²⁰⁵ and the police had use of the Hostel to conduct defensive driving seminars.²⁰⁶

Through his control over the Hostel's facilities and its economic resources, McKenna had another means by which he could exert influence and control over people beyond the confines of the Hostel. At times this was perhaps a more subtle influence over those who were beholden to him for the use of the facilities or the apparent economic success of the Hostel.

Andrew Bourke, a teacher at KSHS recalled:

*“the phys. ed. department for the school ... would often use buses and they could get them from the hostel and I think they were told, you know, “Don't sort of upset him because he might change his mind” or something like that.”*²⁰⁷

Ian Lockhart, the physical education teacher at KSHS, elaborated further at his interview with Inquiry investigators, saying he:

“always saw him [McKenna] as a person that you didn't sort of mess around with ... I don't know if I was personally intimidated by him but he ... maybe manipulative - - no maybe that's not even the right word. Here's a scenario ... the hostel had a bus, like a coaster bus. I worked in phys ed and there was this kind of arrangement where the school could use the hostel bus ... to transport kids to various things, you know, we're going to some sort of sporting thing, or we're going down town to do something... but it was sort of like you could have it today but on a whim tomorrow, Dennis wouldn't let you have it ... it was like a power thing, controlling sort of thing ... I used to find that extremely frustrating because you sort of never knew where

²⁰⁰ Inquiry Transcript of Evidence, p. 2465.

²⁰¹ Marriott, G 1985, Yearly planner – 1985.

²⁰² Great Southern Herald 1985, *Warm welcome for Ice*, 7 August, p. 4.

²⁰³ Bourke, A J Inquiry Transcript of Evidence, p. 1967.

²⁰⁴ [Not available] 1986, Letter to Fox-Columbia Film Distributors, 12 May.

²⁰⁵ Inquiry Investigator 2012, Inquiry file note of conversation with S Marshall, 13 February.

²⁰⁶ WA Police 1985, Occurrence Book – Katanning, 14 November.

²⁰⁷ Inquiry Transcript of Evidence, p. 1967.

you stood. I didn't actually have much to do with Dennis specifically but there was always this sense that if you stuffed around with him, if you pissed him off, then ... he had the capacity to make life difficult for you ... in probably a number of ways."²⁰⁸

However, there are also clear examples of McKenna blatantly exerting his power if he believed it was necessary to get what he wanted or to protect his reputation. For example, in August 1990 McKenna wrote to K J Elwin, the proprietor of an electrical repair shop in Katanning. McKenna claims that Mr Elwin made a comment to parents who visited his shop that a student was withdrawn from the Hostel because of the "poor way in which the Hostel is run". He continues "We are all very upset with your mannerism [sic] and certainly you will not benefit from any business from us or the 135 families associated with the Hostel".²⁰⁹

Interestingly Mr Elwin has a very different recollection of events:

"My recollection around this incident is that I feel this letter was a bit of a "put up" and not really true.

From memory Dennis wasn't really threatening me about an "alleged comment" [which Mr Elwin denies making] but rather he was angry with me about not getting his own way with regards to how I wanted payment for the repairs I was doing.

Dennis came to me and asked me to invoice the St Andrews Hostel for all repairs, however I told him that unless he had an official order number which he could give me he would have to pay cash.

This was something he did not like, because he did not get his own way on this point.

Even back then it appeared to me that Dennis usually got what he wanted around town and as I reflect back on my dealings with him I always found him to be a bit "cocky"."²¹⁰

Whether the letter had the intended impact on Mr Elwin was probably not the issue for McKenna. The "Elwin Affair" was noted in the Board Minutes of 23 August 1990 and no doubt served its purpose in convincing the Board that McKenna was ever vigilant of the good name of the Hostel.²¹¹ At the same time it would provide a pretext should Mr Elwin complain about McKenna's conduct in the future.²¹²

Of course, perhaps the clearest example of how McKenna was able to exercise his "economic" power beyond the Hostel is in the events associated with Westrek. The Authority took up a lease over Kartanup (St Rita's Convent premises), despite the objections of McKenna and the Hostel Board.²¹³ Indeed, despite these objections, the Authority went on to give the use of Kartanup to the Hostel, with the Authority's Administrative Officer writing to the Board:

²⁰⁸ Lockhart, I 2012, *Inquiry Interview*, in possession of the Inquiry, 4 April, pp. 8, 9.

²⁰⁹ McKenna, D (Warden, St Andrew's Hostel) 1990, Letter to K J Elwin, 1 August.

²¹⁰ Elwin, K J *Inquiry Transcript of Evidence*, pp. 4315.

²¹¹ St Andrew's Hostel Board 1990, Minutes of Meeting, 23 August.

²¹² Mr Hendry's evidence was that he had never received a letter addressed to him from McKenna in which McKenna made serious allegations of bullying by Mr Hendry's son. Mr Hendry was withdrawing his son from the Hostel at the time. He speculated that the letter had been fabricated by McKenna to deflect any criticism of his conduct should Hendry complain at a later date (*Inquiry Transcript of Evidence*, pp. 1932-1933).

²¹³ CHSHA 1984, Minutes of Meeting, 11 December.

*"After discussion with Dennis it may be feasible to use Kartanup as and when you see fit as an extra facility for students and staff alike. Therefore the Authority offers your Board the use of Kartanup for 1985 to utilize to the best advantage for all concerned."*²¹⁴

Kartanup was leased to Westrek for the six month pilot project in Katanning.²¹⁵ Mrs Maggie Dawkins recalls that after she raised concerns about the allegations of a former resident at the Hostel that:

*"I remember her [Elizabeth Stroud] directing me to pack up and move to the Westrek project at Bunbury. I was given 48 hours to do so. Ms Stroud informed me that Dennis McKenna had threatened to withdraw the accommodation of Kartanup from Westrek. This would have put an end to the project I had worked so hard to set up."*²¹⁶

A1.7 Conclusion

There is no more apt conclusion for this chapter on the governance of the Hostel between 1975 and 1990 than to adopt the words of Mr Parker, a former resident at the Hostel:

"a situation was allowed to develop in Katanning where an almost exclusive focus was placed on the reputation and attendance of the Hostel. The local board [was] allowed deficit funding despite a clear and proven long term inability to manage the income and expenditure of the facility. The board were never given training or instruction as to how to address the situation or given a set of instructions as to what their primary focus was. No long term planning was every conducted and the Authority had tenuous control at best, seemingly leaving any management to untrained amateurs."

*Yet the accolades kept coming. Some generated internally by the Board, the Authority and the Warden. Others, from the local community which benefitted from aspects of the Hostel's operation. The salient point is that this reputation was not built in any way on fact."*²¹⁷

²¹⁴ Administrative Officer (CHSHA) 1984, Letter to Chairman St Andrew's Hostel Board, 19 December.

²¹⁵ See Chapter 11.13.

²¹⁶ *Inquiry Transcript of Evidence*, p. 240. Other than Peter Sherlock, all of the Westrek management witnesses who gave evidence to the Inquiry claim that Mrs Dawkins was moved due to her poor performance and not because of McKenna. Importantly however, Mrs Dawkins' account is corroborated by the Hostel Board minutes, which record both the termination of Westrek's lease of Kartanup and its reinstatement. (See Stroud, E J *Inquiry Transcript of Evidence*, pp. 1469-1538, 3709-3738, 4251-4259; Sherlock, P *Inquiry Transcript of Evidence*, pp. 1541-1618, 4245-4251; Carter, I L *Inquiry Transcript of Evidence*, pp. 1618-1661, 4232-4237; Kenyon, P R *Inquiry Transcript of Evidence*, pp. 2294-2394, 4237-4244; Holmes a Court, J L *Inquiry Transcript of Evidence*, pp. 4219-4225; St Andrew's Hostel Board 1985, Minutes of Meeting, 30 October; St Andrew's Hostel Board 1985, Minutes of Meeting, 20 November.)

²¹⁷ Parker, I 2012, *Submission to the Inquiry*, 29 May, pp. 2, 3.

Attachment 1.1

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APPENDIX 5

COUNTRY HIGH SCHOOL HOSTELS AUTHORITY

LETTER OF ARRANGEMENT

The Local Committee to:

1. Engage or dismiss staff and pay all accounts incurred in connection with the control and conduct of the Hostel, including the wages and salaries of all members of the staff.
2. Purchase or dispose of all stores.
3. Supervise the management and control of the hostel and to be responsible to the Authority for the provision of clean lodgings and wholesome board to the students residing therein.
4. Keep and maintain in good order such chattels which are and shall remain the property of the Authority for the use of the Local Committee on the premises.
5. Comply with the Health Act 1911 and the Local Government Act 1960.
6. Refer all matters in dispute, or in respect of which the Committee may require a direction, to the Authority for determination or adjudication.
7. Not to do anything whereby any policy of insurance against loss or damage by fire on the hostel or the contents may become void or whereby the premiums payable in this respect may be increased.
8. To pay all charges in respect of electricity and fuel, telephone rental and calls, sanitary charges, removal of rubbish, water and fire brigade charges.
9. Permit the agents and servants of the Authority at all reasonable times to enter and view the state of cleanliness of the hostel and chattels and to inspect the nature and quality of the accommodation being provided by the Local Committee.
10. Remedy any defects for which the Committee is liable and of which written notice shall be given by the Authority to the Local Committee.
11. Use the Hostel and the chattels for the purpose of providing accommodation for students and for no other purpose except for the duration of school vacations, during which periods, if the hostel is not required for educational purposes, the Local Committee may use the hostel and chattels for such other purpose as the Authority shall have in writing first approved.
12. Not to make any structural alterations to the hostel nor instal therein any fixtures or fittings without the consent in writing of the Authority first had and obtained.
13. Insure and keep insured all members of the staff employed at the hostel or in connection therewith during the terms of this arrangement, against all claims that may be made upon the Local Committee for or in respect of personal injury or death happening or occurring to any person in or about the Hostel or in the course of working thereof whether such claim shall arise or be made under the Workers' Compensation Act 1912-64 or any other statute or common law.
14. Charge student fees at such rate as the Authority from time to time approves.
15. Endeavour to run the Hostel on a non-profit making basis, any surplus accruing to be used for the benefit of the students either by reducing fees or providing amenities.

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16. Submit financial statements to the Authority annually.
17. Build up a fund or make other provision for the payment of long service leave or pro-rata long service leave for the staff.

The attention of the Committee is drawn to Regulations made pursuant to the Country High School Hostels Authority Act, which deal specifically with the maintenance and enforcement of discipline in hostels.

The Authority to:

1. Keep and maintain or cause to be kept and maintained the hostel in good and substantial repair and condition with the exception of damage caused other than by fair wear and tear.
 2. Arrange to replace chattels that may become worn or damaged beyond repair in the normal use thereof.
-

It is MUTUALLY AGREED AND DECLARED by and between the parties that this agreement may be determined by either party giving to the other, three calendar months written notice expiring at the end of the school term of its intention in that behalf and upon the expiration of the period mentioned in such notice, this arrangement shall cease and determine and the Local Committee shall vacate and deliver up the hostel and chattels and leave the hostel in a clean and tidy condition. Any funds accruing at the expiration to be transferred to the incoming Committee or the Authority.

COUNTRY HIGH SCHOOL HOSTELS AUTHORITY

.....Chairman

.....Member

LOCAL COMMITTEE

.....Chairman

.....Member

Date. <u>3/5/12</u>	Exhibit No. <u>88</u>
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Appendix 2



SOLICITOR GENERAL WESTERN AUSTRALIA

13 February, 2012

Hon Peter Blaxell
Special Inquirer
St Andrews Hostel Inquiry

JURISDICTION OF THE ST ANDREWS HOSTEL INQUIRY WITH RESPECT TO PUBLIC OFFICIALS

1. On 8 February 2012 you wrote to the State Solicitor seeking advice as to the scope of your Inquiry's terms of reference. The State Solicitor has referred that request to me.

The Inquiry and its Terms of Reference

2. The Inquiry is established under s. 24H(1) of the *Public Sector Management Act 1994* (WA) ("PSM Act"). The Public Sector Commissioner ("Commissioner") has appointed you to conduct a special inquiry into the conduct and response of relevant public officials and government agencies in relation to allegations of sexual abuse at St Andrews Hostel in Katanning ("Hostel"). The terms of reference provide that, among other things, in examining this matter the Inquiry is to report on "any disciplinary action that should be taken against any public official as a consequence of the findings" which the Inquiry makes.

Request for Advice

3. You have sought advice as to the scope of the phrases "public official" and "disciplinary action", which appear in the Inquiry's terms of reference, and as to whether the jurisdiction of the Inquiry extends to:
 - (a) investigating the conduct and response of certain categories of officer, and
 - (b) recommending that disciplinary action be taken against certain categories of officer.

Advice

4. In my opinion, the phrase "public official" in the terms of reference comprehends persons who, at the time of the relevant conduct, were working in or performing the functions of an entity which is currently, or which would be if it still existed be, a "public sector body" as that term is defined in the PSM Act. That includes persons who

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were, at the time of the relevant conduct, either

- (a) the Chairman and other members of the Country High School Hostels Authority ("Authority"), appointed under s. 4 of the *Country High School Hostels Authority Act 1960* (WA) ("the Authority Act");
- (b) members of a committee in respect of a hostel, appointed by the Authority under s. 7(1)(ba)(iv) of the Authority Act;
- (c) the staff of hostels, engaged under s. 7(1)(ba)(iii) of the Authority Act;
- (d) officers and servants of the Authority, appointed under s. 10(1) of the Authority Act;
- (e) the secretary or other officers of the Authority, whose services were co-opted under s. 10 of the Authority Act; and
- (f) school teachers and nurses employed in the Department currently designated the Department of Education.

It is, therefore, within the jurisdiction of the Inquiry to investigate the conduct and responses of persons holding those positions at the relevant time.

5. In my opinion, the reference to "public officials" does not comprehend police officers or councillors or employees of a local government. However, the Inquiry may receive evidence and make findings about:
 - (a) allegations about sexual abuse made to the police or local government;
 - (b) the action taken in relation to such allegations; and
 - (c) the reasons why action was or was not taken,

where that evidence or those findings are relevant to the investigation of the conduct and responses of public officials (in the sense explained above) to the same or similar allegations.

6. In my opinion the phrase "disciplinary action" in the terms of reference comprehends such action which the employer or appointer of a public official may lawfully take against an employee or office holder for substandard performance or misconduct by that employee or officer. It includes, but is not limited to, disciplinary action under Part 5 of the PSM Act. However, the terms of reference do not contemplate the Inquiry making recommendations that disciplinary action be taken against persons who are not "public officials" in the sense explained above.
7. My reasons for these conclusions are set out below.

"Public Official"

8. As you have noted, the term "public official" is not defined by the Authority Act. In its ordinary meaning, the term is capable of referring to any person who holds an office of a public nature established by a law of the State or Commonwealth, or who is employed

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by a governmental body. Like the term "government agencies", the term "public official" is of potentially broad application. It seems likely that those who drew the terms of reference sought to use language which would give the Inquiry as wide a scope as possible to investigate the official response to allegations of abuse at the Hostel.

9. However, in construing the phrase "public official" as it appears in the Inquiry's terms of reference it is, in my opinion, important to have regard to the statutory context in which the Inquiry is established. In particular, it is important to have regard to the limits on the authority of the Commissioner to arrange for the holding of a special inquiry.
10. Section 24H(1) of the PSM Act authorises the conduct of an inquiry "into a matter related to the Public Sector". Section 24H was introduced by s. 23 of the *Public Sector Reform Act 2010* (WA). It was largely a re-enactment of the former s. 11 of the PSM Act, which authorised the Minister to direct a suitably qualified person to "hold a special inquiry into a matter related to the Public Sector". Prior to the 2010 amendments the functions of the Commissioner, noted below, were vested in the Minister. While the original s. 11 of the PSM Act was the subject of contentious debate in the Legislative Assembly (Hansard 7 June 1994 pages 1103-8), I have not found anything in the Parliamentary materials which assists in the construction of either the former s. 11 or the current s. 24H(1) of the PSM Act.
11. Section 24H(1) of the PSM Act, in referring to a "matter related to the Public Sector", imposes a limitation on the authority of the Commissioner to arrange for the holding of a special inquiry under that section. The terms of reference should be construed in a manner which has regard to that jurisdictional limitation on the permissible scope of a special inquiry under s.24H. That factor counts in favour of construing the terms of reference in a manner which does not exceed those limits, so that the "matter" which is identified by the terms of reference as the subject of the Inquiry can be characterised as one which is "related to the Public Sector".
12. Section 3 of the PSM Act defines the "Public Sector" to mean all "agencies", "ministerial offices" and "non-SES organisations".
13. "Agencies" are, by definition:
 - (a) Departments; and
 - (b) "SES organisations", which are the public bodies and officers specified in Schedule 2 to the PSM Act and persons employed by or for the purposes of those bodies and officers.
14. The Authority is specified in item 4 of Schedule 2 to the PSM Act. The Authority, and persons employed by or for the purposes of the Authority, therefore constitute a SES organisation, an agency and part of the Public Sector for the purposes of the PSM Act.
15. The phrase "ministerial officers" is defined to mean a person appointed under s. 68 of the PSM Act, which relates to the appointment of the staff of Ministers.
16. The phrase "non-SES organisation" is defined in s. 3 of the PSM Act to mean bodies and offices established for a public purpose under a written law, and persons employed

by or for the purposes of that body or office holder, which are neither SES organisations nor specified in Schedule 1 to the PSM Act. Some of the bodies identified in Schedule 1 to the PSM Act are presently relevant. Item 5 of Schedule 1 specifies “the Police Force within the meaning of the *Police Act 1892*”. Item 15 of Schedule 1 specifies “any local government or regional local government or the council of a local government or regional local government”. Those bodies and their employees will not be “non-SES organisations” or part of the Public Sector for the purposes of the PSM Act.

17. For the Inquiry to be validly constituted, it is therefore necessary that the subject matter of the Inquiry be characterised as being a matter related to the “Public Sector”, as that phrase is explained above. The phrase “related to” is itself one of indeterminate reference. The question which then arises is what kind of connection is necessary for the subject matter of a special inquiry to be characterised as one which is related to the Public Sector? In answering that question it is also necessary to consider the purpose for which the power to arrange for the holding of a special inquiry is conferred. The exercise of the power to arrange for the holding of an inquiry for an unauthorised purpose would be invalid: *Thompson v Randwick Corporation* (1950) 81 CLR 87 at 105-7; *Re Minister for Environment; ex parte Elwood* (2007) 154 LGERA 366 at 408; [2007] WASCA 137 at 173; *Mandurah Enterprises v Western Australian Planning Commission* (2010) 240 CLR 409.
18. That purpose is suggested by the long title to the PSM Act, which is relevantly an “Act to provide for the administration of the Public Sector of Western Australia and the management of the Public Service and other Public Sector employment”. Sections 7 and 8 of the PSM Act establish principles “to be observed in and in relation to the Public Sector”, while s. 9 provides for principles of conduct that are to be observed by “all public sector bodies and employees”.
19. Part 3A of the PSM Act, in which s. 24H is found, establishes the office of the Commissioner. The functions of the Commissioner are set out in ss. 21A-22F of the PSM Act. The Commissioner’s general functions, set out in s. 21A, are concerned with the efficiency and effectiveness of the Public Sector (s. 21A(a) and (b)) and planning for the future management and operation of the Public Sector (s. 21A(c)). Section 21 is concerned with the making, and monitoring of compliance with, public sector standards “of merit, equity and probity to be complied with in the Public Sector” (s. 21(1)(a)). Section 22A provides for the Commissioner to issue written instructions in relation to certain matters, the most broadly stated of which is the “management and administration of public sector bodies” (s. 22A(1)(a)). Section 22B empowers the Commissioner to deal with the replacement or amalgamation of Departments, organisations and bodies which, by definition, are part of the Public Sector. Sections 22C-22E provide for the Commissioner’s reporting function concerning compliance by public sector bodies and employees with certain requirements and “the State of administration of and management of the Public Sector” (s. 22D(1)(a)).
20. Later parts of the PSM Act are also exclusively concerned with the management and administration of the Public Sector.
 - (a) Part 3 of the PSM Act provides for the constitution of the Public Service as a subset of the Public Sector.

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- (b) Part 4 deals with the provision of assistance to political office-holders, either by ministerial officers who form part of the Public Sector or by special officers in a Department which forms part of the Public Sector.
 - (c) Part 5 is concerned with disciplinary matters in relation to public service officers, ministerial officers and such employees in the Public Sector as are prescribed (see s. 76(1) of the PSM Act, read with the definitions of "public service officer", "ministerial officer" and "employee" in s. 3 of that Act).
 - (d) Part 6 is concerned with the redeployment and redundancy of employees in departments and organisations, which are by definition part of the Public Sector.
 - (e) Part 7 is concerned with breach of public sector standards; and
 - (f) Part 8 is concerned with miscellaneous matters concerning the Public Sector.
21. It can be seen from these provisions that the whole concern of the PSM Act and the functions of the Commissioner is with the management and administration of the Public Sector. In my opinion, the purpose for which the power to arrange for the holding of a special inquiry is conferred must be considered against the limits of the objects and subject matter of the Act. In my opinion, the power to arrange for the holding of a special inquiry is to be exercised for the purposes of the Commissioner's functions. That is, a proper purpose for holding a special inquiry will be to promote the efficiency and effectiveness of the Public Sector; to advise and report on the state of management and administration of the Public Sector; to consider whether public sector standards have been complied with by the Public Sector; or to enable the Commissioner to plan for the future management and operation of the Public Sector.
22. An inquiry into the conduct and response of bodies and officers within the Public Sector to allegations of sexual abuse occurring at the Hostel is clearly concerned with the management and administration of the Public Sector, both past and future. As to the past, it is concerned with identifying deficiencies in the management and administration of those parts of the Public Sector which may have failed to respond adequately or at all to those allegations. The examination to be conducted by the Inquiry will inform the Commissioner, and enable the Commissioner through his reports to inform others, as to how the management and administration of the Public Sector can be reformed to improve the Public Sector's response to any similar allegations made in the future.
23. However, I do not consider that a special inquiry into the response of bodies and officers outside the Public Sector to allegations of sexual abuse at the Hostel would be authorised by the PSM Act. That is because the subject matter of such an inquiry would not be concerned with the administration and management of Public Sector bodies, and would have only a remote and tangential connection to the Public Sector. The only connection of such an inquiry to the Public Sector would be that the offending behaviour was committed by officers in the Public Sector. However, the subject matter of the Inquiry is not the offending behaviour but the reaction of public officials to allegations about that behaviour. In my opinion, a special inquiry into the reaction of persons outside the public sector to offending conduct within the public sector could not be characterised as a matter related to the Public Sector. It would be in substance an inquiry into the management and administration of a body over which the

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Commissioner had no responsibility. Further, the purposes of such an inquiry would be divorced from any matter of concern to the management and administration of the Public Sector. It would not be a purpose for which the exercise of the power to hold a special inquiry could lawfully be exercised.

24. In my opinion, construed against that statutory background, the references to “public official” in the terms of reference are to officers and employees within the Public Sector; ie persons working in or performing the functions of a “public sector body” as that term is defined in the PSM Act. Such a construction of the terms of reference would be consistent with the extent of the Commissioner’s power to arrange for the holding of a special inquiry. In my opinion, there is nothing in the language of the terms of reference which demands a different view, and a valid construction of the terms of reference is to be preferred to one which is, at least in part, invalid.
25. I note that the opening statement of counsel assisting the Inquiry at the preliminary hearing held on 15 December 2011 indicated that the timeframe for the events with which the Inquiry is concerned began in or about 1975 and ended in 1990. That timeframe predates the commencement of the PSM Act. The concept of the “Public Sector” is, of course, a creature of the PSM Act. However, I do not consider there to be anything in the PSM Act which precludes a special inquiry from being established to consider the conduct of officers in bodies which are now, or which would if they still existed be, part of the Public Sector.
26. The Authority, established under the Authority Act in 1972, has a continuous existence and currently forms part of the Public Sector. An examination of the conduct of officers and employees of the Authority can, in my view, be characterised as being concerned with the management and administration of a body within the Public Sector for the purposes of the PSM Act.
27. Similarly, the Department of Education has, so far as I am aware, continued in existence as a Department since 1975 although its designation has been altered from time to time. (I discuss the history of the Department of Education in greater detail below). However, even if the Department had been abolished and re-established, I consider that, as a Department is necessarily part of the Public Sector, an examination of the conduct of officers in a former Department would still be into a matter related to the Public Sector, particularly as an examination of that conduct may inform the future management and administration of existing Departments.
28. The term “public sector body” is defined in s. 3 of the PSM Act to mean an agency (ie a department or SES organisation), ministerial office or non-SES organisation. The effect of the above analysis is that the reference to “public official” is to be taken as a reference to public sector bodies (including their officers and employees). The subject matter of the Inquiry is relevantly the conduct and response of public sector bodies (including their officers and employees) to allegations of abuse at the Hostel. The conduct and response to the allegations of persons outside the Public Sector, such as police or local government officers, is not itself a subject matter of the Inquiry.
29. That is not to say that the making of complaints to police and local government officers, who stand outside the Public Sector, is entirely irrelevant to the Inquiry. The Inquiry will be able to examine allegations made to police or local government so far as the making of those allegations informs the examination of the conduct and response of

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public sector bodies (including their officers and employees) to allegations of sexual abuse at the Hostel. Whether, and to what extent, this is the case will depend on the evidence to be led before the Inquiry. However, the conduct and reaction of police or local government officers is not itself a subject matter of the Inquiry.

30. The point I make in the previous paragraph can be illustrated by example, which is entirely hypothetical. Suppose that an allegation of sexual abuse at the Hostel was made to an officer of the Department of Education and that officer passed on the allegation to the police, who took no action. The passing on of that allegation to police, and any subsequent police response, may be relevant in assessing the conduct of the Departmental officer and the manner in which that part of the Public Sector was managed and administered. It may be relevant to the question of why the Departmental officer did not take any further action in relation to that particular allegation (eg, he thought it was in the hands of the police). Further, if a complaint was made to police and no action was taken, that may be relevant to understanding why, on a subsequent occasion, the Departmental officer did not forward similar information on to the police. Whether or not the reference of allegations to the police and any subsequent police action justified the conduct of the Departmental officer, those matters would inform the Inquiry as to the Departmental officer's state of mind and the reasons why he acted as he did. It may also be the case that the manner in which the allegation was passed on to police contributed to a failure by the police to investigate. In that case it would be relevant for the Inquiry to consider how public sector bodies might better convey allegations of that kind to the police. In this hypothetical example, although the conduct and response of the police is not itself the subject matter of the Inquiry, it would be relevant for the Inquiry to receive evidence and make findings about the fact that the allegation was passed on to the police, the fact that the allegation was not acted upon by the police and the reasons why the allegation was not acted upon.
31. It may well be the case that the circumstances which the Inquiry is investigating are such that it is practically impossible to divorce the conduct and response of the police from the conduct and response of public sector bodies to the same or similar allegations. In that case the Inquiry would appropriately receive evidence and make findings about allegations made or passed on to police, the response (if any) of the police to those allegations and the reasons for that response or lack thereof. However, even in that case, it will be necessary to bear in mind that the subject of the Inquiry is the conduct and response of public sector bodies, rather than the conduct and response of the police. The relevance of the evidence and findings will be to the assessment of the conduct and response of public sector bodies. It would not, for example, be within the terms of reference to make recommendations of disciplinary action against police officers.

Officers of the Authority

32. The Authority was established by the Authority Act as a body corporate with the public functions specified in s. 7 of the Authority Act. It is an incorporated body established for a public purpose under a written law. It is specified in Schedule 2 to the PSM Act. Therefore, the Authority is an SES organisation under paragraph (a) of the definition of that phrase, and is therefore a public sector body for the purposes of the PSM Act.
33. Paragraph (b) of the definition of "SES organisation" includes "person employed by or for the purposes of" the Authority under the Authority Act or another written law.

34. At all material times s. 4(2) of the Authority Act has provided that the Authority consists of members appointed by the Governor, one of whom is appointed by the Governor as Chairman of the Authority. While there have been changes to aspects of the appointment procedure and the number of members, none of those changes are presently material. As constituent members of the Authority, the Chairman and other members fall within paragraph (a) of the definition of “SES organisation” and are part of a public sector body. The terms of reference of the Inquiry therefore extend to examining the conduct and response of the Chairman and other members of the Authority to allegations of sexual abuse at the Hostel.
35. Section 10(1) of the Authority Act, as originally enacted, provided that, by agreement with the Public Service Commissioner, the Authority may for the purposes of the Authority Act co-opt the services of any officer within the meaning of the *Public Service Act 1904* (WA) (“1904 Act”) as secretary or as an officer of the Authority. Persons whose services were so co-opted would be employed “for the purposes of” the Authority under the Authority Act within the meaning of paragraph (b) of the definition of “SES organisation”.
36. Section 10 of the Authority Act was repealed and substituted by s. 5 of the *Country High School Hostels Authority Act Amendment Act 1979* (WA). That amendment introduced the power, which continues to be contained in s. 10(1) of the Authority Act, of the Authority to appoint its own officers and servants. Subject to one possible qualification, those persons would be persons employed by the Authority under the Authority Act within the meaning of paragraph (b) of the definition of “SES organisation”.
37. The qualification referred to in the previous paragraph is that the reference to “officers and servants” in s. 10(1) of the Authority Act suggests that it is possible for the Authority to appoint an officer otherwise than by contract of employment. Officers who were not themselves specified in Schedule 2 of the PSM Act, and who therefore did not fall within paragraph (a) of the definition of “SES organisation”, and who were not employees, and therefore did not fall within paragraph (b) of the definition of “SES organisation”, may not themselves fall within the definition of “public sector body”. However, as officers of the Authority they would be performing the functions of the Authority and constitute the agents by which the Authority exercised those public functions. The conduct of those persons clearly has a direct impact on the management and administration of the Authority. The investigation of their conduct as officers of a public sector body would, in my opinion, clearly be “related to the Public Sector” in the sense described above. The expression “public official” is apt to include such officers.
38. The 1979 Amendment to the Authority Act also continued the provision for the Authority to co-opt public servants for its purposes. Since 1979 that provision has been contained in s. 10(3) of the Authority Act.
39. There have been other amendments to s. 10 of the Authority Act, which I do not consider to be material for present purposes.
40. It is also relevant to note the provisions of s. 7(1)(ba) of the Authority Act, which was introduced by s. 2 of the *Country High School Hostels Authority Act Amendment Act 1966* (WA). This provision provided that it was a function of the Authority:

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"to undertake and carry out or cause to be carried out the general management of hostels, and in relation thereto but without limiting the generality thereof: ...

- (iii) to engage and dismiss members of the staff of hostels and to determine their powers and duties;
- (iv) to appoint committees in respect of hostels and to delegate to any such committee all or any of the powers of the Authority under this paragraph, in which case the provisions of section 9 shall apply in relation to that delegation as though the committee were a committee appointed pursuant to that section."

Section 9 of the Authority Act has, at all material times, enabled the Authority to establish, and delegate powers to, sub-committees of its members.

- 41. I understand that members of committees referred to in s. 7(1)(ba)(iv) of the Authority Act were the "local board members" referred to in your request for advice. I am instructed by those assisting your Inquiry that these committee members were generally part-time community volunteers who were not engaged under a contract of employment. Notwithstanding the manner and terms of their engagement, members of these hostel committees were able, under delegation, to exercise the public functions of the Authority. I am instructed by those assisting your Inquiry that preliminary investigations indicate that many of the Authority's functions were in fact performed by these committees of "local board members". In my opinion, as persons performing the functions of the Authority, members of these committees are "public officials" within the meaning of the terms of reference.
- 42. Your request for advice refers to "hostel staff (including wardens and supervisors) considered by the Authority to be 'government officers'". If these staff were appointed by the Authority, either itself or by one of its committees exercising delegated powers, they will fall within paragraph (b) of the definition of "SES organisation" and themselves be part of a public sector body.
- 43. In my opinion, therefore, members of the Authority and its committees, persons appointed or engaged by the Authority under ss. 7(1)(ba)(iii) and 10(1) of the Authority Act, and public service officers whose services were co-opted by the Authority, are all "public officials" within the scope of your terms of reference.

Officers of the Department of Education

- 44. Prior to 16 May 1979 the regulation of the Public Service was effected by the 1904 Act. At all material times s. 77 of the 1904 Act authorised the Governor, on the recommendation of the Public Service Board, to make regulations for the establishment, alteration and abolition of any Department or sub-department. Regulation 99 of the *Public Service Regulations* provided that the Governor could, on the recommendation of the Public Service Commissioner, establish any part of the State Services (as defined in s. 5(1) of the 1904 Act) to be a Department of the Public Service, and abolish any Department so established.
- 45. The establishment of the Department of Education appears to predate even the 1904 Act. Section 13 of the *Public Education Act 1899* (WA) refers to the Department, while s. 4 of the *Public Education Amendment Act 1905* (WA), s. 6 of the *Public Education Acts Amendment Act 1926* and s. 4 of the *Education Act 1928* (WA) ("the 1928 Act")

refer to the "Education Department". Records of the Department of the Premier and Cabinet ("DPC") indicate that the Department was in existence in 1964.

46. On 16 May 1979 the *Public Service Act 1978* (WA) ("the 1978 Act") was proclaimed into operation. Section 21 of that Act provided for the Governor, on the recommendation of the Public Service Board, to establish, amalgamate and divide, abolish and alter the designation of Departments. Section 63(c) of the 1978 Act provided for the continuation of Departments established under the 1904 Act as Departments established under s. 21 of the 1978 Act.
47. Notwithstanding that transitional provision, on 4 April 1979 the Governor in Executive Council, acting on the recommendation of the Public Service Board, established the various Departments of the State under s. 21 of the 1978 Act. The power to establish Departments under s. 21 in advance of the Proclamation of the 1978 Act was conferred by s. 11 of the *Interpretation Act 1918* (WA). One of the Departments established at this time was the "Education Department". However, the Governor's decision did not abolish the existing Education Department, which was continued by s. 63(c) of the 1978 Act. The better view would appear to be that this decision of the Governor merely confirmed the effect of s. 63(c) of the 1978 Act and continued the Education Department established under the 1904 Act without abolishing that Department.
48. I am advised by DPC that the designation of the Education Department was altered to the "Ministry of Education" on 19 July 1988. That designation of the Department was altered to "the Education Department of Western Australia" on 1 January 1994.
49. The Education Department of Western Australia was continued in existence as a Department under the PSM Act by clause 6 of Schedule 5 to the PSM Act.
50. The designation of the Department was again altered to the "Department of Education and Training" in 2003 (see Gazette 31/1/03 at p 288) before being altered to the Department of Education in 2009 (see Gazette 30/10/09 at p 4338).
51. The above history discloses that what is now designated the Department of Education was in existence prior to 1975, although its designation has been altered on several occasions.
52. The employment of teaching and other staff of the Department was, at the time of the events of interest to your Inquiry, dealt with by the 1928 Act. At all material times s. 4 of that Act vested the administration of that Act, and the control of the Education Department, in the "Minister for Education", established as a body corporate by s. 5 of the 1928 Act.
53. In 1975 s. 7(1) of the 1928 Act provided for the Governor to appoint a Director General of Education and such other officers as were deemed necessary for the administration of the Act, and to appoint, or delegate to the Minister the appointment of, "teachers and other officers". A "teacher" was defined to include any member of the educational staff of a school. Teachers were generally not subject to the 1904 Act.
54. The 1928 Act was amended in 1979. From that time, s. 7 of the 1928 Act provided for the appointment, under and subject to the 1978 Act, of a Director General of Education and such other officers as were deemed necessary for the administration of the Act. The

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Minister was empowered to appoint teachers and employees, other than officers, of the Department. The 1978 Act did not apply to teachers.

55. The appointment, assignment, promotion and disciplining of teaching staff was dealt with by the *Education Act Regulations* as they existed from time to time.
56. Currently, the categories of staff in the Department of Education are identified in s. 235 of the *School Education Act 1999* (WA).
57. While the legislation has, over the relevant time, distinguished between teaching and other staff, the provision has been for all staff to be employed in the Department of Education. Teachers and school nurses employed under those provisions have been part of the Department of Education, and therefore part of the Public Sector, at all material times. They will, therefore, be public officials whose conduct the Inquiry is to investigate.

“Disciplinary action”

58. The term “disciplinary action” is defined by ss. 3(1) and 80A of the PSM Act in relation to a breach of discipline by a public sector employee. The list of possible disciplinary action identified in s. 80A extends beyond the two permissible means of disciplining an employee at common law, being reprimand and dismissal.
59. However, the definition in s. 80A applies only in relation to a “breach of discipline”, a term defined in s. 80 of the PSM Act. In general terms, the PSM Act distinguishes between substandard performance, dealt with in Division 2 of Part 5, and breaches of discipline, dealt with in Division 3 of Part 5.
60. Further, Part 5 of the PSM Act, in which s. 80A is located, does not apply to all public sector employees. By s. 76(1) of the PSM Act, Part 5 applies to all public service officers and ministerial officers and other public sector employees as are prescribed. Regulation 14 of the *Public Sector Management (General) Regulations 1994* prescribes a limited class of public sector employees, including some persons employed under the 1928 Act.
61. As the Authority is not part of the Public Service, Part 5 of the Act does not apply to members of the Authority, its committees or employees and officers engaged by the Authority.
62. The question which then arises is whether the Inquiry can make recommendations as to disciplinary action against public officials who are not public service employees or prescribed public sector employees to whom Part 5 of the PSM Act applies? If the phrase “disciplinary action” were used in the terms of reference in the sense in which that phrase is defined by s. 80A of the PSM Act, the answer to this question would be “no”. The definition in s. 80A applies only for the purposes of Part 5 of the PSM Act, and then only in relation to breaches of discipline and not substandard performance.
63. However, in my opinion the terms of reference do not use the phrase “disciplinary action” in a sense confined by the provisions of s. 80A of the PSM Act. As I have noted, the Inquiry is concerned with a broader range of public sector officers and employees than are subject to Part 5 of the PSM Act. The focus of the Inquiry must

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include officers and employees of the Authority, who are not subject to Part 5 of the PSM Act. In that context it would be illogical for the terms of reference to confine recommendations as to disciplinary action to only some of the public officials whose conduct the Inquiry is to investigate, and to exclude disciplinary recommendations in relation to officers of the public sector body which is of principal concern to the Inquiry. In that context the reference to “disciplinary action” should, in my opinion, be read in its colloquial sense as referring to the action which an employer may lawfully take to discipline their employee. That will include, but not be confined to, disciplinary action under Part 5 of the PSM Act.

Use of this Advice

64. I have, in this opinion, expressed my views on the questions which I was asked to address. I am, of course, happy to provide such advice as you require in order to assist you in the conduct of the Inquiry. However, as special inquirer it is, subject to the supervisory jurisdiction of the Supreme Court, ultimately a matter for you to determine the extent of your authority to investigate and report. In that context it is obviously open to you to disagree with the conclusions I have expressed and to prefer a different view.
65. To the extent that you do rely on this advice, you may need to consider whether procedural fairness requires you to disclose the advice, or at least the substance of my reasoning, to interested parties who may appear before your Inquiry. You may consider that one or more of those parties should be given an opportunity to persuade you that the views I have expressed should not be adopted. If you consider it to be appropriate, I do not have any objection to you providing a copy of this advice to those parties for that purpose.
66. Because this advice addresses the scope of the Commissioner’s powers to arrange for the holding of a special inquiry, I have provided a copy of the advice to him. I have not provided a copy to the State Solicitor (who acts for some interested parties) or any other person. I shall leave it to you to consider whether a copy of this advice should be provided to the State Solicitor.
67. Please feel free to contact me should you have any further queries or require any clarification of the above.



**ROBERT MITCHELL SC
ACTING SOLICITOR GENERAL**

Appendix 3

Records received by the Special Inquiry

A3.1 SUMMARY OF RECORDS HELD BY OTHER ORGANISATIONS ACCESSED BY THE ST ANDREW'S HOSTEL INQUIRY

ORGANISATIONS	RECORDS
Legislative Council	<ul style="list-style-type: none">• Various transcripts and submissions relating to the Twentieth Report of the then Standing Committee on Government Agencies' <i>Review of the Country High School Hostels Authority</i> published in 1988.
National Archives of Australia	<ul style="list-style-type: none">• Documents ranging from 1983 to 1987, including<ul style="list-style-type: none">○ Westrek or related Commonwealth Employment Programs○ Private Papers of Kim Beazley – HR records, Electoral Officer .
State Library of Western Australia	<ul style="list-style-type: none">• Hansard from 1975 to 1987.• The Great Southern Herald Newspaper ranging from 1963 to 1987.• The West Australian from 1985 to 1986, and 2007.
State Records Office	<ul style="list-style-type: none">• CHSHA Board meeting agendas from January 1983 to December 1992.• CHSHA Board meeting minutes from November 1960 to December 1987.• Katanning occurrence books ranging from December 1978 to December 1986.• Ongerup occurrence books ranging from November 1979 to January 1984.

A3.2 SUMMARY OF RECORDS RECEIVED BY THE ST ANDREW'S HOSTEL INQUIRY

Please note that despite the indicative timeframes stated below, not all records received were complete.

A3.2.1 Records received from organisations

ORGANISATIONS	RECORDS
Anglican Diocese of Bunbury	<ul style="list-style-type: none"> • Yearbook extracts ranging from 1964 to 1978. • Bunbury Diocesan Council meeting minutes ranging from 1963 to 1970.
Anglican Diocese of Perth	<ul style="list-style-type: none"> • Anglican Diocese of Perth Yearbook and Synod extracts from 1957 to 1964, and 1967 to 1982 relating to St Christopher's and Adamson House Northam, St Michael's House Merredin, St Andrew's Hostel Esperance and St James Hostel Moora. • Professional Standards documents from 2004 to 2005.
Anglicare	<ul style="list-style-type: none"> • Documents relating to Westrek/Creative Links Foundations.
Australian Broadcasting Corporation	<ul style="list-style-type: none"> • Records of interview.
Country High School Hostels Authority (CHSHA)	<ul style="list-style-type: none"> • Documents relating to St Andrew's Hostel (SAH) Katanning ranging from 1975 to 1993, including: <ul style="list-style-type: none"> ○ Board and other correspondence in & out ○ Board meeting minutes and agendas ○ Employment records ○ Financial documents and reports ○ Newspaper clippings ○ SAH Parent's Association meeting minutes ○ Photos ○ SAH staff meeting minutes ○ Student achievement record cards ○ Student enrolment details ○ Student Hostels Association documents ○ Student records ○ Wage and salary records ○ Warden's reports.

ORGANISATIONS	RECORDS
CHSHA continued	<ul style="list-style-type: none"> • Documents relating to St Christopher's and Adamson House Northam ranging from 1940 to 2002, including: <ul style="list-style-type: none"> ○ Board meeting minutes ○ Correspondence in and out ○ Employment records ○ Financial documents ○ Hostel daily events journals ○ Hostel newsletters ○ Hostel staff meeting minutes ○ Parents and Friends Association documents ○ Photos ○ Student achievement and disciplinary records ○ Student enrolment details ○ Wage and salary records ○ Warden's and matron's reports • Documents relating to St Michael's House Merredin ranging from 1950 to 1986, including: <ul style="list-style-type: none"> ○ Board meeting minutes (1954 to 1977 and 1980 to 1984) ○ Correspondence in and out ○ Hostel reunion documents ○ Past hostel student contact details ○ Student enrolment details. • CHSHA documents ranging from 1962 to 2003, including: <ul style="list-style-type: none"> ○ Annual reports ○ Hostel audit reports ○ CHSHA Reviews ○ Corporate planning documents ○ Board and other correspondence in & out ○ Hostel reviews ○ Hostel and Authority staff duty statements ○ CHSHA Board meeting minutes from January 1988 to December 1992 ○ Pastoral care documents ○ Guidelines, manuals, policies and procedures

ORGANISATIONS	RECORDS
CHSHA continued	<ul style="list-style-type: none"> ○ Reports and operations documents ○ Wardens meeting minutes. • Personnel records of relevant CHSHA staff. • Other miscellaneous records relating to various hostels and the CHSHA.
Department for Child Protection (DCP)	<ul style="list-style-type: none"> • Documents relating to the Child Protection Services Register. • Departmental guidelines, policies and procedures ranging from 1987 to 2012. • Personnel records of relevant DCP staff.
Department for Communities	<ul style="list-style-type: none"> • Redress claim records.
Department of Commerce	<ul style="list-style-type: none"> • Records relating to registered business names. • CHSHA industrial relations files ranging from 1972 to 1994.
Department of Corrective Services	<ul style="list-style-type: none"> • Prisoner files and records of calls/visits.
Department of Education (Department)	<ul style="list-style-type: none"> • Documents ranging from 1970 to 2012, including <ul style="list-style-type: none"> ○ Departmental guidelines, policies and procedures ○ Files and documents relating to Westrek ○ Katanning PS and SHS employment records ○ Personnel records of relevant Katanning SHS staff ○ Other miscellaneous records.
Department of Health	<ul style="list-style-type: none"> • Departmental guidelines, policies and procedures from 1982 to 2011. • Medical records. • Other miscellaneous records.

ORGANISATIONS	RECORDS
Department of Training and Workforce Development¹	<ul style="list-style-type: none">• Westrek files.• Personnel records of Westrek staff.
Director of Public Prosecutions	<ul style="list-style-type: none">• Trial transcripts, records of proceedings and case files of relevant cases.
Freemasons	<ul style="list-style-type: none">• Membership records.
Royal Perth Hospital	<ul style="list-style-type: none">• Medical records.
Scouts WA	<ul style="list-style-type: none">• Membership records.• Other miscellaneous records.
State Solicitors Office	<ul style="list-style-type: none">• SSO advice to the CHSHA ranging from 1960 to 1992.• Other miscellaneous records.
WAIRC	<ul style="list-style-type: none">• Hearing transcripts and case files of relevant cases.
WA Police	<ul style="list-style-type: none">• Departmental policies and procedures ranging from 1987 to 2012.• Case and investigation files and incident reports ranging from 1984 to 2011.• Katanning police occurrence books from December 1988 to January 1992.• Broomehill police occurrence books from January 1988 February 1989 and May 1991 to February 1992.• Other miscellaneous records.

¹ These records were limited. Refer to Chapter 4.5

A3.2.2 Records received from the public

NAME	RECORDS
Name withheld	<ul style="list-style-type: none"> • St Andrew's Hostel (SAH) Student Handbook. • SAH Annual Magazine 1987. • SAH Annual Magazine 1988. • Katanning Senior High School (SHS) Magazine 1987.
Name withheld	<ul style="list-style-type: none"> • Letter from the Western Australian Cricket Association.
Name withheld	<ul style="list-style-type: none"> • Assorted photos relating to SAH.
BOURKE, Andrew	<ul style="list-style-type: none"> • Minutes of Katanning SHS senior staff meeting.
BROWN, Graeme	<ul style="list-style-type: none"> • Assorted photos relevant to SAH.
BUDISELIK, Bill Dr	<ul style="list-style-type: none"> • Thesis regarding protective/preventative education and mandatory curriculum.
COX, David	<ul style="list-style-type: none"> • Documents relating to Craig House Bunbury from 1972 to 1979, including: <ul style="list-style-type: none"> • Board meeting minutes • Correspondence in and out • Financial documents • Hostel staff time and wages • Hostel operations records • Hostel policies and procedures • Newspaper clippings • Student enrolment details • Student Hostels Association documents • Student reports.
DAVIES, Karen	<ul style="list-style-type: none"> • Diary extract regarding SAH.
GROVES, Barbara	<ul style="list-style-type: none"> • Miscellaneous records, including: <ul style="list-style-type: none"> ○ Correspondence from SAH ○ Newspaper clippings.
GUIDERA, Liz	<ul style="list-style-type: none"> • Extracts of Shire of Katanning minutes.
HADDOW, Kylie	<ul style="list-style-type: none"> • Miscellaneous documents relating to the CHSHA, SAH, and Katanning SHS.
HADLOW, Belinda (formerly REDDINGTON)	<ul style="list-style-type: none"> • SAH Annual Magazine 1994.

NAME	RECORDS
JACKSON, Hal	<ul style="list-style-type: none">• Miscellaneous materials relating to children in the court process.
KALAIZIC, Mr and Mrs	<ul style="list-style-type: none">• Northam SHS yearbook 1978.
MACLENNAN, Nikola	<ul style="list-style-type: none">• Miscellaneous correspondence relating to her employment.
MARRIOTT, Gerald	<ul style="list-style-type: none">• Daily planners for 1985 to 1986 containing information relevant to SAH.
PHILPOTT, Colin	<ul style="list-style-type: none">• CHSHA records, including<ul style="list-style-type: none">○ Correspondence in out○ Financial documents○ Newspaper clippings○ Policies and circulars○ Publications and working documents
RENTON, Diane (formerly PASCOE)	<ul style="list-style-type: none">• Katanning SHS yearbook 1986.
TAYLOR, Rev John	<ul style="list-style-type: none">• Correspondence relevant to SAH.
WASLEY, Graeme	<ul style="list-style-type: none">• Newspaper clippings.
WELLSTEAD, Gwendoline	<ul style="list-style-type: none">• SAH Board meeting minutes and warden's reports from 1979 to 1980.• Other miscellaneous records regarding SAH.
WENLOCK, Kevin	<ul style="list-style-type: none">• Wenlock family tree.

Appendix 4



Traumatic Amnesia

Traumatic amnesia and delayed memory retrieval of traumatic events has been widely documented for almost one hundred years, and was scientifically accepted in the context of war, accident or disasters.ⁱ The concept only became controversial when it referred to child sexual abuse.

Given that this issue has recently been resurrected in the media Adults Surviving Child Abuse (ASCA) and the NSW Mental Health Coordinating Council have developed this brief literature review to inform our members, the community and the media of the extensive research evidence on traumatic amnesia (also referred to as recovered memory) which exists.

Amnesia

Both short and long-term traumatic amnesia have been observed following a range of aversive events such as: war, natural disasters, adult rape and child physical, emotional and sexual abuse, incest and witnessing or experiencing extreme violence.

When considering combat and war related trauma, as far back as 1941 a study on those with severe stress e.g. soldiers engaged in prolonged fighting in the battle of Dunkirk, established 35% experienced amnesia.ⁱⁱ In studying the Holocaust, 3.8% of concentration camp survivors and 10% of tattooed survivors of Auschwitz were found to display psychogenic amnesia.ⁱⁱⁱ

Judith Herman explored the impact of trauma on the human psyche regardless of its origin, drawing parallels between trauma as a result of a natural disaster, political terror, captivity, combat and that in the private domain - domestic abuse, incest and rape. Her views on the posttraumatic stress disorder (PTSD) and complex PTSD changed the way those in the psychiatric fields diagnosed and perceived trauma (1997, 2002).^{iv}

Controversy surrounding the concept of 'repressed memory' peaked in the 1990's with opponents questioning its validity, despite an abundance of claims supporting the recovery of memory from counsellors and therapists working with survivors. The clinical experience of therapists supporting the validity of the existence of delayed recall of abuse memories has now been upheld by innumerable prospective and retrospective studies in the field. While it should be noted that every instance of recall involves some degree of reconstruction^v the possibility that false memories can occur does not negate the fact that other recalled memories are true.

- Study: A random sample of 724 individuals from across the United States was mailed a questionnaire regarding memory for traumatic events. Among respondents who reported some form of trauma (72%), delayed recall of the event was reported by 32%. This phenomenon was most common among individuals who observed the murder or suicide of a family member, sexual abuse survivors, and combat veterans (Elliot, 1997).^{vi}
- Study: The most definitive study on delayed recall was a non-clinical sample of adult survivors whose sexual histories had been documented at the time of the abuse (Williams, 1995).^{vii} Between 1973 and 1975, 206 girls aged ten months to twelve years had been examined after a report of sexual abuse. Seventeen years later, 38% of 129 of the 206 subjects (i.e. those who could be located) had not recalled the abuse when interviewed.^{viii}

View of professionals

In a survey of psychologists, 73% stated that they had personally seen a case they classified as 'recovered memory'.^{ix} Less than 10% of experimental psychologists and less than 5% of clinical psychologists hold the point of view that accurate recovered memory is not possible.^x

The American Psychological Association's Working Group on Investigation of Memories of childhood abuse agreed that: "...it is possible for memories of abuse that have been forgotten for a long time to be remembered" (p. 993). The International Society for Traumatic Stress Studies (1998) found that there was a consensus across scientists of North America, Europe, Australia and New Zealand that:

- 1) traumatic memories are usually remembered in part or in whole
- 2) traumatic memories may be forgotten, then remembered at some time; and
- 3) illusory memories can also occur.^{xi}

In considering allegations of sexual assault, the literature indicates that false allegations constitute a small proportion of cases and are not a common occurrence. A review of false allegations of sexual abuse in the Family Court in South Australia concluded that approximately nine per cent of allegations were false. Brown, (2003), (cited in Crime and Misconduct Commission, 2003)^{xii} suggests that the commonness of traumatic amnesia is expressed not only by those in the therapeutic community, but also by legal scholars arguing for amendment to legislation.

It is important to consider the source of the report of false memory, especially of CSA, e.g. when the source of the report is the person accused of abuse, a perpetrator might deny the charges for a range of reasons.^{xiii} It is also possible that perpetrators 'forget' or block out the abuse just like victims of CSA can.^{xiv}

- Study: A national sample of psychologists was asked whether they had been abused as children and, if so, whether they had ever forgotten some or all of the abuse. Almost a quarter of the sample (23.9%) reported childhood abuse, and of those, approximately 40% reported a period of forgetting some or all of the abuse (Feldman-Summers et al., 1994).^{xv}

Dissociation

Dissociation is the mechanism most commonly used to explain traumatic amnesia followed by recovered memory. The DSM-IV-TR (American Psychiatric Association, 2005) asserts that dissociation is normal, particularly in highly traumatic circumstances, and defines dissociative disorders as "a disruption of the usually integrated functions of consciousness, memory, identity or perception of the environment," (p.519).

Dissociation describes the disconnection or lack of connection between things usually associated to one another. Dissociated experiences are not integrated into the psyche of the individual, resulting in discontinuities in conscious awareness (The International Society for the Study of Dissociation, 2004). Acute dissociative responses have been identified in survivors of overwhelming traumas such as combat, sexual abuse, accidents and natural disasters.^{xvi xvii}

Dissociation occurring at the time of the trauma theoretically leads to a fragmentation of memory. The memory fragmentation then leads to the individual's difficulty in memory retrieval at a later date. Frequently retrieval is triggered by a similar set of circumstances which resemble the emotional state and/ or physical circumstances to the original trauma.^{xviii}

Louis Cozolino, professor of psychology at the Pepperdine University in the USA; author of several articles and books on neuroscience, psychotherapy and the rebuilding of the human brain after trauma, describes reaction to trauma as predictable and connected to well understood biological processes (2002). In the absence of a supportive context, creating the neurobiological conditions for the reestablishment of neural coherence through integration of cognition, affect, sensation and behaviours, an abused child or traumatised individual may remain dissociated from the trauma forever.^{xix}

- Study: A prospective study of six people with different types of trauma. All reported gaps in their memory which occurred at the moment of their greatest fear (Yovell et al., 2003).^{xx}

Dissociation is a key concept in a range of disorders such as PTSD and dissociative identity disorder. Key components to an acute dissociative response: derealisation (alteration in sense one's perceptions), depersonalisation (alteration in one's sense of self and connection to one's own body), and memory disturbances (van de Kolk et al., 2005).^{xxi}

Dissociative Amnesia

In the DSM-IV TR dissociative amnesia is "characterized by an inability to recall important personal information, usually of a traumatic or stressful nature, that is too extensive to be explained by normal forgetfulness," (American Psychiatric Association, 2005, p. 519). Dissociative amnesia is suspected if there are gaps or blank periods in a person's autobiographical memories.

During a traumatic experience such as an accident, disaster, or crime victimization, dissociation can help a person continue to function and tolerate what might otherwise be too difficult to bear. A person may dissociate the memory of the place, circumstances, or feelings about the overwhelming event; mentally escaping from the fear, pain, and horror. This may make it difficult to later remember details of the experience, as reported by many disaster and accident survivors.

For people repeatedly exposed to traumatic events, especially in childhood, dissociation is an extremely effective coping 'skill' which characteristically becomes reinforced and conditioned. It can protect them from awareness of the pain in the short-term. However, over time, frequent dissociation affects a person's sense of their history and who they are. More frequent dissociation results in serious dysfunction in school, work, social, and daily activities, especially when under stress.

- Study: A prospective study of 129 reported cases of child sexual abuse in a community sample of women, 17 years after sexual abuse and evaluated in a hospital emergency room found one in 10 women (16% of those who recalled the abuse) reported that at some time in the past they had forgotten about the abuse. There is no evidence from this study that recovery of memories was fostered by therapy or therapists. The study looked at the accuracy of the recall and concluded that recovered memories of child sexual abuse reported by adults can be quite consistent with contemporaneous documentation of the abuse.^{xxii}

Traumatic amnesia may last for hours, weeks or years and recall can be triggered by sensory or affective stimuli reminiscent of the original event. This phenomenon logically occurs outside of the victim's ability to, "*consciously will a memory into existence*," (Cossins, 1999).^{xxiii}

Traumatic memories

Traumatic memories are encoded in a particular way and stored as implicit memories. Implicit (sensory) memory refers to the behavioural knowledge of an experience and features the recording of sensory, kinaesthetic and emotional aspects of an event but without conscious recall. People who have been traumatized may live with implicit memories of the terror, anger, and sadness generated but with few or no explicit memories to explain the feelings.

People who have experienced trauma relive their traumatic memories as flashbacks or in nightmares and over time the recalled memories are stored as narrative or explicit memory. Over time the traumatised individual develops a narrative of his/her past laying down explicit (narrative) memory which includes the traumatic past and with it the ability to consciously recall facts or events related to it.^{xxiv}

Trauma causes arousal of the autonomic nervous system, producing a flight/fight response, with increased activation of the limbic system, which controls emotion and the inactivation of Brocca's Area, the area related to language. The amygdala, in the limbic system regulates fear, anger and aggression as well as memory, while the hippocampus, which is very sensitive to stress, is also involved in memory and emotion. Trauma stored in the limbic system processes emotions and sensations, but not language or speech. Neurological research on dissociation^{xxv} shows that trauma leads to fragmented, emotional and sensory memories without an awareness of the actual events, and no verbal component to the memory.

Acute dissociative states which are more likely to occur when in a state of terror or high stress lead to poor encoding of a traumatic event. When in such a state, individuals undergo a shift from explicit memory to implicit formation, in which access to conceptual-linguistic thought processes is severely restricted, and involves actual neurological changes in the limbic system.^{xxvi} This means that during trauma, sensations and perceptions fail to be integrated as a conscious memory.^{xxvii}, ^{xxviii} Rather they are encoded as implicit memories - images, smells and sounds, sensorimotor modalities and somatic sensations.^{xxix}, ^{xxx}

When individuals encounter similar sounds, smells and sensations to the original trauma (i.e. when the encoding and retrieval contexts match), feelings of terror can re-emerge and trigger the memories.

Electroencephalograms (EEG) and MRIs show that physically, sexually and psychologically abused children and adults and combat veterans have reduced left-sided hippocampal size. As previously stated the hippocampus is very important for learning and memory and is very sensitive to stress activation. Additionally, danger or threat affects the hippocampus and connected cortical areas ability to store certain types of information (such as verbal), while effectively storing others (such as non-verbal) ^{xxxii}

When people recover traumatic memories they are often left reliving fragments of the original trauma but are unable to articulate what is happening, as they are often overwhelmed by the terror of what is happening. An autobiographical narrative is developed when an individual has a sense of personal ownership of the memory and the events the memories convey.

The narrative memory, which can be intentionally retrieved and does not depend on situational triggers to be brought to mind adds cohesion to personality over time and establishes context. This enables a narrative to be conveyed to a listener, which is verbal and time-condensed - they become stories which are flexible and adapted to a particular audience. They are not like a videotape of the memory but reconstructive in nature – condensed and symbolised.

- Study: A study of 17 patients who reported both continuous and recovered memories for abuse in therapy provided sources of evidence for the validity of memories and indicated that details of continuous and recovered memories were equally accurate. More than 1/3 of the alleged perpetrators confessed to at least one act of abuse contained within a recovered memory (Dalenburg, 1996). ^{xxxiii}

Traumatic Amnesia –research

Animal and human participant research has documented impairment of memory after periods of great stress or fear. Stress interferes with the encoding of memory. The science of memory has always supported the existence of impaired memory and recovery of memory for aversive or traumatic events. If memory can be undermined and rendered less available by high stress, and if important facets of trauma memory can be lost even days after an event, it follows that a portion of child sexual abuse survivors would have poor memory of their childhood traumas, especially years later. By telling stories, individuals reinforce aspects of their narrative memory but with traumatic memory, which is not accessible to recall, less rehearsal and avoidance will produce poorer memory.

- Study: A sample of 450 adult clinical subjects reporting sexual abuse histories were studied regarding their repression of sexual abuse incidents. A total of 267 subjects (59.3%) identified some period in their lives, before age 18, when they had no memory of their abuse (Briere & Comte, 1993). ^{xxxiii}

Effects of cortisol on memory impairment appear with greater magnitude in delayed rather than in immediate tests, suggesting interference of stress with encoding of trauma material. ^{xxxiv} Similarly, low dose epinephrine injected directly into the amygdala of animals facilitates memory function, whereas higher doses impair memory for the same task. ^{xxxv}

- Study: A study of Posttraumatic stress associated with delayed recall of sexual abuse in the general population reported that 42% of participants with a history of sexual abuse, described some period of time when they had less memory of the abuse than they did at the time of data collection (Elliot & Briere, 1995).^{xxxvi}

False Memory Debate:

The debate on "recovered memories" and "false memories" dominated media coverage on child abuse for much of the 1990s. Science has increasingly affirmed the existence of traumatic amnesia and the reality of "recovered memories".

- Study: In one retrospective study approximately half of those who reported memory loss also reported corroboration for the abuse (Feldman-Summers & Pope, 1994).^{xxxvii}

False Memory Syndrome:

The term False Memory Syndrome was created in 1992 by the False Memory Syndrome Foundation (FMSF). It is "a pseudoscientific syndrome" that was developed by individuals and families to defend against claims of child abuse. The primary purpose of the syndrome was to discredit the testimony of people alleging child sexual abuse in court. No empirical validation has been offered for the syndrome, nor have the symptoms been described and studied.

Questions surrounding therapeutic techniques:

The FMSF claims that "False Memory Syndrome" is caused by "Recovered Memory Therapy". There is no psychological therapy called "Recovered Memory Therapy", and the term was invented by the Foundation in 1992. However some therapeutic techniques have been called into question when associated with recovered memories of child sexual abuse.^{xxxviii} The most controversial of these techniques include hypnotism, guided imagery / visualisation, dream interpretation and interpretation of body memories.

The Royal College of Psychiatrists in Britain has officially banned its members from using therapies designed to recover repressed memories of childhood abuse. The British Psychological Society, in a 1995 report urged therapists to "avoid drawing premature conclusions about memories recovered during therapy." The report also denied that there is any evidence suggesting that therapists are creating false memories of abuse in their patients, a charge levied by members of the False Memory Syndrome Foundation.

Researchers caution that both hypnosis and guided imagery can induce dissociative states and therefore may increase the risk of suggestibility and the recovery of false memories.^{xxxix} In Australia, clinical standards and guidelines state that clinicians should not initiate searches for memories of abuse or engage in any "memory recovery techniques" designed to elicit memories of abuse about which the client has no memory.^{xl} However, it is important to recognise that whatever memories individuals recall, whether traumatic or pleasant, every instance of recall is a process of individual reconstruction, and therefore involves some degree of distortion (Hopper, 2008.)^{xli}

The additional issue is whether a therapist's questions or comments are excessively suggestive or directive.^{xlii} It is important to ensure that the client is the one leading any process in which memories are being recovered including the interpretation of that material, rather than suggesting any particular interpretation of the material which arises – i.e. to follow the principles of non-directive practice.

Critics of recovered memory also report that some therapists tell patients who report no history of CSA, that their symptoms indicate repressed memories of CSA, that many patients cannot recollect their abuse, but that healing depends upon recovering memories of abuse, (in: Lindsay, 1994).^{xliii}

The issue has been stated as the need to distinguish between (1) those cases in which someone knows and has always known that he or she was abused, from (2) those cases in which someone independently remembers forgotten memories, from (3) those cases in which a therapist facilitates recall of forgotten memories, from (4) those cases in which a therapist suggests memories of abuse.^{xliv} Unprofessional practice, it has been suggested should be classed in the latter phenomenon.

- **Study:** Two prospective studies in which participants had been abused 16 to 18 years earlier and the abuse had been corroborated by medical or social services. One study 26% of participants were either unable to clearly remember details of the abuse or could not recall the verified abuse.^{xlv} In the other study 38% did not recall abuse or chose not to disclose it (Williams, 1992).^{xlvi}

In 1997, Herman & Harvey reported that the data from their clinical study suggested that "delayed recall of childhood trauma is often a process that unfolds over time rather than a single event, and that it occurs most commonly in the context of a life crisis or developmental milestone, with a trauma-specific reminder serving as a proximal cue to new recall." Psychotherapy was not implicated in the early stages of delayed recall in most cases. However, "retrieval of memories, once begun, proved to be a powerful incentive for entering psychotherapy." Herman and Harvey found that patients usually did not seek therapy in order to recover more memories, rather they sought to gain more control over intrusive, involuntary re-experiencing of the trauma and wanted to make sense of the fragmented, often confusing and disturbing recollections they already had (p.567).^{xlvii}

Furthermore Herman and Harvey (1997) wrote that the proper role of psychotherapy is to provide confidential environment that is empathic and non-judgemental, and where uncertainty, complexity and ambivalence are tolerated. A stance of open-minded, reflective curiosity should prevail. Within such an environment, with careful pacing, exploration of abusive childhood experiences may be carried out safely. The purpose of such exploration is not the forensic documentation of facts, but the construction of an integrated, personally meaningful narrative that helps free the patient from the persistent noxious effects of traumatic events in the distant past" (pp.568-569).^{xlviii}

Summary:

Complete or partial memory loss is a frequently reported consequence of trauma, particularly childhood trauma and most commonly, child sexual abuse. Traumatic amnesia refers to the full or partial recovery of such memories after a gap of some years. Amid the controversy surrounding the existence of the concept and therapeutic treatments associated with the recovery of traumatic memories, professional associations such as the Australian Psychological Society (APS, 2000) and Psychotherapists and Counsellors Federation of Australia (PACFA) have developed or are developing ethical standards and guidelines for practice related to recovered memory to protect clients and assist in dealing with reports of recovered memories in therapeutic, forensic and scientific contexts.^{xlix}

These guidelines support the evidence outlined in this paper, regarding the possibility of complete or partial memory loss as a result of trauma. There is general agreement that memories of such experiences may be incessant, intrusive, complete, selective, fragmented, distorted or absent depending on the context and nature of the abuse and the survival strategies available to the individual as a child or as an adult in later in life; that all memories are susceptible to revision and influence from the time of encoding up to and including the time and context of retrieval, as well as in the disclosure and reporting process; and that the percentage of child sexual abuse experiences that (a) are recalled for the first time during therapy and (b) are the subject of litigation, is very small in comparison to those that are remembered but unreported, and whose effects may or may not require treatment.ⁱ

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ⁱ Thomson, D. M. (1995). *Allegations of Childhood Abuse: Repressed Memories or False Memories?* Psychiatry, Psychology and Law (Vol. 2) Number 1, pp. 97-105. Available : <http://www.afma.asn.au/DonThomson1.htm>

ⁱⁱ Sargant, W., & Slater, E. (1941). *Amnesic syndromes in war*. Proceedings of the Royal Society of Medicine, 34, 757-764.

ⁱⁱⁱ Kuch, K., & Cox, B. (1992). *Symptoms of PTSD in 124 survivors of the Holocaust*. American Journal of Psychiatry, 149, 337-340.

^{iv} Herman, Judith Lewis (1997, 2002). *Trauma and recovery: The aftermath of violence from domestic abuse to political terror*. Basic Books.

^v Hopper, J. (2008) Recovered memories of Sexual Abuse: Scientific Research and Scholarly Resources.

^{vi} Elliott, D. M. (1997). Traumatic events: Prevalence and delayed recall in the general population. *Journal of Consulting and Clinical Psychology*, 65, 811-820.

^{vii} Cossins, A. (1999). *Recovered memories of Child Sexual Abuse: the Science and the Ideology*. In Breckenridge & Laing, (Eds) (1999). *Challenging Silence*. Chapter 9, p.109.

^{viii} Williams, L. (1994). Recall of childhood trauma: A prospective study of women's memories of child sexual abuse. *Journal of Consulting and Clinical Psychology*, 62, 1167-1176. In Cossins, A. (1999). *Recovered memories of Child Sexual Abuse: the Science and the Ideology*. In: Breckenridge & Laing, (Eds) (1999). *Challenging Silence*. Chapter 9, p.109.

^{ix} Pope, K., & Tabachnick, B. (1995). *Recovered memories of abuse among therapy patients: A national survey*. Ethics and Behavior, 5, 237-248.

^x Dammeyer, M., Nightingale, N., & McCoy, M. (1997). *Repressed memory and other controversial origins of sexual abuse allegations: Beliefs among psychologists and clinical social workers*. Child Maltreatment, 2, 252-263.

^{xi} Dalenberg, C. (2006). *Recovered Memory and the Daubert Criteria*. Trauma, Violence & Abuse, Vol 7, No 4, Oct 2006 pp. 274-310. Sage Publications.

^{xii} *Inquiry into the Practice of Recovered Memory Practice*. (2005). Report by the Health Services Commissioner to the Minister for Health, the Hon. Bronwyn Pike MP under Section 9(1)(m) of the *Health Services (Conciliation and Review) Act 1987*.

^{xiii} Rubin, L.J. (1996). *Childhood sexual abuse: False accusations of "False memory"?* Professional Psychology: Research and Practice, 27, 447-451.

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Appendix 5 Child sexual abuse offences under the Criminal Code in 1975

The following tables outline offences applicable to child sexual abuse in 1975.¹ The tables categorise offences available when the complainant was female, when the complainant was either male or female and when the complainant was male. The offences shaded in blue indicate when a lack of consent by the complainant does not need to be proved.

¹ Significant changes to key offences took effect on 1 April 1986 as a result of the *Acts Amendment (Sexual Assaults) Act 1985* coming into effect. Sections 314, 315, 325 and 328 were repealed and replaced by non-gender specific provisions making sexual penetration (s.324D) (including vaginal, anal and oral sex s.324F) and indecent assault (s. 324B) new offences. It was a circumstance of aggravation (leading to a higher penalty) if the victim was under the age of 16 (ss. 324C, 324E). To successfully prosecute charges of either sexual penetration or indecent assault, the prosecution was required to prove there was no consent. The *Acts Amendment (Sexual Assaults) Act 1985* also resulted in significant changes to the *Evidence Act 1906* restricting the use that could be made of evidence about a complainant's sexual history or reputation (ss. 36B, 36BA, 36BC,) but only for the new offences referred to above. It also required judges to warn the jury that a delayed complaint did not necessarily mean that it was false (s. 36BD) and removed the requirement for a judge to warn a jury about uncorroborated evidence in sexual assault charges (36BE). Other changes were implemented on 23 March 1990 when the *Law Reform (Decriminalization of Sodomy) Act 1989* came into effect (see Chapter 18). It is this Act which raised the age of consent for females to 17 years or older when the accused person was a guardian, employer, teacher, or school teacher of the complainant (s. 189). Neil McKenna was charged with a number of offences under this section of the Code in 2012. However, because his work as a hostel supervisor/warden did not fall within the definition of a "school teacher" he was acquitted on those charges (*The State of Western Australia –v- McKenna* [2012] WADC 50). It was not until 1992, with the enactment of the *Acts Amendment (Sexual Offences) Act 1992*, that the offence was redefined to apply to any offenders who had children (up to the age of 18) under their "care, supervision, or authority" (ss. 321, 321A, 322).

Table 1 - Sexual offences against females

SECTION	OFFENCE	SPECIFIED OFFENCE PROVISIONS	PUNISHMENT
s 185	Defilement (carnal knowledge ²) of girls under 13 [Consent not an issue]	A person cannot be convicted of either of the offences defined in this section upon the uncorroborated testimony of one witness.	Imprisonment with hard labour for life, with or without whipping.
s 186	Householder permitting defilement (carnal knowledge) of young girls on his premises: - Girls under 16 years - Girls under 13 years [Consent not an issue]	It is a defence to prove that the accused person believed, on reasonable grounds, that the girl was of or above the age of sixteen years.	Imprisonment with hard labour for two years, with or without whipping Imprisonment with hard labour for life, with or without whipping.
s 187	Defilement (carnal knowledge) or attempted defilement of girls under 16 [Consent not an issue]	It is a defence to prove that the accused person believed, on reasonable grounds, that the girl was of or above the age of 16. A prosecution for having unlawful carnal knowledge must be begun within six months, and for attempting to within three months, after the offence has been committed. A person cannot be convicted upon the uncorroborated testimony of one witness.	Imprisonment with hard labour for five years with or without whipping If the offender's age does not exceed 21 years he is liable to imprisonment with hard labour for two years, with or without whipping.

² Vaginal sex.

SECTION	OFFENCE	SPECIFIED OFFENCE PROVISIONS	PUNISHMENT
s 188	Defilement (carnal knowledge) or attempted defilement of (female) idiots [Consent not an issue]	A person cannot be convicted of either of the offences upon the uncorroborated testimony of one witness.	
s 189	Indecent dealing with girls under 16, who is known to be an idiot or imbecile or who is under the age of 17 years, and of whom the accused person is a guardian, employer, teacher, or schoolmaster [Consent not an issue]	<p>A prosecution for the offence of unlawfully and indecently dealing with a girl under the age of 16 years must, if she is of or over the age of 13 years, be commenced within three months after the offence has been committed.</p> <p>If a person accused of the offence of unlawfully and indecently dealing with a girl under the age of 16 years proves that the act was done with the consent of the girl, that she was in fact of or over the age of 13 years, and that he believed at the time on reasonable grounds that her age was greater than stated in the indictment, he shall be in the same position as if her age had in fact been such as he so believed it to be.</p>	<p>Imprisonment with hard labour for four years with or without whipping.</p> <p>If the offender's age does not exceed 21 years he is liable to imprisonment with hard labour for two years, with or without whipping.</p> <p>If the girl dealt with is under the age of 13 years he is liable to imprisonment with hard labour for seven years with or without whipping.</p>

SECTION	OFFENCE	SPECIFIED OFFENCE PROVISIONS	PUNISHMENT
s 190	Defilement (carnal knowledge) by guardian, employer, teacher, or schoolmaster of any girl or woman under the age of 17 years [Consent not an issue]		Imprisonment with hard labour for five years with or without whipping.
s 192	Procuring defilement (carnal knowledge) of woman by threats or fraud, or administering drugs [Consent not an issue]		A person cannot be convicted of any of the offences defined in this section upon the uncorroborated testimony of one witness.
s 193	Abduction of girl under 18 with intent to have carnal knowledge [Consent not an issue]	It is a defence to prove that the accused person believed, on reasonable grounds, that the girl was of or above the age of 18 years.	Imprisonment with hard labour for two years.
s 325	Any person who has carnal knowledge of a woman or girl, not his wife, without her consent, or with her consent if the consent is obtained by force, threats, intimidation, or by means of false and fraudulent representations as to the nature of the act is guilty of rape		Imprisonment with hard labour for life, with or without whipping (s 326); for attempt imprisonment with hard labour for fourteen years, with or without whipping (s 327).
s 328	Unlawful and indecent assault on a woman or girl		Imprisonment with hard labour for four years.

* Section 206 provided that a second offence under ss. 187, 188, 189, 326 or 327 against a girl under 13 committed by an offender who is over 16 years old or an offence under s. 185 if the offender is over 16 years old could result in the offender being sentenced to a whipping in addition to any other punishment provided by law which the Court may see fit to impose.

Table 2 - Sexual offences against females or males

SECTION	OFFENCE	SPECIFIED OFFENCE PROVISIONS	PUNISHMENT
s 181	Unnatural offences including “carnal knowledge against the order of nature” ³ and permitting a male person “to have carnal knowledge of him or her against the order of nature” [Consent not an issue]		Imprisonment with hard labour for 14 years, with or without whipping.
s 182	Attempt to commit unnatural offences (s 181) [Consent not an issue]		Imprisonment with hard labour for seven years, with or without or without whipping.
s 183	Indecent treatment of child under 14 ⁴ [Consent not an issue]		Imprisonment with hard labour for seven years, with or without whipping.
s 203	Indecent acts in public or with intent to offend [Consent not an issue]		Imprisonment with hard labour for two years.
s 314	Assault of another with intent to have carnal knowledge of him or her against the order of nature		Imprisonment with hard labour for 14 years.

³ Anal sex.

⁴ This section of the Code refers to unlawful and indecent dealing with a child under the age of fourteen years and defines “The term ‘deal with’ [to include] doing any act which, if done without consent, would constitute an assault as hereinafter defined”.

Table 3 - Sexual offences against males

SECTION	OFFENCE	SPECIFIED OFFENCE PROVISIONS	PUNISHMENT
s 184	Indecent practices between males (“gross indecency” ⁵) [Consent not an issue]		Imprisonment with hard labour for three years, with or without whipping.
s 315	Unlawful and indecent assault on any male person ⁶		Imprisonment with hard labour for three years.

⁵ An act between males that is obviously unbecoming or offensive.

⁶ An act on a male that is unbecoming or offensive, done without his consent.

Appendix 6

A Case Study of a Cross-Examination

The following is reproduced from a study by work of Dr Christine Eastwood and Professor Wendy Patton published in 2002.¹ Unfortunately there is no reference in the report or its appendices to when the alleged offences, court cases, or interviews with the researchers took place, but the extract from a transcript of a child witness's cross-examination is taken from a Queensland committal hearing in which the child, who was 14 years old, was not permitted to give evidence by CCTV.

Although reforms, such as the abolition of committal proceedings were implemented in WA by 2003, committal proceedings were part of the legal system during the time of Dennis McKenna's offending, and as such the transcript provides an insight into the process which applied at the time. The committal process was often a gruelling one for complainants because these were an initial hearing which took place before a magistrate and without a jury. Defence lawyers did not need to temper their approach because of fears of alienating the jury by being seen to attack a child victim. As noted previously, following a committal proceeding, a complainant would often have many months to dwell on the looming ordeal of the trial.

The child in this case, with the pseudonym "Chrissie", was required to give evidence-in-chief and be cross-examined during the committal proceedings. Her father was the accused, and she had waited twelve months to testify for the first time. While giving evidence-in-chief, defence counsel repeatedly interjected and mumbled "ridiculous" while she was trying to describe intimate details of the abuse. During direct evidence defence counsel interjected 12 times on a variety of matters.

According to the police prosecutor, throughout the entire cross-examination process the defence lawyer was hostile, intimidating, and continually yelling at Chrissie and thumping his fist on the table. Chrissie was crying throughout cross-examination. The researchers advise that the excerpts from the court transcript reproduced below are reported precisely as recorded in the transcript document. Breaks in the transcript are appropriately indicated.

The Court Transcript

"The Cross-Examination Begins

Mr X: Why didn't you tell anyone for such a long time?

Child: Beg your pardon?

Mr X: Why didn't you tell anyone for such a long time?

Child: Because I was scared.

Mr X: Scared of what?

Child: My Dad.

¹ Eastwood, C and Patton, W 2002, The Experiences of Child Complainants of Sexual Abuse in the Criminal Justice System, Queensland University of Technology, pp. 77-87.

Mr X: What was he going to do to you?

Child: I'm not sure.

Mr X: Well you can't be scared of nothing can you?

Child: No.

Mr X: You have to be scared of something don't you.

Child: Yes

Pros: Objection your worship. Fear is certainly subjective...

Mr X: I beg your pardon?

Pros: She can develop a fear – without any person...

Mr X: Oh look I object to my friend putting words in to the witness's mouth.

BENCH: Well, the situation is this, that you asked the witness. She said she was scared that's why she didn't say anything to anyone. She said she was scared of her father.

Mr X: Yes.

BENCH: Right?

Mr X: Now I'm asking her why she was scared of the father

Bench: And what was your answer to that? Did you say anything there?

Mr X: I might approach it this way. Did he ever hit you?

Child: No

Mr X: Did he ever threaten you? Do you know what a threat is?

Child: Yes.

Mr X: Did he ever threaten you?

Child: I don't think so.

Mr X: What do you mean you don't think so.

Child: I can't remember.

Mr X: So the answer is that he has never threatened you. Is that right?

Child: Yes.

Mr X: He's never been violent towards you?

Child: No

Mr X: Well then what were you scared of?

Child: What he did to me.

Mr X: Scared of that?

Child: Yes. Because I didn't.... (child interrupted)

Mr X: How long was it from when you first told your mother that you'd seen your father? Last seen him? Even talked to him? How long? A year and a half? Does that sound right?

Child: Yes.

Mr X: But you got the courage up did you?

Child: Yes.

Mr X: And your mother was sitting in bed?

Child: Laying in bed.

Mr X: And you just gathered this courage up to go and tell her. Is that right?

Child: Yes.

Mr X: In a cool, calm way you just went in there and told your mother? That's what I thought you just told this fellow here – that she was sitting in bed and you gathered up the courage to go in there and tell her. Is that right?

BENCH: I don't think she said – did she say in a cool calm way?

Pros: No she didn't say that.

BENCH: No. Okay. Well – well the question is that you didn't go in there in a cool calm way. You – you went in and told your mother. That – that's what's being asked of you.

Mr X: You got up the courage to go and tell her. Is that right?

Child: Yea.

Mr X: So out of the blue, as it were, you decided to go in there and tell her about what had happened? I just want you to confirm this for me. You got the courage up..

Pros: Objection Your Worship

Mr X: To what?

BENCH: Well, first of all, let's keep the voice down a bit when questioning this witness Mr X. It'll come to a situation of badgering the witness or harassing the witness with your attitude toward her. Ask the questions calmly and properly and let her answer those questions.

Mr X: Thank you.

Pros: Your Worship I maintain my objection.

BENCH: Yes.

Pros: In that Mr X put to the witness that she's come up with it out of the blue and the witness has clearly said that she's come up with the courage..

BENCH: Yes

Mr X: Oh look this is rubbish. I object to this. Perhaps the witness can wait outside.

BENCH: No. No. You question the witness. As I stated before, I don't want any badgering, harassing, raising your voice. Just ask the witness her questions. I can understand what the witness is saying. I don't want any words put into her mouth.

Before you said that she went in a cool, calm way which she hadn't. She hadn't given that evidence at all. That was just put in her mouth.

Mr X: Well it was a question with respect Your Worship.

BENCH: Yes. But those words weren't given in evidence. You just put that – you said to her that she went in in a cool calm way and she didn't say that at all. So just continue with your cross-examination of her.

Mr X: I will.

BENCH: And just keep everything down just to a nice calm level.

Mr X: Thank you.

BENCH: Ask the witness her questions. Just – if you feel you're being harassed or badgered in any way you just let me know. You just take your time. Okay?

Mr X: Do you remember about 10 minutes ago when this fellow was asking you some questions? Do you remember that?

Child: Yes.

Mr X: Do you remember telling him that you told your mother on a night when – or an occasion when she was sitting or lying in bed? Do you remember telling him that 10 minutes ago.

Child: Yes.

Mr X: Do you remember telling him that you did that because you'd got the courage to go and do that? That was the words you used "courage" wasn't it?

Child: Yes.

Mr X: That there was not conversation between you and your mother immediately before you went into her bedroom to tell her?

Child: Could you please repeat the question?

Mr X: Your mother's in the bedroom watching TV. Is that right?

Child: Yes.

Mr X: You walk into her bedroom and tell her do you?

Child: Yea

Mr X: Right. So there was no conversation before you walked into her bedroom to tell her.

Child: No.

Mr X: So there was no outside influence that prompted you to go in and tell her?

Child: No.

Mr X: You did it out of the blue.

Child: I'd been thinking about it for a while.

Mr X: Yes. Apart from you thinking about it, you didn't talk to your mother before you walked in that night and just told her while she was lying on the bed watching the TV?

Child: No.

Mr X: That's right isn't it.

Child: Yes.

(Break in the transcript)

Mr X: you were not having an argument with your mother.

Child: No.

Mr X: You didn't blurt out; I've been touch or words to that effect during the course of an argument with your mother.

Child: No.

Mr X: All right. If there's one thing we can be certain of it's that that did not happen? Is that right?

Child: Yes.

Mr X: What did his penis look like?

Child: I beg your pardon?

Mr X: What did it look like? Do you want me to explain that question to you?

Child:No.

Pros: Your Worship she has just had three goes at trying to get it out. I've watched her Your Worship.

BENCH: Yes.

Pros: Maybe he could let her speak.

BENCH: Or be more specific with the question.

Mr X: What did it look like? Can you use words to describe what is was you saw?

Child: Not really.

Mr X: Why not? How long was it? How wide was it? What colour was it? How big was it?

BENCH: One question at a time.

Mr X: I'm just trying to give her some hints.

BENCH: No. You're getting a bit over giving hints. You're getting towards harassing her. One question at a time. If you can't answer the question – if you don't know the answer witness – just so say so. I'll take a short adjournment and just let you settle down a bit and then we'll come back and we'll run this at a more calm and leisurely way.

Mr X: Your Worship perhaps the...

BENCH: ... than the harassment that's going on now. Or otherwise I'll excuse the witness for the rest of the...

(Break in the transcript. Adjournment followed by some questioning)

Mr X: I was asking you before the break what his penis looked like. Can you please tell me now.

Child: No.

Mr X: You can't describe it at all? I beg your pardon?

Child: I don't know how to.

Mr X: Well, how long was it?

Child: I don't know.

Mr X: Is it because you didn't see it that you don't know how long it was?

Child: I did see it.

Mr X: Well, how long was it?

Child: I don't know.

Mr X: Well how long was it?

Child:how do you expect me...

Mr X: No. I expect you to tell me. Tell me this. Do they teach you at school how long a centimetre is?

Child: Yes.

Mr X: How long is a centimetre? Hold up your fingers please and show me how long a centimetre is? Right. Using your understanding of centimetres, how long was it?

Child: I don't know.

Mr X: Well you say you saw it. I am now asking you to tell me what it was that you saw?

Child: I know what I saw but I don't know how long it is or how wide it is.

Mr X: How much of it did you see?

Child: Not very much of it.

Mr X: All right. How much? How long?

Child: About three centimetres of it.

Mr X: Now why didn't you say that before?

Child: Because I thought you meant how long the whole thing was.

Mr X: So you're saying you saw three centimetres of it. Is that right?

Child: About that.

Mr X: And how wide was it?

Child: I don't know.

Mr X: Well you say you saw it. We know that you have an understanding of centimetres. You say you saw three centimetres of it. How wide was it?

Child: I don't know.

Mr X: What did it look like at the end?

Child: A normal penis.

Mr X: I beg your pardon.

Child: A normal penis.

Mr X: Without going into it too far, have you seen a penis on another occasion?

Child: When we had sex ed last year.

Mr X: Oh. Do you know the difference between a circumcised penis and an uncircumcised penis? Did they teach you that?

Child: What? An erection and a normal?

Mr X: No. I'm afraid we're just going to have to stick with this. You'll have to describe – I'm afraid miss – what you saw. Did you see the end of it.

Child: Yes.

Mr X: Well can you please use words to describe what it was that you saw? I think so far we have got you saw three centimetres of its length. Is that right?

Child: Yes.

Mr X: How wide was it?

Child: I don't know.

Mr X: Why not?

Child: Because I didn't see it straight on. I saw it from, not like front on. It was...

Mr X: What did the end of it look like please? Was it square, rounded? Square or rounded? I'm not trying to put words in your mouth. I'm asking you to use your own words. Can you draw it?

Child: No.

Mr X: Why not?

Child: No. Because I can't draw.

Mr X: Now they teach you to draw things at school surely. I'll give you a piece of paper and a pen and ask you to draw what it was that you saw – you say you saw.

BENCH: She just said she can't draw. Can you draw it or not? Just..

Mr X: Well I'd like her best effort at least Your Worship.

BENCH: Well she said – she described it. You keep asking her to describe it.

She said it was like a normal penis as she was taught in sex education at school. So – what – what further do you want? What are you – what do you want her to draw?

What do you want her to say? Like, she...

Mr X: Well I want her to draw what she saw.

BENCH: Can you – can you draw what you saw?

Mr X: I'd like her to make her best effort to draw what she saw. It's a matter for, in my respectful submission at the end of the day, for the jury – for the jury as to whether or not they accept this of course. If you could do it to scale. Do you know what to scale means?

Child: Yes. Can I just draw it?

Mr X: Are you finished?

Child: Yes.

Mr X: Can you just hold it up so I can see that?

Child: I drew a little..

Mr X: Perhaps if I can. You've got a sort of a bulb on the end of it. Is that right?

Child: It's not a bulb.

Mr X: Well I'm not trying to put words in your mouth but you seem to have two lines coming down parallel – can you look at me for a moment please? You seem to have two lines coming down parallel and then a round thing on the end. Do you want to have a look?

Child: It's not a round thing – it's the end of a penis.

Mr X: Well, I'll just ask you to have a look at what you've drawn. Do you agree that there seems to be some sort of round thing or bulb on the end of the two parallel lines?

Child: Yes.

Mr X: Is that what you saw?

Child: No – I can't draw it exactly.

Mr X: Is that what you were shown in your sex lessons at school?

Child: No.

Mr X: Have you drawn there what you were shown in the sex lessons at school as opposed to what you saw that day?

Child: No.

Mr X: What you say you saw that day?

Child: No.

Mr X: Well, have you drawn what you saw or not please?

Child: I drew it to the best of my ability?

Mr X: And the best of your...

Child: I can't..

Mr X: ...the best of your ability?

Child: I can't...

Mr X: ...ability includes that bulb – round thing on the end. Is that right?

Child: It's not a bulb thing.

Mr X: Well just look at it and tell me what it is if it isn't a bulb thing? Perhaps if Your Worship could have a quick look at it?

Child: I can't draw a penis.

Mr X: I'm not asking – I'm asking you to draw what you saw that day? What you said you saw that day?

Child: I can't draw it.

Mr X: Because you didn't see it.

Child: I did so.

Mr X: I'll get back to this bulb thing that you've drawn on that. Am I to understand that's a drawing of what you say you saw that day? Is it?

Child: Not exactly because I can't draw it exactly.

Mr X: But your best efforts to draw it include that bulb at the end of the two parallel lines. Is that right? Is that right? That's your best effort to draw what you say you saw that day. Do you accept that? Do you accept that? Are you thinking now or do you want me to repeat the question? Do you want me to repeat the question?

Child: No

Mr X: Are you going to answer the question?

Child: It's not exactly what I saw because I can't draw properly.

Mr X: Well can you use words to describe it?

Child: No – because I can't draw it properly.

Mr X: You didn't see anything that day did you?

Child: Yes I did.

Mr X: That's why you can't draw it. Cause you don't know what it looks like. Is that right?

Child: No.

Pros: Objection Your Worship. She's explained why she can't draw it.

BENCH: She's explained quite often why she can't draw it. She said she can't draw a penis. She said she did see it on that date what she's drawn there is the best of her ability. So that's the evidence she's given now. I'd suggest possibly move on

Mr X.

(Break in the transcript. During later questioning the issue is raised again)

Mr X: Did he use he use his left arm or did he use his right arm? Did he take you by the left hand or the left arm, or hand, or the right arm or the right hand? Forget about the fact that you can't draw a penis, the thing you say you saw. Tell me what he did?

(Cross-examination continues)"

Appendix 7

**ST ANDREW'S HOSTEL INQUIRY
INVITED SUBMISSION
30th JUNE 2012**

**“APPROPRIATE REFORMS TO DEFAMATION AND PROTECTION
LAWS”**

**PROFESSOR MICHAEL GILLOOLY
LAW SCHOOL
THE UNIVERSITY OF WESTERN AUSTRALIA**

A. INTRODUCTION

The Inquiry has “heard evidence from members of the Hostel community, including parents of students that:

- Where they did raise concerns or suspicions about inappropriate conduct of the warden, Mr Dennis McKenna, they were threatened with defamation proceedings and in some instances received letters from legal firms to this effect.
- Because of their fear of defamation proceedings they did not make a complaint about inappropriate conduct within the Hostel.”¹

I have been asked to briefly advise “on what might be appropriate reforms to current defamation or protection laws in respect of the following:

1. Allowing a person who reports child sexual abuse, believing it to be true, to have statutory protection from defamation proceedings.
2. Whether designating additional positions or authorities for this purpose would be appropriate (consistently with the currently designated mandatory reporters, the Department for Child Protection or Western Australia Police).
3. Whether the PID Act can be suitably amended, or alternatively, provides an appropriate model for that purpose.
4. Any other mechanisms or protections that could be considered to ensure that those who have a valid complaint of child sexual abuse can disclose it appropriately.”²

B. THE CAUSE OF ACTION IN DEFAMATION

1. Low threshold for action

The reason why the threat of defamation proceedings is such an effective deterrent is because the law sets the threshold for action so low. A plaintiff need not prove the falsity of the allegations complained of, any actual harm flowing from their publication, or any fault on the part of their publisher. All that must be established is the communication to some person other than the plaintiff of material that has a tendency to lower the plaintiff in the eyes of the community.³

¹ Letter of invitation from the Special Inquirer (19/6/12) p 1

² Ibid p 2

³ See *Radio 2UE Sydney Pty Ltd v Chesterton* (2009) 238 CLR 469, 466[1] – 468[7]. The elements of the cause of action for defamation are established by the common law, rather than being codified in the uniform defamation legislation. For example, s 6 *Defamation Act 2005* (WA) (“DA”) provides: “(1) This Act relates to the tort of defamation at general law. (2) This Act does not affect the operation of the general law in relation to

Even the gossip about others commonly contained in everyday conversations will often suffice to expose the speaker to proceedings for defamation.

In the present context, there is no doubt that allegations of child sexual abuse, whether actual or suspected⁴, are defamatory, and if communicated to anyone other than the person accused, would perfect the accused's cause of action against the person making the allegations. Thus the fear of defamation proceedings referred to by members of the hostel community is completely understandable. Undoubtedly the fear is not just of the potential for an adverse damages award at the end of the proceedings, but also of the cost and mental wear and tear of being involved in the litigation, regardless of the ultimate result.

2. Defences and the interests at stake

Of course, merely establishing the elements of the cause of action does not mean that the action will be successful. If the defendant is able to prove a legally recognised excuse for the publication, then he or she will avoid liability. In the following pages, the defences currently available to potential reporters of child sexual abuse are reviewed to determine whether they provide that level of clear and specific protection necessary to induce such persons to communicate their concerns to the appropriate authorities. And, in conducting this review, it must be borne in mind that it is not just the interests of the reporters that are at stake.

In many defamation cases, the aspersions cast upon the plaintiff are essentially of concern only to the plaintiff – the plaintiff complains that he or she has been lowered in the esteem of others, and seeks compensation to make up for that injury. However, where the allegedly defamatory material is a report of suspected child sexual abuse, the interests not just of the person accused but also of his victims, are implicated. Failure to provide an adequate defence for reporters may facilitate the continuation of the abuse, potentially leaving the most vulnerable people in our community at the mercy of their tormentors. Furthermore, where the abuser is a person who has been placed in a position of authority over the victim by the community, the breach of trust involved provides yet another compelling reason for removing any disincentives to potential reporters coming forward.

the tort of defamation except to the extent that this Act provides otherwise..." However, s 7(1) abolishes the old distinction between libel and slander, and s 7(2) confirms that "the publication of defamatory matter of any kind is actionable without proof of special damage."

⁴ An imputation of suspected criminal behaviour is capable of being defamatory: *Hyams v Peterson* [1991] 3 NZLR 649; *Mirror Newspapers v Harrison* (1982) 149 CLR 293; *Favell v Queensland Newspapers* (2005) 79 ALJR 1716

C. GENERAL DEFAMATION DEFENCES

1. Truth and honest opinion

If the defendant can prove the substantial truth of what has been published, then he or she has a good defence.⁵ If the defamatory publication comprised an expression of opinion, then a defence of honest opinion may be available but normally only on condition that the factual basis for the comment is shown to be substantially true.⁶ This need to prove truth undermines the utility of these two defences for potential sexual abuse reporters like the members of the hostel community referred to earlier. Honest belief in the truth of their complaints is not enough – proof of the actual truth of the defamatory imputations to the exacting standard required in a court of law is what is required, and this can be extremely problematic. Defendants will usually need to look to a defence that does not require proof of truth. Hence attention turns to the defence of qualified privilege.

2. Qualified privilege at common law

The common law recognises that there are certain situations in which the public interest requires that protection be given to the publisher of defamatory material,⁷ even though its truth cannot be established.⁸ Where the publisher has a social, moral or legal duty or interest in communicating the material in question, and the recipient of the material has a corresponding duty or interest in receiving it, then the law confers on the publisher a “privilege” to defame. The material is said to be published on an occasion of privilege - defamatory statements made in the course of giving an employment reference or in a call to Crime Stoppers are well known examples. However, this privilege is not absolute but qualified. The qualification is that the privilege will be lost if the

⁵ Both at common law and under the uniform defamation legislation, a defence of justification is available. See, for example, DA s 25 : “It is a defence to the publication of defamatory matter if the defendant proves that the defamatory imputations carried by the matter of which the plaintiff complains are substantially true.”

⁶ DA s 31(1) provides: “It is a defence to the publication of defamatory matter if the defendant proves that – (a) the matter was an expression of opinion of the defendant rather than a statement of fact; (b) the opinion related to a matter of public interest; and (c) the opinion is based on proper material.” Under s 31(5) “an opinion is based on proper material if it is based on material that – (a) is substantially true” or published on a privileged occasion (paragraphs (b) and (c))

⁷ All that is required to constitute “publication” under the law of defamation is communication of the defamatory material to a single person, other than the plaintiff: see *Dow Jones v Gutnick* (2002) 210 CLR 575

⁸ For a recent summary of the elements and rationale of the defence, see *Cush v Dillon* (2011) 243 CLR 298, 305[11]-[12] & authorities there cited. The common law defence has survived the enactment of the uniform defamation legislation across Australia. See eg DA s 24(1): “A defence under this Division is additional to any other defence or exclusion of liability available to the defendant apart from this Act (including under the general law) and does not of itself vitiate, limit or abrogate any other defence or exclusion of liability”. Note also s 6(2): “This Act does not affect the operation of the general law in relation to the tort of defamation except to the extent that this Act provides otherwise (whether expressly or by necessary implication).” Under s 4 “general law means the common law and equity”.

defendant was actuated by “malice” ie “ill will, spite or other improper motive”.⁹ Knowingly publishing false defamatory material readily leads to an inference of malice against the publisher.¹⁰ On the other hand, an honest belief in the truth of what is published, even if it subsequently turns out to be false, tends to rebut the inference.¹¹

There is no doubt that reports about child sexual abuse, whether actual or suspected, which are made to an appropriate person, honestly and in good faith, would be protected by the defence of qualified privilege. Nonetheless, the long standing existence of that protection proved an insufficient inducement to members of the hostel community to come forward and voice their concerns about the activities of the Warden. It is submitted that the reason is the common law nature of the defence. Because the defence is rooted in the common law, it suffers from certain deficiencies as a form of encouragement to potential complainants:

First, the defence can only be stated in the broad terms of general principle. The virtue of this generality is that qualified privilege is flexible enough to apply in a multitude of different situations. In this regard it can be contrasted with its distant cousin, absolute privilege, which only applies in a narrow range of specifically enumerated circumstances.¹² However, the defence’s generality and flexibility are also its major weaknesses for present purposes, for there may be some element of uncertainty attaching to the precise scope of its application.¹³ Hence, it fails to provide a potential reporter with a clear and specific statement of his or her immunity from action.

Second, the defence is not readily accessible to non-lawyers. Its existence and elements are to be found in the interstices of the common law, and considerable specialist knowledge is required to grasp its full implications.

Third, like all common law principles, the defence is open to change retrospectively and without notice by judicial decision.¹⁴

⁹ *Lange v ABC* (1997) 189 CLR 520, 574. See also *Roberts v Bass* (2002) 212 CLR 1, 31[76]; *Cush v Dillon* (2011) 243 CLR 298, 306[14]-307[15]

¹⁰ See *Cush v Dillon* (2011) 243 CLR 298, 311[28]-[29], 306[14]-307[15]

¹¹ *Horrocks v Lowe* [1975] AC 135, 150. See *Cush v Dillon* (2011) 243 CLR 298, 306[14]-307[15]

¹² See DA s 27

¹³ Eg *Aktas v Westpac Banking Corporation* (2010) 241 CLR 79 (Bank mistakenly dishonouring customer’s cheque and marking it “Refer to Drawer” held entitled to a defence of qualified privilege at trial. Decision unanimously confirmed by NSWCA, but overturned by HCA by a majority of 3 to 2)

¹⁴ Eg *PGA v R* [2012] HCA 21 (the conventional wisdom that rape in marriage was not legally possible at common law overturned, the court determining that rape in marriage was legally possible *as at 1963*)

3. Qualified privilege under the *Defamation Act*

The Australia-wide uniform defamation legislation includes a general defence of qualified privilege. Section 30(1) of the *Defamation Act 2005* (WA) provides:

There is a defence of qualified privilege for the publication of defamatory matter to a person (the recipient) if the defendant proves that –

- (a) the recipient has an interest or apparent interest in having information on some subject;
- (b) the matter is published to the recipient in the course of giving the recipient information on that subject; and
- (c) the conduct of the defendant in publishing that matter is reasonable in the circumstances.¹⁵

This provision was based upon a defence contained in earlier New South Wales defamation legislation, which had been intended to provide media outlets with access to a defence of qualified privilege.¹⁶ Traditionally, media defendants had been unable to rely on the common law defence because of an inability to establish a duty or interest of the relevant kind to publish the defamatory material to all their readers, listeners or viewers.¹⁷ The legislature relieved the media of that burden in the statutory defence, but substituted for it what turned out to be an even more difficult hurdle for the media to jump namely the requirement, now embodied in paragraph (c), that the defendant's conduct was "reasonable in the circumstances". Stringent judicial interpretation of that requirement almost invariably led to the failure of the defence. For, once it has been demonstrated that the defamatory allegations are false, then it normally follows that there were steps that the defendant could have taken to reveal that falsity prior to publication. With the benefit of twenty-twenty hindsight, there is an overwhelming temptation to conclude that that "peerless paragon of virtue",¹⁸ "the reasonable person", would have taken those steps. Hence the publisher has not acted reasonably, and so the defence is forfeited.

Section 30(1), like its New South Wales predecessor, is not of course limited in its terms to media defendants (although a number of the matters set out in subsection (3) indicate its origins¹⁹). A member of the public, like a child sexual

¹⁵ For a recent illustration of the operation of the defence, see *Lvmh Watch and Jewellery Australia Pty Ltd v Michael Lassanah and Ors* [2011] NSWCA 370

¹⁶ *Defamation Act 1974* (NSW) s 22

¹⁷ *Lange v ABC* (1997) 189 CLR 520, 569-570, 572-573

¹⁸ Gillooly M, *The Third Man – Reform of the Australasian Defamation Defences*, The Federation Press, 2004, at p 159. See also the observations of Kirby J in *Favell v Queensland Newspapers* (2005) 79 ALJR 1716, 1722[23] – 1723[26]

¹⁹ DA s 30(3) sets out a non-exhaustive list of factors that a court may take into consideration in assessing the reasonableness of the defendant's conduct. These factors include: "(f) the nature of the business environment in which the defendant operates; (g) the sources of information in the matters published and the integrity of those

abuse reporter, could potentially rely upon it. On the credit side, the statutory defence does overcome the second and third problems mentioned above with respect to the common law defence ie lack of accessibility, and the risk of judicial alteration. However, due to the generality of its terms, the section still fails to provide potential complainants with the specific guarantee of protection that is needed to induce them to come forward. Also, the addition of the “reasonableness” requirement further undermines the utility of the defence in the suspected abuse scenario. It makes clear to potential reporters that their own honest beliefs are not enough. Their protection is dependent upon the application of an external standard – their conduct must be adjudged to be “reasonable”. And this is not “reasonableness” in the loose, quasi-subjective sense in which the ordinary, lay person may understand the term. Rather, it is “reasonableness” in the precise, objective, lawyer’s sense. The law expects the “reasonable person” to exhibit all the desirable attributes of the model citizen, rather than merely the actual attributes of the ordinary member of the community. On this exacting standard, many potential complainants may be found wanting. As a result, such persons may be deterred from reporting their suspicions at all, or at least defer their reporting until they are able to obtain sufficient evidence to ensure that their conduct will subsequently be deemed “reasonable”.²⁰

4. Amendments to the *Defamation Act* not recommended

Notwithstanding the deficiencies in the general defamation defences identified above, I do not recommend any statutory alteration. The current *Defamation Act 2005* (WA) is part of a national scheme of uniform defamation legislation agreed to by all the Australian jurisdictions, and no change to it should be made without nationwide consensus. However, s 24(1) does permit the creation of defences under other legislation:

A defence under this this Division is additional to any other defence or exclusion of liability available to the defendant apart from this Act (including under the general law) and does not of itself vitiate, limit or abrogate any other defence or exclusion of liability.

It is by the appropriate amendment of legislation dealing specifically with the protection of children and the disclosure of misconduct by public officials that any necessary changes should be made.

sources; (h) whether the matter published contained the substance of the person’s [plaintiff’s] side of the story and, if not, whether a reasonable attempt was made by the defendant to obtain and publish a response from the person.”

²⁰ It is interesting to note that cl 4 of the *Defamation Bill 2012* (UK) currently before the British Parliament, provides a defence for “*responsible* publication on a matter of public interest” (my emphasis). The defence is based upon the well-known species of qualified privilege with respect to *responsible* publication recognised by the House of Lords in *Reynolds v Times Newspapers* [2001] 2 AC 127.

D. DEFENCES UNDER THE *CHILDREN AND COMMUNITY SERVICES ACT*

1. Current provisions

Section 129 of the *Children and Community Services Act 2004* relevantly provides:

129. Protection from liability for giving information

- (1) This section applies if a person acting in good faith —
- (a) gives information to the CEO or another officer about any aspect of the wellbeing of a child; or...
 - (e) makes a report under section 124B(1); or...
- (2) In giving the information or making the report...the person —
- (a) does not incur any civil or criminal liability; and
 - (b) is not to be taken to have breached any duty of confidentiality or secrecy imposed by law; and
 - (c) is not to be taken to have breached any professional ethics or standards or any principles of conduct applicable to the person's employment or to have engaged in unprofessional conduct.
- (3) The protection given by subsection (2) also applies to a person who, in good faith —
- ...
- (b) provides information on the basis of which —
 - (i) the information mentioned in subsection (1)(a)...is given; or
 - (ii) a report is made under section 124B(1); or...
- or
- (c) is otherwise concerned in —
 - (i) providing the information mentioned in subsection (1)(a)...or causing the information to be provided; or
 - (ii) making a report under section 124B(1) or causing a report to be made; or...

Subsection (2) absolves from any civil or criminal liability (which includes liability for defamation) the persons specified in subsections (1) and (3). Those persons may be conveniently considered under the following three headings.

Category (a) – Voluntary informants

Paragraph (1)(a) covers people who, in good faith, give to a relevant official “information... about any aspect of the wellbeing of a child”. Section 3 of the Act provides that “**wellbeing** of a child includes the care, development, health and safety of the child”. It would seem clear that concerns about a child being sexually abused would qualify as such information, and so a good faith reporter could claim protection. A consideration of the objects section of the *Child and*

Community Services Act 2004,²¹ in light of the statutory directive in the *Interpretation Act 1984* to prefer a construction that promotes the purpose or object of legislation,²² supports this view. Indeed, the Attorney-General, when introducing the Bill that inserted the mandatory reporting provisions into the Act in 2007,²³ explicitly acknowledged the existence of this general discretion to report concerns about child sexual abuse. After outlining the new provisions, Mr J.A.McGinty MLA said:

It is also important to note that any person may give information to the chief executive officer of the Department of Child Protection or another officer about any aspect of the wellbeing of a child... However, the bill now removes the discretion in relation to the reporting of child sexual abuse by doctors, nurses, midwives, teachers and police officers to the chief executive officer of the Department of Child Protection.²⁴

Unfortunately, the beneficial effect of this defence, in the context of reporting child sexual abuse, is somewhat reduced by its obscure location within the *Children and Community Services Act 2004*. The Act now contains a specific division entitled "Reporting sexual abuse of children".²⁵ At present that division only contains provisions relating to mandatory reporting. It is there that one would expect to find some mention of a general right to make a voluntary report, but there is no such mention. Its absence may mislead people into thinking that there is no such right. If potential reporters are to be induced to come forward, then the legislature must set out the protection provided in clear, specific and accessible terms. An appropriate amendment is suggested below.

Category (b) – Mandatory reporters

Paragraph 129(1)(e) only applies to a limited class of person namely a "doctor, nurse, midwife, police officer or teacher".²⁶ Under s 124B(1), if such professionals form a reasonable belief, in the course of their work, that a child has been or is being sexually abused, they must report it as soon as practicable to

²¹ Section 6 *Child and Community Services Act 2004*: "The objects of this Act are —

(a) to promote the wellbeing of children, other individuals, families and communities; and (b) to acknowledge the primary role of parents, families and communities in safeguarding and promoting the wellbeing of children; and (c) to encourage and support parents, families and communities in carrying out that role; and (d) to provide for the protection and care of children in circumstances where their parents have not given, or are unlikely or unable to give, that protection and care; and (e) to protect children from exploitation in employment."

²² Section 18 *Interpretation Act 1984*: "In the interpretation of a provision of a written law, a construction that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to a construction that would not promote that purpose or object."

²³ *Children and Community Services Amendment(Reporting Sexual Abuse of Children) Bill 2007*, and see category (ii) below

²⁴ *Hansard* Legislative Assembly 28/11/07 pp7901c-7902a (Second reading speech of Mr JA McGinty, Attorney-General)

²⁵ Part 4, Division 9A

²⁶ *Children and Community Service Act 2004* s 124B(1)(a)

the CEO or persons approved by the CEO. A person who makes such a report in good faith incurs no liability for defamation, provided that the statutory requirements are met.

Category (c) – Providers of information to voluntary informants and mandatory reporters, and others involved

Subsection 129(3) covers people who provide relevant information to the informant or reporter, or are otherwise concerned in providing, or causing to be provided, the information, or making or, causing to be made, the report. Thus the protection from liability under subsection (2) is extended to the informant or reporter's sources of information which might, in a particular case include abused children, their parents, or other members of the public. The effect is to increase the range of people to whom protected complaints of child abuse can be made by members of the public, to include the mandatory reporters specified in s 124B.

2. Suggested amendments

In view of the deficiencies mentioned above, the following amendments to the Act are suggested.

(a) Creation of a specific and explicit right to report child abuse for ordinary members of the public

A provision expressly and specifically confirming the right of the ordinary citizen to report concerns relating to child sexual abuse should be inserted into the Act. What is envisaged is a section along the following lines:

Section XXX. Voluntary reporting of child sexual abuse

(1) A person, who believes or suspects that a child has been, is being or will be the subject of sexual abuse, may report that belief or suspicion to the CEO of the Department of Child Protection, the Commissioner of Police or any of their officers.

(2) A person making a report under subsection (1) shall state their reasons for forming the reported belief or suspicion.

Express voluntary reporting provisions are now found in the child protection legislation of all the other States and the Australian Capital Territory,²⁷ and the time is now ripe for Western Australia to follow suit.

²⁷ The voluntary reporting provisions of the other Australian jurisdictions are set out below.

Children and Young People Act 2008(ACT) s 354: “(1) This section applies if a person believes or suspects that a child or young person – (a) is being abused; or... (c) is at risk of abuse... (2) The person may report (a *voluntary report*) the belief or suspicion, and the reasons for the belief or suspicion, to the director-general.”

The suggested provision covers not only beliefs but also suspicions and does not require either to be based on reasonable grounds. Whilst such requirements may be appropriate when imposing a duty upon professionals to report under s 124B, they are counterproductive when endeavouring to encourage ordinary members of the public to come forward. Reputational damage to the accused person is kept to a minimum by limiting the recipients of the report to the specified officials.

The most convenient place in the Act for this new provision would be in the existing Division 9A – “Reporting the sexual abuse of children” – of Part 4 – “Protection and care of children”. This Division currently contains only provisions relating to mandatory reporting by certain professionals, but could comfortably accommodate the voluntary report section suggested. Consequential amendments to some of the other provisions of the Division will, of course, be necessary, for example the provisions designed to protect a reporter’s identity.²⁸

Children and Young Persons (Care and Protection) Act 1998 (NSW) s 24: “A person who has reasonable grounds to suspect that a child or young person is, or that a class of children or young persons are, at risk of significant harm may make a report to the Director-General.”

Child Protection Act 1999 (Qld) s 22: “(1) This section applies if a person, acting honestly— (a) notifies the chief executive or another officer of the department that the person suspects— (i) a child has been, is being or is likely to be, harmed; or (ii) an unborn child may be at risk of harm after he or she is born; or (b) gives the chief executive, an authorised officer or a police officer — (i) information about alleged harm or alleged risk of harm to a child; or (ii) information, relating to an unborn child, about a suspected risk of harm to the child after he or she is born. (2) The person is not liable, civilly, criminally or under an administrative process, for giving the notification or information.”

Children’s Protection Act 1993 (SA) s 12: “A person who (whether voluntarily or pursuant to a requirement of this Act) notifies the Department of a suspicion that a child has been or is being abused or neglected or provides any information to the Department in respect of such a notification— (a) cannot, by virtue of doing so, be held to have breached any code of professional etiquette or ethics, or to have departed from any accepted form of professional conduct; and (b) insofar as he or she has acted in good faith, incurs no civil or criminal liability in respect of the notification or the provision of the information.

Children, Young Persons and Their Families Act 1997(Tas) s 15: “(1) This section applies to a person who voluntarily, or as required by section 14 or section 18(3), informs the Secretary or a Community-Based Intake Service – (a) that he or she knows, or believes or suspects on reasonable grounds, that a child has been or is being abused or neglected or that there is a reasonable likelihood of a child being killed or abused or neglected... (2) A person – ... (b) to the extent that he or she has acted in good faith, incurs no civil or criminal liability in respect of informing the Secretary or a Community-Based Intake Service as specified in subsection (1).”

Children, Youth and Families Act 2005 (Vic) s 28: “A person may make a report to the Secretary if the person has a significant concern for the wellbeing of a child.”

In contrast, in the Northern Territory, a duty to report is imposed on all persons, not just certain professionals. *Care and Protection of Children Act (NT) s 26(1):* “(1) A person is guilty of an offence if the person: (a) believes, on reasonable grounds, any of the following: (i) a child has suffered or is likely to suffer harm or exploitation; (ii) a child aged less than 14 years has been or is likely to be a victim of a sexual offence; (iii) a child has been or is likely to be a victim of an offence against section 128 of the Criminal Code; and (b) does not, as soon as possible after forming that belief, report (orally or in writing) to the CEO or a police officer: (i) that belief; and (ii) any knowledge of the person forming the grounds for that belief; and (iii) any factual circumstances on which that knowledge is based.”

²⁸ Section 124F

(b) Expansion of s 129 to provide protection for a voluntary reporter

The last division in Part 4 - “Protection and care of children” is Division 10 – “General”. Within this Division, current s129(2) provides that a person incurs no criminal or civil liability, and is not to be taken to have breached any duty of confidentiality or any ethical standard, through making a report referred to in subsection (1). Subsection (1) provides that “This section applies if a person acting in good faith - (e) makes a report under section 124B(1)”²⁹. To confer the requisite protection on a voluntary reporter, subsection (1) must be expanded to include an explicit reference to a good faith report under the new voluntary reporting section, perhaps by the addition of a new paragraph along the following lines: “(exxx) makes a report under section XXX”.

(c) New provisions regarding defamation proceedings

The present Inquiry has revealed that the threat of defamation proceedings has proved effective in dissuading members of the public from reporting suspected child abuse. The enactment of the new section XXX proposed above will go some way to counteracting such threats. However, it is submitted that more needs to be done. Hence, it is suggested that the following section be added to Part 4, Division 10, perhaps after s129.

Section 129XXX. Provisions relating to defamation proceedings

(1) In any proceedings for defamation, when a defence under s 129(1)(exxx) and (2) is relied upon, the defendant need not prove that he or she acted in good faith, but the onus of proof lies on the plaintiff to establish the defendant’s lack of good faith in order to defeat the defence.

(2) Where defamation proceedings fail due to successful reliance by a defendant on a defence under s 129(1)(exxx) and (2), and the plaintiff proves the falsity of the defamatory imputations conveyed by the report made under s XXX, the court may make a declaration of the falsity of those imputations.

(3) A person shall not threaten or foreshadow the initiation of defamation proceedings in order to deter or dissuade a person from making a good faith report under s XXX.

Penalty: a fine of \$6000

The purpose of subsection (1) is to cast the onus on the issue of good faith on to the plaintiff. The proposed statutory defence is then consistent with the common law defence of qualified privilege, where the onus of proof of disqualifying malice is also on the plaintiff.

²⁹ This is the mandatory reporting provision for the members of certain occupational groups ie doctors, nurses, midwives, police officers and teachers

Subsection (2) is designed to deal with the situation where a good faith, voluntary report under section XXX ultimately proves to be false. If the plaintiff proves the falsity of the content of the report, then he or she may seek a declaration of that falsity from the court.³⁰ In such a situation the defendant is absolved from liability, but the plaintiff's reputation is restored.

Subsection (3) is intended to provide a disincentive to those who would use the threat of defamation proceedings to suppress good faith reporting of suspected child sexual abuse. Whilst successful prosecutions might be rare, the subsection sends a clear message about the unacceptability of abusing the legal process in this way.³¹ A legal practitioner would be obliged to advise a client of the penal consequences of such abuse.

E. DEFENCE UNDER THE *PUBLIC INTEREST DISCLOSURE ACT*

1. Current provisions

Where the perpetrator of child sexual abuse is an employee of a public authority, as in the present Inquiry,³² the *Public Interest Disclosure Act 2003* (WA) may provide a measure of protection for members of the public wishing to report such abuse. Section 13 of the Act provides:

Section 13. Immunity for appropriate disclosure of public interest information

A person who makes an appropriate disclosure of public interest information to a proper authority under section 5 —

- (a) incurs no civil or criminal liability for doing so; and
- (b) is not, for doing so, liable —
 - (i) to any disciplinary action under a written law;
 - (ii) to be dismissed;
 - (iii) to have his or her services dispensed with or otherwise terminated; or
 - (iv) for any breach of a duty of secrecy or confidentiality or any other restriction on disclosure (whether or not imposed by a written law) applicable to the person.

³⁰ For examples of legislation explicitly conferring power to award declaratory relief in defamation proceedings, albeit in different contexts from the present, see *Defamation Act 1992* (NZ) s24, and *Defamation Act 1996* (UK) c 31 s 9(1)(a)

³¹ Cf *Defamation Act 1992* (NZ) s 45: "The commencement of proceedings to recover damages for defamation shall be deemed to be a vexatious proceeding if, when those proceedings are commenced, the plaintiff has no intention of proceeding to trial"

³² Denis Reynolds was employed as Warden at the St Andrew's Hostel, a hostel owned and operated by the Country High School Hostels Authority under the *Country High School Hostels Authority Act 1960* – see St Andrew's Hostel Inquiry Public Hearing 20/2/12 Transcript pp 9-12

By virtue of paragraph (a), a person who makes a disclosure under s 5 incurs no criminal or civil liability (including liability for defamation). Section 5(1) confers a right on any person to make an “appropriate disclosure” of “public interest information” to a “proper authority”.

(a) “Public interest information”

Under s 3 of the Act, “public interest information” includes:

Information that tends to show that, in relation to its performance of a public function..., a public authority, a public officer, or a public sector contractor is, has been, or proposes to be, involved in

(a) improper conduct; [or]

(b) an act or omission that constitutes an offence under written law;

“Public officer” includes an employee of a “public authority”³³ like the Country High School Hostels Authority, a body established by statute to supervise and provide hostel accommodation for isolated students.³⁴ There is little doubt that information relating to sexual abuse of the children committed to his care by the warden of such a hostel constitutes “public interest information” under the Act.

(b) “Appropriate disclosure”

Section 5(2) provides:

A person makes an appropriate disclosure of public interest information if, and only if, the person who makes the disclosure —

(a) believes on reasonable grounds that the information is true; or

(b) has no reasonable grounds on which to form a belief about the truth of the information but believes on reasonable grounds that the information may be true.

Without paragraph (b), the standard of certainty required before there could be an “appropriate disclosure” of information relating to child sexual abuse by a public officer, would be set too high. However, under paragraph (b), all that is required is a reasonable belief that the information *may* be true. Whilst not the equivalent of the subjective “in good faith” requirement under the *Children and Community Services Act*, the paragraph moves the standard of certainty necessary in the mind of the reporter substantially in that direction, and away from the more stringent requirement in paragraph (a). Practically speaking, one would expect a good faith reporter of child sexual abuse to be able to satisfy

³³ “Public officer” and “public authority” are defined in s 3.

³⁴ *Country High School Hostels Authority Act* ss 4, 7

paragraph (b) in virtually all situations. Hence no change to the statutory definition of “appropriate disclosure” is recommended in the present context.

In any event, given that the definition of “public interest information” covers such a broad spectrum of matters beyond reports of child sexual abuse, then it would be inappropriate to amend general legislation like the *Public Interest Disclosure Act* to deal with such a special situation. Matters pertaining to child sexual abuse are better dealt with in a specific statute dealing with the protection of children like the *Children and Community Services Act*, as recommended elsewhere in this submission.

(c) “*To a proper authority*”

Section 5(3) provides:

A disclosure of public interest information is made to a proper authority if —

(a) where the information relates to an act or omission that constitutes an offence under a written law — it is made to a police officer or to the Corruption and Crime Commission;

(b) where the information relates to a substantial unauthorised or irregular use of, or substantial mismanagement of, public resources — it is made to the Auditor General;

(c) where the information relates to a matter of administration that can be investigated under section 14 of the *Parliamentary Commissioner Act 1971* — it is made to the Parliamentary Commissioner or to a person who occupies a position specified under section 23(1)(a) in relation to the public authority concerned;

(d) where the information relates to a person who holds an appointment made under the *Police Act 1892* Part I, III, IIIA or IIIB — it is made to the Commissioner of Police or to the Corruption and Crime Commission;

(e) where the information relates to a judicial officer — it is made to the Chief Justice;

(f) where the information relates to a member of either House of Parliament — it is made to the Presiding Officer of the House of Parliament to which the member belongs;

(g) where the information relates to a public officer (other than a member of Parliament, a Minister of the Crown, a judicial officer or an officer referred to in Schedule 1 to the *Parliamentary Commissioner Act 1971*) — it is made to the Commissioner or the Parliamentary Commissioner;

(h) where the information relates to a matter falling within the sphere of responsibility of a public authority — it is made to a person who occupies a position specified under section 23(1)(a) in relation to that authority; or

(i) where the information relates to a person or a matter of a prescribed class — it is made to a person declared by the regulations to be a proper authority for the purposes of subsection (1) in relation to such information.

Under this subsection, the proper authorities to receive information regarding child sexual abuse by a public officer are: a police officer or the Corruption and Crime Commission (paragraph (a)); the Public Sector Commissioner or the Parliamentary Commissioner (paragraph (g)); and the person within the relevant public authority designated to receive disclosures of public interest information (paragraph (h)).

The original intention behind the subsection was to assist potential whistleblowers by providing a convenient list of the proper places to complain.³⁵ However, there are two major impediments to the achievement of this laudable objective.

First, a concerned member of the public who consults this list will have to possess or acquire a certain mastery of the various pieces of legislation mentioned in order to determine to whom it is safe to disclose information.

Second, if the person making the disclosure errs, and informs the wrong person or agency in the list, then the “proper authority” has not been informed and the immunity under s 13 is forfeited.³⁶

2. Suggested amendments

To overcome the deficiencies identified above, it is suggested that a new paragraph (j) be inserted into s 5(3), and a new subsection (3A) into s 5, along the following lines.

Paragraph 5(3)(j)

(j) where the information relates to any of the matters referred to in any of the preceding paragraphs of this subsection, except for paragraph (g)³⁷ – it is made to the Commissioner.

³⁵ Explanatory Memorandum accompanying the *Public Interest Disclosure Bill 2002*, cl 5: “To assist whistleblowers, the clause lists the agencies to which a whistleblower can make a public interest disclosure and designates specific agencies depending upon the nature of the public interest disclosure.”

³⁶ Cf eg *Public Interest Disclosures Act 1994* (NSW) s15 which protects those who honestly and reasonably misdirect their disclosure to the wrong agency

³⁷ Section 5(3) provides that a disclosure of public interest information is made to a proper authority if “(g) where the information relates to a public officer... - it is made to the Commissioner or the Parliamentary Commissioner”

Subsection 5(3A)

Where a disclosure is made to the Commissioner under s5(3)(j), the Commissioner shall refer the disclosure to the relevant “proper authority” and is not subject to the obligations set out in Part 2, Division 2 with respect to that disclosure.³⁸

The purpose of these provisions is to make the Public Sector Commissioner a “one stop shop” or the normal point of first contact for all complaints of wrongdoing against public officers. Given the special responsibilities imposed on the Commissioner under Part 4 of the Act,³⁹ it is submitted that the Commissioner is clearly the appropriate person to fulfil this role. Potential complainants may avoid the risk of reporting to the wrong authority, and thereby losing their s 13 protection, by making their disclosure to the Commissioner. Where the disclosure falls within s 5(3)(g), the Commissioner is a “proper authority” and so must discharge the normal obligations to investigate, act and notify contained in Part 2, Division 2.⁴⁰ Where the disclosure falls within one of the other paragraphs of s 5(3), then the Commissioner’s sole obligation is to act as a “post box” and refer the disclosure to the appropriate “proper authority”.

3. A practical problem - Identifying the person responsible for receiving disclosures of public interest information within a public authority

Under s 23(1)(a) of the Act, the principal executive officer of each public authority is required to “designate the occupant of a specified position with the authority as the person responsible for receiving disclosures of public interest information”. The Special Inquirer has observed that “the designation of PID officers within agencies does make it difficult to access the appropriate person, particularly for a child in a regional environment”.⁴¹

One of the avowed purposes of the Act is “to facilitate the disclosure of public interest information”.⁴² If the way in which s 23(1)(a) is being implemented hinders disclosure, then the legislative intent is being thwarted.

Under s 19, the Public Sector Commissioner is required to monitor compliance with the Act, and to provide assistance with compliance to public authorities and

³⁸ Cf eg *Public Interest Disclosures Act 1994* (NSW) s 25 – Referral of disclosures by investigating authorities; *Public Interest Disclosures Act 2002* (Tas) s 27 – Referral of disclosure to State Services Commissioner, s 29B – Referral of disclosure to Integrity Commission, s 42 – Referral of public information disclosures to relevant public body for investigation

³⁹ Part 4 – Role of the Public Sector Commissioner – ss 18 to 22 impose obligations relating to the monitoring, assisting with and reporting on compliance with the Act.

⁴⁰ Part 2 – Public Interest Disclosures, Division 2 – Obligations of a person to whom a disclosure is made

⁴¹ Letter of invitation from the Special Inquirer (19/6/12) p 2

⁴² The long title of the *Public Interest Disclosure Act 2003* is “An Act to facilitate the disclosure of public interest information, to provide protection for those who make disclosures and for those the subject of disclosures, and, in consequence, to amend various Acts, and for related purposes.”

officers. Under s 21, the Commissioner may prepare “guidelines on internal procedures relating to the functions of a proper authority under this Act”. Under s 23(2), the internal procedures of the authority “must be consistent with guidelines prepared by the Commissioner under section 21.”

In view of the Special Inquirer’s observation about the practical difficulty in accessing the appropriate person within authorities, it is recommended that the Public Sector Commissioner be invited to consider the preparation of guidelines under s 21 to address this problem, without the further legislative action at this stage. Specific consideration should be given to situation where the person wishing to make a disclosure is a child in a regional environment.

F. CONCLUSIONS

In all, five specific recommendations for action have been made in this submission. For convenience, these have been gathered together in the Appendix.

By way of summary, I shall relate those recommendations to the four particular matters upon which I was asked to advise.

1. “What might be appropriate reforms in respect of...Allowing a person who reports child sexual abuse, believing it to be true, to have statutory protection from defamation proceedings.”

I have recommended the creation of an explicit right to report for members of the public, and protection from liability for those who exercise that right in good faith (Recommendations 1 and 2).

2. “Whether designating additional positions or authorities for this purpose would be appropriate (consistent with the currently designated mandatory reporters, the Department for Child Protection or the Western Australia Police).”

Under the new provision creating a right to voluntarily report child sexual abuse, the authorised recipients of such reports are the two primary investigative bodies, the Department for Child Protection and the Western Australia Police (Recommendation 1). Under the amendment proposed to the *Public Interest Disclosure Act*, the Public Sector Commissioner would become the normal “one stop shop” for complaints against public officers (Recommendation 4).

Pursuant to s 129(3)(b) and (c) of the *Children and Community Services Act*, those who provide information to the mandatory reporters specified in s 124B ie doctors, nurses, midwives, police officers and teachers, are protected provided they have acted in good faith. Under s 13 of the *Public Interest Disclosure Act*, in the type of scenario being considered by the Inquiry, protection is conferred upon disclosures to a police officer, the Corruption and Crime Commission, the Public Sector Commissioner, the Parliamentary Commissioner as well as the person within the relevant public authority designated to receive disclosures of public interest information.

In light of the above, it is submitted that the range of people to whom a protected report of child sexual abuse can be made is appropriate, and that there is no need for any further expansion.

Specifically with respect to the difficulty in identifying the person within an authority who has been designated to receive public interest disclosures, it is recommended that the Public Sector Commissioner be invited to consider the preparation of guidelines to overcome this problem (Recommendation 5).

3. “Whether the PID Act can be suitably amended, or alternatively, provides an appropriate model for that purpose.”

Appropriate amendments to both the *Children and Community Services Act 2004* and the *Public Interest Disclosure Act 2003* have been recommended (Recommendations 1-4).

4. “Any other mechanisms or protections that could be considered to ensure that those who have a valid complaint of child sexual abuse can disclose it appropriately.”

Special provisions relating to defamation proceedings, the institution of the Public Sector Commissioner as the normal “one stop shop” for complaints against public officers, and the preparation of guidelines to facilitate the identification of the person designated within public authorities to receive public interest information, have all been recommended (Recommendations 3-5).

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APPENDIX

SUMMARY OF RECOMMENDATIONS

AMENDMENTS TO THE *CHILDREN AND COMMUNITY SERVICES ACT 2004*

1. That a specific and explicit right to report child abuse for members of the public be enacted

The insertion into Part 4 Division 9A of provision along the following lines is suggested:

Section XXX. Voluntary reporting of child sexual abuse

(1) A person, who believes or suspects that a child has been, is being or will be the subject of sexual abuse, may report that belief or suspicion to the CEO of the Department of Child Protection, the Commissioner of Police or any of their officers.

(2) A person making a report under subsection (1) shall state their reasons for forming the reported belief or suspicion.

2. That the subsection 129(2) protection be extended to cover reporters exercising the new right enacted pursuant to Recommendation 1

The insertion into s 129(1) of a new paragraph along the following lines is suggested:

Paragraph 129(1)(exxx)

(exxx) makes a report under section XXX;

3. That special provisions relating to defamation proceedings be enacted in order to: (i) cast the onus with respect to good faith under the new defence on the plaintiff; (ii) enable a defendant to obtain a declaration of falsity in an appropriate case; and (iii) penalise the use of defamation proceedings to deter good faith reporting of child sexual abuse

The insertion, after s 129, of a new section along the following lines is suggested:

Section 129XXX. Provisions relating to defamation proceedings

(1) In any proceedings for defamation, when a defence under s 129(1)(exxx) and (2) is relied upon, the defendant need not prove that he or she acted in good faith, but the onus of proof lies on the plaintiff to establish the defendant's lack of good faith in order to defeat the defence.

(2) Where defamation proceedings fail due to successful reliance by a defendant on a defence under s 129(1)(exxx) and (2), and the plaintiff proves the falsity of the defamatory imputations conveyed by the report made under s XXX, the court may make a declaration of the falsity of those imputations.

(3) A person shall not threaten or foreshadow the initiation of defamation proceedings in order to deter or dissuade a person from making a good faith report under s XXX.

Penalty: a fine of \$6000

AMENDMENTS TO THE *PUBLIC INTEREST DISCLOSURE ACT*

4. That section 5 be amended to make the Public Sector Commissioner the “one stop shop” for the initial receipt of public interest disclosures

The insertion into section 5 of provisions along the following lines is suggested:

Paragraph 5(3)(j)

(j) where the information relates to any of the matters referred to in any of the preceding paragraphs of this subsection, except for paragraph (g)⁴³ – it is made to the Commissioner.

Subsection 5(3A)

Where a disclosure is made to the Commissioner under s5(3)(j), the Commissioner shall refer the disclosure to the relevant “proper authority” and is not subject to the obligations set out in Part 2, Division 2 with respect to that disclosure.⁴⁴

ADMINISTRATIVE RECOMMENDATION

5. That the Public Sector Commissioner be asked to consider the preparation of guidelines under s 21 to facilitate the identification of the person within a public authority who has been designated to receive public interest information disclosures

⁴³ Section 5(3) provides that a disclosure of public interest information is made to a proper authority if “(g) where the information relates to a public officer... - it is made to the Commissioner or the Parliamentary Commissioner”

⁴⁴ Cf eg *Public Interest Disclosures Act 1994* s 25 – Referral of disclosures by investigating authorities; *Public Interest Disclosures Act 2002* s 27 – Referral of disclosure to State Services Commissioner, s 29B – Referral of disclosure to Integrity Commission, s 42 – Referral of public information disclosures to relevant public body for investigation