Crime Prevention Committee

COMBATING CHILD SEXUAL ASSAULT

AN INTEGRATED MODEL

Inquiry into Sexual Offences Against Children and Adults

First Report

May 1995

PARLIAMENT OF VICTORIA

CRIME PREVENTION COMMITTEE

COMBATING CHILD SEXUAL ASSAULT

AN INTEGRATED MODEL

FIRST REPORT

upon the

INQUIRY INTO SEXUAL OFFENCES AGAINST CHILDREN AND ADULTS

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CRIME PREVENTION COMMITTEE

MEMBERS

The Honourable Kenneth M. Smith, M.L.C., *(Chairman)*

Mr. Donald Kilgour, M.P., *(Deputy Chairman)*

Mr. Robert K. B. Doyle, M.P.

Mr. Andre Haermeyer, M.P.

Mr. Hurtle R. Lupton, O.A.M., J.P., M.P.

The Honourable Donato A. Nardella, M.L.C.

Mr. Gary J. Rowe, M.P.

Mr. Robert C. G. Sercombe, M.P.

Mrs. Janet T. Wilson, M.P.

Crime Prevention Committee - Membership - Motion made by leave, and question - That Mr. Sandon be discharged from attendance on the Crime Prevention Committee and that Mr. Haermeyer be appointed in his stead (Mr. Gude) - put and agreed to. Tuesday, 4th October, 1994.

CRIME PREVENTION COMMITTEE

STAFF

Mr. Alan B. Ogilvie

Director of Research & Administration

Ms. Tiffany Tyler

Office Manager - Research Officer

Ms. Lisa Casamento

Research Consultant

Ms. Lorraine Beyer

Research Consultant

FUNCTIONS OF THE CRIME PREVENTION COMMITTEE

Parliamentary Committees Act **1968**

Section 4EF.

To inquire into, consider and report to the Parliament on any proposal, matter or thing concerned with the level or causes of crime or violent behaviour, if the Committee is required or permitted so to do by or under this Act.

The Crime Prevention Committee's address is:

Level 20,
Nauru House,
80 Collins Street,
Melbourne Victoria 3000

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TERMS OF REFERENCE

The Parliamentary Crime Prevention Committee shall inquire into, consider and report to the Parliament on the 1992/93 Victoria Police Annual Report and in particular the cited increase in Rape and Sexual Assault, and shall: -

1. **Analyse the levels of rape and sexual assault as cited in the 1992/93 Victoria Police Annual Report.**

2. **Examine the causal factors of the increase in the level of rape and sexual assault as cited in the 1992/93 Victoria Police Annual Report.**

3. **Report on initiatives to reduce the level of rape and sexual assault as cited in the 1992/93 Victoria Police Annual Report.**

STATEMENT REGARDING EVIDENCE TAKEN IN PRIVATE

The Committee has taken extensive evidence "In Camera" in order to allow for full and frank discussions, and still protect individual witnesses, particularly victims of sexual assault. The disclosure and publishing of this evidence, which has been given in private, is prohibited by Section 4R (3) of the *Parliamentary Committees Act*, 1968 which states:

"A Joint Investigatory Committee shall not disclose or publish any evidence given to it in private."

The Committee wishes it known that it has received evidence in support of every issue raised and every recommendation contained within this report but is constrained to not publish evidence given in private.

PREAMBLE

This is the First Report of the Parliamentary Crime Prevention Committee's inquiry into the 1992/93 Victoria Police Annual Report and in particular "Sexual Offences Against Children and Adults" and focuses on the sexual assault of children.

Subsequent Report(s) yet to be tabled in the Parliament will address other areas of sexual assault including adult men and women.

The Committee has collected an extensive library of books, journal articles and manuals relevant to sexual offences against children and adults. A library bibliography is available on application to the Committee.

CHAIRMAN'S FOREWORD

This is the First Report resulting from the Crime Prevention Committee's inquiry into sexual offences against children and adults and deals primarily with the sexual assault of children and the systemic response to those assaults.

The Committee commenced its inquiry a little over 12 months ago and Members had only a limited background knowledge of the extent and the impact of sexual assault of both children and adults. High profile cases reported, and often dramatised, in the media provided the only public information with which community attitudes had been influenced in the past.

Investigations by the Committee included frank and open discussions with offenders who commit these abhorrent crimes. The Committee spent many hours with incarcerated sex offenders gaining an insight into the complexity of their beliefs and offending patterns. The oral, vaginal or anal penetration of infants and young

children is so repulsive that a tendency exists to disbelieve its occurrence. To reject a child's disclosure as being outrageous, far fetched and pure fiction is a defence mechanism which individuals and the community generally can adopt. It can also be exploited by offenders and their legal counsel during the legal process.

To hear factual accounts of the most obscene and perverse crimes, such as that of an offender on his way home from the hospital with his newly born daughter, masturbating at the thought of what he was going to do sexually to the child. Then regularly and intentionally penetrating the child with larger and larger objects until penile penetration was possible at the age of four. This is then followed by repetitive sexual assault till the child is eight years of age and the matter is finally brought to the notice of police. Who would believe that a father could do such a thing? Equally who would believe that a mother could actively participate in such a crime? Evidence gathered by the Committee in both Australia and other countries makes the existence of child sexual assault an unquestionable reality and one which must be addressed.

Victims and their parents have come forward individually or through representative support groups to share their experiences, trauma and shock at both the incident itself and then the legal system which brands them "irrelevant". Victims of sexual assault often perceive that for a trial to be fair to the accused, then the accused must be found not guilty. The scales of justice have weighed too long in favour of the accused, to the detriment of both the victim and the community. The Committee's recommendations redress this imbalance whilst still providing adequate protection for the rights of the accused.

Protocols of some religious organisations have received critical comment by witnesses regarding both the reporting of suspected sexual assaults and the appropriateness of internal investigation of such assaults.

Evidence has been presented before the Committee of barriers to proper investigation and in some instances a lack of co-operation between some service providers. Under the Committee's recommendations, services provided by the two lead agencies, being Health and

Community Services and Victoria Police, are united with other support agencies to develop an integrated service in combating child sexual assault and breaking down existing barriers. The integration of specialist services including police, protective advocates, health, legal and counselling services will ensure that crisis intervention, investigation, prosecution and appropriate victim support services are available, effective and accountable.

The cycle of offending must be addressed on two fronts. Firstly through education and community awareness of sexual assault and its ramifications on victims and society generally. Secondly by providing early intervention, assessment and treatment of adolescents who display deviant sexual behaviours. This may be actioned through the Children's Court, without criminal conviction, where appropriate. Ultimately it will be a combination of early intervention and public education which will reduce the incidence of sexual assault.

My life has been deeply marked by the experiences of the past 12 months as have the lives of other Committee Members and the Committee's staff. The horror stories

relayed by victims and investigators cry out for an emotional response to the problem. The diversity of witnesses including relevant Ministers, the Chief Judge of the County Court, police, health professionals, protection workers, psychologists, many victims as well as self confessed paedophiles and child molesters, has however ensured that the Committee maintain its objectivity throughout the inquiry.

I wish to express my sincere thanks to the Members of the Parliamentary Crime Prevention Committee who have, in the spirit of bipartisan support, given their time and their commitment to this most difficult inquiry.

The Committee's Director of Research and Administration, Mr. Alan Ogilvie and Office Manager, Ms. Tiffany Tyler, worked tirelessly throughout this inquiry as did the consultants employed by the Committee, Ms. Lisa Casamento and Ms. Lorraine Beyer. My deepest gratitude goes to them, for their tenacious support of child protection issues and their focused determination to improve our current system. Without

their support, dedication and hard work this report would not have been possible.

I believe that the implementation of the recommendations in this report will be a multi-faceted, integrated service to combat sexual assault of children. The commitment of Government, combined with the support of professional service providers to enhance, improve and develop a better system will result in Victoria providing the very best child protection (sexual assault) service possible. Victoria will yet again be a world leader in crime prevention and community safety.

The Honourable Ken Smith, M.L.C.
Chairman
Parliamentary Crime Prevention Committee

RECOMMENDATIONS OF THE FIRST REPORT

1. The Committee recommends that the word `significant' be defined within the *Children and Young Persons Act. 1989* to ensure appropriate investigation. *(Section 2.3.5)*

2. The Committee recommends that support services be provided to victims , regardless of whether protective concerns exist. *(Section 2.3.6)*

3. The Committee recommends that a new criminal offence: that of wilfully making a false and malicious complaint of the sexual assault of a child, be created. *(Section 2.3.10)*

4. The Committee recommends that academics and professionals be encouraged to develop models for the collection and analysis of statistical data relevant to sexual assault. *(Section 3.3.2)*

5. The Committee recommends that geographic boundaries of all government departments be better co-ordinated. *(Section 3.3.3)*

6. The Committee recommends that the criminal offence of sexual assault against a child be vigorously prosecuted. *(Section 4.2)*

7. The Committee recommends that the Minister for Community Services be designated as the Minister responsible for the co-ordination of sexual assault services for children within the State. *(Section 4.4.1)*

8. The Committee recommends that the Minister for Community Services actively promote a national strategy against sexual assault. *(Section 4.4.2)*

9. The Committee recommends that a Victorian Child Protection (Sexual Assault) Board be established.
(Section 4.5)

10. The Committee recommends that the Child Protection (Sexual Assault) Board be responsible for reviewing child protection (sexual assault) cases.
(Section 4.6)

11. The Committee recommends that the Board provide policy development advice to the Minister.
(Section 4.7)

12. The Committee recommends that the Child Protection (Sexual Assault) Board co-ordinate Sexual Assault Response Teams (SARTs). *(Section 4.8.1)*

13. The Committee recommends that the Minister for Community Services identify one metropolitan region and one country region for piloting of the Committee's recommendations which relate to the establishment of Sexual Assault Response Teams. *(Section 4.8.2)*

14. The Committee recommends that an independent evaluation of the Sexual Assault Response Team pilot project, be conducted two years after commencement. *(Section 4.9)*

15. The Committee recommends that regional Child Protection (Sexual Assault) Committees be established. *(Section 4.10)*

16. The Committee recommends that a Victim Services Co-ordinator be established within Health & Community Services. *(Section 4.11)*

17. The Committee recommends that a Pro-active Services Co-ordinator be established within Health & Community Services. *(Section 4.12)*

18. The Committee recommends that the Pro-active Services Co-ordinator liaise with the Directorate of School Education regarding school based programs aimed at reducing sexual assault. *(Section 4.12.1)*

19. The Committee recommends that an assessment be conducted by the Child Protection (Sexual Assault) Board, of the workload and funding of all State funded service providers to child sexual assault victims. *(Section 5.3)*

20. The Committee recommends that a victim services co-ordinator be appointed in each region. *(Section 5.4)*

21. The Committee recommends that the final decision to continue an investigation must rest with the regional Sexual Assault Response Team manager. *(Section 5.5)*

22. The Committee recommends that the child's parent(s) or guardian(s) should be consulted during the decision making process provided such parent(s) or guardian(s) is/are not the alleged offender(s). *(Section 5.5.1)*

23. The Committee recommends that the parent(s) or guardian(s) has/have the right to request the delay or cessation of an investigation or prosecution provided such parent(s) or guardian(s) is/are not the alleged offender(s). *(Section 5.5.2)*

24. The Committee recommends that protection workers attached to Sexual Assault Response Teams be responsible for advocacy of all child victims and be called protective advocates in order to reflect this change in focus. *(Section 5.6)*

25. The Committee recommends that the protective advocate shall represent the victim in any decision making regarding the handling of the case. *(Section 5.6.1)*

26. The Committee recommends that children should be entitled to counselling and psychological treatment irrespective of gender or age. *(Section 5.7)*

27. The Committee recommends that pre-court counselling services shall be available in each region. *(Section 5.7.2)*

28. The Committee recommends that support services including counselling be available to parent(s) or guardian(s) provided such parent(s) or guardian(s) is/are not the alleged offender(s). *(Section 5.8)*

29. The Committee recommends that the protective advocate, police investigator and resident counsellor form an assessment team to conduct initial needs assessments. *(Section 5.9)*

30. The Committee recommends that the Minister lobby the Federal Government to consider Medicare coverage for counselling and psychological services to sexual assault victims. *(Section 5.10)*

31. The Committee recommends that multilingual protective advocates and police with appropriate skills be actively encouraged to join SARTs. *(Section 5.11)*

32. The Committee recommends that protective advocates and police employed within the SART team be trained in cultural issues relevant to the ethnic demographics of their region. *(Section 5.11)*

33. The Committee Recommends that SART training include dealing with intellectually disabled clients. *(Section 5.12)*

34. The Committee recommends that a victim provident fund be established and administered by Sexual Assault Response Teams. *(Section 5.13)*

35. The Committee recommends that Sexual Assault Response Teams (SARTs) be established to provide an integrated team of experts to respond to sexual assault notifications. *(Section 7.2.1)*

36. The Committee recommends that SARTs be established in one metropolitan region and one country region as a pilot project. *(Section 7.2.2)*

37. The Committee recommends that SARTs comprise police, protective advocates, legal counsel and medical and counselling services. *(Section 7.2.3)*

38. The Committee recommends that the management of SARTs be undertaken by persons employed independently of all organisations associated with the teams. *(Section 7.2.4)*

39. The Committee recommends that SARTs be co-located. *(Section 7.2.5)*

40. The Committee recommends that SARTs have interview facilities on site. *(Section 7.2.6)*

41. The Committee recommends that all interview rooms be installed with video cameras capable of recording the entire room. *(Section 7.2.7)*

42. The Committee recommends that all interview rooms shall be installed with unobtrusive high powered microphones and audio equipment capable of detecting and recording the softest noise at any point in the room. *(Section 7.2.8)*

43. The Committee recommends that the Non-Interviewing SART member has a monitoring and advisory role, crucial to the interview process. *(Section 7.2.9)*

44. The Committee recommends that SARTs have medical examination facilities on site. *(Section 7.2.10)*

45. The Committee recommends that SART police officers be the primary investigators of sexual offences against children. *(Section 7.2.11)*

46. The Committee recommends that a specialised sexual assault investigators' course be established within Victoria Police. *(Section 7.2.12)*

47. The Committee recommends that protective advocates attached to SARTs shall be of at least SOC 2 level. *(Section 7.2.13)*

48. The Committee recommends that protective advocates attached to SARTs shall have completed a specialised course prior to commencing duty.
(Section 7.2.14)

49. The Committee recommends that specialised joint training for members of SARTs be mandatory.
(Section 7.2.15)

50. The Committee recommends that suitably qualified medical staff be accessible, to respond to medical and forensic needs of victims'. *(Section 7.2.16)*

51. The Committee recommends that formal under graduate and post graduate medical training in child sexual assault be established. *(Section 7.2.17)*

52. The Committee recommends that suitably qualified legal counsel be accessible, to respond to victim needs, advise interveners on legal matters and oversee all investigations. *(Section 7.2.18)*

53. The Committee recommends that ALL reports which involve, or are suspected of involving, sexual assault of any kind are to be notified to the SART immediately. *(Section 7.3)*

54. The Committee recommends that a well publicised central contact number be provided 24 hours a day to receive and re-direct calls from victims of sexual assault. *(Section 7.3.1)*

55. The Committee recommends that it be a formal disciplinary offence for H&CS or police to fail to immediately notify the SART of a suspected sexual assault. *(Section 7.3.2)*

56. The Committee recommends that all notifications received by police shall be recorded as a report of a criminal offence. *(Section 7.3.3)*

57. The Committee recommends that both the police investigator and protective advocate be specially trained to conduct interviews. *(Section 7.4.1)*

58. The Committee recommends that the number of interviews be limited to as few as possible. *(Section 7.4.2)*

59. The Committee recommends that there be no prescribed limitation on the length of time a SART team can devote to a case. *(Section 7.5)*

60. The Committee recommends that on notification of suspected sexual assault of a child, a SART case meeting is called and a decision on intervention options established. *(Section 7.5.1)*

61. The Committee recommends that any team member who is in disagreement with the decision of the team manager may seek a review by the regional Child Protection (Sexual Assault) Committee. *(Section 7.5.2)*

62. The Committee recommends that a review of Regional Committee decisions shall be by application to the Child Protection (Sexual Assault) Board.
(Section 7.5.3)

63. The Committee recommends that the Bureau of Crime Statistics and Research within the Department of Justice be tasked with the collection of all available data relating to prosecution and the court process. *(Section 8.1)*

64. The Committee recommends that the Crimes Act 1958, be amended to allow a period of 12 months for the analysis of samples prior to their destruction.
(Section 8.2.1)

65. The Committee recommends that the State Forensic Science Laboratory ensures that all forensic evidence, including blood samples are analysed expeditiously. *(Section 8.2.3)*

66. The Committee recommends that the Minister for Police and the Attorney General lobby for a National Sexual Offence Intelligence System. *(Section 8.2.4)*

67. The Committee recommends that section 47A of the *Crimes Act 1958*, apply to all persons, not just those having care, supervision or authority over the victim. *(Section 8.2.5)*

68. The Committee recommends that the specific consent of the Director of Public Prosecutions to prosecute a charge under section 47A not be required. *(Section 8.2.5)*

69. The Committee recommends that legislation be enacted which presumes multiple victim sexual assault cases, which are presented together, will be heard together. *(Section 8.2.6)*

70. The Committee recommends that costs against police only be awarded in sexual assault cases where there is clear evidence of malice, misconduct or incompetence. *(Section 8.2.7)*

71. The Committee recommends that only those charges for which prima facie evidence exists be laid. *(Section 8.2.8)*

72. The Committee recommends that an inquiry into the rules of evidence relating to child sexual assault cases be conducted as a matter of urgency. *(Section 8.3.1)*

73. The Committee recommends that hearings and trials involving child victims of sexual assault proceed as a matter of urgency. *(Section 8.3.2)*

74. The Committee recommends that a transcript of the child's video taped evidence be produced at the Committal hearing by the informant. *(Section 8.3.5)*

75. The Committee recommends that at trial and lower courts, where the determination of guilt is the intended outcome of proceedings, the video recorded evidence of the child is played for the jury as evidence in chief. *(Section 8.3.6)*

76. The Committee recommends that the child witness gives evidence via closed circuit television. *(Section 8.3.7)*

77. The Committee recommends that courts provide voice amplification for children when giving evidence in court. *(Section 8.3.9)*

78. The Committee recommends that a booster seat be available to a child witness when giving evidence in the court. *(Section 8.3.10)*

79. The Committee recommends that a screen be provided to prevent the child seeing the accused in court. *(Section 8.3.11)*

80. The Committee recommends that child victims and witnesses be shown the court prior to giving evidence. *(Section 8.3.12)*

81. The Committee recommends that a Child Witness Package be developed which provides information to victims and parents regarding the court process. *(Section 8.3.13)*

82. The Committee recommends that all courts provide a dedicated victim waiting room. *(Section 8.3.14)*

83. The Committee recommends that the design of future courts incorporate facilities to better meet the needs of victims. *(Section 8.3.15)*

84. The Committee recommends that the protective advocate, trained in the developmental levels of children's language, be available to assist the court. *(Section 8.3.16)*

85. The Committee recommends that a more comprehensive judicial education program be developed which addresses issues relevant to child sexual assault. *(Section 8.4)*

86. The Committee recommends that a pilot project of employing specialist prosecuting barristers be trialed. *(Section 8.5)*

87. The Committee recommends that the court order an independent psychological/psychiatric pre-sentence assessment of all convicted sex offenders. *(Section 9.3)*

88. **The Committee recommends that comprehensive guidelines for the use, preparation and confidentiality of Victim Impact Statements be established.** *(Section 9.4)*

89. **The Committee recommends that the Attorney General review penalties for sexual offences to ensure that the sexual assault of a child is regarded as seriously as the sexual assault of an adult.** *(Section 9.5)*

90. **The Committee recommends that the actual sentence dispensed for sexual penetration of children under 16 reflect the seriousness of the crime.**
(Section 9.5.1)

91. **The Committee recommends that the Serious Sex Offender Legislation be reviewed by the Parliament after 3 years.** *(Section 9.5.2)*

92. **The Committee recommends that all convicted sex offenders shall undergo assessment with a view to treatment where appropriate.** *(Section 9.6)*

93. **The Committee recommends that the custodial sex offender treatment program be further developed.** *(Section 9.6.3)*

94. **The Committee recommends that strategies be developed to improve communication, co-operation and co-ordination of services to sexual offenders.**
(Section 9.6.4)

95. The Committee recommends that all convicted sex offenders shall continue treatment at least until the completion of their parole period. *(Section 9.7.1)*

96. The Committee recommends that the Adult Parole Board shall co-ordinate and regulate post release support services for sex offenders. *(Section 9.7.1)*

97. The Committee recommends that all convicted sex offenders sentenced to a community based disposition shall undergo assessment with a view to appropriate treatment. *(Section 9.8.1)*

98. The Committee recommends that assessment and treatment programs, for sex offenders serving community based dispositions or on parole, be better co-ordinated by the Correctional Services Division. *(Section 9.8.2)*

99. The Committee recommends that increased levels of supervision of sex offenders serving community based dispositions or on parole be piloted. *(Section 9.8.3)*

100. The Committee recommends that all adjudicated adolescent sex offenders shall undergo assessment and appropriate treatment. *(Section 9.10)*

101. The Committee recommends that the Victoria Police shall not caution adolescent sex offenders.
(Section 9.10.1)

102. The Committee recommends that the *Children and Young Persons Act* 1989, specified grounds for protection be extended to include children displaying early signs of sexually offending behaviour. *(Section 9.10.2)*

103. The Committee recommends that children under protection on the grounds of displaying early signs of sexually offending behaviour shall undergo immediate assessment and appropriate treatment. *(Section 9.10.2)*

104. The Committee recommends that H&CS, Juvenile Justice shall be responsible for co-ordinating services to adolescent sex offenders. *(Section 9.10.3)*

105. The Committee recommends that all convicted adult sex offenders shall be registered with the Victorian Sex Offender Registry for life. *(Section 9.11)*

106. The Committee recommends that the Victoria Police establish and maintain the Victorian Sex Offender Registry. *(Section 9.11)*

107. That Committee recommends that the Attorney General and the Police Minister lobby for an extension of the sex offender registration program nationally.
(Section 9.11.1)

108. The Committee recommends that the Pro-active Services Co-ordinator assume responsibility for implementing and overseeing State prevention programs for sexual assault. *(Section 10.2)*

109. The Committee recommends that the Directorate of School Education review all current protective behaviours programs available for use in Victorian primary and secondary schools. *(Section 10.4)*

110. The Committee recommends that the Directorate of School Education shall accredit an appropriate comprehensive protective behaviours program which shall be compulsory in all State primary schools and encouraged in all private primary schools. *(Section 10.4.1)*

111. The Committee recommends that the Directorate of School Education shall accredit an appropriate, comprehensive protective behaviours program which shall be compulsory in all State secondary schools and be encouraged in all private secondary schools.
(Section 10.4.2)

112. The Committee recommends that all Victorian teachers undergo a professional development course prior to teaching the accredited protective behaviours program.
(Section 10.3.3)

113. The Committee recommends that schools for intellectually disabled students focus attention on teaching appropriate social, including sexual, behaviour.
(Section 10.6)

114. The Committee recommends that a multi-media campaign addressing the issue of child sexual assault be developed. *(Section 10.7)*

115. The Committee recommends that prior to a person being employed, including voluntary employment, in a position which has a duty of care or supervision over children, a criminal history check must be undertaken to determine if they are a fit and proper person.
(Section 10.8)

116. The Committee recommends that the Victoria Police be responsible for criminal history checks to determine if a prospective employee is a fit and proper person. *(Section 10.8.1)*

117. The Committee recommends that the fee incurred for the criminal history check shall be the financial responsibility of the applicant. *(Section 10.8.2)*

118. The Committee recommends that it be an offence to employ a person, in a position which has a duty of care or supervision over children, who has not passed a criminal history check by the Victoria Police. *(Section 10.8.2)*

119. The Committee recommends that where the Victoria Police deem an applicant not to be a fit and proper person, a right of appeal exist to the Administrative Appeals Tribunal. *(Section 10.8.3)*

120. The Committee recommends that Health & Community Services implement and enforce the most stringent procedures for regulating and reviewing foster parents and institutions which provide care and supervision to children. *(Section 10.9)*

121. The Committee recommends that the Attorney General review the current definition of pornography to ensure the any sexually explicit depiction of a child including computer generated images, is covered. *(Section 11.2.1)*

122. The Committee recommends that the Attorney General review penalties relating to pornography to ensure that the seriousness of the offence is reflected in the penalty, particularly in cases of commercial gain. *(Section 11.2.2)*

123. The Committee recommends that child pornography legislation be created to provide that all commercial photographic processors and similar organisations, who have knowledge of, observe, or process any photographic image, negative or slide that depicts a child in a sexually explicit way, be mandated to report the offence to the police. *(Section 11.2.4)*

124. The Committee recommends that the manufacturing, reproducing, selling or swapping of any kind of child pornography under the recommended definition be an indictable offence. *(Section 11.2.7)*

125. The Committee recommends that goods, equipment and materials being used in any way in the manufacture or duplication of child pornography be forfeited to Victoria Police upon conviction.
(Section 11.2.7)

126. The Committee recommends that it be an offence for any person to use any communication or other electronic device, instrument or implement, pornography or erotica or any other inducement, to entice or attempt to entice a child to participate in a sexual act. *(Section 11.3)*

127. The Committee recommends that existing child pornography legislation be amended to make it an offence to access or retrieve child pornography via any electronic means including bulletin boards. *(Section 11.4.2)*

128. The Committee recommends that the Attorney General lobby other Australian State and Federal Governments to support uniform laws for the regulation of bulletin boards. *(Section 11.4.3)*

129. The Committee recommends that protocols be developed within religious organisations to ensure that the SART is immediately notified of any suspected sexual assault. *(Section 11.5.1)*

130. The Committee recommends that religious organisations develop protocols to ensure evidence is not contaminated by internal investigations or inquiries. *(Section 11.5.2)*

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CHAPTER ONE

PREFACE

1.1 Introduction

The Parliamentary Crime Prevention Committee, resolved to adopt an inquiry into the Victoria Police Annual Report 1992/93 which was tabled in the Parliament on 23rd November, 1993. This was done under section 4F (1) (b) of the *Parliamentary Committees Act* 1968.

The terms of reference are as follows:

The Parliamentary Crime Prevention Committee shall inquire into, consider and report to the Parliament on the 1992/93 Victoria Police Annual Report and in particular the cited increase in Rape and Sexual Assault, and shall: -

1. **Analyse the levels of rape and sexual assault as cited in the 1992/93 Victoria Police Annual Report.**

2. **Examine the causal factors of the increase in the level of rape and sexual assault as cited in the 1992/93 Victoria Police Annual Report.**

3. **Report on initiatives to reduce the level of rape and sexual assault as cited in the 1992/93 Victoria Police Annual Report.**

1.2 Annual Report

The 1992/93 Victoria Police Annual Report provides an overview of the structure, goals and resources of the Victoria Police as well as a comprehensive financial statement. The highlights, achievements and major issues facing the Force are provided, as is some discussion of levels of crime.

It was the rise in 1992/93 of 7.97%, to a total of 786 reported rape and attempted rape and the increase in other sexual offences, combined with the observation in the report that the extent of sexual assault in the community is particularly disturbing, which provided the focus of the inquiry. Initial investigations of reported sex offences revealed that the level of reported rape had increased by 11.25% (702) in 1992/93 and it was only a decrease in reported attempted rapes -13.40% (84) which realised the figure of 7.97%. Further investigation revealed that

reports of sexual penetration of children had increased by 32.72% (288), and of incest by 195.08% (180). Reports of indecent assault were also up by 12.60% (Victoria Police, Statistical Services Division,1993).

1.3 Evidence Received

The Committee has invited evidence from all walks of life to ensure a thorough investigation is conducted. The recommendations are based on the most comprehensive evidence available both within Australia and overseas.

Professionals, service providers, offenders and victims have come forward to provide an insight into the current system and its problems. The Committee wishes to highlight the diversity of witnesses who have provided evidence at formal and informal hearings and/or written submission. Evidence was received from judges; legal counsel and court officials; police officers; health and child care professionals; psychiatrists, psychologists to name but a few. A complete list of witnesses and submissions may be found in the attached appendices.

1.3.1 Formal Evidence

The Committee has received 680 pages of evidence at Public Hearings and almost 600 pages at In Camera Hearings. A total of 100 witnesses have appeared before the Committee at formal hearings and have given

evidence. Many witnesses who are primary or secondary victims of sexual assault or the systemic response to sexual assault have given evidence in both verbal and written format. Written submissions more than treble the volume of direct evidence received.

All written submissions and evidence received at In Camera Hearings have been held to be "confidential" by the Committee and shall not be released to the public. This is for the protection of all witnesses and to ensure that secrecy provisions within legislation are not inadvertently contravened. Section 4R. (3) of the *Parliamentary Committees Act* 1968 directs that evidence given in private not be disclosed or published.

The Committee has received a further 350 pages of transcribed evidence from its visits to Sydney and Brisbane, where meetings with professionals and legislators provided information regarding past and present programs in those States. The Committee identified certain programs, procedures and practices which are considered worth while and are therefore encompassed in this report.

The Committee further recognised, during its investigations interstate, some problems inherent in certain programs. Those problems have been avoided in this report.

1.3.2 Site Visits - Victoria

The Committee visited key service areas including Melbourne Metropolitan Prison, the Brunswick Street Clinic and the Melbourne Juvenile Justice Centre. Meeting professionals providing sex offender therapy and treatment and speaking with sex offenders was beneficial in providing Members with a greater understanding of the system.

1.3.3 Overseas Visit

The Committee travelled overseas to the United States of America, Canada, the Netherlands and the United Kingdom. Over 300 professional contacts were made in formal meetings conducted in 16 cities in four countries. The personal knowledge gained and first hand experience of actually seeing what does and doesn't work has provided an important insight into the most appropriate model for managing sexual assault within this state. By conducting face to face investigations, whilst overseas, the Committee was able to test the evidence presented, thereby gaining a more accurate and informed understanding of alternative models.

Many overseas cities are providing excellent programs in different areas relating to sexual assault. Some areas provide quality victim services while others focus on

offender treatment. Investigation of sexual assault allegations and the court process also varied around the world.

The Committee was unable, during its overseas visit, to identify the ideal model for sexual assault management. Rather, it identified principles of best practice in key areas which have been amalgamated and adapted to form a significant part of this report.

The recommendations contained in this report will create an integrated and co-ordinated model based on the best principles from around the world as seen by the Committee.

1.4 Limitation of the Inquiry

The inquiry conducted by the Committee into the Victoria Police Annual Report and, more particularly, into sexual assault of children and adults has resulted in wide ranging recommendations for improvement and development of current services. The recommendations are however, limited to sexual assault matters within the Terms of Reference.

The Committee considers the recommendations will be beneficial to service areas and offence management other

than sexual assault. As an example, physical assault of children, which is also a crime, may better be handled within the same framework recommended by the Committee for sexual assault of children.

To provide a seamless management model, the Government may consider the recommendations made by the Committee are applicable to other areas of child protection such as physical assault of children.

1.4.1 First Report

This is the first Report of the Crime Prevention Committee in relation to its inquiry into the 1992/93 Victoria Police Annual Report and focuses on sexual offences against children. Further reports regarding sexual abuse of adults will be tabled in due course.

The Committee acknowledges that an overlap of issues occurs between adult and child sexual assault and that a coherent and co-ordinated approach is needed in both areas.

1.5 The Crime

Sexual assault of a child is a **crime.** It is a crime against the child and a crime against society. For too long sectors of the community have remained silent about this abhorrent offence. We have used labels which are less

offensive such as abuse, injury and suffering which minimise the criminality of sexually assaulting a child.

The enormity of the problem is exemplified in a study by Abel in 1987 which reported on acts of paedophilia committed by 453 offenders.

"These individuals had molested 67,112 victims, totalling 106,912 acts of child molestation. 54.5% of all victims were girls 13 years or younger, 81.3% of the acts were non-incest and 72.9% involved hands on touching of the child . . . " (Abel, 1989: 679).

1.6 Summary

A new integrated structure which co-ordinates victim and prosecution services at the operational level is recommended.

The following chapters provide a comprehensive model for development, which will more accurately reflect the expectations of service users and service providers and better meet the goals of government for a safer Victoria. The proposed model and associated recommendations will move Victoria to the forefront of child sexual assault prevention. The comprehensive recommendations provide the most advanced and integrated program, to deal with sexual assault of children, in the world.

CHAPTER TWO

CONTEMPORARY ISSUES

2.1 Introduction

From the beginning of the present century until 1985, police in Victoria, (essentially through the Women Police Units as they were then known), had the prime responsibility for child protection. These units had prime responsibility to intervene on behalf of children living in conditions of extreme squalor or neglect, suffering serious assaults at home or who were in situations such as homelessness where they were at risk of being exploited or victimised. The Children's Protection Society was also tasked to protect children and was funded by the State Government for this purpose.

In 1985 it was decided by the government that the Community Services Department should be jointly responsible for child protection along with police, and to this end community services child protection workers became authorised persons under the Community Welfare Services Act, 1970. This meant that, similarly to police, they could take out protection applications on behalf of children deemed to be in need of protection. The

co-existence of child protection workers and police became known as the `dual track' system. An increased budget was allocated for the establishment of a 9 - 5, week-day response service by the Community Services Department and for the establishment of Child Protection Units under the control of Regional Managers.

By 1987 it was apparent that the child protection service offered by Community Services was in an unsatisfactory state. The Ministerial Statement on Child Protection, released on 10th March, 1993 by The Hon. Michael John, Minister for Community Services stated that,

"By 1988 the performance of child based protection services had reached a crisis point; . . . (The Hon. Michael John, MP, 1993:3).

A further $2million dollars was allocated to upgrade its service. In 1988, following concerns by police and a number of deaths of child clients of Community Services, a further substantial increase in funding was allocated to set up a 24 hour Community Services child protection service.

In 1988 Mr Justice John Fogarty headed an inquiry into child protection services which recommended replacing the `dual track' with one in which Community Services

would be the lead agency in child protection and would handle all notifications made to it. Police were to retain a role in cases involving significant physical and/or sexual assault.

Three reports, relevant to the Committee's investigations, resulted from Justice Fogarty's inquiries. They were: Protective Services for Children in Victoria, An Interim Report, 1989; One Year Later: Review of the redevelopment of CSV's protective services for children in Victoria, 1990; and Protective Services for Children in Victoria, 1993.

2.2 The Fogarty Reports

Evidence from professional service providers involved in child protection and criminal investigation has raised serious concerns with the effectiveness and efficiency of the current child protection system.

The principles and philosophies upon which the current system exists are largely based on those identified and recommended by Justice John Fogarty in his review of child protection. The previous Labor government commenced implementation of Justice Fogarty's recommendations which the current government has continued.

The Honourable Michael John, Minister for Community Services stated at a public hearing that,

"The single-track system, again, was one of the major recommendations in Justice Fogarty's early reports. The single track system was taken on board by the previous government, and quite rightly so. When we came to office in October 1992 it was about half implemented; the previous government had already put it into place in some of the regions" (The Hon. Michael John, MP, Public Hearing, 23/11/1994).

Acceptance of the Fogarty Reports was based on the accurate premise that the welfare of the child should be paramount, and as this identified welfare need was addressed in his reports, it was understandable that his recommendations be adopted.

2.3 Current Service

The Committee has been made aware of an extensive array of services provided to victims of sexual assault by Health and Community Services and other service providers.

Unfortunately for some victims of sexual assault and their families, the implementation of changes did not result in

the service improvements which were predicted. The Committee has heard evidence that conflict between agencies, gaps in services, and victims falling through the net are still occurring. There is also evidence of a lack of accountability.

We have a single track reporting system with dual investigation systems; one criminal, one welfare. The Committee is concerned that the "single track" system, in its current format, may have contributed to a service culture which fails a number of primary and secondary clients.

The Committee is of the view that throwing more and more money into the existing service will never successfully address the desired outcome of reducing the incidence and minimising the impact of sexual assault against children.

The solutions lie down the path of a whole of government response which is integrated, co-ordinated and responsibly funded with appropriate accountability mechanisms which ensure service providers are accountable for their actions.

2.3.1 Double Standards

It is shown elsewhere in this document that perpetrators who offend against children are less likely to be tried for

the offences, less likely to be convicted if tried and if convicted, more likely to receive lighter sentences than if their victims had been adults.

Following the introduction of the *Children and Young Persons Act*, 1989 and the passing of primary responsibility of child abuse to a welfare agency, sexual assaults on children have tended to be viewed as welfare matters. The lead agency, which operates on a welfare model, assesses what will be done about sexual assaults reported to it.

In evidence to the Committee, it has been put that the State's handling of domestic-based assaults on adults, such as wife bashing, are now treated in a much more serious light than are domestic-based assaults on children. Over the past decade there has been a concerted effort to educate society and the judiciary that assaults on spouses are unacceptable and are crimes deserving a criminal justice response. Legislation has been enacted to support and strengthen the State's response to domestic violence as a crime, however, domestic-based assaults on children are still seen primarily as welfare issues.

2.3.2 Softening Language

Protective workers, police and the *Children and Young Persons Act* 1989 soften terms to describe assaults on

children which does not reflect the experience of the child concerned. The *Children and Young Persons Act*, 1989 uses the words physical 'injury' and sexual `abuse' instead of physical assault and sexual assault. The Child Protection Services manual speaks of `harm' and in some protocols refers to assaults as `maltreatment' (H&CS/Police Protocol, 1992). The Committee is of the view that euphemisms should not be used to describe sexual assaults against children.

The Community Policing Squad training manual describes physical `abuse' as including: beatings, shaking, burns, human bite or grab marks, pinching, fractures, head or internal injuries, poisoning or death (Community Policing Squad Work Practices Manual 1.1(Undated)). In circumstances outside the home, or where any adult received such treatment from another, this `abuse' would be considered a criminal assault and treated as such from the beginning.

2.3.3 Legislative Framework

The Committee has been advised that,

"Legislation requiring mandatory reporting was put in place for two major reasons: 1) the protection and welfare of children; 2) a public proclamation that child

sexual and physical abuse is a crime that is so heinous that for those designated, no choice is given as to whether it should or should not be reported. One result of the current indecisive reporting processes is that the decision to investigate the crime of sexual and physical assault upon a child is being left to the discretion of H&CS. This I suggest is incongruous with the spirit of the legislation . . . I highlighted earlier my contention that this process creates an impression that sexual abuse is a welfare issue rather than criminal offence" (Family Research Action Centre Inc., Written Submission, #76).

The Committee has received evidence that some H&CS workers may be making inappropriate decisions regarding notifying police of criminal offences. In cases where a worker believes there are no protective concerns for a child, but where an assault of some kind appears to have occurred, some H&CS workers have failed to notify police of the situation. The Committee believes better accountability must be built into the system to ensure that an appropriate response is made to all notifications.

The Honourable Michael John, Minister for Community Services advised the Committee that,

"Approximately half - 40 or 50 percent - of notifications require some further investigation of a substantial nature" (The Hon. Michael John, M.P., Public Hearing, 23/11/1994).

H&CS advised that in 1994 approximately 8.1% of notifications were classified as inappropriate which generally means no significant harm exists or it was a general inquiry often relating to a family court matter. Approximately 10.3% were recorded as insufficient information and therefore no further action needed. Approximately 30% resulted in no further action, although considered an appropriate notification, as there were no protective concerns or the matter was being dealt with by other agencies.

Where caregivers are able to protect the child from further harm, the notification may be recorded as either an appropriate or an inappropriate notification depending on the view of regional management.

2.3.4 Police Criticism

Evidence heard by the Committee suggests that many notifications involving allegations of sexual assault are either not reported to police at all by protective workers, or there are substantial delays in notification to police. This is despite the existence of protocols between protective workers and police which state that: `Where reasonable grounds exist for believing that a child has been sexually assaulted or where significant harm as a result of physical injury has occurred, CSV Protective Services must report the matter to Police immediately for possible criminal investigation' (H&CS/Police Protocol,

1992:4). Evidence has been received from police, that protective workers are not trained to investigate allegations of a criminal nature and therefore should not conduct even a preliminary investigation without police advice and assistance.

2.3.5 Significant Harm

Section 63 (c), (d), (e) and (f) of the *Children and Young Persons Act* 1989 uses the term `significant' to describe the degree of harm a child should suffer before being considered as a child in need of protection. A child is deemed to need protection when the child has, or is likely to suffer in the future, **significant** harm as a result of sexual abuse or physical injury and the parent or caregiver is unable or unlikely to protect the child. Thus presumably, a child who has merely suffered sexual assault may not be classified by H&CS as needing protection and can be rejected as a candidate for child protection services, even when there clearly are assaults occurring.

The qualifying term `significant' is ambiguous and may permit the means of deflecting even abused children away from protective services.

1. The Committee recommends that the word `significant' be defined within the *Children and Young Persons Act, 1989* to ensure appropriate investigation.

Any sexual assault of a child is harmful and should be considered a crime which warrants proper investigation.

2.3.6 Protecting Parents

The Committee is concerned that a sexual or physical assault of a child may occur, be reported to H&CS but, because there are no protective concerns, the matter is not looked into further by H&CS workers, and may or may not be passed on to police for their further investigation. Protective services have no legal mandate to become involved in cases of sexual or physical assault where the custodial family or carer can protect the child from further assault.

The wording of legislation in Section 63 (c) and (d) suggests that if a parent is protective of the child there is no necessity to report offences of sexual and physical assault. Protective services are only mandated to be involved with children if the child has suffered, or is likely to suffer significant harm as a result of physical injury or sexual abuse **and** the child's parents have not protected, or are unlikely to protect, the child from harm of that type.

Even where police are informed, prosecution of offenders against children is extremely difficult and consequently no

action may be taken by police. This leaves parents who are trying to protect their children feeling deserted by a system designed to support. This service gap affects many victims and parents of victims of sexual assault.

2. The Committee recommends that support services be provided to victims, regardless of whether protective concerns exist.

2.3.7 Release of Information

Of further concern is the policy of protective workers to consider notifying the family that it is presently the subject of a report, in the preliminary stages, when consideration is being made to contact other professionals regarding the matter (Community Services Victoria, 1992:66). Protective workers are advised to `continue to encourage notifiers (particularly professionals) to inform the family of the notification, as this enables the family and protective worker to immediately focus on the safety of the child rather than the identity of the notifier' (Community Services Victoria, 1992:64).

Prior warning given to an abusive family gives family members time to cover or destroy evidence, coach and/or threaten their children, get their stories consistent and indeed in some cases to move away. The policy of notifying families that they are the subject of a

notification, prior to any protective or criminal investigation, is not seen to be in the best interests of an abused child and may severely hamper an investigation of the allegations and concerns expressed by the notifier. At best such a policy places a severe strain on the family who is put in the position of anticipating an official investigation. The decision when to notify parents and offenders is to be made by the investigating team.

2.3.8 H&CS Manual

Whilst the *Children and Young Persons Act* 1989 provides the legislative framework for child protective services, it is the standards and procedures manual which is the guide followed by protective workers in their every day work.

The chapter entitled `Duty Service' in Health & Community Services' current work practices manual, Protecting Children: Standards and Procedures for Protective Workers, Community Services Victoria, December 1992, reflects some strong and clearly stated philosophies which appear to be at odds with the spirit of the Children *and Young Persons Act* 1989. Section 66 (1) of the *Children and Young Persons Act* states: `A protective intervener must, as soon as practicable after receiving a notification under section 64 (1) or (1a), investigate, or cause another protective intervener to

investigate, the subject matter of the notification in a way that will best ensure the safety and well-being of the child'.

2.3.9 Deflecting Notifications

Throughout the Duty Service chapter in the Community Services Victoria, Standards and Procedures for Protective Workers' manual, there is an underlying philosophy of `deflecting' away as many notifications as possible in order to reduce the number requiring further action.

The Protective Workers' manual advises protective workers that investigation of a notification should consist of questioning the notifier at the time of notification (Community Services Victoria, 1992:61), and, if it is thought appropriate, to make telephone calls to a limited number of other professionals, if they could easily verify information which would satisfy the protective worker that the safety and well-being of the child/young person is assured, and thus alleviate the need for a visit to the family (Community Services Victoria, 1992:66).

Particularly in the case of notifications of sexual assault of a child, this type of investigation is most inadequate. Relying on the opinions of professionals, who generally have not investigated the home or the family dynamics, or relying on the information provided by non-

professional notifiers, is not adequate to make quality decisions about the safety and well-being of a child, nor to establish the seriousness of the child's situation and level of risk.

Of concern, considering the weight given to the information provided by notifiers, is the apparent lack of independent checking on the bona fide of the professional notifier, and, in the case of non professional notifiers, the ability of the notifier to know and articulate all the relevant details. For many notifiers their report may merely be made as a result of a suspicion based on their observations and perhaps `gut feeling'.

These types of notifications, even when expressed in vague terms, need investigation to establish the facts. In many cases this one notification may be the only chance that a child has of coming to the notice of protective workers. Investigations should proceed on that basis, and not be based on judgements made over the telephone about the notifier and the information given by the notifier.

The tragic short and long-term consequences to the lives of children exposed to physical and sexual assault and other abuses are impossible to quantify. A child protection system which has the underlying philosophy of deflecting as many cases away from itself as possible, and

where a visit to the family is seen as a last resort, even where notification is substantiated, does not reflect the expectations of the community and can in no way meet the protection needs of children.

Mandated professionals are required by law only to have formed a suspicion based on reasonable belief. Protective services however, use the information from notifiers to make important decisions about the level of safety of children; the nature of the assaults and whether or not any further action beyond taking the initial notification call will occur. A much higher standard of information is required to make such decisions. Second-hand information taken over the telephone and assessed in the confines of the child protection office is neither a professional nor appropriate way in which to make informed decisions about the safety and welfare of children.

2.3.10 False Reports of Child Abuse

3. The Committee recommends that a new criminal offence: that of wilfully making a false and malicious complaint of the sexual assault of a child, be created.

To deter and hold accountable persons wilfully making false and malicious reports, for whatever reason, including `pay backs', there should be a specific offence of

false report of sexual assault. The onus of proof and subsequent penalty would be the same as a false report to police. This offence would not apply to individuals who make a notification in good faith, only those who make a malicious complaint.

2.4 Summary

The quality of decisions made by child protection services and their ability to protect children under current H&CS policies and procedures should be above reproach The Committee has however concluded that interagency co-operation has not been adequately achieved with the current model and service deficiencies by protective workers and police systems are still allowing victims to be unprotected. The answer lies within a multi-agency model which closes the gaps not only for victims, but also for offenders.

CHAPTER THREE

STATISTICS

3.1 Introduction

It has only been in the last decade that there has been an increase in the quantity and quality of research being conducted into sexual assault. A consequence of the lack of meaningful and accurate data relative to sexual assault, has been that current systems and responses to sexual assault may be based on incomplete and misleading information.

The statistics presented below give an indication only of the size of the problem of sexual assault in Victoria. It will be seen that some of the data relating to the nature of sexual offending is in fact quite different from what was previously believed. For example, it was a common community perception that the majority of sexual assault was committed by strangers, whereas more recent data reveal that this is not the case.

For the purposes of this report the Committee has used the definitions of sexual offences as found in the *Crimes Act 1958* and the *Crimes (Rape) Act* 1991.

3.2 International Research

International research involving interviews with adults appeared to confirm that females were twice to four times more likely than males to be sexually abused in childhood. Badgley et al (1984) found that 13% of Canadian men claimed to have been abused in childhood compared with 34% of women. Studies in Los Angeles (Burnam, 1995), Georgia (Seidner and Calhoun, 1984) and West Virginia (Schultz and Jones, 1983), all found that twice as many women as men claimed to have been victimised.

A 1992 national survey in the United States, which surveyed a national probability sample of adult women in a three year longitudinal study, found that one in every eight adult women had been the victim of forcible rape at sometime in their lifetime. The study found that the majority of forcible rapes occurred during childhood and adolescence. 29% of all forcible rapes occurred when the victim was less than eleven years old, while another 32% occurred between ages eleven and seventeen. Only 6% of forcible rape occurred when the victim was older than 29 years (National Victim Center, 1992:3).

The finding that a high proportion of victims of sexual assault are children is consistent with what was found in the Committee's comprehensive analysis of 1993/1994 Victoria Police official crime statistics.

Canada was one of the first countries to try and establish the true extent of sexual assault in the community. In 1984 the Canadian government conducted a national population survey which found that one third of males and one half of all females surveyed had been the victims of at least one unwanted sexual act during childhood (Badgley, 1984).

3.3 Data Collection Agencies

Statistics related to sexual offences, sexual offenders and victims of sexual assault can be found in police, court and corrections statistics and in the reports of various agencies servicing sexual assault victims and offenders. However, very little census research has been done of the experiences of Victorians and Australians of sexual assault. Because of the high level of under reporting, the number of sexual offences committed and patterns in sexual offending have been, (and still are), notoriously difficult to gauge in any complete or accurate way.

3.3.1 Reporting Rates

It is unfortunate that some organisations and institutions had no requirement that sexual assault be reported to the police. The policy was very much one of keeping it 'in

house'. Unfortunately this attitude, which has been common across the community, has had the effect of supporting sex offenders.

Treating sex offenders and sexual offending as a social or institutional problem, instead of a criminal assault, has enabled sex offenders to avoid being made to account for their criminal behaviour. This has reinforced the sex offender's belief that what they are doing is justifiable, and that their behaviour is neither criminal nor harmful to the victims. As a result it was, and still is, very easy for sex offenders to continue their sexual offending virtually unchallenged.

Many institutions and organisations are now requiring employees to report allegations of sexual abuse to police.

In the last decade, the rate of reporting of sexual offences to police has increased considerably, although the Australian Bureau of Statistics study, Crime and Safety, Victoria, April 1994, showed that only 12% of persons who had been sexually assaulted in the last twelve months had reported it to police. In the previous period, April, 1993, the percentage of sexual assault victims reporting the assault to police was 33% (Australian Bureau of Statistics, 1994:7). (Note though that these proportions have a relative standard error greater than 50% and therefore are not very reliable).

3.3.2 Data Shortcomings

4. The Committee recommends that academics and professionals be encouraged to develop models for the collection and analysis of statistical data relevant to sexual assault.

Statistical data related to sexual offending exists, but it is fragmented, incomplete, and un-co-ordinated, making it extremely difficult to build up a complete picture. Shortcomings in the data available also make it impossible to gauge whether or not present responses of the criminal justice system, health, community services and other relevant agencies, are in fact working in an efficient, responsive and co-ordinated manner to meet the expectations and needs of the government, and the community, of which sexual assault victims make up a significant proportion.

Tracking the progress and outcome of any one sexual assault case involves a laborious search through several agencies to try and trace what occurred following notification. Consequently gaps in the system, related either to the needs of the people involved or problems within the system, are very difficult to isolate and define.

3.3.3 Boundary Changes

5. The Committee recommends that geographic boundaries of all government departments be better co-ordinated.

A key problem area which has been identified on numerous occasions over many years is the distinctly, different geographical boundaries used by various departments including, Police, H&CS, Education, Courts, Australian Bureau of Statistics, Municipal and many others. The effective collection of meaningful statistics will only occur when geographic boundaries are more closely aligned.

The recent change to local government boundaries has provided an ideal opportunity for all government departments to review their boundaries to ensure better co-ordination There may be inherent difficulties in having identical boundaries but it is the view of the Committee that a significant number of problems can be overcome.

3.4 Crime Statistics

3.4.1 Victoria Police

Official Victoria Police statistics show that the total number of reported `Major Crimes Against People'

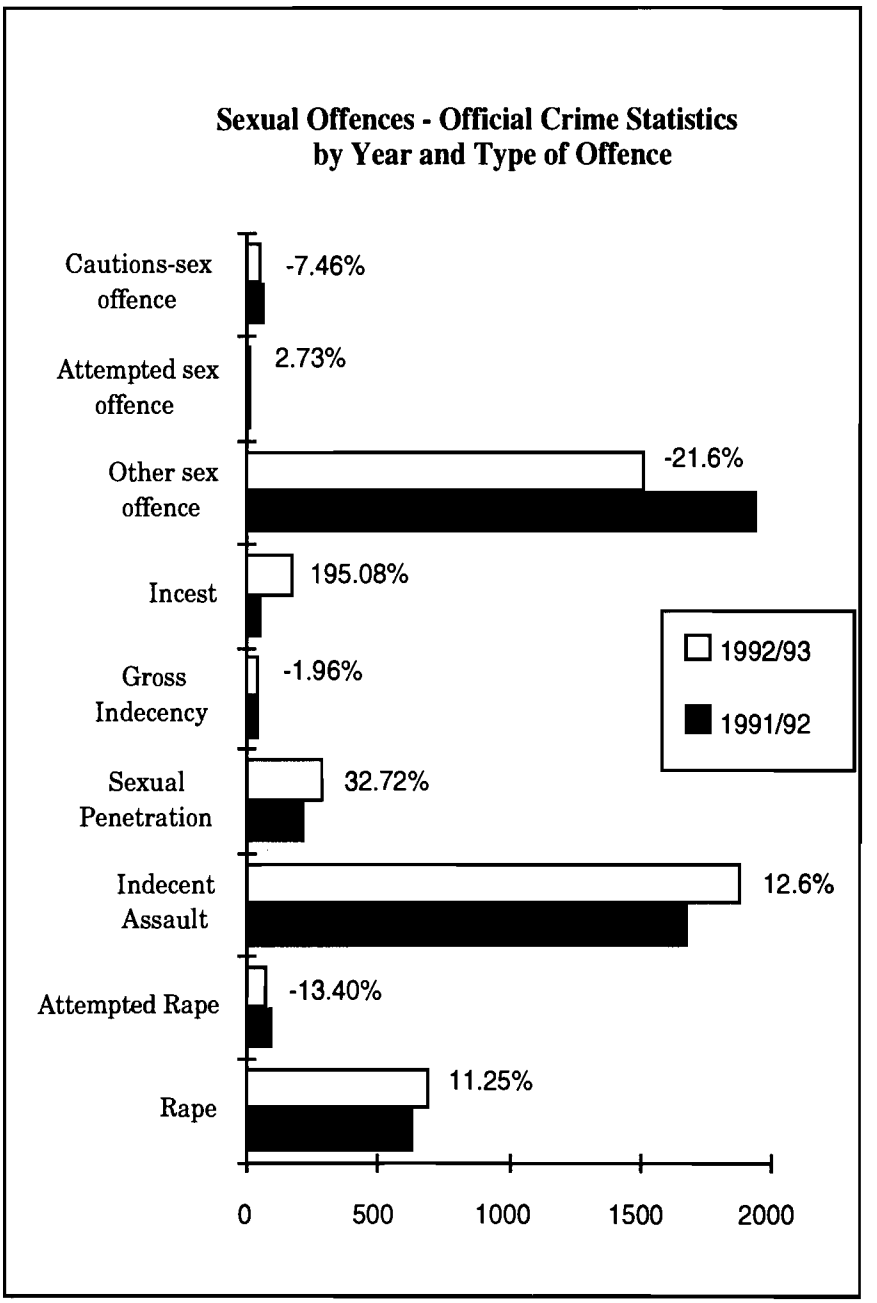
increased in the period 1992/93, whilst reported 'Major Property Crimes' decreased overall (Victorian Bureau of Crime Statistics and Research, 1993:1). This trend was continued in the 1993/94 crime rates.

There has been a consistent rise in reported sex offences, including rape. In 1992/93, reports of indecent assault rose by 12.6% on the previous year, sexual penetration of a child under ten years rose by 32.7%, reports of incest rose by 195.1% and attempted sex offences rose by 72.7%. Reductions occurred in reports of gross indecency, down 2%, `other' sex offences, down 21.6% and `cautions sex offences', down 7.5%. The table below gives a summary of Victoria Police sex offence statistics for 1991/92, 1992/93:

TABLE 1: SEXUAL OFFENCES - OFFICIAL CRIME STATISTICS BY YEAR AND TYPE OF OFFENCE

Type of Offence	1991/92	1992/93	% Change
Rape	631	702	11.25
Attempted rape	97	84	-13.40
Indecent Assault	1,675	1,886	12.60
Sexual Penetration	217	288	32.72
Gross Indecency	51	50	- 1.96
Incest	61	180	195.08
Other sex offences	1,944	1,524	-21.60
Attempted sex off.	11	19	72.73
Cautions - sex off.	67	62	-7.46
Total (victims):	**4,754**	**4,795**	

Source: Victoria Police, Official Crime Statistics 1992/93 Press Release



Source: Victoria Police Crime Statistics, 1992/93

3.4.2 Comparability of Data

Victoria Police statistics for rape and sexual offences for the year 1993/94 are not easily able to be compared with previous years due to a change in recording method. For the first time, rape and other sex offences are being counted as the number of principal victims for each separate occurrence of the offence (Victoria Police, Statistical Services Division, 1994). This brings it into line with the way other offences are counted. For example, a victim alleging rape on ten occasions by a relative over a three month period would previously have been recorded as one rape offence. In the 1993/94 crime statistics this is now counted as ten rape offences.

The 1993/94 crime statistics show that for every victim there is an average of approximately 1.8 offences committed. (Victoria Police, Official Crime Statistics 1993/94 Press Release).

The new counting procedure has had the effect of making sexual assault figures much more volatile than before. For example, a police district may record one sex offence during a one month period and have twenty sex offences recorded in the next month because a victim has come forward and reported twenty offences which occurred ten years ago over a five year period. Caution therefore needs to be exercised when drawing conclusions or when making comparisons.

3.4.3 Victims of Sexual Offences

The new computer Law Enforcement Assistance Package (L.E.A.P.) introduced by Victoria Police means that more detailed analysis can now be carried out on reported crime. Reporting and recording methods associated with L.E.A.P. have also enhanced the consistency and reliability of the information provided by all areas of Victoria Police.

A pattern in sexual offending in Victoria, which has been revealed by the new analysis system, and which is of considerable concern, is that a large proportion of the victims of rape and a majority of victims of sexual assault, are children. Of the reported total of 898 rape victims 31% (281) were aged under 17 years. Of the total 4,141 sexual assault victims, other than rape, 62.4% (2,583) were aged under 17 years. 16% (144) of all rape victims were aged under 14 years, whilst almost one out of every two sexual assaults were committed on victims aged under 14 years (44% or 1,817 victims). (Victoria Police, Official Crime Statistics 1993/94 Press Release. Table 3.2.1).

3.4.4 Community Policing Squad Statistics

As part of the Crime Prevention Committee's Inquiry, it analysed and recorded every Sexual Offence reported and subsequently recorded on a Case Entry File at every Community Policing Squad Office in Victoria for the 1992/1993 financial year. A full statistical report tabulating the information gathered through this exercise may be

released by the Committee at a later date, however the following information was gathered.

TABLE 2: Community Policing Squad Case Book Entries - 1992/93

	Age of Victim		
Gender	**Under 5**	**5 to 10**	**11-16**
Female	368	768	841
Male	119	228	157
Unknown	4	17	12
Total	**491**	**1013**	**1010**

Source: Community Policing Squad Case Book Entries 1992/93, Victoria Police (Gathered and calculated by the Crime Prevention Committee).

In the 1992/1993 financial year there were 3561 sexual offences reported to Community Policing Squads, of which 70.6% or 2514 involved victims aged 16 or under.

As this table shows, the majority of those reported child sexual assault victims which the system must deal with are female with the highest number being aged between 11 and 16. Fewer child victims are males, approximately 25.5%, and most male victims are younger, aged between 5 and 10. Of the cases that are reported to authorities, the victims of incest are about 80 percent female and 20 percent male (Parker, 1993:35).

The assumption that child sexual abuse is a problem affecting girls only has led researchers and publishers to concentrate on issues relating to female victims.

As figures such as these show, boys too are sexually abused and some recent writers, such as Hunter (1990), have suggested that the sexual abuse of boys is grossly under-reported and under-recognised. He points to the fact that, even when therapists ask adult clients about 'sexual abuse', those who were victimised seldom report it. This is not because of distrust or dishonesty but the fact that males tend to have a definition of abuse 'which does not include what happened to them'.

In Canada, Dube and Herbert (1988) showed that despite high levels of violence and emotional damage, two thirds of 511 male victims denied that their experiences constituted abuse.

Of the 2,514 complaints involving child victims, 389 were cases of Incest, 526 were cases of Sexual Penetration and 1416 were indecent assaults, the remainder were other types of sexual offences.

The other major variable is the offender's relationship to the victim. In 31.09% of reported cases the offender was the child victim's parent or step parent and in another 17.9% of cases the offender was another relative. 34.17% of offences reported were committed by a family friend or acquaintance and 6.77 % were committed by a person in a position of authority to the child, for example a teacher, religious leader or sports coach.

TABLE 3: Victim/Offender Relationship

Offender Type	Under 5	5 to 10	10-16
Parent/ Step P.	190	330	259
Other Relative	81	225	143
Auth Relation.	25	52	68
Aquaint/Fr.	157	330	372
Stranger	14	37	93
Other/Unknown	24	39	75
Total	**491**	**1013**	**1010**

Source: Community Policing Squad Case Book Entries 1992/93, Victoria Police (Gathered and calculated by the Crime Prevention Committee).

In only 6.73 % of cases was the offender a stranger, yet it is strangers which most guardians warn their children about. These statistics appear representative of the general trend in child sexual assaults - the vast majority of children are offended against by someone close to them, often their parent or another relative. This means that the assault represents an enormous betrayal of personal trust. Most offences occur in the victim's or the offender's home.

Less than 10% of offences against children are reported on the same day. Almost 50% of offences are reported 1 month or longer after the date of the offence by which time it is extremely difficult to have a child particularise the date and other details of the offences. Medical and

forensic evidence is virtually non-existent. In 30.94 % of reports there was no record of the date of the offence again reinforcing the difficulty children have in particularising the offence.

3.4.5 Under Recording by Police

Police crime statistics are derived from details contained in crime reports submitted by police members. Crime reports are submitted by police for offences either reported to or detected by police, and are submitted when police are satisfied an offence has occurred. Some reports made to police may not be officially recorded on a crime report. An example of this is where a mother reports to police that her child is displaying `sexualised' behaviour and suspects the child may be being sexually assaulted. If the child says nothing, there is no offender known and there is only a suspicion by the mother, based on the child's behaviour, there would be no offence disclosed, and therefore no crime report would be submitted.

Other reports made to police but not recorded may be more contentious.

If a complainant attends at a police station to report a crime, the attending police member is required to record the reported crime, but evidence before the Committee indicates that this is not always done. This is a cause for

concern. If a police member chooses not to accept a complainant's statement, a record of the allegation is not necessarily made at all. A witness before the Committee stated,

"When a complainant (victim) attends a police station to report a crime the attending police member has a discretionary power as to whether or not to accept the complainant's version of the alleged crime. If the police member chooses to not accept the complainants version, a record of the allegation is not necessarily made"(Family Research Action Centre Inc., Written Submission, #76).

The Committee is of the view that police should not have a discretion to dismiss a report of sexual assault at the initial stage of reporting, and proper accountability mechanisms should be in place to ensure that every report of sexual assault is recorded in crime statistics.

Crimes counted in the official statistics of Victoria Police relate to crimes which are reported to police, or which are detected by police and for which a crime report is submitted. A comprehensive analysis of sexual offences reported to Community Policing Squads has revealed that a significant number of sexual offences reported to squads are not subsequently included in official police statistics, because no crime report was submitted. How many reports of sexual offences were made to other sections of the police and not officially recorded is impossible to establish. It may be that enquiries were made into the

report, but for a variety of reasons, such as the child was too young to be a credible witness, the report was not put on a L.E.A.P. crime report and therefore did not become part of the official crime statistics.

As can be seen, not only is there a problem with under-reporting of sexual offences by victims, but there is also a problem of under recording by police of sex offences reported to them.

3.4.6 Rate Changes

More research is needed to establish why reporting rates of sex offences are increasing. It appears that the rise may be due to a combination of factors including: the availability of crimes compensation to victims; higher public profile being given to issues surrounding sexual offending through publicity and public debate; a greater number of agencies now available in the community to support victims of sexual assault; greater number of `old' sexual assaults and rapes being reported; and active encouragement of victims to report sexual assaults through police phone-in campaigns, such as Operation Pegasus and Operation Paradox.

Greater willingness to report sexual offences has probably contributed significantly to the rise in figures. Supporting this contention is the fact that the number of cases where the offender was known to the victim has increased at a much greater rate than the number of stranger rapes.

This trend is significant because reporting rates have traditionally been much lower where the offender and victim have been known to each other (Victorian Bureau of Crime Statistics and Research, 1992:3).

In 1991/92, 78%, and in 1992/93, 91% of all sex offence cases involved victims and offenders who knew one another prior to the offence (Victorian Bureau of Crime Statistics and Research, 1993: Bulletin No.3.).

The proportion of sexual offences being reported to police more than three months after their occurrence, has continued to rise. Over 50% of all rape and sex offences reported in the 1993/94 fiscal year actually occurred in previous financial years (5016 out of a total 9571 sexual offences) (Victoria Police, 1994:2).

The Victorian Bureau of Crime Statistics and Research also concluded that there were significantly more `old' rapes being reported than previously and that this had contributed to the inflation of sexual assault figures (Bureau of Crime Statistics and Research, 1993:4).

3.5 Court Statistics

3.5.1 Children's Court

In the calendar year 1993, 6,551 children and young persons appeared before the Children's Court charged

with a criminal offence. In 30 cases the principal offence was recorded as a sex offence and in all these cases the child sex offender was male. Five were aged 12 and 13 years at the time of final hearing, twelve were aged 14 and 15 years, and thirteen were aged 16 and 17 years. Only three of the child offenders were incarcerated for their sex offence.

Dispositions are shown below:

For three, or 10% of sex offenders, a conviction was recorded against the child or young person and a term of incarceration in a residential or training centre imposed. These were for two rapes and an indecent assault case.

For eight, or 27% of sex offenders, the disposition was probation or supervision with or without a conviction being recorded. (Whether a conviction was recorded or not was not stated). These were six cases of indecent assault, one aggravated indecent assault, one sexual penetration of a child under ten years and one incest case.

For one, or 3% of offenders, a fine was imposed, with or without a conviction.

For eighteen, or 60% of offenders, no conviction was recorded. Seventeen cases were dismissed and one

offender was placed on a bond and no conviction recorded. These were for nine indecent assaults, seven cases of sexual penetration of a child under ten years, one incest, and one case of wilful and obscene exposure (Children's Court Statistics, 1993).

3.5.2 Police Cautions

In the 1993/94 financial year, official Victoria Police statistics show that fifty-five juveniles received an official police caution for sexual assault offences (excluding rape), rather than being taken to court to answer the charges. No adult offenders were cautioned for any sex offences. (Victoria Police, 1994 -Draft copy).

3.5.3 Director of Public Prosecutions

Of the total number of sexual offence cases received at the office of the Director of Public Prosecutions, approximately half proceed to trial at the Melbourne County Court. It appears that, whilst the number of cases of sexual offences, other than rape, received by the Director of Public Prosecutions has risen steadily over a three year period, the proportion of those received going to trial at the Melbourne County Court has steadily reduced.
See Table 4.

Information about numbers of cases going to trial in Circuit County Courts is required to complete the comparison. The DPP states that they do not have the relevant figures to say how many sexual assault trials were held in Circuit County Courts.

TABLE 4: NUMBER OF `OTHER SEX OFFENCE' CASES RECEIVED BY THE DPP AND PROCEEDING TO TRIAL AT THE MELBOURNE COUNTY COURT (ONLY) , BY YEAR

	`Other sex offences' received	Cases to trial (Melb. County) Court	Proportion
1991/92	128	101	78.9%
1992/93	176	111	63.1
1993/94	205	116	56.6%

Source: Department of Public Prosecutions, 1994

3.5.4 Magistrates' Courts

Magistrates' Courts in Victoria heard a total of 338,639 charges in the calendar year 1993 (Sentencing Statistics, Magistrates' Courts, 1993:4.63). 3,052 of these were sex offences.

Types of sex offences heard at Magistrates' Courts, and dispositions are summarised below:

TABLE 5: MAGISTRATES' COURTS DISPOSITIONS FOR TOTAL SEX OFFENCES, 1993

Offence	Rape	Ind Ass.	Sex Pen	Incest	Other	Total	%
Dismissed	100	10		1	5	116	3.8
Struck out	155	1,085	475	43	95	1,853	60.7
Dispositions*							
Imprison.	-	115	28	-	2	145	4.7
YTC	-	1	1	1	1	1	1
Mix Imp & Susp	-	54	19	-	2	75	2.5
Suspend.	-	104	38	-	1	143	4.7
ICO	-	14	27	-	-	41	1.3
UCW	-	163	68	-	9	240	7.9
CCO	-	33	8	-	-	41	1.3
MIS	-	10	4	-	-	14	.5
Fine	-	122	17	-	1	140	4.6
Drug/alcoh	-	5	-	-	-	5	2
ADU/Bond	-	87	148	-	2	237	7.8
Conv&Dis	-	1	-	-	-	1	.1
Total:	155	1894	842	44	117	3,052	100.2**

* Dispositions are listed in order of severity, from most severe to least severe penalty

** Total percentage does not add up to 100% due to rounding errors

Note: The above table shows number of offences, not offenders. One offender may be charged with more than one offence

Source: Sentencing Statistics, Magistrates' Courts, 1993

LIST OF ABBREVIATIONS:

Imprison.	Imprisonment
YTC	Youth Training Centre
Mix Imp&Susp.	Mixed imprisonment and suspended sentences
Suspend.	Suspended Sentence of Imprisonment
ICO	Intensive Correction Order
UCW	Community Based Order: Unpaid Community Work
CCO	Community Based Order: Community Corrections Officer
MIS	Community-Based Order: other program conditions
Fine	Fine
Drug/alcoh	Offenders shall submit to testing for alcohol or drug use
ADU/Bond	Adjourned Undertakings
Conv&Dis	Convicted and Discharged

Of the 3,052 sex offence charges brought before the Magistrates' Courts:

64.5% (1,969) were dismissed or struck out;
7.2% (221 charges) resulted in incarceration;
4.7% (143 charges) resulted in a suspended sentence of imprisonment;
11% (336 charges) resulted in a community based order of some type;
4.6% (140 charges) resulted in a fine;
7.8% (237 charges) resulted in dispositions of adjourned undertakings;
2% (5 charges) resulted in the offender being required to submit to testing for alcohol or drug use; and
.1% (1 charge) resulted in a disposition of conviction and discharge.

(Sentencing Statistics, Magistrates' Court, 1993).

3.5.5 Higher Criminal Courts

Sentencing statistics for Higher Criminal Courts, show that the number and proportion of sex offenders dealt with by the higher courts has steadily increased over the four year period 1990 to 1993. As can be seen in table 6, the proportion of sex offence trials has doubled from 8.9% of all offenders tried in higher courts in 1990, to 17.2% of all offenders tried in higher courts in 1993. Whilst the number of sex offenders going to trial in higher courts has increased, the overall number of offenders dealt with in the higher courts has decreased, and has therefore affected the proportions (Courts and Tribunals Services, 1994).

Chief Judge Waldron of the County Court advised the Committee that,

"First, the overall number of indictable matters dealt with by the Court has fallen steadily over the four year period in question. There are a number of causes for that phenomenon. First, with the increase in the Magistrates' Court criminal jurisdiction, operative from 1 September 1990, a greater proportion of less serious indictable matters have progressively been dealt with summarily in the Magistrates' Court. Secondly, since late 1992, from which time first D.P.P. Solicitors and later, Legal Aid Commission solicitors have been involved in most committals at the Melbourne Magistrates Court, the process of less serious indictable matters being identified and dealt with summarily in the Magistrates' Court has

been accentuated. As a result, the proportion of more serious, "heavier" and therefore longer, cases being dealt with by the County Court has risen. Thirdly, over more recent years with the exception of an occasional plea of guilty, all indictable matters within the concurrent jurisdiction of the Supreme Court and County Courts have been dealt with by the County Court. This again has caused the incidence of "heavy", frequently lengthy, criminal trials dealt with by the County Court to rise. Indeed, virtually all lengthy criminal trials (some of recent times well exceeding a year in duration) are now dealt with by the County Court" (Chief Judge Waldron, 28/11/94).

TABLE 6: NUMBER OF SEX OFFENDERS AND PROPORTION OF ALL OFFENDERS* DEALT WITH BY VICTORIAN HIGHER CRIMINAL COURTS, BY YEAR

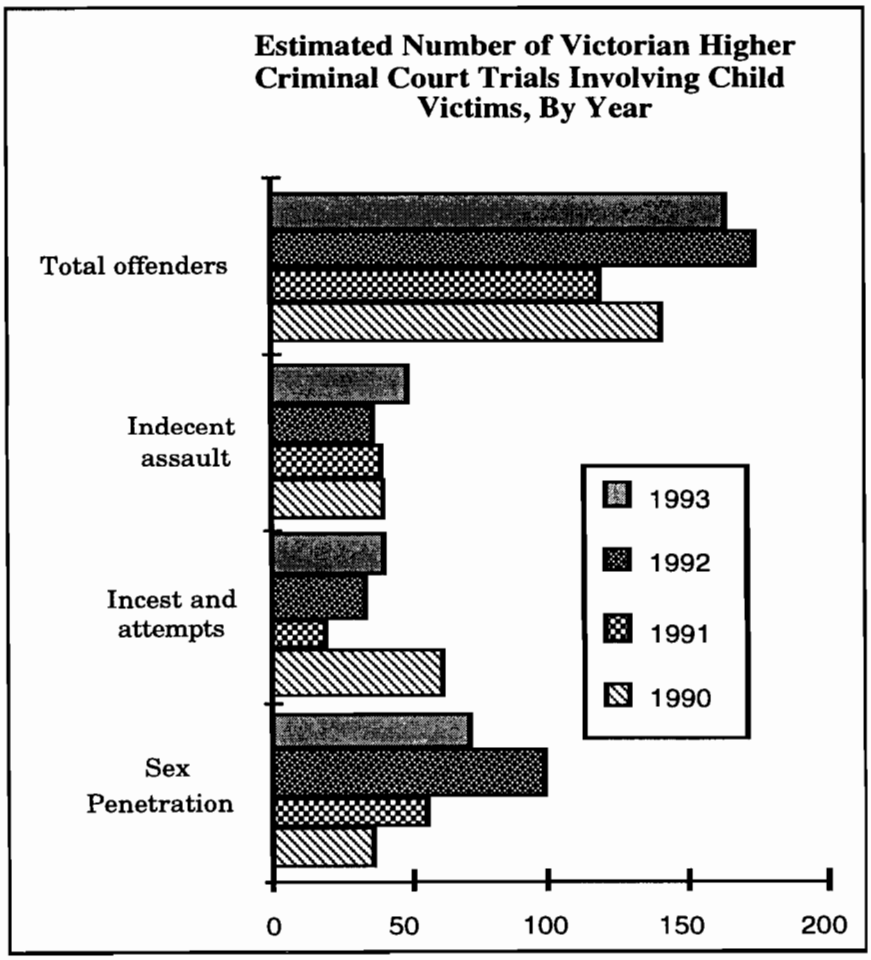
	Number of Sex Offenders	Proportion of all Offenders	Total Number of all Offenders
1990	160	8.9%	1796
1991	169	10.7%	1574
1992	234	16.2%	1442
1993	234	17.2%	1359

* These numbers are based on State DPP cases only and do not include Commonwealth DPP cases.

Source: Sentencing statistics, Higher Criminal Courts, 1993

There has been a small overall increase in the number of sex offenders going to trial in higher courts where the

victims have been children. (Sometimes more than one child victim in each trial). As can be seen in table 7 below, greatest increase in numbers of trials involving offences against children has been where the principal offence was sexual penetration of a child under ten years. Where the principal offence was indecent assault the numbers have remained virtually static over the four year period.



Source: Chief Judge Waldron, 1994

TABLE 7: ESTIMATED NUMBER OF VICTORIAN HIGHER CRIMINAL COURT TRIALS INVOLVING CHILD VICTIMS, BY YEAR

Principal Offence	Sex Penetration	Incest and attempts	Indecent assault	Total offenders
1990	38	61	44	143
1991	58	20	41	119
1992	101	35	38	174
1993	72	43	49	164

Source: Chief Judge Waldron, 1994

A total of 1,867 sex offences were heard at Higher Courts in 1993, with some defendants often having more than one offence to answer. Of these offences, 13.2% (246) were of rape or attempted rape, 17.7% (331) were sexual penetration offences, 22.4% (419) were offences of incest, 41.7% (779) were offences of indecent assault and 5% (92) consisted of other types of sexual offences (Sentencing Statistics, Higher Criminal Courts, 1993:78-79). As can be seen in Table 8. below, for all sex offences except rape, where the conviction rate was 56.9%, conviction rates were around 85%.

TABLE 8: RESULT OF HEARINGS FOR SEX OFFENCES HEARD IN HIGHER CRIMINAL COURTS, VICTORIA, 1993

	Rape		Sexual Penetration		Incest		Indecent Assault		Other	
	No.	%	No.	%	No.	%	No.	%	No.	%
*Convict	140	56.9	285	86.1	363	86.6	663	85.1	74	80.4
**Acquit	106	43.1	46	13.9	56	13.4	116	14.9	18	19.6
Total:	246	100	331	100	419	100	419	100	92	100

* Convicted includes guilty pleas and findings of insanity.
** Acquitted includes offences quashed, no evidence led, nolle and `other'.

Source: Sentencing Statistics, Higher Criminal Courts, 1993.

The high conviction rates for sex offences before Higher Courts is perhaps not surprising given that the majority of prosecutions which are successful result from a guilty plea. For example over 94% of successful prosecutions for sexual penetration of a child under 10 years, were pleas of guilty. Only 37.5% of charges of sexual penetration of a child under 10, where the accused did not plead guilty, resulted in a conviction (Sentencing Statistics, Higher Criminal Courts, 1993:78-79). There is also a variety of assessment processes in place which ensure that the standard of evidence is high.

Following a Committal Hearing, a transcript of the evidence is examined in detail by a Prosecutor for the Queen who will decide what, if any, charges are presented by the State. These prosecutors overturn, modify and

amend the decision of the Magistrate where considered appropriate. The matter is then listed as a case for trial in the County or Supreme Court. If the case has survived these assessment processes to the stage of being presented at a Higher Court, it can be assumed to be a very strong case against the accused.

Sentencing statistics show that there has been a steady increase in average effective/head sentence in the four year period 1990 to 1993. As can be seen in the table below, average length of sentence for rape and incest has almost doubled over the four year period. However, average length of prison sentence for persons convicted of sexual penetration of a child, has increased by only approximately two years (Courts and Tribunals Services, 1984.)

TABLE 9: AVERAGE TOTAL EFFECTIVE/HEAD SENTENCE (IN YEARS) GIVEN AT VICTORIAN HIGHER CRIMINAL COURTS FOR RAPE, SEX PENETRATION AND INCEST, BY YEAR

Principal Offence:	Rape	Sex Pen	Incest
1990	4.2	4.6	4.4
1991	4.4	4.9	5.8
1992**	4.8	4.7	4.1
1993**	5.5	4.4	5.4

Note Sentences exclude Youth Training Centre and suspended sentences.

** Sentences imposed in 1990 and 1991 were subject to remissions which were automatically allowed at the commencement of the terms of imprisonment. Remissions effectively reduced the sentence by one third. In order to accurately compare post 1992 sentences with those imposed prior to that date, sentences imposed in 1992 and 1993 should be adjusted by adding a further one half to the sentence.

Source: Courts and Tribunals Services, 1995

3.6 Correctional Statistics

3.6.1 Background

As at 30 June, 1993, there were three hundred and thirty eight (338) persons in prison, either under sentence or awaiting sentence, where their principal offence was a sex offence. Statistics list prisoners by principal offence, so where prisoners have charges of serious assaults with sexual offences, or homicide with sexual offences, they are not included in the figures.

Note also that prisoner numbers fluctuate daily as sentences are finished and others started. Of the 338 rape and sexual assault prisoners, 335 (99%) were male.

3.6.2 Sex Offenders

Sex offenders serving prison sentences make up approximately 15% of the total prison population at any

given time. As at 30 June, 1993, the total number of prisoners in the state of Victoria was 2,272.

In the 1992/93 financial year, three hundred and twenty eight (328) sex offenders served prison sentences. 66.8% of the sentences were for periods of one year or less, 21% were for periods of two to five years and 12.2% of sentences were for periods of six years or more. In the following year, 1993/94, two hundred and fifty one (251) sex offenders served prison sentences. Proportion of length of imprisonment were similar to the previous year i.e. 72% were for periods of one year or less, 16.7% were for periods of two to five years and 11.1% of sentences were for periods of six years or more (Correctional Services Division, 1994).

Approximately 99% of sex offence prisoners had prior convictions for either sexual or other offences. Only one prisoner in each of the 1992/93 and 1993/94 years had no prior criminal history before being imprisoned. Approximately 38% of sex offence prisoners had between one and five prior convictions, approximately 55% had between six and fifty prior convictions and approximately 6% had more than fifty prior convictions. The number of prior convictions for each imprisoned sex offender ranged from none to two hundred and twelve prior convictions. In 1992/93, nineteen sexual offence prisoners had more than fifty prior convictions, and in 1993/94, fifteen such prisoners had more than fifty prior convictions.

3.6.3 Sex Offender Characteristics

Characteristics of sex offenders imprisoned in 1992/3 and 1993/4 were similar in both years. The majority of imprisoned adult sex offenders in both years had only partly completed secondary school, (86% and 79% respectively). Approximately 33% were married or living in a defacto relationship, 25% were divorced or separated, and 40% had never been married and were single. Approximately 2% were widowed or had unknown marital status.

Approximately one in four sexual offenders sentenced to imprisonment in 1992/3 and 1993/4 were employed, two out of four were unemployed. The remainder were pensioners and students. Approximately one in five sex offence prisoners were categorised as users of drugs. 1.5% (5 prisoners) were classified as being intellectually disabled and registered with Health and Community Services.

3.6.4 Parole

In 1992/93, 32 sex offenders received parole. This is approximately 10% of the total prison sex offender population for that year (328). In 1993/94, 58 sex offenders received parole. This was approximately 23% of the total prison sex offender population for that year (251) (Correctional Services Division, 1994).

3.6.5 Community Based Orders

In 1992/3, in addition to sex offenders serving prison sentences, a further 197 convicted sex offenders were sentenced to community based orders. Twenty five of these offenders (12%) were subsequently detected and charged with breaching the conditions of their orders. Twelve of the breaches involved the commission of further offences. In 1993/4, 175 sex offenders were given orders. Twelve, (7%) were subsequently detected and charged with breaching the conditions of their orders. Six of the breaches involved the commission of further offences (Correctional Services Division, 1994).

Note: in the data provided some offenders were listed more than once, these have been counted as one offender, rather than two.

In 1993/94, there was a large increase in the number of orders made, 16,154 in 1993/94, compared with only 9,761 in 1992/93. 10% of orders in 1992/93 and 4.3% of orders in 1993/94 were parole and pre release orders, therefore the large increase was due to an increase in community work/community based orders, rather than an increase in parole and pre release orders.

Approximately three out of four sex offenders on community based orders were aged over 25 years. Approximately one quarter of adult sex offenders on community based orders were aged between 18 and 25 years.

TABLE 10: AGE OF SEXUAL OFFENDERS ON COMMUNITY BASED ORDERS, BY YEAR

Age	18 -25		26-35		36-45		46-55		56 & over		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
1992/93	51	26	51	26	53	27	26	13	16	8	197	100
1993/94	42	24	58	33	36	20	25	14	14	8	175	99

Source: Department of Corrections, 1994

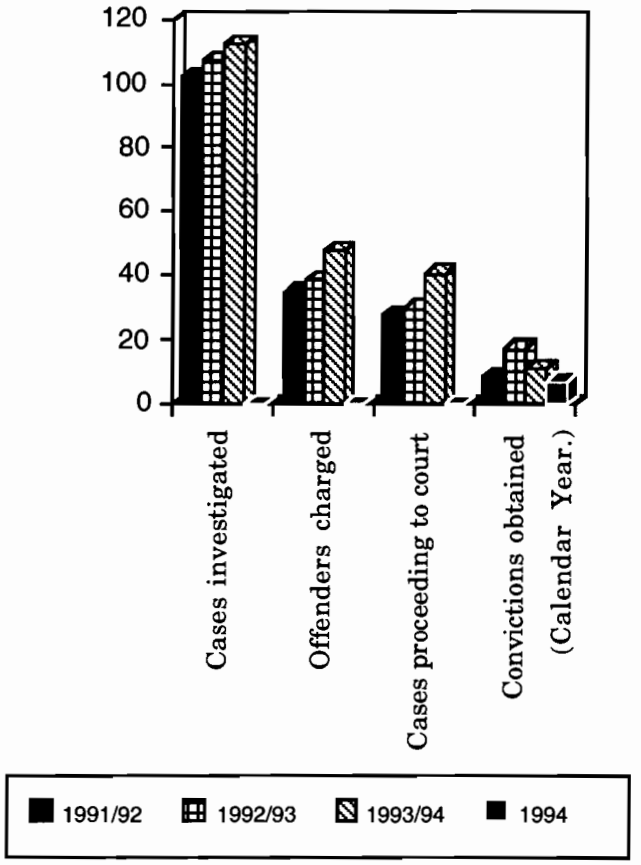
3.7 General

3.7.1 Child Exploitation Unit

Some indication of the difficulties in getting sex offenders to court to face charges are revealed in the statistics provided by the Child Exploitation Unit of the Victoria Police. The Child Exploitation Unit investigates cases involving paedophiles where there are usually multiple child victims. Their statistics show that in 1993/94, out of 112 separate cases investigated, a total of 47 offenders were charged and only 40 proceeded to court. In 1992/93, of 107 cases investigated, 38 offenders were charged and only 29 cases proceeded to court (Victoria Police, Child Exploitation Unit, 1994).

Convictions of paedophiles are counted by the year in which they were handed down. It is apparent that the number of convictions obtained is very low compared with the number of offenders charged. As can be seen in the table below, between one third and one half of cases proceeding to court appear to have led to a conviction.

Victoria Police Child Exploitation Unit: Cases Investigated and Offenders Prosecuted, By Year



Source: Victoria Police, 1994

Note: 1994 is only a 6 month period.

TABLE 11: VICTORIA POLICE, CHILD EXPLOITATION UNIT: CASES INVESTIGATED AND OFFENDERS PROSECUTED, BY YEAR

	Cases investigated	Offenders charged	Cases proceeding to court	Convictions obtained (calendar yr.)
1991/92	102	34	27	8
1992/93	107	38	29	17
1993/94	112	47	40	11
1994				7

Note: 1994 is only a six month period.

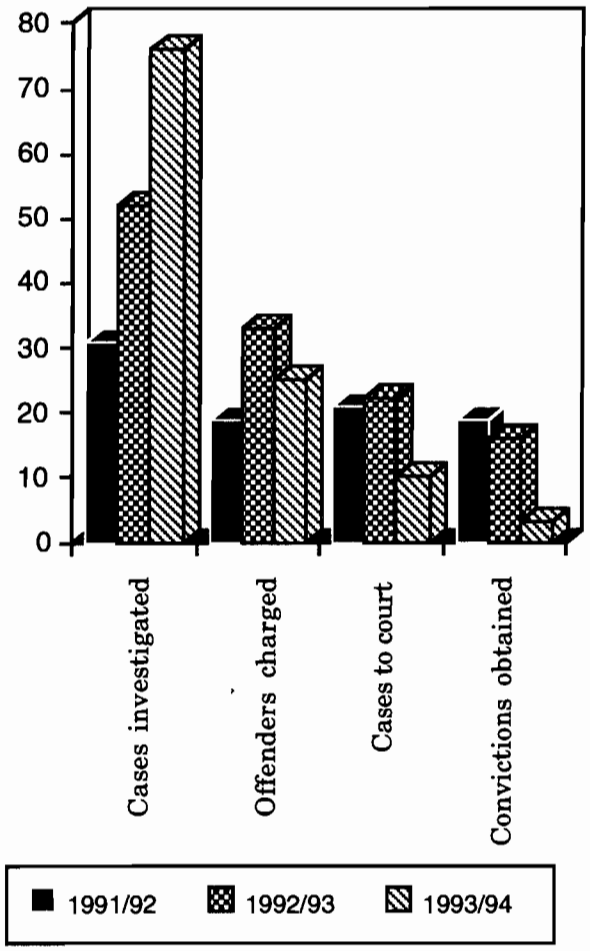
Source: Victoria Police, Child Exploitation Unit, Written Submission #62.

3.7.2 Rape Squad

The Rape Squad of the Victoria Police is another specialist investigative squad. It investigates reported cases of rape, child stealing, and abduction for sexual purposes, where the offender is a person unknown to the victim or where there are unusual or bizarre circumstances indicated.

Table 12 gives a summary of the number of cases investigated by them, the number of offenders charged, number proceeding to court and number of convictions obtained:

Victoria Police Rape Squad: Cases Investigated and Offenders Prosecuted, By Year



Source: Victoria Police, Rape Squad, Written Submission #72.

TABLE 12: VICTORIA POLICE RAPE SQUAD: CASES INVESTIGATED AND OFFENDERS PROSECUTED, BY YEAR

	Cases investigated	Offenders charged	Cases to court	Convictions obtained
1991/92	31	19	21	19
1992/93	52	33	22	16
1993/94	76	25	10*	3*

* Other cases and convictions are still pending and are not included in this figure.

Source: Victoria Police, Rape Squad, Written Submission #72.

As can be seen, conviction rates in the Rape Squad are higher than for the Child Exploitation Unit (where the witnesses are usually children). A high proportion of cases proceeding to court resulted in convictions.

However, whilst the number of cases investigated has risen over the three year period, numbers of offenders charged, cases proceeding to court and convictions obtained, appear to have remained relatively constant.

3.7.3 Victoria Police Phone-In

In 1989, Victoria Police conducted the first of what has become an annual child sexual assault phone-in. The table below shows number of calls received, and number of arrests and charges made as a result of information received through Operation Paradox. As can be seen in table 13, number of calls received has varied over the years, whilst arrest rates of the Child Exploitation Unit

have remained relatively constant with the exception of 1994 which realised a large increase in the number arrested.

TABLE 13: SEXUAL OFFENCE PHONE-IN `PARADOX': NUMBER OF CALLS RECEIVED, NUMBER OF ARRESTS MADE AND NUMBER OF OFFENCES CHARGED, BY YEAR

	No. of calls received	No. of persons arrested	No. of offences charged
1989 (2 phone-ins)	677	9	689*
1990	426	4	229
1991	220	18	180
1992	549	17	**
1993	474	15	90
1994	368	80	investigations ongoing

* These charges were laid prior to the High Court decision of S Vs Queen (particularisation) which had the effect of substantially reducing the number of charges that could be laid in cases where sexual offences were ongoing over a period of time.

** No record was kept of the offences charged as a result of the 1992 phone-in.

Note: Arrest statistics are conservative as they only relate to Child Exploitation Unit Briefs, which involve offences against children only. Other arrests may have been made by other police.

Source: Victoria Police, 1994

3.7.4 Prioritising

In 1992 a system of prioritising calls was introduced to enable the Child Exploitation Unit to assess the information received more quickly. Calls were given one of three possible priority numbers:

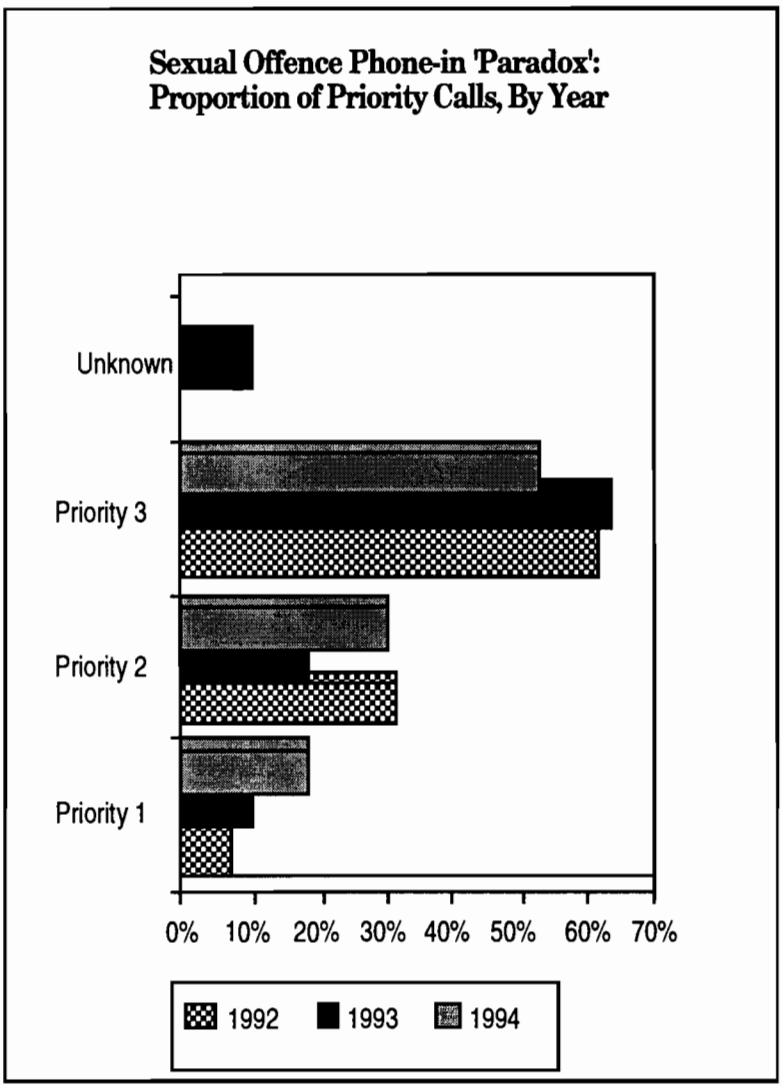
Priority One:	High risk. Abuse occurring now. Current risk to child.
Priority Two:	Medium risk. Recent abuse. No immediate risk to child.
Priority Three:	Low Risk. Abuse not recent. No risk to child. No immediate action necessary.

Table 14 shows the proportion of calls received in each priority category. It can be seen that in 1994 there was a significant increase in the proportion of priority one and two calls.

TABLE 14: SEXUAL OFFENCE PHONE-IN 'PARADOX': PROPORTION OF PRIORITY CALLS, BY YEAR

	Priority 1	Priority 2	Priority 3	Unknown	Total No.	Other calls
1992	7%	31%	62%	-	549	110
1993	9%	18%	64%	9%	474	66
1994	18%	30%	52%	-	368	40

Source:Victoria Police, 1994



Source: Victoria Police, 1994

It was found that in 1994 callers were tending to report more adult, rather than child sexual assault as was intended by the phone-in. No information on gender of callers was collected for previous years, but the 1994

statistics show that one out of every four calls was made by an adult male. Male children made up 15% of all calls. Only a small proportion of male callers were classified as priority one or two. Adult male victims were more likely to be reporting abuse which happened to them when they were children (Community Policing Squad Co-ordination Office, 1994).

3.7.5 Child Protection Services, H&CS

Sexual abuse statistics from Health and Community Services relate only to cases where there is an allegation of sexual abuse and the family has failed, or is unable to protect the child.

Cases where a sexual offence appears to have occurred and the parents or care-giver are able to protect the child, are not the responsibility of H&CS. Such cases may or may not be passed on to police by H&CS, or H&CS may suggest to the notifier that they should contact police.

3.7.6 Notifications

In the financial year 1992/93, a total of 19,344 notifications of child abuse were received by the Child Protective Services section of H&CS. Of these, 3,242, or 16.7% involved allegations of sexual abuse. 10% (337) of sexual assault notifications were substantiated by H&CS workers.

Because only 52% of notifications received by H&CS are investigated beyond questioning the notifier at time of notification, it is not known how many of the remaining 10,027 cases notified, in fact consisted of sexual or other abuse not known by the notifier (Health & Community Services, Protective Services, Written Submission, #39, Table 9).

3.7.7 Protection Applications

In the calendar year 1992, 1,111 protection applications and in 1993, 1,199 protection applications were initiated by H&CS. (Children's Court Statistics, 1993). 11% of all protection applications initiated by H&CS in 1993 (134) included sexual abuse as a ground for the application (Health & Community Services, Protective Services, Written Submission, #39, Table 6).

3.7.8 Education Department

The Manager of the Complaints and Investigations Unit, Department of Education provided figures to the Committee during a Public Hearing, of the number of sexual abuse allegations against teachers, that the Department of Education has received for the 1992/93 and 1993/94 financial years:

"In the 1992-93 financial year there were 10 incidents of allegations of sexual abuse by teachers against young people reported to my unit. In 1993-94 there were 16 incidents. . . . .In those two years 18 of those teachers have resigned, one has been terminated, court proceedings are pending on two others, internal procedures have been implemented in four other cases, and in one case the complaints were unsubstantiated" (Simmons, Public Hearing, 26/10/94).

3.7.9 Centres Against Sexual Assault

"Centres Against Sexual Assault (C.A.S.A.s) have primary responsibility for the delivery of treatment services to victims of sexual assault and their families." (Health & Community Services, Written Submission, #39).

"There are 16 C.A.S.As in Victoria, 14 regional services and two state-wide services. . . . State-wide services include: a dedicated specialist crisis care and counselling and support services for children and adolescents who are victims of sexual abuse their families. [and] an after hours telephone based sexual assault service, offering state-wide coverage" (Health & Community Services, Written Submission, #39).

C.A.S.As are funded through State and Federal government sources and there appears to have been a steady rise in demand for C.A.S.A. services over the past three years. In 1991/92, there was a state-wide total of 10,584 new clients, in 1992/93, 15,369 and in 1993/94, 21,289.

Note that over half the number of all the new clients for each year came from the State-wide telephone counselling service (Health & Community Services, Written Submission, #77).

3.7.10 Data Inconsistencies

Statistics kept by the various C.A.S.As are not consistent with one another. Some have no statistics at all, others collect data for the calendar year, others for the financial year and categories vary. Unfortunately the inconsistency of data makes it very difficult to give an accurate picture of the number and type of victims using the C.A.S.As or the nature of the offences being alleged.

The following tables, whilst incomplete, give an indication (only) of the nature of the sexual assault and type of victims seen by C.A.S.A. s:

TABLE 15: NUMBER OF SEXUAL ASSAULT VICTIMS SEEN BY CENTRES AGAINST SEXUAL ASSAULT IN 1992/93, BY SEX OF THE VICTIM

Centre	Victims Male		Female		Total		Victims under 15 yrs	
	No.	%	No.	%	No.	%	No.	%
South Western	28	15	156	85	184	100	48	26
Goulburn Valley	8	13	55	87	63	100	23	37
Royal Women's	4	2	183	98	187	100	0	0
Monash Medical*	43	11	359	89	402	100	144	36
Mallee	83	24	269	76	352	100	120	34
Loddon	42	12	304	88	346	100	109	32
Ballarat	25	10	239	90	264	100	60	23
North East	36	8	397	92	433	100	40	9
Geelong	18	10	170	90	188	100	37	20
Children's Hospital	182	31	414	69	596	100	596	100 **
Wimmera	13	13	89	87	102	100	26	25
Upper Murray	not available							
Gippsland (Formerly Kalparrin)	55	14	332	86	387	100	131	34
West, Footscray	not available							

* 1993 calendar year

* * Child victims seen at the RCH are aged under 17 years

Total male clients:	537	15%
Total female clients:	2967	85%
Total clients:	3504	100%
Total child clients:	1334	38% of total clients
Total child clients , excluding RCH:	738	21% of total clients

Source: Centres Against Sexual Assault, 1994

The number of children seen at the Royal Children's Hospital has inflated the figures relating to number of children seen by C.A.S.A.s. If Royal Children's Hospital figures are taken out, it can be seen that the remainder of the C.A.S.A.s jointly provided services to approximately 738 children State wide, which represents 21% of total clients seen.

Whilst Victorian crime statistics and other studies are showing that the majority of sexual assault victims are children, clients seen by the lead agency in sexual assault services in Victoria (i.e.: C.A.S.A.s) are predominantly adults.

Adults appear to be the greatest client base, not just for older offences, but also for recent sexual offences and crisis intervention services. As can be seen in table 15, some C.A.S.A.s served considerably more child clients than others. North East C.A.S.A., whilst servicing the largest number of clients only saw 40 (9%) child victims, compared to 23% to 37% child clients at other C.A.S.A.s.

Approximately 15% of the total clients seen by Centres Against Sexual Assault are male. The Royal Children's Hospital C.A.S.A. saw the most male clients (31%), whilst in other C.A.S.A.s the proportion of male clients was between 2% and 24% of total clients serviced.

3.7.11 Offender - Victim Relationship

Where C.A.S.A.s recorded the sex of the alleged offender, it was found over 95% were male.

Consistent with other data, the relationship of the offender to the victim tended to be either a relative or a person otherwise known to the victim. Only a small percentage of sexual assault was alleged to be by a stranger.

See in the following table:

TABLE 16: CENTRES AGAINST SEXUAL ASSAULT, RELATIONSHIP (%) OF OFFENDER TO SEXUAL ASSAULT VICTIMS IN 1992/93

Centre	A:	B:	C:	D:	E:	F:	No.	%
South Western	7	34	5	16	18	20	56	100
Goulburn Valley	6	46	5	30	9	4	63	100
Royal Women's	25	-	13	10	49	3	187	100
Monash Medical	16	47	4	15	11	7	402	100
Mallee	12	58	4	11	12	3	81	100
Loddon	5	42	2	17	23	38	346	100
Ballarat	Not available							
North East	13	35	3	9	8	32	433	100
Geelong	7	29	2	21	28	13	166	100
Children's Hospital	Not available							
Wimmera	Not available							
Upper Murray	Not available							
Gippsland (Formerly Kalparrin)	33	293	4	3	42	12	387	100
West, Footscray	Not available							

Note: A: Acquaintance/Friend B: Unknown
C: Stranger D: Partner
E: Parent or Relative F: Other
No. Number

Source: Centres Against Sexual Assault, 1994

Consistent with findings from official crime statistics and other studies, a high proportion of clients seen by C.A.S.A.s had been sexually assaulted by relatives and persons known to the victim. Also consistent, the majority of the sexual assaults occurred in the home of either the victim, the offender, or their mutual home.

3.7.12 Offence Location

TABLE 17: CENTRES AGAINST SEXUAL ASSAULT, LOCATION OF THE SEXUAL ASSAULT IN 1992/93

Centre	Victim home	Offender home	Mutual home	Public place	Other/ unknown	Total No.	Total %
South Western	27	27	9	14	23	56	100
Goulburn Valley	32	21	16	6	25	63	100
Monash Medical	Not available						
Royal Women's	55 (any home)			13	32	187	100
Mallee	37	20	9	19	16	81	100
Loddon	39	23	16	5	17	346	100
Ballarat	Not available						
North East	Not available						
Geelong	Not available						
Children's Hospital	Not available						
Wimmera	Not available						
Upper Murray	Not available						
Gippsland (Formerly Kalparrin)	13	33	13	3	13	75	100
West, Footscray	Not available						

Source: Centres Against Sexual Assault, 1994

3.7.13 Mandatory Reporting of Child Abuse

"It is known that our notifications [of child abuse] have increased by approximately 52 per cent since the mandatory reporting legislation commenced on 4 November 1993" (Armitage, Public Hearing, 28/9/94).

Mandatory reporting was introduced on 4/11/93 for doctors, nurses and police and on 18/7/94 for teachers and principals.

3.8 Summary

The Committee in its search for accurate and meaningful statistics has found a multitude of data sources which are rarely collated or coherently analysed. Victoria Police, Community Policing Squads collect and store information at a variety of standards ranging from very good to totally haphazard. C.A.S.A.s likewise have no consistency with what or how they collect data. Some courts collect some information and some don't. The Committee is concerned by both the lack of available data and the standard of the data which is available.

Even accepting the inadequacy of available statistics the Committee considers that the reporting level of sexual assault which has steadily risen in recent years is only the

tip of the iceberg in relation to the true levels of sexual assault in the community. The Committee heard from the Canadian Centre for Justice Statistics that 90% of sexual assaults were never brought to the attention of the police (Gartner, et al, 1994:2). Other national and international figures varied between 70% and 94% for estimated levels of non-reporting, however the 1993 Canadian survey appeared to be the more comprehensive and methodologically sound survey.

The Committee, during its overseas investigations, was impressed with the quality of statistical data collected and analysed by the Canadian Centre for Justice Statistics. The Committee acknowledges the value to management and policy makers of accurate, timely and uniform data for analysis.

There is no doubt that only a small percentage of victims report sexual assault to the police. Furthermore, as the Committee has revealed, a significant percentage of those reports are never recorded in official crime statistics by police.

The level of sexual assault is too high regardless of the figure accepted as the most accurate. The financial, social and emotional impact of sexual assault has ramifications for government and the community as a whole which if not dealt with now in an integrated manner, will continue to increase in both reporting levels and actual incidence.

Clearly, to ensure that future responses and initiatives by government and community agencies are targeted in the most appropriate, effective and efficient manner, it is essential that there be a more accurate definition of the size and nature of the problem than is available and that meaningful data are collected from all agencies for central analysis. Only through the integration of collection mechanisms and meaningful analysis of information can informed long term policies be developed.

CHAPTER FOUR

SEX ASSAULT SERVICES

4.1 Introduction

In his 1989 Interim Report titled, "Protective Services for Children in Victoria" Mr. Justice Fogarty wrote that,

"The present system of statutory child protection is unsatisfactory. That is largely the result of historic factors over the past 20 years"(Fogarty, 1989:6).

He went on to write,

"The dual track system for the provision of statutory child protection in Victoria has not worked, it is wrong in principle and has been the subject of wide criticism. It must be replaced by a welfare based child protection system within CSV" (Fogarty, 1989:6).

The report goes on to state, "CSV must accept all notifications made to it" (Fogarty, 1989:7).

The recommendations of the 1989 Fogarty Report were accepted by the then Government. The phasing out of the 'dual track' system commenced and was completed in 1992, when a 'single track' system saw CSV (now H&CS)

assume total responsibility for receiving all reports of child abuse.

In the 1993 report "Protective Services for Children in Victoria", Mr. Justice Fogarty stated that,

"The general situation is considerably better now than it was when the previous reviews were conducted in the 1989 and 1991" (Fogarty, 1993:4).

"It is satisfying to report that considerable improvements have occurred in the State's child protection system since the original review in 1989" (Fogarty, 1993:6).

There is little doubt that the 'single track' system, increased resources and a clear commitment to the implementation of the majority of recommendations identified in the Fogarty Reports, have had a significant impact on child protection in the State. Evidence before the Committee however, reveals that the system can still be substantially improved.

4.2 Criminal Offence

6. The Committee recommends that the criminal offence of sexual assault against a child be vigorously prosecuted.

The Committee considers that the sexual assault of a child should be investigated and prosecuted as a criminal offence. Notwithstanding that the welfare of the victim is, and should always be paramount, the perpetrator of the sexual assault must be held accountable for that criminal offence. Our current system of intervention sees only a relatively small number of offenders presented before the court and an even smaller number convicted.

The criminal nature of sexual and physical assaults on children should be reflected in the *Children and Young Persons Act* 1989 and in the manuals, training and other documentation relating to child protection services.

4.3 Current System

The current system is complex, with counselling, offender treatment, prosecution, protection, policing, health, corrections and education all providing services. The multitude of inter-related services may result in duplication, communication breakdown and service gaps. The Committee has received reports, examples and evidence of system failures of one kind or another.

Mr. Michael Tizard of the Children's Protection Society advised the Committee at a Public Hearing that,

"We see a range of situations, some of which have been well managed and some of which have been appallingly managed, and that has led to further abuse of the child or insufficient evidence being gathered by the worker to take action in court to protect the child" (Tizard, Public Hearing, 23/5/94).

The individuals providing the service are often providing the best service they know how, or at least the best service which the system will permit them to provide.

The current model has been developed from a welfare base, which infers that if the primary concern is the welfare of the victim, then the protection of that victim and the community will naturally follow. On occasion this does not occur.

Improvement to the system will result from the implementation of an integrated service, as recommended by the Committee.

4.3.1 Single Track

The single track system sees H&CS as the lead agency, but other departments including police, health, courts, corrections, to name a few, still provide services which impact directly on the victim and are still in conflict with the protective workers view of the best interest of the child.

The single track system at an operational level provides for all reports of abuse to go to one single agency, H&CS, and then H&CS decides what, if any, action it will take with that notification. H&CS may chose to do nothing if there are no protective concerns for the child. The Committee is concerned that existing protocols which require H&CS to report to police may not always be adhered to.

H&CS may also choose to do nothing if the disclosure of sexual abuse is not considered significant harm. This may occur where the disclosure is by a young child and is of a non-specific nature. An example may be that the child does not like her father in the bath with her. No other information is available except for this general statement from a young child. With little evidence of significant harm, no action may be taken by H&CS.

H&CS may elect to intervene at a variety of levels including supervision, interim accommodation, protection application or full custody, depending on the interpretation of the evidence which has been collected during the investigation.

H&CS may decide that, based on the investigation, a criminal offence may have occurred in which case their protocol requires they notify Victoria Police. This system seems to have created significant problems, both in terms of H&CS workers perceptions of what is criminal and

what is not, as well as their skills in investigation aimed at reaching that conclusion. Contamination of evidence has been raised time and time again, as have delays in notification.

Evidence before the Committee indicates that in country areas where Community Policing Squad positions may not be filled for up to 18 months or longer, H&CS officers may not inform police of some cases as there are no suitably qualified police to inform. This is of concern to the Committee, who wish to ensure the quality of service to rural Victoria is maintained at the highest possible standard.

4.3.2 Rural Services

In country regions the relationship between H&CS workers and Community Policing Squad members is often considerably better than the metropolitan area. Smaller numbers of personnel, a much lower staff turnover rate and a closer geographical location contribute to this better relationship.

Officers from both organisations in the country areas tended to criticise their own management rather than each others. They were more concerned with the failure of their own structure to adequately protect children, than with blaming the other agency. Where personality

conflict existed between agency management, even the culture of co-operation which exists in the country could not break down the barriers to a create a harmonious working relationship.

4.3.3 Metropolitan Service

In the metropolitan areas however this story was radically different. There were criticisms from both police and H&CS, and most criticisms were directed at each other. In metropolitan areas the reaction from police may be less than cordial which creates barriers between the two agencies.

The relationship between H&CS and Victoria Police, in particular Community Policing Squads, in most areas is professional tolerance at best. In the operational environment, protocols and interdepartmental directives sometimes have little impact on improving this situation.

Management in both agencies are convinced that their counterparts in the other agency are to blame. This attitude can permeate through the various levels down to the field workers in each organisation, who take on the culture and so, the distrust perpetuates.

The Executive Officer from the New South Wales Child Protection Council advised the Committee that,

"One of the things the council does is to continually emphasise that the response to the problem of child abuse is an inter agency response, that the police have a role, Department of Community Services have a role, teachers, the medical profession, the Director of Public Prosecutions Office and none of them have a greater or lesser important role in dealing with the issue, so when we are looking at the problems in the system, it is not useful to look at it in terms of whether or not one particular agency is doing their bit" (Rogers, NSW Meeting, 12/4/1994).

The Committee is determined, through its recommendations to break down the barriers which provide the cultural basis, by forcing the agencies to meet and work together. The long term goal is to achieve a stable harmonious work place with the protection of children and the prosecution of offenders as the focus.

4.4 Leading the Change

4.4.1 Minister for Community Services

The commitment to improved services must come from all areas, levels and agencies, but none more so than the political will to make Victoria the absolute world leader in sexual assault services.

"Government must serve as policy setters, catalysts, facilitators, service and information providers and funding sources. Above all, government must provide a

style of leadership which encourages the involvement and commitment of others and that helps to build trust throughout society" (Rogers, 1990:12).

7. The Committee recommends that the Minister for Community Services be designated as the Minister responsible for the co-ordination of sexual assault services for children within the State.

The first step in creating a whole of government response to sexual assault is to designate a single Minister responsible for sexual assault services within the State. The Committee has identified seven key portfolios which are currently covered by six Ministers. They are: Heath; Community Services; Police; Corrections; Education; Youth Affairs and Attorney General.

Lack of co-operation between Community Services, Police, Courts and other service providers must be eradicated. A single Minister responsible for overseeing the service will provide the integrated focus at the government level required to implement the consequential recommendations of the Committee.

The Minister should provide the leadership from the highest level to drive the changes required to provide an integrated response.

The primary function of the Minister will be to ensure that policy frameworks are integrated. Co-operation must start with Ministerial consensus on policy direction.

Legislation must be co-ordinated to ensure it is consistent with the agreed policy determinations of the Minister.

Extensive consultation with other Ministers whose departments have a role in providing services in the area is necessary. Regular meetings with the Ministers and/or senior bureaucrats will be essential in allowing the Community Services Minister to drive the whole of government approach.

The Minister will also provide the community with a tangible example of both the seriousness of the problem and the commitment of the Government in addressing the problem.

4.4.2 National Strategy

8. The Committee recommends that the Minister for Community Services actively promote a national strategy against sexual assault.

The Minister will also be in a position to lobby interstate counterparts for a national response to sexual assault which is needed to address certain critical issues including paedophile rings, bulletin boards, and highly transient offenders.

4.5 Child Protection (Sexual Assault) Board

9. The Committee recommends that a Victorian Child Protection (Sexual Assault) Board be established.

Whilst in the United Kingdom, the Committee met with representatives of the Interdepartmental Group on Sex Offending. The group comprises senior representatives from Health, Prosecutions, Social Services, Probation, Parole, Police and the Home Office. The Group provides a national focus for England and Wales for sexual assault prevention.

The Committee received direct evidence from Dr. Ferry Grunseit, Chairperson of the New South Wales Child Protection Council regarding the prevention of child abuse in NSW and the Council's role. The Council resides within the portfolio of the Minister for Community Services, but consists of representatives of other relevant government departments and also has community representation.

The Council provides specialist training, public information and education campaigns, as well as an advisory service to Ministers regarding policy, procedure and practice.

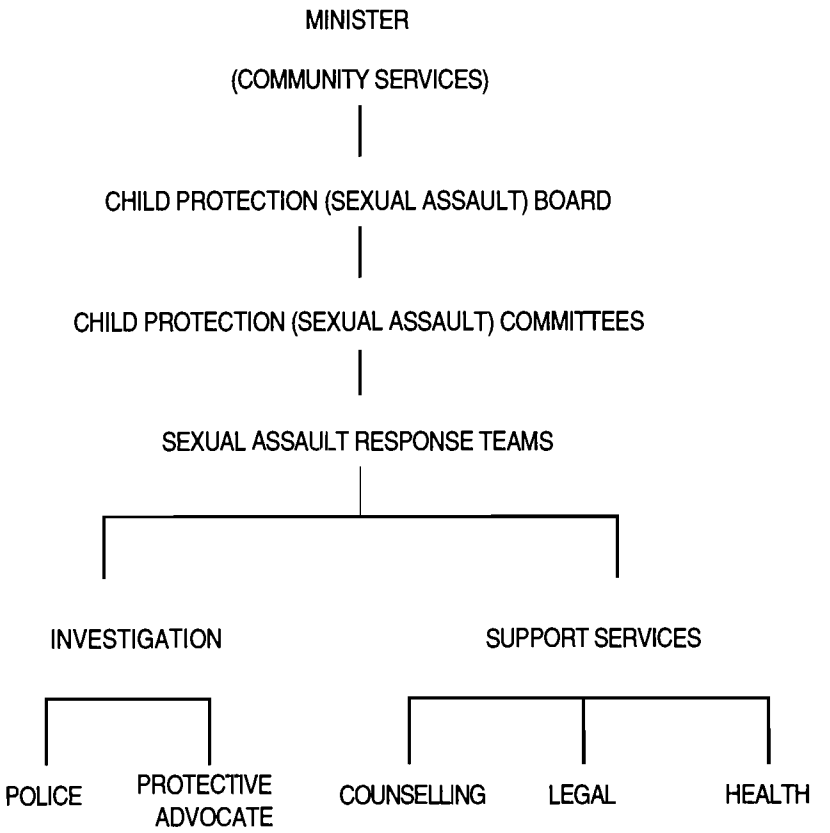
Dr. Grunseit stated,

" . . . so in that way we monitor everything that comes out from police or from the Department of Community Services or from Justice or Juvenile Justice" (Grunseit, NSW Meeting, 12/4/1994).

The Committee has considered a range of alternatives for ensuring integration and co-ordination of services, positive performance standards and accountability of service providers. The establishment of a Victorian Child Protection (Sexual Assault) Board is the structure which best meets the expectations of Committee Members.

The organisational chart below indicates the overall structure intended by the Committee's recommendations. Each component of the structure is discussed in detail within the report.

CHART 1:



4.5.1 Board Composition

The Child Protection (Sexual Abuse) Board should have representation, at a senior level, from all government departments which provide relevant services. The Board should also have representatives from selected non government agencies, as well as the community.

The following list could provide the nucleus of the Board's composition;

H&CS, Protective Services;
Victoria Police;
H&CS, Juvenile Justice;
Attorney General's Department;
Department of Justice, Correctional Services Division;
H&CS, Health Department;
Family Court of Australia;
Department of Education;
H&CS, Psychiatric Services;
Department of Youth Affairs;
Non government agency - victim service;
Non government agency - offender service; and
Community representatives

The Committee considers it important during the early development of the Board that a Chairperson, independent of the two principal agencies [H&CS and Victoria Police] be appointed. The representative of the

Attorney General's Department may be appropriate, as such a person may see the outcome of both criminal and family investigations, and would have the technical and legal expertise to Chair such a Board.

4.5.2 Role of the Child Protection (Sexual Assault) Board

The management and co-ordination of Sexual Assault Response Teams will be through the Child Protection (Sexual Assault) Board. The Board, shall have a number of duties including the following:

Joint Training between all agencies as a mandatory requirement for SART membership and the provision of such training will be under the control of the Board. Management of regional SARTs is to ensure standards of service, quality control and accountability.

Case review resulting from a dissenting view will be held by regional staff. The co-ordinator may also randomly select cases which are to be reviewed as a management tool to ensure service standards.

Interagency liaison will be required at all levels to ensure speedy resolution of problems and maximised efficiency and effectiveness.

4.6 Independent Review Function

10. The Committee recommends that the Child Protection (Sexual Assault) Board be responsible for reviewing child protection (sexual assault) cases.

Accountability and the response to complaints has been a major issue of concern raised with the Committee by many witnesses. Concerns have focused on H&CS, but have also included police responses, particularly CIB Detectives.

The method by which H&CS responds to complaints and requests for case reviews was criticised by Ms. Day from the Ombudsman's Office at a Public Hearing when she stated,

"In terms of the internal review we have certainly raised with the department the fact that we are not always satisfied with the response that complainants get when they ask for a review of the handling of the cases before them. The reviews are often extremely brief and they are handled within the office that the complaint comes out of" (Day, Public Hearing, 28/9/94).

Client confidence in a service is of paramount importance and cannot exist where a complaint or review structure is flawed or perceived as biased. Thorough, independent

investigation of complaints is essential as both an accountability mechanism and also to maintain public faith in the service.

The Child Protection (Sexual Assault) Board will receive all complaints or requests for case reviews, and will provide a central review capacity for the State. Minor matters may be dealt with at regional level, but must still be recorded at the Board's central data base. More serious complaints or matters which cannot be amicably resolved at regional level should be investigated by trained staff attached to the Board.

The Board must have sufficient legislative powers and resources to undertake its most important task. Access to confidential documents, held by government departments, must be assured. Without such powers, service providers may prevent investigation and therefore accountability, as can occur now.

The Parliamentary Crime Prevention Committee was refused access to H&CS files required during the course of this inquiry.

A research facility within the unit will provide vital information on problem areas within the service, for use in the evolution and development of an integrated child protection service.

4.6.1 Role of the Ombudsman

The valuable role of the Ombudsman must continue in relation to the services around sexual assault. The service must not become subject to allegations of secrecy, unaccountability or unprofessional conduct. The Child Protection (Sexual Assault) Board and the Ombudsman will ensure a far more accountable and professional review model.

4.7 Policy Role

11. The Committee recommends that the Board provide policy development advice to the Minister.

The Board shall be able to network with victim support groups and may provide a central contact point for victims of sexual assault. The information gained from consulting with victims, victim support groups and service providers will allow for timely, accurate and relevant information to be provided to the Minister for Community Services for consideration in strategic policy development.

4.8 Regional Services

The value of an integrated sexual assault service within Victoria will be gauged by the services in the field. The

first point of contact with the system, the crisis intervention and the follow-up support at the grass roots level, is ultimately what really matters. Services at the local level, where offences are occurring and the systems response is direct, are the nucleus of the Committee's recommendations.

4.8.1 Co-ordination of SARTs

12. The Committee recommends that the Child Protection (Sexual Assault) Board co-ordinate Sexual Assault Response Teams (SARTs).

Intervention with regards to suspected sexual assault of a child shall be undertaken, in all circumstances by members of the regional Sexual Assault Response Team as described in Chapter seven. The co-ordination of regional SARTs will be a responsibility of the Board.

4.8.2 Pilot Project

13. The Committee recommends that the Minister for Community Services identify one metropolitan region and one country region for piloting of the Committee's recommendations which relate to the establishment of Sexual Assault Response Teams.

The Minister must be a significant driving force for reform and must therefore have a strict oversight of the pilot project and its evaluation. The success or failure of

the project should be measured by its ability to provide a better service to victims and increase the prosecution levels of offenders.

From evidence received, the Committee is concerned that the cultural change intended by the recommendations may be met with resistance. Appropriate strategies at the operational level will be required to overcome this concern.

4.9 Evaluation

14. The Committee recommends that an independent evaluation of the Sexual Assault Response Team pilot project, be conducted two years after commencement.

Evaluation of service for effectiveness and efficiency is a healthy management tool and is essential in the developmental process to achieve optimum performance. The Committee acknowledges that the model recommended in this chapter is new and radical and so an evolutionary period with refinement stages is inevitable. Two years from commencement of the SART pilot project will allow enough time for establishment difficulties to be overcome. The evaluation should be by an independent professional and should be released as a public document upon completion.

4.10 Child Protection (Sexual Assault) Committees

15. The Committee recommends that regional Child Protection (Sexual Assault) Committees be established.

The service at local level requires input from local community leaders and representatives to remain focused on community needs and expectations. The Surrey Constabulary first informed the Committee of the value of Area Safety Committees during the Committee's visit to the United Kingdom. This was reinforced during meetings conducted in Birmingham.

A community based committee, with professional representatives from local government, community groups, relevant local agencies, schools, doctors and others, will provide ongoing information and feedback to the Sexual Assault Response Team. Although the Committee would have no management function, it would play a vital role in information exchange, co-ordination and community focus for the region.

The Committee should also have a review and evaluation capacity for cases handled by the Sexual Assault Response Teams. Public accountability would also be enhanced with community leaders and representative groups having regular and direct contact with both Sexual Assault Response Team management and the Child Protection (Sexual Assault) Board.

4.11 Victim Services

16. The Committee recommends that a Victim Services Co-ordinator be established within Health & Community Services.

At present a multitude of victim services are available around the State. These range from psychological counselling through to legal advice regarding compensation claims. Some services are provided directly by government agencies and others by the private sector with or without government funding.

A detailed analysis of victim service needs, with recommendations for improvement is discussed in Chapter 5 of this report however the co-ordination of victim services at a State level is of concern to the Committee. The need to ensure that victims have access to appropriate services can be achieved through co-ordination of existing services and the development of services to fill identified gaps. The Victim Services Co-ordinator will provide a centralised co-ordination and support structure to regional service providers.

4.12 Pro-active Services

17. The Committee recommends that a Pro-active Services Co-ordinator be established within Health & Community Services.

Community awareness of the extent, impact, social and financial repercussions of sexual assault of children is necessary for the long term reduction of sexual assault levels. The pro-active programs which incorporate educative, media and public awareness components are to be integrated and overseen by the Pro-active Services Co-ordinator. [See Chapter Ten]

4.12.1 Education

18. The Committee recommends that the Pro-active Services Co-ordinator liaise with the Directorate of School Education regarding school based programs aimed at reducing sexual assault.

The Committee recognises the important role the education system has, and will have in the future in preventing sexual assault. A co-ordinated program must be developed for use within the school system and such program must be evaluated at regular intervals to ensure it remains relevant, appropriate and effective.

4.13 Summary

The Committee has evidence which suggests that at times, some State services are disjointed, ad hoc with minimal communication, co-operation and integration. Through changes in the delivery structure, the Committee aims to

reduce the incidence of sexual assault and minimise the traumatic impact on victims.

The goals are short, medium and long term, but with commitment from State leaders driving the much needed reforms, the goals can, and will be attained to the benefit of all Victorians.

Ultimately the reduction in levels of sexual assault is a long term goal which the Committee believes can be achieved if all the recommendations are implemented.

CHAPTER FIVE

VICTIM SERVICES

5.1 Introduction

The term "child sexual assault victim" is a broad one - 'victims' are not all alike, in fact the only similarity they share usually, is that they have been sexually abused by an offender. Child sexual assault victims are of both sexes, a fact which is often not recognised by the wider community. Victims vary in age from 0 - 17 and come from different cultures, religions, geographical areas, family structures and socio-economic backgrounds.

The majority of sexual assault victims are female, although the degree of under reporting by male victims is only now being recognised and there may be higher level of unreported offences by males than females. As some recent Canadian statistics revealed, 18 per cent of sexual assault victims, both adults and children were male and 82 per cent were female. 81 per cent of male victims were under the age of 18, whilst only 61 per cent of female victims were under 18 (Canadian Centre for Justice Statistics, 1994, 27 and Table 39).

5.2 Victim Reporting

In order to reduce sexual offending against children one must first encourage the reporting of offending. In recent years this has been partially done through the introduction of mandatory reporting, however all indications are that an unknown, but probably large, number of offences still go unreported each year.

Members of society do not wish to get involved in such an unsavoury issue. They do not wish to accuse their friend, neighbour or family member of being a paedophile or child molester. Even when sure that the crime has indeed occurred, many people attempt to deal with it privately. This is partially because they view the occurrence as shameful and wish to stop the offending, while protecting the reputations of those involved.

Frequently however this is because of a desire to protect the victim from re-victimisation by the system. The horror stories are too common and all too real.

Many feel that the child will be better able to recover if they do not have to relive the events through interviews and court appearances, constantly trying to get someone to believe what they say and actually do something positive about it. The initial report is only the beginning of a judicial maze which must be navigated by vulnerable victims, particularly children.

In evidence before the Committee, Ms Karen Hogan, Co-ordinator of the Gatehouse Centre, Royal Children's Hospital stated,

". . . once a disclosure is made, and they really find themselves in a chaotic world that is really foreign, not very supportive and the systems that they find themselves in . . . often cannot meet their needs" (Hogan, Public Hearing, 7/7/1994).

5.3 Existing Victim Services

19. The Committee recommends that an assessment be conducted by the Child Protection (Sexual Assault) Board, of the workload and funding of all State funded service providers to child sexual assault victims.

There are many worthwhile and successful programs working within Victoria, which either directly or indirectly assist the victims of sexual assault and their non-offending family members.

Many programs provide a limited service which is focused in a key direction regarding sexual assault. The Committee considers many of these programs to be of significant benefit, but is concerned at the lack of co-ordination, integration and evaluation of the programs.

It is difficult to consider the effectiveness and appropriateness of programs which have not been independently evaluated, but still continue to be funded.

5.4 Regional Victim Services

20. The Committee recommends that a victim services co-ordinator be appointed in each region.

Regionally based victim services are required to ensure that services are directed towards and focused on local needs. The regional co-ordinators shall ensure that the needs of victims are being met by appropriate programs and services.

Where a gap is identified, the victim services co-ordinator for the region will encourage local organisations to fill these gaps. In order to ensure that each region has adequate services, the funding of regional services will be done in consultation with the regional co-ordinators.

5.5 Decision Making

21. The Committee recommends that the final decision to continue an investigation must rest with the regional Sexual Assault Response Team manager.

It will be the decision of the regional SART manager whether to continue an investigation or prosecution against the wishes of non-offending care-givers. The reasons for the decision must be well documented and explained to the child and caregivers.

5.5.1 Consultation

22. The Committee recommends that the child's parent(s) or guardian(s) should be consulted during the decision making process, provided such parent(s) or guardian(s) is/are not the alleged offender(s).

Evidence to the Committee from some victims has highlighted the sense of insignificance felt by, and lack of assistance to victims during the current process. In the past lip-service has been paid to the idea of the victim and their parent(s) or guardian(s) being consulted as part of the decision making process.

Instances have been presented to the Committee which indicate that the needs and concerns of the victim and their non-offending family members have not been taken into account in both the criminal and family court jurisdictions. This is especially so with children.

Evidence from both victims who have been through the court process, and the professionals who work within the system, has been critical of the lack of information and control, and the loss of power which further traumatises victims.

5.5.2 Cessation of Investigation

23. The Committee recommends that the parent(s) or guardian(s) has/have the right to request the delay or cessation of an investigation or prosecution, provided such parent(s) or guardian(s) is/are not the alleged offender(s).

The Committee believes that, where a request is made to delay or stop an investigation, or not proceed to prosecute on the basis of genuine concern for the child, then it should be considered.

The child's well-being must always be considered as paramount.

It is a highly volatile situation where a balance must be reached between the needs of the child and the protection of the community.

Consideration must be given as to whether the request is being made out of concern for the child, or if there is an ulterior personal motive. As one witness stated at a Public Hearing,

"I have heard women reject their children by saying, 'look what you have done to us. You have torn our family apart. It is your fault that my partner is in gaol" (Benjamin, Public Hearing, 26/10/1994).

5.6 Protective Advocates

24. The Committee recommends that protection workers attached to Sexual Assault Response Teams be responsible for advocacy of all child victims and be called protective advocates in order to reflect this change in focus.

Many experts tell us that sexual assault is about the removal of power and control from the victim by the offender, but the current system does not empower the victim. Even with the advent of victim impact statements and victim's rights groups, they still have little say in the way their case is handled, whether or not it is prosecuted and indeed are told little about the way the system functions. Rather, they are handed from department to department, worker to worker.

The alleged offender has legal representation to ensure the rights of the accused are not breached, however the victim is not represented by anyone. Prosecutors do not see their role as representing the victim.

Children must be provided with accurate information as to the nature and limitations of their role as a witness for the prosecution in criminal trials. All available rights and options must also be explained, including the right to choose from the alternative procedures for giving evidence.

In parts of the United States there are Victim Witness Advocacy Programs operating, where specialists trained in advocating for victims of crime assist the victim through the process. They help victims interpret legal language and rules, understand the reason for delays and cope generally cope better with the legal system.

One of the important principles behind Sexual Assault Response Teams is that the child is dealt with throughout the system, on a professional level, by the same workers who made the initial response. For this reason it seems logical that the person who supports the child through the medical and any court attendance should be one of these SART response members.

The Committee considers the appointment of skilled child advocates to be important. The protection worker would seem most appropriate; as their very name suggests they are the ones who protect and look after the child.

Protective advocates will form an integral part of a SART, from responding to the initial report with a police investigator to the end of the court process. These workers will be responsible for ensuring the well being of the child and easing their way through the system. They will explain the process, and the options available to the child and their non-offending family through every stage of proceedings.

5.6.1 Protective Advocate's Role

25. The Committee recommends that the protective advocate shall represent the victim in any decision making regarding the handling of the case.

The Committee feels that the victim needs an advocate in discussions regarding things such as proceeding to prosecution, charge bargaining and the use of alternate means of giving evidence, such as video recordings or screens in the court. Further detail regarding protective advocates is provided in Chapter 6.

Where it is determined that prosecution cannot proceed due to insufficient evidence, but there are still adequate concerns for the child's safety as to require their removal from an offending guardian, it is the protective advocate who makes a protection application and aids the child through the Children's Court process.

Where it is decided to prosecute a criminal offence, the protective advocate shall be responsible for showing the victim through the court prior to their case being heard and attending court with the victim on each day of the trial. [See Chapter Seven]

5.7 Counselling

Victims of sexual offences frequently need counselling and psychological services to assist them in coming to terms with what they have experienced and aid them through the transition from victim to survivor.

In Victoria's current system, we acknowledge the need for such services by victims and there are a substantial number of organisations which provide them. Despite this, some victims may still have trouble accessing a suitable service within a reasonable time period.

Counselling and psychotherapy services are very expensive and are generally not covered by Medicare.

26. The Committee recommends that children should be entitled to counselling and psychological treatment irrespective of gender or age.

Whilst there are some free services available such as C.A.S.A. and the Gatehouse Centre, the queues are long and the number of sessions offered are limited - when taking into account the degree of trauma suffered, this is often simply not enough. Some victims need treatment and assistance for years.

The Committee has also been advised that recovery times for victims will vary considerably with some victims never fully recovering from the sexual assault.

Child victims of sexual assault should be entitled to counselling or psychological services and the gender of the victim shall not restrict access to services.

Sexual offences are difficult enough to deal with, without adding this unnecessary financial burden. If left untreated, the effects of sexual assault may simply compound and the resulting cost to society may be even greater. The Committee, therefore considers it imperative that child victims of sexual assault should have access to counselling or psychological services.

5.7.1 Pre-Court Counselling Service

27. The Committee recommends that pre-court counselling services shall be available in each region.

Counselling/psychological services must be available at the regional level. Co-located services under the Regional Sexual Assault Service will ensure victims are not forced to a variety of locations for service.

The treatment of victims depends on the process which they experience. Their needs differ depending on their reaction to the offence and whether there is enough evidence to proceed with a criminal case. The logical separation of services appears to be pre-court and post-court. The short term, pre-court service must be available to the victim for as long as they remain a client of SART.

That is from the time of the initial report until either;

(a) it is decided that the case will not proceed through either the criminal court process nor the Children's Court;

(b) where the legal process has ended; or

(c) the client wishes to cease treatment.

The post-court counselling need as determined by an assessment team should be contracted to external services if it is felt that these are required for the child's well being.

5.8 Treatment for Victims' Families

28. The Committee recommends that support services including counselling be available to parent(s) or guardian(s) provided such parent(s) or guardian(s) is/are not the alleged offender(s).

Parents also have to accept what has occurred and deal with the psychological, social and financial repercussions. Often the offender may be their partner, child, parent, sibling or close friend. The betrayal of trust is not only the immediate victims', but also theirs.

"They are major, massive issues for those families. You are dealing with things that have just torn a family apart and every family member has a major problem" (Hogan, Public Hearing, 7/7/1994).

5.9 Assessments

An assessment of the needs of victims must be conducted to determine their requirements and appropriate services.

29. The Committee recommends that the protective advocate, police investigator and resident counsellor form an assessment team to conduct initial needs assessments.

Once immediate medical treatment has been given where required and statements taken, there should be no delay in providing counselling to victims. The needs assessment should be conducted as soon as possible after the initial report and referrals to internal and external services issued. The Assessment Team shall monitor the progress of the victim and periodically re-evaluate the needs of victims.

The service must be victim focused and tailored to meet the individual needs of each victim.

5.10 Funding Options

30. The Committee recommends that the Minister lobby the Federal Government to consider Medicare coverage for counselling and psychological services to sexual assault victims.

The Committee feels that the treatment claims of sexual offence victims are as valid as other treatment groups currently covered by the Medicare system. The Committee wishes to emphasise that the victim is no way at fault for the offence and as such, should not be punished further by having to pay for treatment services which would otherwise be unnecessary.

The inclusion of appropriate private practices through the Medicare system, shall mean accessible and affordable medical and psychological treatment will be available to all victims without unnecessary waiting lists, up front payments and time delays for a Crimes Compensation determination on reimbursement. The pressure on existing free treatment services will also be reduced.

5.11 Services for Non- English Speaking Victims

31. The Committee recommends that multilingual protective advocates and police with appropriate skills be actively encouraged to join SART.

The communication barriers, cultural differences and the isolation from the wider society by some ethnic groups, reduce the likelihood of a report being made and offer the ideal screen for a sexual offender. It is even harder for a victim or their family to speak out about and have a case

successfully resolved through the court process if they have limited or no ability to speak English. The effective use of interpreter/translators between police, protective workers/advocates and victims is essential.

32. The Committee recommends that protective advocates and police employed within the SART team be trained in cultural issues relevant to the ethnic demographics of their region.

Language barriers are compounded by the cultural differences between races when dealing with victims and their families. Some isolated communities still view intrafamilial sex as acceptable or commonplace and in other communities sexual intercourse and even sexual assault are not discussed.

"There are considerable problems for children who come from cultural backgrounds where some terminology or words are not used. . . . when the child hesitates to use terminology as far as the anatomy is concerned" (Benjamin, Public Hearing, 26/10/1994).

Victims from different cultural backgrounds will require additional understanding and sensitivity during the questioning, medical and legal process. All procedures must be conducted with consideration to the cultural heritage of the victim.

5.12 Intellectually and Physically Disabled Victims

Sexual offences are committed against both institutionalised and non-institutionalised people with intellectual and physical disabilities and this group of victims is one of the most difficult to obtain a disclosure from.

33. The Committee Recommends that SART training include dealing with intellectually disabled clients.

In the case of victims with intellectual disabilities, workers need to understand the ways in which some of the more severely disabled communicate and the differences between classifications of disabilities and cognitive levels. Intellectually disabled victims may experience greater difficulty in understanding and communicating what has occurred to them.

SARTs will be required to deal with victims with a range of physical disabilities, therefore SART offices must be easily accessible to victims who use transportation devices such as callipers and wheel-chairs. Victims with physical disabilities must be able to make an initial report and receive follow up services.

The needs of people with sight, hearing or speech impairments must be able to be catered for in a

professional manner and the use of technological facilities such as Typewriter Telephone for the Deaf (TTY) communication will be of assistance.

5.13 Victim Provident Fund

Evidence from the Victoria Police highlighted to the Committee, the extremely difficult financial situation some victims are in as a result of a sexual assault.

34. The Committee recommends that a victim provident fund be established and administered by Sexual Assault Response Teams.

The Committee considers it appropriate that SARTs have access to small amounts of money to immediately assist victims in time of crisis. Approval for expenditure could be via the SART manager and reconciliation could be to the regional Child Protection (Sexual Assault) Committee.

5.14 Summary

All sexual assault victims suffer as a result of the offence. The invasion of their privacy, loss of power or control and physical injury are just some of the factors which make sexual assault perhaps the worst personal injury

victims may suffer. The recovery distance from victim to survivor varies, but re-victimisation by the system has an unquestionable impact on individual recovery.

The many and varied needs of victims for appropriate support services, counselling both short and long term and most importantly empowerment, are better met through an integration and co-ordinated service. The provision of information to victims regarding the circumstances of their complaint and the progress of investigations ensures they have sufficient knowledge upon which to make rational decisions.

The rights of the victim must be brought into balance with the legal system which currently focuses on the rights and needs of the accused.

CHAPTER SIX

SEX OFFENDERS

6.1 Introduction

Offenders who sexually assault children are cunning, devious, manipulative and recalcitrant individuals, according to experts around the world. They will ingratiate themselves into vulnerable families which include children of the age and gender they prefer. They will even marry in order to have access to victims. It is not uncommon for a sex offender to be extremely transient, remaining with a family in one place through the desirable age of the children and then moving on to another unsuspecting family.

There seems no limit to the extent offenders will go in order to have access to child victims. Occupations which provide a position of control and authority over children are magnets to these offenders.

6.2 The Nature Of Sexual Offending

Experts in the field suspect that the incidence of child abuse is not only being talked about more now, but also

that the actual offending rate has risen. Data available on child abuse shows that the step-father is over represented as offender in all categories of sexual offences against children. Step-fathers or de facto partners are much more common now than in the past, due to the rise in single parent families and the incidence of marriage breakdown and subsequent formation of new partnerships.

6.2.1 Relationships

Child sexual assaults are predominantly crimes between people known to one another, and are crimes most often committed in the offender's or victim's home. The identity of the offender is known in the majority of cases and therefore the contested issue is whether the actual incident occurred or not.

6.2.2 Multiplicity of Victims

An enormous numbers of children can be assaulted by offenders, particularly those who get themselves into professions or positions where they have responsibility for and access to large numbers of children.

6.3 Offender Profiles

Many offenders, particularly those who offend against children, are notorious for being plausible in their explanations or denials. Several experts in the field of sex

offender treatment have provided examples to the Committee of the explanations of sex offenders for their offences.

The Honourable Mr Justice Vincent also advised the Committee of sex offenders persistent denial of their offending behaviour,

"There are amazing levels of rationalisation. I have sat and listened to men tell me that they were seduced by seven year old children or that they were in love with a six year old" (The Honourable Mr Justice Vincent, Public Hearing, 26/10/1994).

The Committee has been made aware that sex offenders are often of a likeable personality, hold responsible positions in society and are most often known in a social context by the victim and their family. Sex offenders will often refuse to accept that their behaviour is of a criminal nature, and that their behaviour will have long-term negative effects on their victims, and will go to great lengths to justify their behaviour to themselves, to blame events or others for their behaviour, and to deny that they made a conscious choice to commit the offence.

Most sex offenders do know what they are doing and by using their cunning and their skills at manipulating people are able to use the social context of the offence to their own advantage. The additional myth that the offender must have had a `one-off' lapse or that somehow

they are sick and not responsible for their behaviour also conspires to support offenders, many of whom have long histories of offending patterns behind them.

When the histories of individual child sex offenders are examined, the State's treatment of them implies that their offences are not as serious as sex offences against adults. A double standard appears to be operating in the system in relation to sexual assault on children. Offenders currently in prison for sexual offences against children generally have a large number of prior convictions behind them. How many unreported and undetected offences they have committed can only be guessed at, but from overseas research it appears likely that they would be of considerable number.

6.3.1 Victim Response

Under the surface there still exists the myth that children are seductive and ask for it. This idea was common until a few years ago and it confuses cause and effect. Children learn to respond sexually because that is the way they have been treated. It is important to remember that children are physically weaker, they are dependent, easily coerced, easily threatened and easily bribed. They don't have a real choice about how they are treated. What is often forgotten is that these children suffer horrifically and quite often the suffering is long term. The physical and psychological consequences can be devastating.

An important element in the sexual abuse of children and adults is that of the offender having power over the victim. Sexually assaulting children allows some adults to feel powerful and it gives the adult the opportunity to abuse someone who is weaker than they are. The concept that sexual assault is about power more than sex, holds true for both adult and child sex offences.

6.3.2 Common Myths

Current research of sex offenders and sex offending have shown that most of the old stereotypes, myths and preconceptions held as recently as five or ten years ago are incorrect. Sex offenders come from every occupation and socio-economic level. They are notoriously difficult to identify and, unlike other types of offenders who tend to `settle down` by their 30s and lead non offending lives, the sex offender may continue to offend throughout their life time. This is why, in the prison statistics, sex offenders re-offend within all age groups.

When the background of sex offenders is carefully examined it is common to find that the majority have been offending since their teenage years. Some sex offenders offend throughout their lives, whilst others may offend in their youth and then, after some decades, will start to offend again.

Whatever the offending pattern though, sex offenders are not curable and will remain a danger all their lives.

The community should be alerted to the fact that incest should not be looked at and treated as a family problem, or a problem for family counselling. Clearly the incest offender must be made to face the consequences of his criminal acts and take full responsibility for the offences.

6.4 Offenders as Victims

Many sex offenders state that they were sexually assaulted themselves when they were children.

The Australian macho image that men are supposed to look after themselves and are not supposed to be victims, plus the myth amongst adolescents that males who have been sexually assaulted by other males are homosexuals, makes it harder for boys to admit the assault and seek assistance. Assistance at that early age may enable many boys to resolve their problems and to re-establish a positive sense of self.

6.5 Paedophiles

Paedophiles have a deviant, criminal sexual orientation towards sexually assaulting children. Most of the multi-victim paedophiles coming to police notice are single men, although some paedophiles marry and some live in defacto relationships. Some paedophiles are known to maintain defacto relationships for the sole purpose of

having access to the children. Others seek to become a trusted family `friend' so as to gain access to children.

The Committee has also, however heard conflicting evidence, which suggests that homosexuality has little or no bearing on sexual assault of male children.

6.5.1 Organised Paedophile Groups

Many paedophiles seek to communicate with others with similar interests. A number of well organised groups exist in the USA including the 'North American Man Boy Love Association (NAMBLA), the Rene Guyon Society (with the infamous motto `sex before eight or it's too late'), the Lewis Carroll Collectors Guild and BLAZE. Other similar groups exist throughout the world. All such organisations seek to legitimise the sexual abuse of children.

In Australia a number of organised paedophile groups exist. Unlike other organised crime, financial gain is usually not the motivating force of these organisations. Rather the purpose of belonging to one of these organisations is for members to validate their own deviant behaviour, to seek social acceptance, exchange information and obtain other forms of stimulation (Hopley, 1994:72).

Evidence obtained in Australia and overseas indicates that a network of paedophiles are involved in a flow of

correspondence and exchanges of child and other pornography and erotica, through computer bulletin boards and a limited number of newsletters and magazines. It is these types of associations that may lead to the commission of criminal offences against children in the future, although it is not a criminal offence to talk, write or otherwise communicate about sexual activities with children and such associations are not illegal.

Whilst such organisations exist, organised sexual abuse of children is not prolific. The greater majority of sexual offences against children are committed in private by lone offenders and the offenders go to great lengths to ensure that the activity is carried out in secret.

6.6 Summary

In the last five years there has been a marked improvement in the quality and quantity of research in the area of sexual assault. Existing systems and procedures designed to address the problem of sexual offending have been based on old information which is now known to have been incomplete and misleading. As a community we are now better informed than ever before about the size and nature of the problems surrounding sexual assault. As such we should be changing our approach from one which has been based on myths and assumptions, to one which is based on current knowledge.

Community beliefs and attitudes, as well as the structure of the criminal justice system itself, have combined to give far too many sex offenders, particularly those who abuse children, the ability to continue their offending behaviour.

It is time to review the way in which sexual assault is addressed and to do it in a way which will allow the responses to be co-ordinated, complimentary and continuously improving as more and better information comes to light.

CHAPTER SEVEN

INTERVENTION

7.1 Introduction

What does a parent or guardian do when a child returns home from an access visit with a divorced parent and discloses sexual abuse? What action should a mother take when a child discloses sexual abuse by a teacher? What should a father do when he learns that his 5 year old son has been sexually abused by a neighbour? What can a mother do when she becomes aware that her defacto husband is sexually molesting her 12 year old daughter? What do siblings aged between 6 and 13 years do about being video taped having sex with their father while being held down by their mother?

7.1.1 Need for a Better System

The Committee's overseas research which examined first hand a range of intervention models in various countries, combined with direct and indirect evidence from professionals, service providers and clients of our current system, has led the Committee to the conclusion that improvements to the current system will improve the services to victims and maximise the potential to prosecute offenders.

With the exception of that given by H&CS managers, evidence presented to the Committee in both verbal and written form advocate a multi-disciplinary model.

Dr. David Wells of the Department of Forensic Medicine advised the Committee that,

"At the end of the day, no single individual can manage a case of child abuse. It is far too complex. It requires an integrated team approach" (Wells, Public Hearing, 27/10/1994).

Dr. Barry Perry, acting Ombudsman and Deputy Ombudsman, Police Complaints in evidence to the Committee stated,

"I would have thought that probably, the ideal model would be one where you have a joint effort on the part of a unit consisting of the community or the protective people from the department, community police and the police investigator if it is an allegation of sexual abuse. I see that as the ideal model because it would certainly overcome a large number of the problems that we have seen in the course of our investigation in that area" (Perry, Public Hearing, 28/9/1994).

Mr. Greg Levine, Senior Children's Court Magistrate in his written submission to the Committee stated,

"There has been considerable tension between the police and H&CS in relation to the single track system since its introduction. Police presently refer matters to H&CS if it appears that a child is in need of protection. The court becomes aware from time to time where police have referred matters but have felt that those cases have not been followed through adequately" (Levine, Written Submission, #74).

This view expressed by Mr. Levine was clarified in verbal evidence before the Committee when Mr. Levine stated,

"You hear evidence that makes those tensions quite evident. Often that arises from a feeling community policing members have that occasionally the Department of Health and Community Services is not taking sufficient, appropriate or any action in relation to matters which the community police perceive to be issues of child abuse - obviously sometimes sexual abuse" (Levine, Public Hearing, 24/11/1994).

In cases where divorce or custody is a component, a particularly difficult situation of allegation and cross allegation often comes into play. Of concern to the Committee in these cases, has been the evidence gathering techniques utilised and the process by which evidence is filtered for presentation at either the Children's or Family Court by H&CS workers.

Many examples of incidents involving police, protective advocates, and other service providers where clients have fallen through gaps as a result of poor management, poor communication, philosophical or ethical differences have been presented to the Committee. The current service does not fail to meet expectations on all occasions, but it does on a significant number.

7.1.2 The English Model

Whilst in the United Kingdom the Committee visited Surrey Constabulary where the delegation met with representatives of the multi-disciplinary team. The Committee heard that eight years ago when the joint response was first devised, the attitude of police was extremely defensive and they viewed social workers as being all about 'making tea and biscuits'. Equally defensive were the social workers who viewed the police as 'jack booted, gun toting individuals out to make arrests'. These views graphically describe the philosophical differences perceived by each group. In reality eight years down the track, and after some difficult times of re-adjustment, the teams are working most effectively and the realisation that both groups are striving for the same outcome in reality; the protection of the child and the prosecution when appropriate of the offender. The conflict and barriers have dispersed over time as they will in Victoria with the implementation of the Committee's multi-disciplinary model.

The results of the multi-agency approach according to Surrey Constabulary management have been an improvement in the service to victims of sexual assault and a better work environment for staff from the various agencies. The quality of evidence gathered and presented to the courts has also been enhanced by the multi-agency model. Research is yet to be undertaken to identify what impact the multi-agency model has had on both prosecution and conviction rates.

7.2 The New Operational Model

7.2.1 Sexual Assault Response Teams

35. The Committee recommends that Sexual Assault Response Teams (SARTs) be established to provide an integrated team of experts to respond to sexual assault notifications.

An integrated service which brings together key service providers into a single multi-disciplined team will provide a more effective and efficient service to meet the welfare needs of victims and maximise the opportunity to bring offenders to justice.

7.2.2 Piloting Sexual Assault Response Teams

36. The Committee recommends that SARTs be established in one metropolitan region and one country region as a pilot project.

The establishment of SARTs should be an evolutionary process with evaluation and refinement of services at strategically identified points. The evaluation of the outcomes of the pilots must be by independent researchers to ensure an accurate assessment.

7.2.3 Composition of Sexual Assault Response Teams

37. The Committee recommends that SARTs comprise police, protective advocates, legal counsel, medical and counselling services.

The key areas which have crisis intervention roles will be police and protective advocates. Medical, legal and counselling services will play a key role in secondary intervention and support.

7.2.4 Sexual Assault Response Team Management

38. The Committee recommends that the management of SARTs be undertaken by persons employed independently of all organisations associated with the teams.

A range of management structures for multi-disciplinary teams were observed overseas, including welfare workers as managers, police management and health managers. Once the teams have been operating for a number of years

and the personnel are experienced, with protocols and procedures becoming second nature the importance of strong, independent management may diminish. In the initial stages however, management independence will be critical. The barriers and tensions between agencies will not dissipate overnight and the role of the manager in problem solving, conflict resolution and conciliation will be paramount. No single agency should have greater control in an integrated service than any other. The Committee therefore considered the model seen at Stuart House where an independent manager who has suitable expertise is employed, to be the most appropriate model. Stuart House is a purpose built facility, in close proximity to the Santa Monica Hospital, California.

The success of a SART will be very much dependant upon the skills of the manager and supervisors. It is recognised that metropolitan SARTs will require a number of personnel, particularly protective advocates and police investigators to provide the 24 hour, immediate response required. Therefore it will be necessary to have supervisors from both streams attached to the SARTs in order to provide supervision, support and leadership to the field workers. Those supervisors will naturally have a responsibility to their own department to ensure that the code of practice, ethics and rules of each organisation are maintained. The responsibility for the service to victims rests with SART management and where conflict exists between agencies, the manager of the SART will have the final authority.

Individuals attached to SARTs from any agency will be primarily accountable for their individual actions to their parent organisation, but the team will be accountable to the SART manager.

7.2.5 Co-location of Sexual Assault Response Teams

39. The Committee recommends that SARTs be co-located.

The proximity of work groups has a profound effect on working relationships in all environments but none more so than in the response to sexual assault. The SART concept is based on integration, co-operation and co-ordination and the Committee believes the services will not achieve their potential if not co-located.

Many examples of co-located facilities were observed overseas with perhaps the most notable being Stuart House in Santa Monica, California. Stuart House brings together Police, Protective Advocates, counsellors, prosecutor and medical staff to provide a total service to victims. The close working relationship between agencies created an atmosphere of information sharing and understanding which contributed towards achieving maximum effectiveness in client service. Total agreement in every case was not always possible but agency independent management are able to resolve differences, without fear or favour to any particular agency.

At a meeting with Dr. Anna Salter, a world renowned expert of sexual assault services to both victims and offenders, Dr. Salter responded to questions regarding the need for co-location. Dr. Salter advised the Committee that she considered co-location essential and that co-location was the only successful way to have agencies work together. Secondment of personnel from relevant agencies to work together as in the United States Child Advocacy Centres is the only way to go (Dr. Salter, Meeting, 2/3/1995).

7.2.6 Interview Facilities

40. The Committee recommends that SARTs have interview facilities on site.

The correct interview method of victims is crucial for the collection of evidence for presentation in a criminal or protection matter. Minimisation of secondary trauma will occur with all SARTs having interview suites on site.

The Committee considers it important that the child is neither distracted nor intimidated by the environment and this is not limited to the interview room, but rather the design of the SART as a whole. The surroundings must be as comforting and 'familiar' as possible.

Interview rooms should be situated in a quiet location, remote from the commotion of the main office. Access to interview rooms should be as direct as possible and should not involve a long walk through a busy office environment. It is inappropriate for suspected offenders, at any stage, to be situated within visible proximity of victims including entry points.

There are varying opinions on the design and layout of interview rooms. Finding a balance between ensuring some degree of victim relaxation and providing too much opportunity for distraction is extremely difficult.

The interview suite inspected in Amsterdam was considered the most suitable, finding the balance between the needs of the interviewers and the needs of the victim. The room was pleasantly decorated with a few children's toys and child size furniture. Provision was made for drawings of children to be on display which indicated that the present child victim was neither the first nor the only child to suffer at the hands of an adult. There was a vacant spot for this child's drawing to be displayed.

Interview rooms must be well lit for both the comfort of participants and the operation of film equipment. Lighting glare should be kept to a minimum and is not necessary with modern camera equipment. The room should be attractively, yet sparsely furnished in an informal style. Furnishings must be comfortable as well

as durable. The use of small tables and chairs or functional household style furniture such as couches and low tables have been proven to be effective.

It must be remembered however that children, especially younger ones, have a short concentration span and are prone to fidgeting. It is unrealistic and unreasonable to expect that they will sit passively and answer questions, particularly if they find the subject a stressful one. The room must therefore be large enough for them to wander a little.

It does not matter if they make a disclosure in stages or if it is done sitting on the floor talking into a toy telephone. The system is there to service the child client and to maximise the collection of available evidence.

7.2.7 Video Facilities

41. The Committee recommends that all interview rooms be installed with video cameras capable of recording the entire room.

The size and shape of the room itself is extremely important, both for recording and the actual interviewing process. The camera/s must be able to not only view the entire room but to record on different angles and to a court room standard.

The camera itself can be a huge distraction to the child, however the Committee does not feel that it is appropriate to lie to the child about its existence. For court purposes it is important that the child is fully aware that the interview is being recorded on video.

During site visits the Committee has seen different ways of partially or totally concealing cameras so that, although they may be aware of their existence, the victim can choose to ignore them and is less likely to become camera shy.

7.2.8 Audio Facilities

42. The Committee recommends that all interview rooms be installed with unobtrusive high powered microphones and audio equipment capable of detecting and recording the softest noise at any point in the room.

It was drawn to the Committee's attention overseas that one of the major difficulties encountered, when commencing to record child victims, was the tone and level of their voices. When stressed they would often adopt a hushed, sometimes deeper tone, mutter or speak with their mouth partially covered. It must be remembered they are telling perhaps the biggest 'secret' of their short life.

It is essential that the audio equipment should be installed at sufficient points to record (to court quality) the child's

disclosure regardless of where in the room the child is and what pitch or volume the child uses. Equipment must also be placed in order to ensure that it will not distract the child in any way.

7.2.9 Equipment Operation

43. The Committee recommends that the Non-Interviewing SART member has a monitoring and advisory role, crucial to the interview process.

The monitoring and advisory role is crucial in the interview process. By interviewers wearing ear piece microphones they are able to hear suggestions from their partner, who will be operating the audio video equipment, with less risk of distracting the child. Cameras can be panned and volume increased/decreased according to the child's actions.

The role which the non-interviewing member of the team performs is vital in that, at arms length from the interview itself, a broader overview can be seen with key issues or ambiguities being picked up and investigated.

7.2.10 Medical Facilities

44. The Committee recommends that SARTs have medical examination facilities on site.

The physical needs of clients must be met speedily and with minimum fuss to reduce continued trauma. An on site medical facility will be able to provide minor medical services to patients but will also provide forensic examinations in comfortable surrounding, thus avoiding casualty waiting rooms and cubicle style examination at public hospitals. Having the facility ready and waiting will also encourage victims to provide forensic evidence should the victim wish to proceed with criminal investigation. Control of the situation must be given to the victim or their parent or guardian, in order to minimise further stress.

7.2.11 Police Role

45. The Committee recommends that SART police officers be the primary investigators of sexual offences against children.

The Committee has identified unacceptable duplication of services resulting from intervention from two CPS officers followed by investigation by one or perhaps two detectives. The need within the SART is for a suitably trained and qualified investigator who has skills appropriate to dealing with child sexual assault victims. The Committee does not consider it necessary to have both Community Policing Squad members and detectives attached to SARTs but rather investigators appropriately skilled and training in both areas.

Following the initial intervention the SART investigator will continue to work with the protective advocate as required. The on-going investigation of the criminal offence is the responsibility of the SART investigator, however all contact with family members or other potential victims, shall involve the protective advocate. Where further interview of the primary or secondary victims is required, a case meeting should be called to establish the tactics of the interview, and to allow for alternative concepts to be discussed.

The Committee does not wish to see SART investigators identifying additional victims and then handing them over to protective advocates nor does it accept the current situation of protective advocates identifying victims and offenders and then handing them over to police.

The recommendation to rationalise the police response to dual trained SART investigators is not a reflection against the Community Policing Squad, who have often been the meat in the sandwich between detectives and protective workers or victims. The Committee considers that the police role is protection of the community and the victim through investigation and prosecution of the offender where possible. The welfare of the victim and family is the responsibility of the protective advocates. If police and protective advocates each perform their designated roles as required, there will be no need for a third service provider.

The usual criminal investigation training and techniques of police are not well suited to the investigation of sexual offences, nor do they equip the investigator to take into account the emotional dynamics surrounding sexual assault.

Characteristics of sex offences which make them distinct from any other type of crime, from a police investigator's point of view, include the facts that: sexual offences are often committed in private with no eye witness accounts to corroborate the allegations; because the offence is often not reported immediately, consequently crime scenes afford little or no forensic corroboration; and appeals for public assistance in identifying the offender or of providing any leads for the investigation are rarely of any use because of the nature of the crime. The vast majority of non-sexual criminal investigations by police are successfully concluded through the assistance of one or a combination of the above. Alternative investigative skills are often required in sexual assault matters, particularly where the victim is a child.

Sexual assault is a crime requiring specialist police investigators using specialist investigative techniques to overcome the limitations of conventional crime investigation. The approach taken by police investigators needs to take into account; the known `modus operandi' of sex offenders; the unique problems associated with gathering evidence; and a keen appreciation of the personal and social dynamics surrounding sexual abuse.

Many police officers with whom the Committee met had both CPS and CIB experience and these seemed ideally suited to the new role of SART investigator. Victim sensitivity is essential when dealing with children and therefore the rough and tumble detective would be inappropriate for this role. Additionally operational police informed the Committee that a quiet, empathetic style of interviewing is the most effective technique with paedophiles and child molesters which reinforces the view that a special interest and skill in this area is essential for selection to become a SART investigator.

7.2.12 Police Investigators' Course

46. The Committee recommends that a specialised sexual assault investigators' course be established within Victoria Police.

There is no requirement to have CPS officers and Detectives involved in SARTs when one adequately trained police investigator can accommodate the police role as rationalised in the Committee's model. Investigators in this highly specialised field will require training beyond the standard detective training course. Emphasis on victim sensitivity, offence dynamics, paedophile profiles and victim offender interviews are just some of the areas which would be of paramount importance to a successful investigator. Key Community Policing Squad members as well as specialised detectives

of the calibre of those with whom the Committee met must be involved in the preparation and presentation of the training course.

Whilst in San Diego the Committee attended a meeting of sexual assault investigators from San Diego and neighbouring county law enforcement agencies. The training which investigators undergo, and the professional associations formed amongst sexual assault investigators were first rate and are considered essential within Victoria and in fact Australia.

7.2.13 Protective Advocates

47. The Committee recommends that protective advocates attached to SARTs shall be of at least SOC 2 level.

The role of the protection advocates attached to SARTs will be critical both in the welfare and protection of the child and in the support of the police investigation. The skill level of protective advocates must be raised considerably for them to meet their new challenges. Life experience as well as operational expertise will be important in the personal development of advocates. The operational decisions required to be made will necessitate a depth of knowledge and understanding which goes far beyond tertiary qualification. The Committee has been advised that the SOC 2 level is the highest operational level below supervisor.

The requirement for at least SOC 2 level staff will, in part, overcome the identified problem of inexperienced workers dealing with complex matters which often result in court appearances. Mr. Levine of the Children's Court stated in his written submission that,

"The Children's Court is often confronted with inexperienced social workers and other professionals whose evidence is often affected by inadequate investigation and assessment" (Levine, Written Submission, #74).

7.2.14 Training of Protective Advocates

48. The Committee recommends that protective advocates attached to SARTs shall have completed a specialised course prior to commencing duty.

The current system of training of protective advocates is totally inadequate for the role performed. The Committee has received considerable evidence from a range of witnesses who have criticised the level of expertise shown by protective workers. The criticisms, though not limited to the court process, are particularly scathing in this area.

Psychologist, Mr. David Bruce, gave in evidence,

"My main concern, though, is the manner in which evidence is collected and cases are assessed. It seems to be done on an ad hoc basis by people who are inexperienced and under-trained" (Bruce, Public Hearing, 7/7/1994).

The dedicated protective advocates who have chosen this most difficult profession must receive adequate, timely and appropriate training before they commence their duties. The Committee hopes that the current burn-out rate of protective workers will significantly diminish when they are properly prepared complex and difficult duties.

7.2.15 Joint Training

49. The Committee recommends that specialised joint training for members of SARTs be mandatory.

The new role, envisaged by the Committee for SART members will require specialist training. A comprehensive course must be developed which will afford all team members not only the skills and knowledge required to undertake their respective duties, but also an understanding of their fellow team members' responsibilities. Understanding roles and responsibilities was a major factor in the success of overseas models.

Joint training will be provided by bringing together a training team of experts from a variety of fields including forensic medicine, policing, social work, child psychology and many others. It will be the responsibility of the Child Protection (Sexual Assault) Board to co-ordinate joint training.

The training must be undertaken prior to or immediately upon arrival at the SART. Current training regimes particularly of protective workers, has been the subject of extreme criticism. Team Members must be skilled to undertake their duties right from the very beginning of their attachment to the team. Waiting months before providing training is unacceptable.

7.2.16 Medical Staff

50. The Committee recommends that suitably qualified medical staff be accessible, to respond to the medical and forensic needs of victims'.

Victims of sexual assault make a most difficult decision whether to disclose the offence and, if so, under what circumstances and to whom the disclosure is made. In the case of a child the disclosure may be to a parent, friend or teacher, and for adults it may be to a partner or work colleague. Regardless of to whom the first disclosure is made, if the victim decides to come forward and disclose in order to receive support and/or generate an investigation, it is imperative that the system meet each and every expectation of that victim. Expectations including welfare and support, must be met while maximising the potential of having the offender brought to justice. Medical services, including forensic examination, AIDS and sexually transmitted disease testing as well as psychiatric services play pivotal roles in client services to victims.

It is not necessary to have a doctor, or qualified forensic nurse, on site 24 hours per day, waiting for the next victim to arrive, but the service must be available at call. The key component of this recommendation is the recognition that the service must be available when the victim is ready, not when the system is ready. Attending one office to make a report, then travelling to another to give a statement, then another to get counselling and then another to have a medical examination simply magnifies and compounds the confusion and helplessness felt by victims. It must be remembered that the service exists for the client not the other way round.

7.2.17 Medical Training

51. The Committee recommends that formal under graduate and post graduate medical training in child sexual assault be established.

The level of expertise available within the medical profession regarding child sexual assault is, in many instances, limited to generalities.

"I refer particularly to allegations of child sexual abuse, an area which is well outside the knowledge of most medical practitioners and which requires individuals who have had substantial training and experience" (Wells, Public Hearing, 27/10/1994).

Academia and the medical profession generally must provide better education for students regarding child sexual assault and further provide specialist training for those interested in a long term career in the examination and treatment of sexual assault victims.

7.2.18 Legal Counsel

52. The Committee recommends that suitably qualified legal counsel be accessible to respond to victim needs, advise interveners on legal matters and oversee all investigations.

The Committee has received evidence from legal professionals regarding the quality and correctness of briefs of evidence provided by Police and H&CS officers. The area of sexual assault is extremely complex with changing legislative frameworks for criminal offences, evidentiary procedures and case law decisions making it almost impossible for a generalist legal officer, solicitor or barrister to have sufficient expertise in the area, let alone police or H&CS workers.

The Office of Public Prosecutions currently has a specialist Sexual Offences Section, and the Committee received evidence from its manager Mr. Gary Ching. Mr. Ching made the Committee acutely aware that the primary duty of public prosecutors is to the court, to ensure that criminal proceeding are conducted properly and fairly.

"I am saying that a prosecutor is there to present the case fairly and properly" (Ching, Public Hearing, 6/7/1994).

Whilst being a laudable duty, the Committee considers that this most proper insistence on fairness to the accused, and proper conduct of the trial, is primarily a responsibility of the judge in the first instance.

The Committee believes that a commitment to successful prosecution should also be a primary duty of a prosecutor, and a closer relationship with investigators, victims and offenders will contribute to the level of expertise of prosecutors, while ensuring that all available evidence is gathered for presentation before the court.

The Committee is not suggesting that the prosecutor become directly involved in the interview of either the victim or the offender, rather be in the background as an advisor at all stages. Quality legal advice at an early stage will provide better quality evidence for the court to consider during trial. The legal officer's presence will, in part, ensure the investigation is correct from the start. Confusion and communication breakdown can be minimised by closer contact between all relevant parties.

The Committee heard from a victim of sexual assault identified as Jacqueline that,

"In actual fact the prosecuting barrister was not aware that my sister had made a statement because the solicitor had not told her . . . " (Jacqueline, Public Hearing, 6/7/1994).

She went on to say,

"I made four statements. I went back to the police station two times after I made the initial statement because the prosecution decided that it wanted more statements made. . . . They wanted all the other information I had already given to the police, . . . I mean everything I told them initially that they [police] did not record ended up being recorded in my other statements" (Jacqueline, Public Hearing, 6/7/1994).

7.3 Reporting Process

53. The Committee recommends that ALL reports which involve, or are suspected of involving, sexual assault of any kind are notified to the SART immediately.

At present victims still fall through the gap between police and H&CS. Numerous reports have been received by the Committee of H&CS failing to notify police of sexual assault matters or advising police, days, weeks and in some cases months after the original notification. Equally H&CS have advised of circumstances where they

have informed police of sexual abuse notifications and the police have decided there is insufficient evidence, usually due to the age of the victim, making it a waste of their time to investigate. The Committee has no doubt that both situations occur and considers both situations intolerable.

SARTs may receive calls directly from victims, the public or other notifiers, including police and H&CS. The critical issue is that SARTs must be advised of a suspected sexual abuse immediately, in order to take appropriate action, minimise system-trauma and eradicate duplication of service and corruption of evidence.

7.3.1 Emergency Telephone Facility

54. The Committee recommends that a well publicised central contact number be provided 24 hours a day to receive and re-direct calls from victims of sexual assault.

A well publicised central number for all sexual assault inquiries from victims, professionals or other notifiers is required to ensure that all calls for assistance are properly received and appropriately responded to. The contact point will be able to directly contact SARTs or, after hours, team members for response to sexual assaults. The contact will also be able to provide appropriate information to parents of victims regarding the actions

being taken by the team. Victims would still be encouraged to contact "000" in the case of an emergency and the operator could then redirect their call if appropriate or have other emergency services attend where necessary.

7.3.2 Failing to Notify

55. The Committee recommends that it be a formal disciplinary offence for H&CS or police to fail to immediately notify the SART of a suspected sexual assault.

The Committee recognises that protocols already exist which require H&CS to notify police of sexual assault, and that too many times this just does not happen, or does not happen within appropriate time frames. The Committee considers it necessary to have sanctions placed on those who fail to comply with the new requirements. All victims of sexual assault deserve an equal, quality service and this will only happen with an integrated client based service.

7.3.3 Recording Process

56. The Committee recommends that all notifications received by police shall be recorded as a report of a criminal offence.

Too often the Committee has been made aware of victims reporting sexual assault to police or to H&CS and, for a range of reasons considered unacceptable by the Committee, the complaint is never recorded as a criminal offence. The filtering of complaints of sexual assault is further discussed elsewhere in this report. All reports to SARTs must be recorded as criminal offences and duly investigated unless the victim wishes otherwise. Empowerment of the victim is considered most important and where the victim desires an investigation, such investigation shall be conducted.

Where circumstances are such that there may be little chance of prosecution, a full and thorough investigation shall still take place, and full and complete records of such investigation shall be maintained. Under no circumstances shall a member of a SART fail or refuse to record a complaint of sexual assault as being a criminal offence. Where the investigation fails to find sufficient evidence to substantiate the offence beyond the statement of the complainant, the matter must still be recorded as a criminal offence. If the victim does not wish to have the matter investigated it must still be recorded as a criminal offence. If investigation subsequently proves that it was a false allegation or the complainant states that the complaint was false, a record of both the original complaint and the subsequent finding shall be recorded.

The 1993/94 Victoria Police Statistical Review of Crime defines cleared crime to include: those matters where

offenders are processed; the complainant (victim) has withdrawn the complaint or requests no further police action; and where the perpetrator is known but for legal or other reasons could not be charged. Including matters which are not finalised, such as complaint withdrawn or no further police action gives an inflated clearance rate of 76% for sexual offences. The Committee considers this to be most inappropriate, as it infers that the offender has been apprehended and charged or that it was a false complaint. Neither case may be correct. The clearance rate for police investigators should only reflect those matters where an offender has been charged or proof provided that the original complaint was false. In other circumstances where the allegation is unsubstantiated, the complainant withdraws the complaint for personal reasons or where the victim requests no further police action, the matter should not be classified as cleared but rather suspended.

The Committee acknowledges that the level of reported sexual assault will rise considerably if all reports of sexual assault are recorded. The Committee considers that to be not only acceptable but essential if a true picture of levels of sexual assault are to be recognised and thus community attitudes to sexual assault, particularly of children, change. Public recognition of the true levels of sexual assault will help to halt the complacency currently felt in the community.

7.4 Interview Technique

Interviews with child victims should be made as congenial and comfortable for the child as possible. The victim should not be made to feel that they are in some way being punished. The gravity of the offence must however be at the forefront of the investigator's mind to ensure that a truthful and accurate account of an alleged incident is obtained.

In addition to the usual fears experienced by a child entering unfamiliar surroundings and the necessary separation from their parent or guardian for the interviewing process, the difficulty of the situation is heightened by the grooming techniques of many offenders which involve instilling a fear of authority figures, such as police and protective workers, in the child, in order to reduce the risk of them disclosing at some later stage.

Whilst in New South Wales and overseas the Committee met with a number of interviewers including police investigators, social welfare workers or counsellors and full time interview specialists employed solely to interview child victims. What became clear however is that the crucial factor in conducting a successful interview is not the employment or background of the interviewer, but rather their skill and ability in interviewing and in developing an initial rapport with the individual child.

Each child is different, and like adults, their reaction may vary according to the workers. They may be effected by the age, sex or manner of the potential interviewer so it is important that there is some flexibility in the interviewing process. The use of leading questions during a video taped interview will make the evidence all but useless for court purposes.

7.4.1 Interview Training

57. The Committee recommends that both the police investigator and protective advocate be specially trained to conduct interviews.

When dealing with such a sensitive issue in an unfamiliar environment, it is important that the child is not dealt with by multiple workers. Once established the continuity of contact must be maintained by the initial response team.

Video taped evidence often creates an additional problem at court when the process, as well as the content, is tested by the defence. The expertise of interviewers is often questioned and so the training must be of the highest possible standard. The ICARE training program in Queensland provides interviewers with specialist skills needed in child interviews. Victoria police have developed a comprehensive training course for its

members which is evolutionary in nature, with ongoing refinement based on experience.

The Committee considers that an appropriate specialist interviewers' course be developed incorporating the best elements of existing training regimes of police, social welfare, child psychologists, prosecutors, ICARE and other national and international models. This training would form part of the joint training discussed in paragraph 7.2.15.

7.4.2 Number of Interviews

One of the many benefits of a joint response team is the elimination of duplication. It has been drawn to the Committee's attention that, in the current system, a child may be subjected to a number of interviews regarding the same offence, and it is the Committee's opinion that this results in unnecessary re-victimisation as well as expenditure.

58. The Committee recommends that the number of interviews be limited to as few as possible.

Single interviews may not be possible with some children, who have a short concentration span and who disclose in small amounts, as though testing the reaction of the interviewer. Having all interviews conducted by the one Sexual Assault Response Team will overcome the trauma of re-interview by different people which the Committee

has been advised is a significant problem currently. The SART will be able to act sensitively to the victim and provide continuity of interview and evidence gathering.

Victims of sexual assault frequently and for obvious reasons have trouble trusting other individuals. They have concerns that they have in some way done something wrong - that they are to blame. A victim may have been told this by the offender or simply be basing it on their limited experience. Children perhaps more than other victims need to know why? They must have done something to deserve it. Some are unsure if what they have experienced is normal.

A career paedophile will do almost anything to intimidate the child they are attacking and by doing so, reduce the risk of disclosure and apprehension. Tactics range from threatening them with incarceration or the disintegration of the family unit in incest cases, to killing a treasured pet, their family, or the child themselves.

Children disclose differently; some disclose immediately, some take longer to disclose, others may never disclose. Full and immediate disclosure is rare.

". . I really think children will tell us only what they know we can cope with. It is quite marked: we see children who slowly disclose further abuse to us over time once they feel safe" (Hogan, Public Hearing, 7/7/94).

During the inquiry many cases have been drawn to the Committee's attention where workers suspected that the child concerned had been assaulted, but were unable in their early attempts, to gain either a disclosure from the child or supporting forensic evidence. In these cases budgetary and staffing limitations meant that they were unable to devote any additional time to the case and the offending was left to continue.

What is important for the victim's sake and the wider community's however is that the victim is given the time they need to choose to speak about their ordeal if they are capable of so doing. This may take many sessions. Sending away a child who is a victim but who is still deciding whether they can trust and tell the truth may discourage that child from ever disclosing at a later date and leaves a possible offender walking the streets.

7.5 Investigations

59. The Committee recommends that there be no prescribed limitation on the length of time a SART team can devote to a case.

Time limits, both on interviewing of children and on the case generally, do nothing to protect the child nor to facilitate the gathering of prosecution evidence. Time constraints are merely a resource management tool.

The Committee acknowledges that it is an important management decision to discontinue an investigation and one which should not be influenced or controlled by legislation nor procedure, but rather the potential outcome of the investigation. Each case should be judged on its merits with consultation of the SART and the victim and their parent or guardian. It is important that when a decision is made to discontinue an investigation everyone effected by that decision be informed as soon as possible and the reasons for the decision articulated.

The case should of course be finalised as soon as possible to minimise the trauma on the child and protect the community from an alleged offender.

7.5.1 Case Planning

60. The Committee recommends that on notification of suspected sexual assault of a child, a SART case meeting is called and a decision on intervention options established.

The Committee has been made aware of offenders being interviewed by H&CS workers prior to police involvement, thus warning them of impending investigation. The evidence of the victim has also been corrupted through improper interview technique, the resulting evidence being lost in the initial stages.

In most circumstances, a case planning meeting will be held involving all members of the SART prior to any intervention occurring. A clear understanding, by all participants, of the facts as they are known will be required and an intervention strategy developed. A contingency plan should also be developed.

The Committee recognises that some situations will be of such an urgent nature that planning time will not be available. In these cases, immediate intervention will be necessary with a de-brief and planning meeting to follow. In most urgent cases, general duties police will be contacted and will respond, but will require expert support at the earliest possible time.

What is to be avoided, is ill conceived and inappropriate action in circumstances where better alternatives exist. Clear thinking professionals from a range of ideological backgrounds will be able to discuss cases and arrive at consensus in most circumstances. Where consensus cannot be reached it will be the responsibility of SART management to make the final decision.

7.5.2 Decision Review

61. The Committee recommends that any team member who is in disagreement with the decision of the team manager may seek a review by the regional Child Protection (Sexual Assault) Committee.

Team members must be allowed full and open access to decision making with a review process available. Where strong disagreement to a decision exists, the matter shall be the subject of an open review by the Regional Child Protection (Sexual Assault) Committee. The Committee must make a decision within 24 hours of the request for review. The Committee must consider all available information prior to making the decision, and the reasons for that decision are to be fully documented and expressed to all team members and recorded on the case file. Open management will be a key component in effective service provision and success of the SART concept.

7.5.3 Board Review

62. The Committee recommends that a review of regional Committee decisions shall be by application to the Child Protection (Sexual Assault) Board.

In an open management style, where issues are discussed in detail prior to decisions being made, and a primary level of review exists, it is unlikely that review to a State level will be required. However, in circumstances where the life of an individual may be at risk, a further review mechanism must be available to members who still have concerns regarding the team and subsequent regional management decisions. Again the review must take place within 24 hours of receipt of request and the decision at the State level explained in detail to the team members.

A Court Official advised the Committee in a written submission that,

"Earlier this year a [H&CS] worker failed to submit an application to the Court within the required time. Upon discovering her mistake, the worker insisted that the Government Solicitor {that she consulted} put her in the witness box so she could state that the application had been lodged at the Court and the Court staff must have lost it. The solicitor explained that this was perjury but even so the worker wanted to proceed" (Written Submission, #47).

The Committee wishes to ensure that open management and total accountability of SART operations exists from which public trust and support will follow.

7.6. Child Exploitation Unit

The Victoria Police established the Child Exploitation Unit (CEU) following the success of the Delta Task Force which was headed by the now Chief Commissioner of Police, Neil Comrie. The CEU undertakes complex investigations where high profile offenders or multiple victims are involved. The CEU is the lynch-pin for investigation and suppression of paedophile groups and pornographic bulletin boards.

The Committee supports the valuable contribution a specialist group makes to the complex area of child sexual assault investigations and wishes to ensure that sufficient resources are allocated to the group and that investigations are not stifled by unnecessary bureaucracy. The Unit builds significant expertise in the investigation of habitual, multiple victim offenders.

A close working relationship with SARTs should be developed and the expertise of CEU investigators should be made available in the training of SART investigators.

7.7 Rape Squad

The Victoria Police Rape Squad members are specialists in the investigation of stranger or serial rape and/or abduction of both adults and children. Like the CEU they provide an expert investigation service to Victoria with respect to a narrow and highly specialised offence category and require sufficient resources to ensure an appropriate response state-wide. The continuation of the Rape Squad and its positive interaction with SARTs is an important component of a total response to sexual assault.

7.8 Summary

The intervention model suggested takes the principles of best practice from around the world and creates an

integrated service. The service shall meet the needs of victims in the best possible manner and maximise the collection of evidence for prosecuting perpetrators. Intervention is a major component of the integrated sexual assault model developed by the Committee. The Committee, during its inquiry and particularly whilst overseas visited, spoke with and examined first hand the major components which combine to create the integrated model.

During a tour of a multi-disciplinary facility in Birmingham a worker at the facility said as a passing comment to the Committee, "We used to do our own thing for years and it never worked and it never will. Together is the only way that works" (Birmingham,11/8/1994).

CHAPTER EIGHT

PROSECUTION

8.1 Introduction

The level of prosecution in child sexual assault cases has been particularly difficult to ascertain. Quality statistical data regarding prosecution from the Office of Public Prosecutions, Courts and Police have been scarce in many areas. Comparisons between investigations undertaken, persons charged, committal hearings conducted, trials and results of charges are impossible except on a case by case basis, which is beyond the resource constraints of this inquiry. The Committee considers the lack of consistent statistical data collection in the State is most unsatisfactory, as is the lack of co-ordination between the many areas collecting data.

63. The Committee recommends that the Bureau of Crime Statistics and Research within the Department of Justice be tasked with the collection of all available data relating to prosecution and the court process.

The Bureau of Crime Statistics and Research undertook an inventory of data-bases maintained within the criminal justice system in 1992. The results indicated significant gaps in the collection of data within the system and the Bureau made a number of recommendations to improve

the statistical collection service (Victorian Criminal Justice Data-bases, 1992). Changes have been made in many areas, the most significant of which is the introduction of the Victoria Police Law Enforcement Assistance Program (LEAP), which has greatly increased the amount of information collected thereby allowing statisticians greater access to data for analysis. LEAP is still being developed and enhanced to better meet the needs of operational police, statisticians within the Force and, of course, Force Command. Many of the deficiencies identified by the Bureau still exist and services are unco-ordinated at best. A single agency should be responsible for the collection, analysis and dissemination of statistics relevant to crime and prosecution.

The collection and analysis of accurate and timely statistical data can play an important role as a factor which influences resource allocation and policy development. To be unable in 1995 to identify the number of cases where charge bargaining took place and scrutinise the resulting court disposition is unacceptable in the view of the Committee.

The need for accurate data was identified at the meeting of Premiers and Chief Ministers in Melbourne on 25th November, 1994 where it was agreed that an area requiring action was in the accurate collection of data on the type and location of criminal offences (National Strategy, 1994). The Committee supports this national approach to data collection.

8.2 Investigation

The Committee has been made aware, through direct evidence and written submissions, that a number of deficiencies exist in the area of investigation of criminal offences by police. These predominantly revolve around legislative or resource limitation under which investigators operate.

8.2.1 Testing of Forensic Samples

64. The Committee recommends that the Crimes Act 1958, be amended to allow a period of 12 months for the analysis of samples prior to their destruction.

Victoria police have raised concerns regarding the legislative requirement to destroy blood samples of suspects after 6 months unless charges have been laid. Evidence has been presented to the Committee regarding Section: 646ZD (4) of the *Crimes Act 1958*, actually impacting on investigations into the most serious sexual assault cases and where that evidence is lost as a consequence of the section.

The Committee is concerned that adequate resources should be provided to the State Forensic Science Laboratory to ensure that blood samples and other evidence are examined as a matter of urgency and the results made available to investigators.

The Committee considers that extending the time limit to 12 months will ensure that sufficient time for analysis of all samples is allowed, but wishes to stress that having 12 months in which to test does not mean patterns should be established which see analysis take 11 months as a matter of course. The importance of speedy investigation, prosecution and court determination of sexual assault matters is paramount, for both the well being of the victim and the protection of the community.

8.2.2 Blood Samples

Current legislation provides that police may apply to the court upon the conviction of a person for sexual offences to have a sample of blood taken. This is having limited success with only a small number of applications being made often only by specialist police such as the Rape Squad. The legislation also requires the offender to have been convicted of the offence prior to the application being made.

The State Forensic Science Laboratory established a Sexual Offences Intelligence (SOI) section in late 1993. The SOI section has established a data-base of known sex offenders for use in offender profiling and as an aid to investigation. The success of the SOI section data-base as an investigative tool remains limited by the small number of samples being provided for analysis. In a written submission from the State Forensic Science Laboratory, concern is expressed that,

"While there are provisions in the Victorian legislation that allow for the taking of body samples of convicted offenders there are no clear procedures in place that guarantee that a blood sample of a convicted offender is obtained and submitted to SFSL for genetic profiling. Clear procedures need to be put in place" (Van Oorschot, 1994:4).

8.2.3 Resources at the State Forensic Science Laboratory

65. The Committee recommends that the State Forensic Science Laboratory ensures that all forensic evidence, including blood samples are analysed expeditiously.

In many instances forensic evidence can identify or eliminate a suspect for a serious crime. Where investigators are required to wait up to six months, and on some occasions longer, for samples to be analysed and results to become available, the wait can quite clearly impact on an investigation. A suspect, who could be eliminated through forensic evidence, may still be investigated using valuable police resources. Investigators may be on a false trail, being brought back on track only by forensic evidence, but it may have taken months to find out. Forensic evidence and particularly DNA profiling are extremely useful tools in investigation, but the science is still in its infancy. A clear commitment towards further development of forensic evidence must be made now to

ensure that the maximum gains possible may be realised for the assistance of the court.

Sufficient support staff for administrative duties are required to ensure that the valuable time of scientists is not used unnecessarily on administration. A computer system linked to Police, Courts and Corrections, is also necessary to ensure that all offenders and persons charged are included in the sample.

The Committee is concerned that police and corrections may not be fully utilising or in some cases adhering to the legislation regarding the taking of blood samples from convicted sex offenders. The value of forensic evidence is certainly not limited to sexual offences but, within the terms of reference for the inquiry, the Committee restricts its comments to areas related to sexual offences.

8.2.4 National Intelligence System

66. The Committee recommends that the Minister for Police and the Attorney General lobby for a National Sexual Offence Intelligence System.

The value of our own SOI system is also limited by the lack of co-ordination and access to offender profiles interstate. In a written submission from the State Forensic Science Laboratory, it is recommended that,

"Thought should . . . be given to the merits of a national database at a central location" (Van Oorschot, 1994:4).

Sex offenders, like many other offender categories, are transient and a national program which would form part of a national strategy against sexual assault is essential.

8.2.5 Particularisation of Offence

Victoria Police witnesses and victims of sexual assault have provided evidence before the Committee regarding the difficulties caused by particularisation of offences. The High Court decision, S v R, (ALR, p.321) provides that no charge can proceed unless there is evidence of date, or material things that can be related to a date, that should be reasonably recalled by the accused. The basic principle behind this decision is the right of the accused to establish a defence, particularly an alibi, which is dependant upon knowing when the incident is alleged to have occurred.

It was interesting to note that the Director of Public Prosecution considered particularisation as "an extremely difficult problem" but also stated that,

"There would be very few cases that we would have where a case would totally fail for want of particularity" (Bongiorno, Public Hearing, 27/10/1994).

Other evidence before the Committee indicated that is was a matter which impacted on a significant number of cases, where perhaps charges are never laid by police as there is insufficient evidence to particularise the offence.

Section 47A of the *Crimes Act 1958* provides the offence of, **Sexual relationship with child under the age of 16.** This offence overcomes in part, the difficulties children have in particularising events. There is no requirement to prove the dates or exact circumstances of the alleged offence however for this offence to be proven, it is necessary for the prosecution to prove beyond reasonable doubt that such an act occurred on two other occasions. The requirement therefore is to prove three separate sexual incidents between the accused and the victim.

67. The Committee recommends that section 47A of the *Crimes Act 1958*, apply to all persons, not just those having care, supervision or authority over the victim.

There is a current restriction on the class of person who can commit an offence under section 47A. Only persons who maintain a sexual relationship with a child under the age of 16 who is under his or her care, supervision or authority commits the offence.

Persons who have no legitimate care, supervision or authority of the child, at the time of the sexual act, are not guilty of this offence. Section 47A was introduced into legislation in part to overcome the difficulty of

particularisation for children. Excluding classes of people does not provide the protection to children required and leaves many victims to battle the difficulties of particularisation. Excluding some people from the offence is discriminatory to victims.

The section should be amended to ensure that **any person** who has a sexual relationship with a child under 16 years may be guilty of this offence.

68. The Committee recommends that the specific consent of the Director of Public Prosecutions to prosecute a charge under section 47A not be required.

Section 47A (7) of the *Crimes Act 1958* relating to maintaining a sexual relationship with a child under 16, requires the specific consent of the Director of Public Prosecution prior to the commencement of the prosecution. The Victoria Police have advised that,

> "This requirement no longer applies to any other sexual offence" (Child Exploitation Unit, Written Submission, #62).

The general requirements of the offence section and the elements of proof required for prosecution are clearly defined. This offence should be held to the same level of scrutiny as any other sexual offence. The Committee is of the view that sufficient safeguards exists for this and other

sex offences and that the additional requirement of section 47A is unnecessary.

8.2.6 Multiple Victim Trials

Separation of trials, where there are multiple victims of sexual assault, is commonplace within the courts. In such cases the defence counsel requests, and is granted, separate trials for each victim. Case law decisions which support this outcome include R v Fitzpatrick, (1962) All ER 840, Hoch v R (1988) 81 ALR 225 and SUTTON v R (1984) 152 CLR.

Hopley, in his report "Advances in Combating Child Sexual Abuse in Victoria" states, in relation to separation of trials that, "Given that many cases are strikingly similar in nature, it would appear that most prosecutors appear loath to attempt to have charges heard together and judges will grant separate trials " as a matter of fairness" (Hopley, 1994:30).

The issue of separation of trials is, like particularisation of offences, an extremely complex issue. The competing principles of fairness to the accused, by not permitting character evidence nor prior criminal history, are weighed against the probative value of like patterns of offending. The Committee was informed of a case where a man had two boys on each side of him in bed and each had a hand

on the man's penis. The trials were heard separately and the accused was found not guilty. When one boy gave evidence as a witness for the offences against the second boy, he was not permitted to comment on what he was doing to the man's penis as it was not relevant to the offence.

There is an absurdity in separating trials where perhaps a dozen children have been sexually assaulted within a Day Care Centre and not permit a jury to be aware of the complete picture of the event. Mr. Bongiorno in evidence stated,

"The joinder of trials so that we are trying people for more than one event or more than one complaint introduces an element of prior conviction . . . " (Bongiorno, Public Hearing, 27/10/1994).

The Committee rejects this view as the joining of presentments, which allows evidence of other victims to be admitted, provides the jury with all available information upon which to consider the verdict. The Committee has heard from experts that sexual offenders against children often use the same seduction process, play the same games and perform the same sexual acts upon their victims. "In sexual assault cases, the assaults are typically the culmination of a pattern of domination/subjugation of a weaker victim by an offender exploiting his access and control of the victim" (Vermont Prosecution Manual on Child Abuse, Undated).

This quote is accentuated by the relationship and the power imbalance between children and adults.

The Committee was advised of an accused who was presented for offences against four boys and, as there was no application from the defendant nor his counsel to have the presentments separated, the charges were heard in one trial and a conviction recorded. A subsequent appeal saw the charges separated and the accused was found not guilty on each charge. To what point do children and the community continue to suffer in order to over-protect the rights of the accused?

69. The Committee recommends that legislation be enacted which presumes multiple victim sexual assault cases, which are presented together, will be heard together.

The offences of sexual assault of children have certain dynamics which make them different from almost all other offences. These include, the relationship between victim and offender, the limitations of victim credibility in adult courts, the lack of forensic evidence in most cases and the recidivist nature of the offender, to name a few. Charges may be joined where similar fact evidence exists and there is no collusion between witnesses. Unfortunately this is rarely, if ever, allowed when challenged by the defence. Long serving police officers have advised the Committee that they are not aware of any child sexual assault case which was not separated on

request by the defence. Similar fact evidence is virtually useless in child sexual assault cases.

A more positive step is required to ensure that juries receive a broader and more accurate account of the actions of the defendant. If a trial judge is satisfied that there has been no collusion which has tainted the evidence of children, the charges shall be heard together. It will continue to be up to a jury to determine what weight to place on each portion of evidence but at least they will have all of the relevant evidence to consider.

8.2.7 Costs Against Police

70. The Committee recommends that costs against police only be awarded in sexual assault cases where there is clear evidence of malice, misconduct or incompetence.

The decision to prosecute should be determined on the strength of the evidence against the accused. An extensive filtering system is in place to ensure that only those charges for which there is sufficient prima facie evidence are proceeded with. Allowing courts to award costs against the police, when acting in accordance with the relevant legislative framework, is inappropriate. Over 1.7 million dollars was spent from the police operating budget on costs awarded against police (Victoria Police Annual Report, 1993/94). This significant amount and the

possibility of cost being awarded has placed a heavy hand of caution over authorising officers who may no longer allow the courts to test the weight of evidence. This usurping of the legal process for fear of financial penalty is manifestly against the best interest of justice. The community ultimately suffers when police are afraid to prosecute.

The Committee is most concerned with this situation and consider it inappropriate for police to "second guess" the decision of a court. Where prima facie evidence exists of a sexual offence, the matter is to be determined in a court of law or by the Director of Public Prosecution.

Where misconduct, malice or incompetence is evident in the prosecution of a sexual offence, costs should still be able to be awarded. Where police are performing within the accepted legislative and judicial framework, cost shall not be awarded against police.

The Committe acknowledges that persons who have suffered from a wrongful prosecution, despite the absence of malice, misconduct or incompetence, should still be entitled to seek costs but that provision for the awarding of such costs be made from an area other than the police budget.

8.2.8 Accuracy of Charges

71. The Committee recommends that only those charges for which prima facie evidence exists be laid.

The Committee has been provided with examples of incorrect charging by police and in a small number of cases over-charging. This may occur through ignorance of the evidentiary requirements at trial in some circumstances, but may also occur where police lay every conceivable, relevant charge to allow the DPP to decide which ones to continue with. There may also be a belief, within police ranks, that more charges provides a better bargaining point for prosecution while enhancing personnel files. Regardless of the reason, it is not appropriate to charge offenders with any offence other than those which prima facie evidence exists.

One example given was charging an offender with sexual penetration of a child when, in fact, the child did not clearly indicate there had been penetration, rather that there had been a touching in the area of the vagina which caused discomfort. There was no evidence of penetration and therefore no charge should have been laid, other than a more applicable charge such as indecent assault.

The Committee considers the attachment of legal counsel to SARTs will eradicate this identified problem. Legal

professionals, skilled in presentation of evidence at trial, will have the expertise to identify the correct charge and guide the collection of evidence required to support that charge.

8.3 Evidence

Our current legal process is adult based. Is was devised by adults, for adult witnesses, jurors, judges and defendants. Small headway has been made in the facilitation of children's evidence and making the system more user friendly. Closed circuit television, video taped evidence in chief, screens and other devices have been introduced which are aimed at minimising the trauma endured by a child. Although each of these mechanisms have their value, they are still only bandaid measures which have limited effect, especially when prosecutors are reluctant to request them and magistrates or judges are reluctant to approve them. Ms Benjamin, the Director of Court Network expressed this very concern to the Committee during a public hearing,

"There is considerable discussion between barristers and the judge about whether or not the video equipment is deserved, merited and can be used. . . . It seems to us an added burden for the victims if they have to prove that they are fragile and vulnerable" (Benjamin, Public Hearing, 26/10/1994).

The Committee shares the view held by Ms Benjamin, that the alternative arrangements for giving evidence should be routinely available to victims.

"People should not have to argue their right to it, so if victims do not want to use it - and that does happen, although not often - they should not feel compelled to. The choice should be with the victim" (Benjamin, Public Hearing, 26/10/1994).

Ms Bloom, a Court Network Volunteer, provided the Committee with several cases that demonstrated the inadequacy of the current court process to accommodate the special needs of children.

"I went to the Children's Court on referral a little while ago where a girl of limited intellectual ability was the complainant in a matter of rape. She could not do it; she went in and out of court four times and each time she just could not sit there and look at that guy. Whether he did it or not, the issue to me was that she never got a chance to tell her story, and the matter was dismissed" (Bloom, Public Hearing, 26/10/1994).

The legal process, the courts and the evidentiary systems still view children as simply small adults. They are not small adults, they are children, and just as the special needs of intellectually or physically disabled witnesses

must be accommodated and the special needs of non-English speaking witness must be met, so too do the special needs of children.

In determining the most appropriate method of receiving evidence from a child, it is important to consider the various needs of the court process.

8.3.1 Rules of Evidence

Fairness to the accused is rightly of paramount importance to prevent the conviction of innocent persons. The status of the court must be maintained at all times to ensure courts remain the final independent arbitrator for justice. All relevant and admissible evidence upon which magistrates or juries may determine guilt must be provided.

The admissibility of evidence which is vital to the prosecution case is often argued within the court which may result in the evidence being ruled inadmissible and therefore precluded from presentation before the jury. This may be for a number of reasons including that it is hearsay, prejudicial to the accused or is character evidence.

The witness may also not meet the criteria of being an acceptable witness due to their age or intellectual capabilities. Ultimately, for one reason or another, the

magistrate or jury is deprived of selected evidence, making their deliberation regarding guilt all the more difficult.

72. The Committee recommends that an inquiry into the rules of evidence relating to child sexual assault cases be conducted as a matter of urgency.

The rules of evidence under which our court system operates are complex to say the least. The finest legal minds present argument and counter argument before the court to determine what evidence will be withheld from the jury. The rights of the State to present relevant evidence and the rights of the jury to hear relevant evidence must be weighed against the rights of the accused to a fair trial.

Generally leading questions by the prosecution during evidence in chief is not permitted by the court. Leading questions are those which suggest an answer. After viewing the video evidence, but before cross examination, the prosecutor should be given **some** latitude to ask leading questions as part of establishing the facts of the offence.

Several states in the United States have specifically authorised permitting leading questions during direct examination of a child witness. For example, in California, there is legislation that allows attorneys to ask some leading questions of a young child during direct

examination. The statute was created to accommodate the needs of children. Some children obviously have `difficulty in articulating complete and detailed sentences that are relevant to the facts unless he or she is guided to a certain extent' (National Center For Missing & Exploited Children, 1993:85).

With few exceptions, hearsay evidence is inadmissible in court. Evidence of first complaint in sexual assault matters is admissible, although limited to statements which are not elicited. The Committee considers this requirement for spontaneous statements too restricting to children's evidence. Children may only confide the secret they have with the offender, to a special person such as a medical practitioner, counsellor or teacher. Such evidence, although hearsay, should be admissible in the interests of justice. The evidence should only be permitted if it relates directly to a sexual act or contact between the victim and the accused. It will be for the jury to determine the probative value of the evidence.

During the First National Conference on Child Sexual Abuse in Melbourne, 1994, Ms Linda Purdy, the Assistant Attorney-General in Vermont, stated that the most important tool for successful prosecution of child sexual abuse cases in Vermont, are the special hearsay exception laws (Purdy, 1994). More that half of the states of America have child sexual abuse hearsay exceptions (National Center for Missing and Exploited Children, 1993:87).

The Chief Judge of the County Court, His Honour Judge Waldron AO, expressed significant concern to the Committee during a public hearing, that juries should be able to infer guilt from an accused who chooses to remain silent and not give evidence.

"Let us take a sexual offences case where the complainant had many, many assertions made to her concerning the alleged lack of veracity or accuracy of her evidence. After all that there is ringing silence and the accused is not going into the witness box. I say rhetorically why should not the tribunal, in fact, infer guilt from that individual's refusal - and that is what it is - to give his side of the events. It is not just with sexual offences, it is across the spectrum in my view" (Judge Waldron, Public Hearing, 27/10/1994).

Should the trial judge be permitted to comment on the accused refusal to refute the accusations or not? In itself, a complex question which begs investigation of fundamental rights.

Concerns regarding the admissibility of certain evidence, including hearsay and leading questions, and the probative value of some evidence should be reviewed by skilled practitioners and advice provided for consideration by the Government. Further inquiry should be undertaken as a matter of urgency into the rules of evidence and other factors which impinge on the fairness to all participants of the judicial process.

Evidence before the Committee from both victims and parents of victims of sexual assault, overwhelmingly condemned the legal process, particularly the giving of evidence by children. Police, protective workers, child psychologists and psychiatrists, court officers and prosecutors identified varying degrees of concern with the presentation of evidence and the cross examination of witnesses.

Judge Waldron stated at a public hearing,

"I have to tell you that the trial judge's real dilemma is that to halt cross-examination, which is directed towards an issue, a relevant matter in the trial, is a hazardous exercise because the appeal court is very likely to say, 'Well, the accused was not given an adequate and fair trial because this was a relevant line of questioning and counsel for the accused was not given adequate opportunity to pursue it'"(Judge Waldron, Public Hearing, 27/10/1994).

8.3.2 Court Process

73. The Committee recommends that hearings and trials involving child victims of sexual assault proceed as a matter of urgency.

Victims of sexual assault need to have the matter dealt with expeditiously as part of their first steps to recovery. A time lapse between committal proceedings and trials was illustrated by a victim of sexual assault who gave evidence to the Committee that,

"He was charged at the end of February 1993. The committal hearing started in June. We had one day in June, then another day in July and a third day in August. The trial was set to start in November 1993. I went to the County Court on two days while we were on a waiting list. We could not get a judge so it was again delayed. The trial eventually started in March" (Jacqueline, Public Hearing, 6/7/1994).

Police have confirmed that although the Committal is usually commenced within a short time period, the actual trial may in fact take years before completion, and even longer if an appeal is lodged.

Priority must be given to child sexual assault cases during investigation, forensic evidence analysis and the court process. The committal must be started at the earliest possible time and the trial as soon as practical thereafter. 12 months between committal and trial may be acceptable for an adults but to a five year old child it represents 20 percent of their life.

Evidence was also given by a Court Network Volunteer during a public hearing that,

"Often victims are forced to recall events that are not only painful but are also way back in the memory. A two-year time lapse is not uncommon" (Bloom, Public Hearing, 26/10/1994).

Requests for adjournments by defence counsel at both committal and trial must be carefully scrutinised by magistrates or judges and only granted in extreme cases.

These matters must be dealt with quickly, not only for the well being of the victim, but also to ensure that if the accused is found guilty of sexual offences against children, appropriate sentences may occur to protect other potential victims.

The appearance as a witness in any court proceeding will be traumatic, regardless of the nature of the complaint. In matters where the evidence is about a sexual offence against the witness, the trauma is magnified ten fold. Regardless of what strategies are put into place to minimise the trauma of victims, it will never eradicate the complex emotions of hate, shame, fear, embarrassment and intimidation they feel.

The aim of the Committee's recommendations within this section is to minimise the secondary trauma experienced by victims during the court process, without unduly reducing the rights on the defence to test the evidence. The Committee strives to balance the needs of victim, the State and the accused in the court process. A

balance is attainable with the implementation of the following recommendations.

8.3.3 Committal Hearings

Many complaints regarding aggressive defence counsel who badger, berate and intimidate witnesses refer to Committal hearings. The Committee repeatedly heard evidence from witnesses expressing concern,

"Another Networker said to me that last month at Elsternwick the defendant's barrister yelled at all five children he cross-examined. This Networker said it was mental abuse. One victim burst into tears and was unable to control herself. Obviously the Magistrate did not say very much because it kept happening" (Bloom, Public Hearing, 26/10/1994).

The Committee heard several other recent examples of children being subjected to aggressive cross-examination during Committal proceedings,

"There are many examples here: a defence barrister belittling witnesses screaming to the children, 'You are lying', and the magistrate did not interfere . . . " (Bloom, Public Hearing, 26/10/1994).

The Committee heard a tape recording of a cross-examination of a child sexual assault victim. It was

obvious that the child being cross-examined was extremely distressed during the cross-examination and broke down emotionally three times. There was no intervention from the Magistrate.

When discussing the case in question, the witness stated that,

". . . they [the child witnesses] got in there [the witness box] and were attacked. They are actually told they are lying and they go at them, and at them, and at them, until they cannot stand up. One of the boys, as they said, had to be carried away. . . " (Gunawan, Public Hearing, 26/10/1994).

The Committee is concerned that more latitude may be given in the examination of witnesses by committal Magistrates. Magistrates may have less experience than many of the defence counsel presenting before them and they may therefore lack confidence in dis-allowing a line or method of questioning. Prosecutors at committal hearings may also be less experienced than trial prosecutors or in fact may see benefit in allowing a State witness to "go through the hoops" in order to test their resilience for the impending trial. Whatever the reason, the Committee is most concerned that the treatment witnesses receive in the court process, particularly the Committal court, is unnecessary and inappropriate.

The Queensland Director of Prosecutions R.M. Miller QC advised the Committee that,

"The rough-house tactics were being used in the court below and counsel in the top court, in the trial, were going softly, softly. Naturally, if you go softly, softly before the jury and can point out discrepancies that were screwed out of somebody in the court below, you have a better chance with the jury" (Miller, Queensland Hearing, 23/1/1995).

The committal process was introduced to speed up trials and reduce the back-log of cases awaiting for trial. An examination of evidence before trial has considerable merit as a filter within the system. If the Magistrate considers there is a case to answer, then the matter is sent for trial and the transcript of the hearing read by a Prosecutor for the Queen. Mr. Richard Read stated at a public hearing that,

"Sometimes it is not always perhaps entirely clear to a magistrate as to exactly where the parameters lie - he might make a mistake about that or it may be a situation that requires a reading of the transcript after the evidence has been given and making an assessment. My understanding is that that is not the way it would work; the magistrate would make a decision pretty much there and then on what he has heard. In other words, things would slip through to the keeper - that is the bottom line on that one" (Read, Public Hearing, 22/6/1994).

It is the role of Prosecutors for the Queen, such as Mr. Read, to sift through the committal transcripts and ultimately decide the charges on which the accused shall be presented.

8.3.4 Use of Video Evidence

To what degree, and in what circumstances, video evidence should be permitted and used within the court process is another of the many complex areas considered by the Committee. Evidence from Amsterdam, during the Committee's overseas visit, strongly supported the view that a transcript of the video should be presented to the court by the police informant and that the cross-examination should be referred by the judge back to the informant for further video interview. The video of the child's interview is available to the court if required, but is seldom required. The child must be available to be cross-examined by the court if required but it would appear that this seldom happens. This is quite clearly the best system for the protection of the child and minimising secondary or system trauma. Concerns exist however, within the Committee that the inquisitorial system of justice under which the above conditions exist, is radically different to our own adversarial system. Does a compromise which allows the defence to test the evidence of the child exist, which does not see a child attacked, confused and de-humanised at a committal and or a trial?

The Committee believes there is such a compromise but acknowledges that further investigation by judicial experts is required to ensure the spirit of the Committee's recommendations are implemented within acceptable legal frameworks.

8.3.5 Video Transcripts

74. The Committee recommends that a transcript of the child's video taped evidence be produced at the Committal hearing by the informant.

The primary function of Committal hearings is to allow the State to produce sufficient evidence to satisfy a Magistrate that prima facie evidence exists to establish whether there is a case to answer, and that the accused should therefore face a trial. A Committal does not decide the guilt of the accused. The testing of the evidence of the case should take place before the jury who will decide the guilt of the accused.

The success of the case will very much depend on the quality of the video taped interview of the victim. The integrated model which incorporates professional legal counsel will contribute significantly to improving the quality of the interview and the strength of the prosecution case.

If sufficient evidence exists for the Committal Magistrate to order a trial, the next assessment of the strength of the evidence comes into play where a Prosecutor for the Queen reviews the transcripts of evidence before deciding on the appropriate presentment. Neither the Committal Magistrate nor the Prosecutor for the Queen is charged with testing the evidence of a witness.

The quality of the video interview and the entire State case will need to be of the highest calibre, anticipating possible areas of cross examination. Defence tactics must be investigated by the State at the earliest stage and incorporated in the interview. Having legal counsel attached to Sexual Assault Response Teams will be a significant advance in the better preparation of prosecutorial briefs of evidence.

New South Wales has placed a prohibition on cross-examination of victim witnesses without special reason. The *Justices (Paper Committals) Amendment Act* 1987, protects victims of sexual assault and other crimes of violence from giving evidence and being cross examined. An exception exists where in the interests of justice, it is considered necessary to have the witness give evidence in person.

The Committal Magistrate may request the video tape be played in evidence. At no time is a copy of the video to be given, for any reason, to the accused or the victim or any

other person outside of the Prosecution and the Court. If the magistrate requires clarification of any points or issues arising out of the presentation of the transcript or the informant's evidence, a further interview may be conducted on video and a transcript presented to the Magistrate.

8.3.6 Video Evidence at Trial

The Committee would see a different process being adopted for the receipt of evidence from children at the trial where the jury should receive all relevant and admissible evidence. The Committee also believes that this is the appropriate time for the testing of that evidence by the defence.

75. The Committee recommends that at trial and lower courts, where the determination of guilt is the intended outcome of proceedings, the video recorded evidence of the child is played for the jury as evidence in chief.

The video recording of the interview with the child should be played for the jury in a closed court. Again, at no stage is a copy of the tape to be made available to any person other than the court and the prosecution. Viewing of the tape by defence counsel would be by arrangement with police.

The child should view the video from an another room where a support person is available to comfort and console the witness.

8.3.7 Cross Examination

76. The Committee recommends that the child witness gives evidence via closed circuit television.

The child shall be required only to give evidence via closed circuit television from an another room which may be part of the court building. The prosecutor should take the opportunity to make the witness feel comfortable and settled with the method of responding to questions from the court. The defence counsel is then permitted to cross examine the evidence in chief of the child. The court must be cognisant of the welfare of the child at all times, ensuring that confusing questions are not permitted and that the tone and demeanour of the defence counsel does not become intimidating to the witness. Latitude to test the evidence is essential but rough-house tactics are not acceptable. The prosecutor must be vigilant in protecting the witness, as must judges.

The Committee considers the welfare of the child to be paramount at all times and if the emotional destruction of a child is necessary to gain a conviction, it is just not worth it.

Evidence from some police and prosecutors suggests that closed circuit television or, in fact, any device which separates the accused and the victim is detrimental to the case and that juries are in some way so de-sensitised by television generally that they are less convinced by the evidence of witnesses via television monitors. Although no statistical basis could be provided to the Committee regarding this hypothesis, the Committee acknowledges it as a possible outcome of video tapes and closed circuit television. Having due regard to our current prosecution record in contested matters and, more importantly, those offences which never make it to court because the witness is too traumatised by the current system, there seems little to be lost from protecting witnesses and being concerned for the welfare of the child.

Prosecutors overseas, with whom the Committee met, reported that initially there appeared to be a lessening of confidence in the evidence when presented on video or closed circuit television but, as the process became more common and in fact was used in all cases, it became the norm and the perceived problem vanished. If the only evidence juries receive from children is presented on video or television, they accept it over time as being the standard and only method of presenting evidence.

The Committee considers the short, medium and long term gains of having children's evidence exclusively presented by video or television, to outweigh any

perceived short term denigration of the probative value of the evidence.

8.3.8 Children in the Witness Box

The overriding presumption will be that a child witness will not be required to give evidence from the witness box. The only time a child should give evidence from the witness box within the court, is where the child themselves requests to do so. This should be a most unusual practice, although however remote, still a possibility.

8.3.9 Voice Amplification

77. The Committee recommends that courts provide voice amplification for children when giving evidence in court.

On the rare occasions that a child gives direct evidence, in the court itself rather than from an another room, the court shall provide discreet voice amplification for the child witness. Children under stress often mumble through fear or embarrassment, and this can make their evidence extremely difficult to hear. Amplification will alleviate this problem.

8.3.10 Booster Seats

78. The Committee recommends that a booster seat be available to a child witness when giving evidence in the court.

The height imbalance between adults and children again sees them at a disadvantage. A simple booster seat for the child who insists on giving evidence in the court will help raise the child to a more equal level with adults.

8.3.11 Screens

79. The Committee recommends that a screen be provided to prevent the child seeing the accused in court.

One of the most stressful factors for a child, or any witness for that matter, is the confrontation between the witness and the accused. Eye contact between an adult offender and child witness can have a devastating effect on the child, intimidate or in some other way traumatise the child to such an extent, as to render evidence almost useless. This is not in the best interest of justice and therefore a screen placed between the child and the accused may help to reduce the impact of giving evidence.

8.3.12 Court Preparation

80. The Committee recommends that child victims and witnesses be shown the court prior to giving evidence.

All child witnesses should be shown the court room and associated facilities prior to the trial. The prosecuting barrister should be involved in this process in conjunction with the protective worker. It is important that the child feel comfortable with the layout of the room, the closed circuit television facility and the barrister who will be asking the initial questions. Presently there is minimal, if any, contact between the child witness and the prosecuting barrister. Concern is voiced that any contact may lead to the barrister being called as a witness, and allegations of corruption of evidence may be levelled. The Committee considers this most unlikely, although possible, but considers the status and reputation of the prosecutor, will enable the barrister to quickly dispel any notion of impropriety. The Committee considered it most important that the prosecuting solicitor and barrister have a greater contact with child witnesses than is currently the case.

8.3.13 Child Witness Package

81. The Committee recommends that a Child Witness Package be developed which provides information to victims and parents regarding the court process.

Whilst in England the Committee was given a copy of a Child Witness Package which had been developed by the Home Office in conjunction with a number of other Departments and agencies.

The Pack contains three key components:

(a) Information and advice for parents and carers;
(b) An activity book for child witnesses aged 5 to 9; and
(c) A book for young witnesses aged 10 - 15.

The Committee believes there is considerable merit in providing a purpose-designed information pack for children and their families as part of their preparation for court. The information must be professionally prepared on principles of best practice such as the U.K. example and must be produced in a user friendly style.

8.3.14 Victim Waiting Rooms

82. The Committee recommends that all courts provide a dedicated victim waiting room.

The normal practice is to exclude all witnesses, including the victim, from the court until they have given evidence. This forces the victim to wait in the foyer of the court with other witnesses, often including family and friends of the accused. This can be extremely intimidating and allows for direct contact with the victim. This is most inappropriate, especially with the waiting time some witnesses must endure prior to giving evidence and also

the interruptions to proceedings where the witness is ordered from the court. A separate waiting room, which provides a comfortable and secure area for victims, is essential. It should be designed to meet the needs of all sexual assault victims and include amenities for children.

8.3.15 Future Design

83. The Committee recommends that the design of future courts incorporates facilities to better meet the needs of victims.

Mr Miller, Queensland DPP advised the Committee that it should be feasible to construct a court in such a fashion that the jury can see the witness and the accused, but the accused and the witness would not be able to see each other. Mr. Miller considered that having both accused and witness together before the jury had a significant impact on the probative value of the witnesses evidence.

" . . . I believe a court could be so constructed that the jury will not notice that the accused and the witness are not in eye contact" (Miller, Queensland Hearing, 23/1/1995).

A separate entrance for the witness which does not allow eye contact with the accused is also desirable to minimise the trauma on victims.

8.3.16 Child Development Evidence

84. The Committee recommends that the protective advocate, trained in the developmental levels of children's language, be available to assist the court.

Most people, particularly highly educated individuals within the legal profession, believe that through life experience and education they have a clear understanding of a child's communication level; that they understand what a child means when speaking; that common sense is all that is required to know what is in a child's mind.

"When a child gives his or her evidence in court, the system at the moment operates on the basis that the members of the jury use their common-sense to determine what the child is telling them" (Bongiorno, Public Hearing, 27/10/94).

The Committee considers that there are two primary areas where the protective advocate may be of assistance to the court. The first is in an advisory role regarding the developmental level of children generally, and to dispel certain myths regarding speech patterns of children. Such advice would be for the benefit of the judge, defence and prosecution counsel as well as the jury. The advice would be of a general nature and would not refer specifically to any witness in the trial.

Many examples of idiosyncrasies within children's speech patterns at various stages of development have been presented to the Committee including Drs. Joe and Laurie Braga, who explained that at certain stages in a child's development the words "Take" and "Give" are synonymous. Drs. Braga are the Directors of the National Foundation for Children in Miami, Florida. Joe and Laurie are world-recognised child psychologists who have specialised in interviewing children who have been sexually abused. The Committee met the Bragas during its overseas visit and Joe and Laurie explained in detail the process undertaken for interviewing children in the famous Country Walk Case in Miami. It was one of the first video taped interviews of children in the United States and related to the sexual assault of a number of children at a day care centre, and the successful prosecution of the operators of the centre for sexual assault.

The Committee accepts that the jury must interpret the words and meaning of the children from the evidence presented, but further views the general advice of the advocate as being of assistance to the court process generally.

The second and equally important role for the child psychologist, within the court process, would be to intervene with advice to the judge when questions asked by counsel are presented in such a manner, as to be beyond

the scope of a child. Examples of defence counsel asking multiple questions designed to confuse witnesses or lead them into a statement which suits the needs of the defence are commonplace. It is a technique which accomplished legal counsel perfect within their work place. Confusing a child into making statements which are not accurate is contrary to the needs of the justice system. The Committee heard evidence from a Clinical and Child Psychologist which confirms the difficulty children can experience as witnesses,

". . . studies have been done of the questions asked of child witnesses by barristers in the criminal courts, and they show quite clearly that often the questioner is not trying to make it easy for the child to answer correctly, is not trying to be helpful to the court, but uses sentence lengths, verbal constructions, hypothetical questions and similar that are quite out of reach or confusing for a child witness" (Glow, Public Hearing, 22/9/1994).

A protective advocated, trained in the developmental levels of children, would explain to the judge why a question may be inappropriate and the judge may direct that the question be simplified in order to gain an accurate answer from the child. The child is thereby protected and the jury still hears relevant admissible evidence.

Constraining defence counsel to asking questions in an appropriate manner may not assist the defence argument, but it still allows for them to test the evidence of the child.

8.4 Judicial Education

85. The Committee recommends that a more comprehensive judicial education program be developed which addresses issues relevant to child sexual assault.

The Committee acknowledges that some education is already undertaken by the Victorian judiciary but considers this insufficient to deal with the complex societal issues surrounding sexual assault, particularly against children.

The Committee is concerned that a public perception exists that many judges have lost touch with community expectations. Evidence before the Committee supports this belief, particularly the evidence received from victims of sexual assault or their parents.

An educational program may include, but not be limited to, gender issues, myths in sexual assault, cognitive levels of children, sexuality in adolescence, technology and many others.

Whilst overseas the Committee met with judicial educators in both the USA and Canada. The meeting with Ms. Lynn Hecht Schafran, Esq., Director of the National Judicial Education Program to Promote Equality for Women and Men in the Courts, provided an excellent

overview of the need for judicial education, as well as a working model for its implementation.

Judge Dolores Hansen of the National Judicial Institute, Canada, added considerable weight to the argument for judicial education. Judge Hansen considered educating the judiciary as extremely important and although she did not advocate that education should be compulsory the Judge indicated that with support of the Chief Judge most judges would attend.

Both overseas organisations strongly stated that the education of judges must be of the highest calibre and be presented by professionals who are expert in the relevant areas.

Judge Waldron, Chief Judge of the Victorian County Court stated at a Public Hearing that,

"It ought not to be assumed for one moment that any person who is intellectually able to be a judge will instantaneously be an adequate judge upon arrival and, of course, as the years go by one has to keep up to date. I suppose there is a risk of the judges perforce having to be somewhat aloof and apart from the community. That contact could be lost, and again, for the longer serving judges, it is more than appropriate for there to be judicial education" (Judge Waldron, Public Hearing, 27/10/1994).

8.5 Specialist Prosecutors

86. The Committee recommends that a pilot project of employing specialist prosecuting barristers be trialed.

The Committee has heard evidence from many professionals, including police, regarding the expertise of some prosecuting solicitors and barristers in sexual assault cases.

The conflict between prosecuting one day and potentially defending the next, does not sit comfortably with the professionals and victims, nor does the Committee consider it the best practice. The legal profession itself does not appear to consider that a conflict exists between the two roles, nor does it seem to accept the need for special skills in prosecuting sexual offences, beyond those of general criminal offences.

The Committee does not question the calibre of prosecuting barristers which the DPP's office briefs to prosecute. The concern relates to the dynamics of child sexual assault which influence the actions of victims and offenders. A greater understanding through court exposure to these cases, as a prosecutor, may in the Committee's view, significantly advance the specialist skill level of prosecuting barristers.

A barrister who develops an understanding of the complex nature of child sexual assault, and the tactics used by offenders to groom their victims, will be a better barrister than one who has prosecuted 5 sexual offence cases and 50 non sexual cases over a ten year period.

A pilot project to trial specialist prosecutors for child sexual assault should be run in conjunction with the pilot project of the regional sexual assault services units. Prosecuting solicitors attached to the SARTs will brief a select group of prosecuting barristers whose primary role is the prosecution of child sexual assault cases.

An evaluation of the effectiveness of this project should be undertaken in conjunction with the independent evaluation of the sexual assault service pilot.

8.6 Summary

This chapter has provided recommendations which alter the method in which a child victim is treated within the court, and the way in which evidence is received. It has aimed to bring greater balance to the court process in order to ensure that relevant admissible evidence is presented to the jury, without reducing the rights of the accused to a fair trial.

The Committee is most concerned that, of the sexual assaults which are reported and investigated within the justice system, too many are never charged and will never proceed to trial. Too many offenders are never held accountable for their actions and are allowed to continue their offending patterns. The Committee considers this to be a central issue within the scope of the report, but has had great difficulty in determining appropriate measures to adequately deal with this group of people without unduly impinging their civil liberties, while providing the protection to victims and the community generally.

The collection and profiling of DNA samples from all persons convicted of sexual offences, provides an invaluable information source for identification or elimination of future suspects. The registration of all persons against whom a sexual offence case is proven will be of significant benefit in the long term management of sexual offenders in providing both ongoing support and supervision.

For the great majority of offenders against whom a charge is not laid, there is little direct intervention available. Improved services to help people cope with, and manage deviant arousal, would provide treatment and support for those identifying that they have a problem and wishing help to deal with it. This will have little impact on those in denial or who have convinced themselves that sexual relations with children is a good and positive thing for them and the child.

CHAPTER NINE

SENTENCING

9.1 Introduction

From the commencement of the inquiry into sexual offences against children and adults, the Committee has grappled with several questions. Should sex offenders be punished or treated? If they are punished, for how long? If they are treated, for how long? Is punishment and treatment compatible? Should their liberties be intruded upon after they have served their sentence? To what extent and for how long? These questions are critical because of the real threat child sex offenders pose to the community.

Sex offenders are a most difficult and dangerous class of offenders.

"They have good skills in manipulating both the system and the people around them to groom potential victims" (Calabro, Public Hearing, 15/6/1994).

Next to murder and manslaughter, it could be argued that sexual abuse is the most serious offence against the

person. The difference between murderers and sex offenders against children is that offenders convicted of murder, very rarely commit the same offence once released back into the community. Whereas, child sex offenders are notorious for their high recidivism rate.

It is because child sex offenders are so recalcitrant in their offending behaviour, that the state must respond to them with the same magnitude as the threat these individuals pose to the community.

Robert Freeman-Longo in a paper presented to the Sex Offenders - Management Strategies for the 1990's conference stated,

"The first point to be made when addressing the issue of sex offender treatment is that there are not `CURES' for these people. Despite the fact that one may see psychological reports stating that an offender has been cured and is no longer a threat to the community, it is a misrepresentation of the state of the art, if you will, and borders on the unethical" (Freeman-Longo, 1990:53).

National and international research and statistics have found that appropriate assessment, treatment, long term supervision and effective monitoring can reduce the risk of sex offenders re-offending when released back into the community.

9.2 Sentencing Principles

The principal objectives of sentencing convicted offenders are set out in the *Sentencing Act* 1991, which states that the only purposes for which sentences in Victoria may be imposed are:

(a) to punish the offender to an extent and in a manner which is just in all of the circumstances; or

(b) to deter the offender or other persons from committing offences of the same or a similar character; or

(c) to establish conditions within which it is considered by the court that the rehabilitation of the offender may be facilitated; or

(d) to manifest the denunciation by the court of the type of conduct in which the offender engaged; or

(e) to protect the community from the offender; or,

(f) a combination of two or more of those purposes (*Sentencing Act*, 1991, s. 5(1)).

Sentencing Magistrates and Judges dispense penalties by applying a structured approach as laid down in law. Chief Judge Waldron, however, advised the Committee that,

"In practice it is the Court of the Criminal Appeal which both establishes the ceiling for sentences within the statutory maximum for the various criminal offences and also generally lays down the law pertaining to sentencing" (Chief Judge Waldron, Written Submission, #57).

The Magistrate or Judge must first consider the gravity of the crime, as the penalty must be proportionate to the crime. They must then consider all aggravating and/or mitigating circumstances personal to the offender. All aggravating and/or mitigating circumstances are identified by the crown prosecutors and counsel for the defence. Once all aggravating and/or mitigating circumstances are identified and brought into account, the Magistrate or Judge, must arrive at a final, appropriate actual sentence. The actual sentence cannot exceed the statutory maximum but, if the mitigating circumstances warrant it, the actual sentence may be lower than the statutory maximum.

9.2.1 Sentencing Options

There are several sentencing options available to Magistrates and Judges. In sequential order, from the most intrusive penalty to the least intrusive penalty, they are as follows:

(a) Imprisonment/Youth Training Centre;

(b) Suspended Sentence;

(c) Intensive Correction Order;

(d) Community Based Order;

(e) Adjourned Undertaking/Bond;

(f) Fine; and

(g) Restitution.

During the 1993 calendar year, there were 132 offenders sentenced before the Victorian higher criminal courts, where their principal offence was a sexual offence against a child. See Table 1 for a breakdown of offences. These figures do not include sex offenders who were sentenced in the lower courts.

TABLE 18:
Higher Courts, Victoria, Australia for the period 01/01/93 to 31/12/93).

Principal Offence	**Total**
Carnal knowledge of a girl under 10 years	2
Sexual penetration of a child under 10	33
Sexual penetration of a person 10 -16	34
Attempted sexual penetration of a child under 10	1
Attempted sexual penetration of a person 10 - 16	1
Maintain sexual relationship with under 16 year old	3
Incest	43
Indecent assault on person under 16	1
Indecent act with child under 16	13
Gross indecency with person under 16	1
	132

Source: Sentencing Statistics, Higher Criminal Courts,1993: 155-157.

There were 33 offenders sentenced before the higher courts, where the principal offence was *Sexual penetration of a child under 10 years.* 19 offenders were sentenced to imprisonment; 2 offenders were sentenced to a Youth Training Centre; 3 offenders received an Intensive Correction Order; 5 offenders received a Suspended Sentence; 3 offenders received a Community Based Order and 1 offender received a Bond.

34 offenders were sentenced before the higher courts, where the principal offence was *Sexual penetration of a person 10-16.* 22 offenders were sentenced to imprisonment; 5 offenders received a Suspended Sentence; 1 offender received a Community Based Order; 1 offender received a Fine and 5 offenders received a Bond.

Of the 43 offenders sentenced before the higher courts, where the principal offence was *Incest,* 42 offenders were sentenced to imprisonment and 1 offender received a Suspended Sentence.

9.3 Pre-sentence Assessments

It is the role of the counsel for the accused to identify all mitigating circumstances before the Magistrate or Judge. Thus it is general practice for the defence counsel to hire a consultant psychologist or psychiatrist from the private sector to assess the offender and provide an opinion to the

court relating to the offender's culpability. The psychological/psychiatric assessments provided by the defence counsel's `expert' witness can have the potential to significantly reduce the actual sentence the offender will receive.

87. The Committee recommends that the court order an independent psychological/psychiatric pre-sentence assessment of all convicted sex offenders.

During the inquiry there has been a recurring concern expressed by specialists in the field of sexual abuse. The concern is that, during the sentencing hearing, assessments provided by the defence counsel's expert witnesses are not accurate. Although the court has the power to order an assessment by H&CS Psychiatric Services, it rarely does so, particularly when one is provided by the defence counsel. The prosecution does not have the right to order an assessment.

As the Queensland Director of Prosecutions so eloquently described the dilemma regarding experts,

> "One can always buy an expert" (Miller, Queensland Hearing, 23/1/1995).

The Committee has been advised of 'chequebook assessments' and considers that in the interest of justice, the court should order an independent assessment prior to sentencing all convicted sex offenders.

Ms Arentz, Manager of the Epistle Intellectually Disabled Ex Offender Program stated to the Committee during a public hearing that,

"I cannot see how an assessment can be totally objective if the defendant's barrister is paying for it. If it is not suitable, that psychologist would not get another job from that barrister. It would be very difficult for it to be totally independent and impartial" (Arentz, Public Hearing, 15/6/1994).

A Senior Clinical Psychologist advised that based on his experience, psychological/psychiatric assessments of offenders, provided by experts for the defence, are not always accurate.

A Clinical Psychiatrist who specialises in treating sex offenders also expressed concern to the Committee in relation to 'expert' witnesses'.

Similarly, the Committee received evidence from another Consultant Psychiatrist that if the community is to be protected from sex offenders, the judiciary must be provided with the best possible information as to the true psychological/psychiatric assessment of the sex offender.

The Committee acknowledge that it would be an infringement of offender's rights, to deny them the opportunity to submit a pre-sentence assessment report prepared by their choice of "expert" witness. In light of

the need to protect the community from further sexual offences, there must however, be due consideration to the assessments provided by an independent assessment body.

Pre-sentence assessments of convicted sex offenders are crucial to effective intervention in the future behaviour of the offender. The pre-sentence assessments assist sentencing Magistrates and Judges in reaching decisions as to whether to sentence convicted sex offenders to imprisonment, or to a community based disposition.

Similarly, the pre-sentence assessments may weigh heavily on the Magistrates or Judges' decisions as to whether sex offenders will be sentenced to undergo treatment or whether they will just be 'warehoused' in the system until they are eligible for parole or the expiry of their sentences.

The Committee has been advised by several witnesses that assessing and treating sex offenders requires specialist knowledge.

The Committee is most concerned that 'expert' witnesses, employed by defence counsels to prepare pre-sentence assessment reports of the sex offenders, do not always have specialist knowledge about offenders' patterns and behaviours. This specialist knowledge is critical if psychologists/psychiatrists are to provide the best possible information to the sentencing Magistrate or Judge.

9.4 Victim Impact Statements

In May, 1994, the Victorian Government introduced legislation for the use of Victim Impact Statements to be considered by Magistrates and Judges during sentencing deliberations.

88. The Committee recommends that comprehensive guidelines for the use, preparation and confidentiality of Victim Impact Statements be established.

The Committee acknowledges the introduction of Victim Impact Statements to be considered by the Magistrates and Judges during the pre-sentencing hearing. However, the Committee was concerned to hear from several witnesses that the guidelines and procedures for their preparation and use have not been properly established.

There appears to be significant confusion amongst victims, the Victoria Police and Centres Against Sexual Assault as to who is responsible for the preparation and presentment to the courts. Written guidelines assigning the task to the organisation/s responsible for the preparation and presentment to the courts need to be established.

If the use of Victim Impact Statements is to be effective as an avenue for giving victims a voice, and as a sentencing

tool for Magistrates and Judges during the sentencing hearing, it is imperative that the organisation/s assigned to prepare and present them in court are equipped with the resources to adequately fulfil the additional responsibility.

9.4.1 Confidentiality of Victim Impact Statements

Concern has also been raised as to the absence of guidelines pertaining to the confidentiality of the Victim Impact Statements.

"While the release of identifying information regarding the victim is generally forbidden, current legislation does not cover the release of information provided in the form of a Victim Impact Statement which, whilst not identifying, is of an extremely personal nature" (McCarthy, 1993:12).

The identity of the victim is maintained currently, however the extremely personal nature of the impact of the crime on the victim may be used as public information. The Committee considers that the possible public disclosure of information contained in a Victim Impact Statement, other than the identity of the victim, serves little or no purpose and can potentially further traumatise the victim.

9.5 Penalties

The sentencing stage is, to a large extent, perceived by the community to be the most important stage of the criminal justice process. The sentencing stage is where justice must be seen to be done.

89. The Committee recommends that the Attorney General review penalties for sexual offences to ensure that the sexual assault of a child is regarded as seriously as the sexual assault of an adult.

Currently, the statutory maximum penalty for *Incest* is 20 years imprisonment (*Crimes Act* 1958, s. 44(1)). The statutory maximum penalty for *Sexual penetration of a child under the age of 10* is also 20 years imprisonment (*Crimes Act* 1958, s.45(1)). The statutory maximum penalty for *Sexual penetration of a child aged between 10 and 16* , to whom he or she is not married, is 15 years imprisonment if the child was, at the time of the offence, under the care, supervision or authority of the defendant, or 10 years imprisonment for any other case (*Crimes Act* 1958, s. 46(a)(b)).

In comparison to sexual offences against adults, the statutory maximum penalty for *Rape* is 25 years imprisonment. Prior to the *Crimes (Rape) Act* 1991, the statutory maximum penalty for Rape was 10 years imprisonment, and Rape with aggravating circumstances

was 20 years imprisonment. The *Crimes (Rape) Act* 1991 effectively abolished the common law offence of Rape, and Rape with aggravating circumstances, and replaced them with a single offence of Rape and increased the maximum statutory penalty to 25 years (s.38(2) and s. 6).

The increase in the maximum statutory penalty for Rape reflected the community's growing abhorrence towards sexual offences against adults. The community must not perceive sexual abuse against children to be less serious than sexual offences against adults. Children are the most vulnerable group of individuals in society and must be protected. This is not the message the *Crimes Act* 1958 is currently sending the community.

90. The Committee recommends that the actual sentence dispensed for sexual penetration of children under 16 reflect the seriousness of the crime.

9.5.1 Lower Courts

The Committee is most concerned that the penalties dispensed in Victorian lower courts, when sentencing offenders convicted of sexual penetration of children, are too lenient and do not reflect the gravity of the offences.

The Committee's concern was further reinforced upon examination of the figures provided by the Magistrates'

Courts. During the 1993 calendar year, the Magistrates' Courts heard, by way of Committal Mention or adjudication, a total of 842 charges pertaining to sexual penetration of children under 16.

Of the 842 charges involving sexual penetration of a child under 16 (includes sexual penetration of a child under 10), 475 (56%) of the charges were struck out. The reasons as to why 56% of charges were struck out, were not able to be provided to the Committee. Generally, the charges may have been struck out at the Committal Mention because of insufficient evidence to proceed to trial or because the Director of Public Prosecutions may have applied to have the charges withdrawn for various reasons. Only 86 (10%) resulted in a term of imprisonment. 107 of the charges (13%) resulted in a sentence to a community based disposition and 165 (20%) were sentenced to either a Fine or an Adjourned Undertaking/Bond.

Note: The above figures represent the number of offences, not offenders.

'Term of Imprisonment' includes; Imprisonment; Youth Training Centre; Mixed Imprisonment and Suspended Sentence and Suspended Sentence of Imprisonment.

'Community based disposition' includes; Intensive Correction Order; Community Based Order; Community Based Order: other program conditions.

The Committee appreciates that in law and practice the sentencing Magistrate or Judge must take into account all mitigating circumstances personal to the offender when deciding the culpability of the offender, and subsequent penalty. However, without impinging on the discretion of the judiciary, the Committee is of the view that there would be very few circumstances of sexual penetration of a child under 16 years, that do not warrant a custodial sanction.

9.5.2 Habitual Offenders

91. The Committee recommends that the Serious Sex Offender Legislation be reviewed by the Parliament after three years.

The Committee acknowledges and supports the creation of Section 5A Sentencing (Amendment) Act, 1993, which allows for extended custodial sentences for "serious sexual offenders". The new legislation directs the court to regard the protection of the community as the principle purpose when sentencing.

In order to achieve that purpose, the sentencing Judge may impose a custodial sentence which will be "longer than that which is proportionate to the gravity of the offence considered in the light of its objective

circumstances" (Sentencing (Amendment) Act, 1993 S 5A (b)).

There are a number of child sexual offenders currently in the community, whose offending behaviours are so entrenched and not amenable to treatment or management, who will continue to sexually victimise children, whilst given the opportunity.

On a separate occasion during a Public Hearing, a Committee Member asked Mr Calabro, the Executive Director of the Epistle Post Release Service, "Are there people in our community who are so predatory that their rehabilitation cannot be guaranteed and who, therefore, should be considered so dangerous that we cannot let them out?" Mr Calabro replied,

"I must say yes to that. I am not saying that there are many, but I am saying yes, there are people like that" (Calabro, Public Hearing, 15/6/1994).

Whilst overseas, the Committee visited the Stillwater Prison, Minnesota and spoke with six serious sexual offenders who were undergoing treatment. One offender stated categorically that he would not commit a further offence as his whole life depended on him controlling and managing his sexual desire. The Committee recognises that the deterrent aspect of indefinite sentencing is limited, but further considers that

deterrence is a secondary benefit compared with the protection of the community.

The Chairman of the Adult Parole Board, the Honourable Justice Vincent advised the Committee during a public hearing that he is personally wary about the possibility of imposing life sentences for serious sex offenders, as it would entail endeavouring to predict human behaviour. He did however, concede that,

"I suppose that of all the areas in which the prediction of human behaviour is safe, the safest is the area of sex offenders, because it is an area that a profile can be built up" (Justice Vincent, Public Hearing, 26/10/1994).

The Committee hold the strong belief that there comes a point when the protection of the community outweighs the individual rights of the sex offender.

A Parliamentary review after 3 years will enable the impact of the serious sex offender legislation to be judged and perhaps modified if required. The Committee considered the "3 Strikes and Your Out" legislation as seen in a number of States in America, but concluded that it would be prudent to allow existing legislation to be tested and evaluated prior to making such a recommendation.

9.6 Treatment

The community may be apprehensive about the State spending tax payer's money on treating sex offenders. The community must however take into account that most sex offenders will eventually be released from imprisonment. The community must accept that incarceration in, and of itself, will not achieve a single thing, other than the protection of the community for that time which an offender is incarcerated.

Thus, the State must attempt to treat sex offenders in order to minimise the risk of them re-offending

92. The Committee recommends that all convicted sex offenders shall undergo assessment with a view to treatment where appropriate.

The Committee has been advised by several psychologists and psychiatrists that recent evidence both in Australia and overseas is suggesting that sex offenders can be managed.

Brian Dixon of the New Zealand Justice Department, Psychological Services provided the Committee with the results of a 1993 study into re-convictions which indicated that 67% of a control group were re-convicted whereas 30% of the treated group were re-convicted. There was

also a reduction of 40% in the seriousness of the re-offence after treatment (Dixon, 1993).

9.6.1 Cognitive Behavioural Treatment

It is now widely accepted that the most effective therapy is based on the cognitive behavioural treatment. The aims of cognitive behavioural treatments are to make the offender take responsibility for his/her offences; to become motivated to engage in treatment as a consequence; and to equip the offender with behavioural controls to exercise against the temptation to re-offend (Barker, 1994:26).

A recent review of international cognitive-behavioural treatment programs for sex offenders found that up to 60% of untreated sex offenders re-offend over 5 years following release, whereas approximately 15% or less of treated offenders re-offend (Marshall, 1993:441).

National and international recidivism rates obviously cannot take into consideration the many offences which do not lead to the notification of law enforcement agencies or convictions. It can therefore be seen that there are a significant number of victims being offended against by known or previously convicted sex offenders.

9.6.2 Cost Benefits of Treatment

The psychological impact of child sexual assault on its victims is devastating and the costs incurred on society are significant, particularly when some of these offences can be avoided. A study was conducted by Prentky and Burgess, (1990) which did a cost-benefit analysis of treating sex offenders.

The study calculated that the financial costs of sexual offences incurred by society include; apprehension; investigation; trial; incarceration and parole. Victim related costs were calculated to include; the department of social services; hospital and medical expenses; victim services and treatment (Prentky, 1990:112).

Their study was based on a sample of 129 sex offenders released from the Massachusetts Treatment Centre since 1959. The recidivism rate for treated sex offenders was estimated at 25% and the recidivism rate for untreated sex offenders was estimated at 40%. It was hypothesised that the untreated group were expected to re-offend at a rate of 40%, which was based on several other studies for sex offenders and recidivism. The study compared the costs of the treated and untreated groups. It was estimated that the costs incurred with untreated sex offenders was an additional $67,989 above the treatment option, as they were incarcerated for longer periods of time (Prentky, 1990:109).

The cost-benefit analysis continued after release measuring the cost of re-offence. The cost of re-offence was estimated at $183,333. The weighted probability of re-offending of untreated offenders, based on a conservative one-victim offence pattern was expected to cost an average of $27,500 for each recidivist (Prentky, 1990:113).

Treatment offers a response to offending which has the potential to have long term positive effects in reducing future offending.

Based on direct evidence from practitioners overseas and evidence from practitioners in Victoria and Australia, the Committee has proposed the following model of effective treatment for non-custodial and custodial sex offenders.

(a) Mandatory assessment of all sex offenders sentenced to a non-custodial and custodial sanction. The aim of the assessment should be to gather information about the offending behaviour and patterns and to encourage the offenders to begin questioning their behaviour. The assessment approach should be through a combination of group and individual therapy sessions;

(b) Following assessment, appropriate offenders should commence an extensive treatment program;

(c) The treatment content should include the following components: cognitive restructuring; victim empathy; behavioural reconditioning; relationship skills;

sex education; social skills; anger management; stress management; social problem solving and relapse prevention; (Psychosexual Therapy Unit, Metropolitan Reception Prison, Victoria; Sex Offenders Treatment Program, Moreton Correctional Centre, Queensland; The Kia Marama Programme For Sexual Offenders, Rolleston Prison, New Zealand).

(d) The treatment programs should have a two week intake cycle;

(e) The treatment programs should be modularised with different levels. The modules should increase in intensity. Promotion to higher module levels should be based on individual progress;

(f) The treatment program should begin at the assessment phase and end at the completion of the offenders parole period;

(g) The treatment units should be managed by a minimal number of correctional officers and a maximum number of therapists;

(h) The therapy teams should be multi disciplinary, including; psychiatrists; clinical psychologists; social workers and correctional officers;

(i) The treatment programs should have a research and ongoing staff training component; and

(j) The treatment programs should have the capability to rotate staff to prevent burnout.

9.6.3 Current Programs

The Metropolitan Reception Prison provides a Psycho-Sexual Therapy Unit for incarcerated offenders. The Unit is funded by Correctional Services Division, Department of Justice.

The State-wide Forensic Program runs an assessment and treatment program for intellectually disabled sex offenders, which incorporates the Intensive Supervision Program in K Division at Pentridge and Loddon Prison; and a multi-disciplinary Support Team. The program is run by the Disability Services Division, Health and Community Services and the Department of Justice.

The Psychosexual Treatment Program at the Brunswick Road Clinic is run by the Forensic Psychiatry Services Division, Health and Community Services.

The Community Correctional Services Division, Relapse Prevention Program provides supervision and treatment to sex offenders who are serving Community Based

Orders and Intensive Correctional Orders. The program is run by the Correctional Services Division, Department of Justice.

The Boy's Sexual Behaviours Program is a short term preventative program for boys aged between 8 and 13 years, who are exhibiting inappropriate behaviours. The program is co-ordinated by the Victorian Society for the Prevention of Child Abuse and Neglect, and Health and Community Services.

The Adolescent Sex Offenders Program is run by the Children's Protection Society and is funded by Health and Community Services.

The Male Adolescent Program for Positive Sexuality is a state-wide assessment and treatment service for 14-17 year olds who have been convicted of sexual offences and placed on community based orders or serving custodial sentences. The program is run by the Clinical and Forensic Health Unit of the Juvenile Justice Section, Health and Community Services.

The Committee was encouraged to learn of all the treatment initiatives currently responding to the problem of sexual abuse. The Committee had the opportunity to attend the Psycho-Sexual Therapy Unit and the Male Adolescent Program for Positive Sexuality. The Committee was most impressed with the operation of the programs.

It has been estimated that approximately 15% of the prison population at any one time, are there for sexual offences. As at 30 June, 1993 there were 328 prisoners whose primary offence was a sexual offence.

Several witnesses have commented on the availability of custodial sex offender treatment programs. Mr Justice Vincent stated:

"They are not, and never have been, available widely enough. I regard it as a regrettable state of affairs that we do not have a much more intensive program operating out of Ararat Prison, where there are approximately 186 sex offenders" (Justice Vincent, Public Hearing, 26/10/1994).

"Intervening in current offending behaviour is a step toward dealing with prevention. It is distressing to us that some professionals debate the virtues of services to victims and services to offenders, as if they are in competition. Obviously, resources for victims are essential, but it is our view that unless more resources are provided for treatment of offenders, we are constantly dealing with the impact of these crimes, by allowing perpetrators to re-offend again and again." (Bouverie Family Therapy Centre, Written Submission, #38).

93. The Committee recommends that the custodial sex offender treatment program be further developed.

The Psycho-Sexual Therapy program is based on the internationally recognised cognitive behavioural approach. The duration of the program is 20 weeks. The components of the program include; the development of social skills; negotiation skills; assertiveness; anger management; relaxation training; drug and alcohol awareness; sex education; sexuality and relationships; cognitive restructuring; deviant arousal control; victim empathy; relapse prevention and coping with change (Bigelow, 1994).

Many witnesses before the Committee have expressed their concern with the duration of the Psycho-Sexual Therapy Unit program. Many sex offenders have long histories of sex offending behaviours. Their offending behaviours have been entrenched over long periods of time. Concern has been raised that a 20 week program is not long enough to effectively change the cognitive distortions which facilitate their offending.

The Committee was most concerned to learn that Victoria's most comprehensive custodial sex offender treatment program, the Psycho-Sexual Therapy Unit program, has the capacity to accommodate only 10 inmates at any one time, with two intakes per year.

At present, sex offenders can be accommodated at any of the prisons in Victoria. This in itself is problematic because child sex offenders, by the very nature of their crimes are extremely vulnerable within the prison system.

The mainstream prison population is often violent towards child sexual offenders who consequently require protection from the general prison population. It is not uncommon for sex offenders to require 23 hour lock-up protection in a single cell, which segregates them from the general prison population. Sex offenders requiring this form of protection, commonly begin to believe that they are the victims, which is not conducive to changing their offending behaviour. Alternatively, sex offenders may have to be provided with a fictitious criminal history or "cover story" as to their offending behaviour. Unfortunately, providing sex offenders with cover stories merely reinforces the lie that they live.

Based on the desire to provide treatment to all custodial sex offenders, the most cost effective way would be to have sex offenders located within well managed purpose designed facilities.

The treatment program for custodial offenders is preferred to be demographically located in an urban area. An urban location would facilitate inter-agency liaison; successful re-integration into the community; access to post-release support services and appropriate, well qualified staff recruitment.

The Committee acknowledges that there can be problems associated with locating large numbers of sex offenders within selected prisons. It can facilitate networking amongst sex offenders which would be detrimental to effective treatment. Networking has the potential to

reinforce sex offender's deviant sexual beliefs. The Committee however considers that networking and deviancy reinforcement is most likely occurring now and there would be minimal increase in risk if more offenders were brought together for treatment and management. Appropriate management and supervision within correctional facilities can, to a large extent, minimise the problem of co-located sex offenders.

Appropriate management would require extensive on-going staff training; mixed units within the prison (i.e. ensure that the units do not contain just paedophiles or just rapists); strict control over pornography and erotica; and strict control over victim issues (i.e. ensure offenders do not posses any photographs of victims and are not contacting them).

9.6.4 Program Co-ordination

94. The Committee recommends that strategies be developed to improve communication, co-operation and co-ordination of services to sexual offenders.

The last few years has seen the emergence of several treatment initiatives in Victoria that are designed to reduce the incidence of sexual assault in the community and to reduce recidivism. National and international research into sex offending has found that untreated sex offenders re-offend at a rate in excess of those who receive treatment.

Having met with many of the professionals involved in the programs, the Committee believes Victoria has many specially skilled and dedicated experts currently treating sex offenders.

However, the Committee shares the view expressed by several witnesses, that sex offender treatment services need to be co-ordinated.

"Basically we are saying that although there have been a number of responses in Victoria, they have not been co-ordinated. It is fairly fragmented. One has no idea about what is happening. A Committee like this has been long overdue. We see it as one way of maybe developing a comprehensive and proper response to this problem. It seems to us that the state is now going to see this as a major issue and respond appropriately. That has been needed for a long time" (Mudaly, Public Hearing, 22/9/1994).

The Committee has the view that there is insufficient co-ordination of Victorian treatment programs currently operating. The sources of funding for the individual programs are fragmented, hence the lines of accountability. Furthermore, there are no formal mechanisms for the exchange of information. Better co-ordination between Correctional Services Division and Psychiatric Services, H&CS is required to improve the current service.

9.7 Parole

The Parole system is based on the premise that it is undesirable for offenders to be released from incarceration without some process of monitoring being put in place, and without efforts being made to assist them to re-integrate into the community.

There are certain conditions placed on paroled offenders. They may involve a restriction on the possession of pornographic material, alcohol and location of residence. The parole conditions may also require that certain individuals may not change their residence without the consent from the Adult Parole Board. In addition, parole conditions may require the parolee to participate in a community based, sex offender treatment program.

An offender's parole can be automatically cancelled by the Adult Parole Board if he breaches any of the conditions imposed. Should an offender's parole be cancelled, the offender will be required to serve the remainder of his sentence in custody.

The Committee would understand concerns the Adult Parole Board may have in granting parole to a sex offender who has refused to undergo treatment or has not adequately progressed through the treatment whilst incarcerated.

9.7.1 Post Release Services

95. The Committee recommends that all convicted sex offenders shall continue treatment at least until the completion of their parole period.

Based on extensive consultation with practitioners in the field of sex offender treatment, both in Australia and overseas, the Committee is of the view that treatment should begin at the commencement of the assessment phase, and end at the completion of their parole period (The Kia Marama Programme For Sexual Offenders - An Overview).

Follow-up support and supervision via the Sex Offender Registration Program then continues for life.

The Committee has been informed that,

> ". . the change process for all sex offenders probably takes somewhere between two and five years and needs to be effectively and comprehensively managed across the board" (Tidmarsh, Public Hearing, 22/9/1994).

Sex offender treatment programs assist offenders to design an individual relapse prevention program.

"Relapse prevention programs are developed by examining the factors that have contributed to the patterns of the individual's offending. This includes identifying high-risk factors such as negative emotional states, disinhibitors and motivators. Once the offender is aware of the contributing factors, a plan is designed to ensure maximum risk reduction" (Dunne, 1993).

Part of the offender's risk reduction is establishing contact with available support services that are aware of the risk issues.

96. The Committee recommends that the Adult Parole Board shall co-ordinate and regulate post release support services for sex offenders.

At present, there are insufficient post-release support services available to sex offenders. The lack of post-release support and treatment services ultimately has meant that programs, such as the Psychosexual Treatment Program are currently operating a waiting list for treatment and support service.

The Committee has heard evidence that there are post release offenders who, through their relapse prevention program, are recognising that they need professional support at times to prevent them from re-offending, yet are being turned away, or put on waiting lists because of the already impossible workloads.

The Committee believes it is essential that co-ordinated post release programs be available to build on and continue the treatment provided during incarceration.

9.8 Non-custodial Sentences

The capacity to manage "low risk" offenders in the community was made possible by the establishment of Intensive Correction Orders (ICO) and Community Based Orders (CBO) (Bigelow, 1994:3). Community-Based Corrections is a branch of the Correctional Services Division of the Department of Justice. Ultimately, community-based dispositions 'promote recognition of more minor offences while at the same time reserving prison as a punishment of last resort' (Bigelow, 1994:3).

"On 31 August 1994, there were 175 sex offenders registered under the management of Community Based Corrections" (Wilmot, Public Hearing, 22/9/1994).

The main objectives of community-based corrections are to provide integrated, cost effective community-based correctional services. In doing so, they must have regard to community interests and expectations, expand the proper use of alternatives to imprisonment and, without unwarranted intrusion, ensure effective supervision and facilitate the offender's personal development and rehabilitation.

Offenders sentenced to Community Based Orders and Intensive Correctional Orders are subject to several core conditions. The core conditions have a requirement to not commit further offences; report any change of address or employment; not to leave the State of Victoria without permission; and to report as, and where, directed.

The liberties of offenders sentenced to Intensive Correctional Orders are further intruded upon with additional core conditions requiring an offender to participate in programs for 12 hours each week. This includes the performance of unpaid community work for a minimum of 8 hours and attendance at a Community Correctional Centre on two separate occasions per week. The remaining 4 hours may be utilised for correctional programs, such as treatment or personal development.

Offenders who fail to adhere to the conditions attached to their individual order risk the order being revoked by the courts and a prison sentence imposed.

9.8.1 Assessment and Treatment

97. The Committee recommends that all convicted sex offenders sentenced to a community based disposition shall undergo assessment with a view to appropriate treatment.

The Committee acknowledges that there are sexual offences against children such as obscene exposure or non-contact offences that, whilst serious offences in terms of the impact on the victim, are not of a significant magnitude to warrant incarceration. There will also be individual cases where the courts will find that the child sex offender is a "low risk" offender and will be amenable to a non-custodial penalty.

Prior to the court imposing an ICO or CBO with core and additional conditions, the sentencing Magistrate or Judge must seek a pre-sentence report from a Community Correctional Officer. These reports provide advice as to whether the offender is suitable to serve the sentence in the community and whether the offender will be amenable to treatment or personal development programs.

Ultimately, it rests with the discretion of the sentencing Magistrate or Judge as to whether an offender sentenced to a community based disposition shall have an assessment and treatment condition attached to the order.

The Committee is of the view that all sex offenders serving a community based disposition should undergo assessment and treatment. The intensity of the treatment should be based on the findings of the assessment and should be for the duration of the community based order.

9.8.2 Co-ordination of Treatment Programs

98. The Committee recommends that assessment and treatment programs, for sex offenders serving community based dispositions or on parole, be better co-ordinated by the Correctional Services Division.

At present, the Correctional Services Division, Department of Justice is responsible for the treatment and supervision of offenders sentenced to a CBO, ICO or serving parole. The Correctional Services Division has designed a specific Relapse Prevention Program for the treatment and supervision of convicted sex offenders serving a CBO, ICO or on parole. Community Corrections Officers who supervise sex offenders are specially trained in the assessment, management and supervision of sex offenders. The Correctional Officers develop individual management plans which examine the factors contributing to the patterns of the individual's offending. High risk factors, negative emotional states, disinhibitions, obstacles to legal sexual outlets, and motivators or triggers are identified and a relapse prevention plan is designed (Dunne, 1993:7).

The Committee is concerned that significant role conflicts are inherent in a program that endeavours to fulfil the responsibility of both supervision and treatment of sex offenders. The problem with this arrangement is that the Correctional Officers remain an instrument of the State with the potential to put offenders back in prison, whilst

also endeavouring to teach relapse prevention techniques (Calabro, Public Hearing, 15/6/1994).

"Those treating sex offenders need to be prepared, and able, to think the unthinkable, imagine the unimaginable, and thereby give offenders permission and encouragement to talk honestly about their offending" (Eldridge, 1991:61).

It is believed by many professionals in the field, that the treatment functions should be carried out by non-community correctional officers.

"The problem is that it is difficult to be an instrument of the state and a supervisor and then endeavour to teach relapse prevention techniques. We do not think clients would be candid with somebody who has the potential to put them back in gaol" (Calabro, Public Hearing, 15/6/1994).

The Correctional Services Division, Adult Parole Board and Psychiatric Services, as well as non-government agencies must work together to provide an integrated and co-ordinated service to sexual assault offenders on non-custodial sanctions and parole.

9.8.3 Increased Supervision

99. The Committee recommends that increased levels of supervision of sex offenders serving community based dispositions or on parole be piloted.

The Committee was advised during a public hearing that the supervision caseload for Community Correctional Officers is somewhere around 40 to 45 offenders to each officer (Wilmot, Public Hearing, 22/9/1994).

During the Committee's overseas study trip, the Committee met with professionals from the San Diego Probation Service. The Committee was informed that prior to a study being conducted, the supervising officer to offender ratio was 90 sex offenders to 1 supervisor. The recidivism rate was 50%. The ratio was changed to 35 sex offenders to 1 supervisor and the result was a reduction in the recidivism rate to 12% (San Diego, 1994).

The Committee considers that increased supervision may be one method of reducing sex offending. A pilot project over two years is to be conducted to evaluate the success of increased supervision on sex offenders.

9.9 Adolescent Sex Offenders

Traditionally, it was thought that perpetrators of sexual abuse were almost always adult men. The Committee was advised by many professionals that a significant percentage of sex offenders are adolescents and even children.

Adolescent sex offending is not a new phenomena. In the past, parents and professionals have often dismissed adolescent sexually offending behaviour as healthy experimentation.

"The response by parents and by professionals, have been to label the behaviours as innocent sex play and experimentation or as normal aggressiveness of the sexually maturing adolescent" (Victorian Offender Treatment Association, Written Submission, #28).

Their lack of concern was based on the belief that adolescents displaying sexually offending behaviour would grow out of it.

"Current research into sex offending indicates that the onset of dominant patterns of sexual behaviour usually has its beginnings in adolescents and sometimes in late childhood" (Victorian Offender Treatment Association, Written Submission, #28).

Offenders with whom the Committee has met both nationally and internationally indicated they commenced offending in their early adolescent years.

Practitioners have advised the Committee that adolescent sex offending is different from other forms of offending. It is generally found that, other than for sexual offences, a

lot of adolescents will grow out their offending behaviour. Practitioners indicate that the same is not true for adolescents. Adolescents displaying early signs of sexually offending behaviour tend to grow into sexually offending behaviour. Eldridge, Still and Wyre (1991) state that, "If abusive practices go unchecked, abuse may become part of the young person's masturbatory fantasy life and sexual arousal may become conditioned around offending behaviour" (Eldridge, Still and Wyre, 1991).

During the course of the inquiry, the Committee felt that it was important to meet with various sex offenders and paedophiles, in order to gain a better understanding of who these men are and what makes them do the things they do.

The Committee heard evidence from a paedophile who has offended against many children since adolescence. His offending behaviour has been entrenched over a long period of time. The Committee is not attempting to exonerate the offender from responsibility for his offences. Had there been appropriate intervention during his adolescence, many young children may have be saved from sexual victimisation.

The Committee had the pleasure of meeting with Mr. Paul N. Gerber, Program Director of the Juvenile Sex Offender Program at the Hennepin County Home School, Minnesota. Mr. Gerber provided a working insight into the adolescent offender and then allowed the Committee

to meet with a variety of offenders involved in the residential program. It was obvious during the conversations with Mr. Gerber and the offenders that it was at this point in the offending cycle that change was still possible and that it was with children and adolescents that the cycle could be broken.

The views expressed by Mr. Gerber, regarding the need to break the cycle of offending at an early stage, were echoed by many professionals. Treatment of adolescent sex offenders was highlighted as a priority during most meetings conducted by the Committee.

The Juvenile Sex Offender Program provides a therapeutic environment for adjudicated adolescents who have been found to be inappropriate for a less restrictive placement. A feature of the program which was particularly noted by the Members of the Committee in attendance, was the commitment to education for clients. Mr. Gerber showed Members the education facility and described that even when youths were confined to single accommodation they were still required to continue their educative studies.

A study of the Juvenile Sex Offender Program by Janis F. Bremer, PhD in 1991 identified only a 6% sex offence recidivism rate of the 193 clients located. The sample had been released from the program for up to 8.5 years (Bremer, 1991).

9.10 Assessment and Treatment

100. The Committee recommends that all adjudicated adolescent sex offenders shall undergo assessment and appropriate treatment.

"The need for early intervention is reflected by research which indicates that 80 per cent of chronic, recidivist adult sex offenders commenced their sexually abusive behaviours during adolescence" (Juvenile Justice Section, 1993).

Assessment and treatment programs provide an opportunity for early intervention before the behaviour becomes chronic and entrenched.

The Committee had the opportunity to meet with the psychologist operating the Male Adolescent Program for Positive Sexuality (MAPPS). MAPPS is run by the Juvenile Justice Section, Health and Community Services. The program is specifically designed for the assessment and treatment of adolescent males convicted of sexual assault.

The objectives of the program include; reducing the incidence of sexual abuse in Victoria while reducing the offender's risk of re-offending by assisting the offender to develop the knowledge, skills and attitudes to manage his life effectively without re-offending. There are four major goals the adolescent sex offender must achieve during the

program. These include; taking full responsibility for his sexually abusive behaviour; acknowledging the full extent of the abuse and the impact on his victim(s) and family; accepting full responsibility for ceasing his sexually offending behaviour; and developing a healthy, positive and pro-social lifestyle and identity. (Juvenile Justice Section, 1993).

During the Committee's overseas study tour, the Committee had the opportunity to visit the Pines Treatment Centre for Children and Adolescents in Virginia; and the Program for Healthy Adolescent Sexual Expression; the Personal/ Social Awareness Program as well as the Hennepin County Home School in Minnesota.

Based on extensive consultation from experts overseas and in Australia, the Committee holds the strong belief that every case of sexually abusive behaviour displayed by a young person should be comprehensively assessed and appropriate treatment undertaken.

9.10.1 Police Cautioning

101. The Committee recommends that the Victoria Police shall not caution adolescent sex offenders.

The Committee was most concerned to learn that in the 1993/94 financial year, the Victoria Police cautioned 55 juveniles for sexual offences (excluding rape). It is imperative that intervention takes place to reduce the risk

of further offending. It is not within the authority of police to order assessment or treatment for adolescent sex offenders.

The Committee is firmly of the view that the best prospect for influencing deviant sexual behaviour is through assessment and treatment of adolescents. To this end, the cycle of offending must be broken at its early developmental stages. As cautioning adolescent sex offenders provides no treatment and no professional support, the Committee considers that it should cease. The Children's Court is in a position to order assessment and where appropriate, treatment for adolescent offenders. This can be done without recording a conviction if necessary.

9.10.2 Offenders in Need of Protection

102. The Committee recommends that the *Children and Young Persons Act* 1989, specified grounds for protection be extended to include children displaying early signs of sexually offending behaviour.

The Committee holds grave concerns that the overwhelming majority of young and adolescent sex offenders will not come to the notice of the criminal courts.

It is not the intention of the Committee to recommend that all young and adolescent sex offenders be charged

with a criminal offence and sentenced at the Children's Court, in order that they be mandated to undergo assessment and appropriate treatment. The Committee acknowledges that many young and adolescent sex offenders are victims of prior sexual abuse. Yet there is much debate among professionals in the field as to what the appropriate response should be to victim-victimisers.

The Committee's concern is that at present there is no mandate for non-adjudicated child or adolescent sex offenders to undergo compulsory assessment and treatment. For their own protection and that of the community, young and adolescent sex offenders must receive appropriate assessment and treatment.

103. The Committee recommends that children under protection on the grounds of displaying early signs of sexually offending behaviour shall undergo immediate assessment and appropriate treatment.

Where inappropriate sexualised behaviour is identified by police or protective workers, they shall report the incident to the Sexual Assault Response Team who will investigate and determine the appropriate action.

The Committee considers that adolescents who display inappropriate behaviour need protection and should therefore be the subject of a Protection Application. The Children's Court may then mandate assessment and treatment of the youth without recording any form of

criminal conviction. It must be recognised that in many cases the child or young person is simply continuing the lifestyle to which they have been conditioned and changing that lifestyle requires professional assistance.

Based on the Committee's discussions with practitioners in Victoria, Australia and overseas, the Committee enthusiastically embraces treatment programs for children and adolescents displaying early signs of sexually offending behaviour.

Extending the *Children and Young Persons Act*, 1989 grounds for protection to include children displaying early signs of sexually offending behaviour will ensure that sexual abuse victim-victimisers will have access to assessment and treatment programs, such as the Male Adolescent Program for Positive Sexuality or the Adolescent Sex Offender Treatment Programme, run by the Children's Protection Society Inc., without criminal adjudication.

9.10.3 Program Co-ordination

104. The Committee recommends that H&CS, Juvenile Justice shall be responsible for co-ordinating services to adolescent sex offenders.

Juvenile Justice within H&CS should take a lead role in co-ordinating services to adolescent sex offenders.

"No single agency can manage juvenile sex offenders. Integration and collaboration between police, protective services, juvenile justice, judiciary, treatment providers, victim treatment agencies, educators, prosecutors and legal services is required" (Health and Community Services, Written Submission #39).

9.11 Sex Offender Registration

Many American states have legislation which requires any person convicted of a sexual offence to register their home address with the local law enforcement agency within a specified period of being released from custody or commencing their non-custodial sentence in the community.

The State of California has the most comprehensive registration laws, which include the requirements that the information registered include the sex offenders address of residence; source of employment; set of fingerprints; DNA sample; physical description and photograph (National Centre for Missing & Exploited Children, 1993:41).

The onus is on the released sex offender or sex offender serving a community based order to register with the Sex Offender Registry. The state has also established penalties of imprisonment for failure to register, or provide false information (National Centre for Missing & Exploited Children, 1993:41).

105. The Committee recommends that all convicted adult sex offenders shall be registered with the Victorian Sex Offender Registry for life.

Given the high recidivism rate of sex offenders and their propensity to continue to offend over their lifetime, the State must take whatever steps necessary to reduce the incidence of sexual assault and protect the community.

The real threat sex offenders and paedophiles pose to the community will require the State to apply effective long term monitoring strategies.

The Committee recommends that the most effective monitoring model for convicted sex offenders should include the following features;

(a) Lifetime registration of all adult offenders convicted of an indictable sexual offence;

(b) Requirement that adolescents against whom a summary sexual offence in found proven, to be registered for a period of 5 years;

(c) Requirement that adolescents convicted of an indictable sexual offence to be registered until they are 21 years of age, providing that they have not re-offended;

(d) Requirement that a Sex Offender Registry Review Panel be established to review the registration status of adolescent sex offenders;

(e) The requirement that registration should include sex offenders released from custody and offenders serving their sentence in the community;

(f) Requirement for the sex offender to appear in person at the Registry;

(g) Requirement for offenders to be notified of requirement to register by the courts;

(h) Information registered should include; name, date of birth; address of residence; source of employment; physical description; set of fingerprints; DNA sample and photograph;

(i) Government Departments including Corrections and Courts are to advise the Victorian Sex Offender Registry when persons are convicted of a sex offence and when they are released from prison.

(j) Requirement of written notification to the Registry of change of address or source of employment within 10 days of move;

(k) Requirement that any person moving into the State of Victoria who has been convicted interstate of a sexual offence, to register within 10 days of arrival and be subject to the same registration requirements;

(l) Requirement that failure to register or provide false information will be an indictable offence;

(m) Requirement of regular verification of the sex offender's address and source of employment by the Victoria Police. Such inquiries are to be made discreetly where possible; and

(n) Requirement that the sex offender must register within 10 days of being released or commencing his/her community based sentence;

106. The Committee recommends that the Victoria Police establish and maintain the Victorian Sex Offender Registry.

The registration of sex offenders as a management tool is considered essential in the long term reduction in sex offending rates. Victoria police will be the primary user of the registration system and should therefore have intimate involvement in its establishment and management.

9.11.1 National Registration

107. That Committee recommends that the Attorney General and the Police Minister lobby for an extension of the sex offender registration program nationally.

The Committee acknowledges that some limitations will be placed on the effectiveness of a State registration program and that the true potential of registration will only be achieved through a national program. The Attorney General and the Police Minister should lobby other State Ministers as well as the Federal Government to initiate a national program as a matter of urgency.

9.12 Summary

In the last five years there has been a marked improvement in the quality and quantity of research in the area of sex offenders. Victoria's existing response to sex offenders has been based on old information which is inaccurate and incomplete. As a community we are more informed than ever about the danger child sex offenders pose in the community. As a community we also recognise that nearly all sex offenders will one day be released from imprisonment and back into the community. We also know that incarceration, in and of itself, will not stop them from re-offending when they are

released. This being so, we should be changing our approach from one which has been based on myths and assumptions, to one which is based on current knowledge.

It is time to improve the way in which child sexual offenders are addressed. The Committee's recommendations when adopted and implemented will provide Victoria with a co-ordinated and appropriate response to child sex offenders.

If the incidence of child sexual abuse is to be significantly reduced and children protected from sexual victimisation, there will need to be more accurate assessments; more appropriate punishments and long term treatment, supervision and monitoring.

CHAPTER TEN

PRO-ACTIVE SERVICES

10.1 Introduction

The Committee recognises that education is a major factor in the long term prevention of sexual offending.

"The sexual abuse of children is a pervasive social problem that can be reduced and ultimately eliminated only through comprehensive social change" (Rogers, 1990:43).

There will need to be a long term commitment from the government of the day to develop and implement extensive prevention strategies.

Child sexual assault prevention programs must target victimisation, sexually abusive behaviour and the changing of community attitudes which allow the sexual abuse of children to occur.

The education system, the media and the community will all have a crucial role to play in the future prevention of sexual abuse and sexually abusive behaviour.

10.2 Pro-active Services Co-ordination

108. The Committee recommends that the Pro-active Services Co-ordinator assume responsibility for implementing and overseeing State prevention programs for sexual assault.

The Committee perceives prevention to be a vital component in the integrated sexual assault model. To ensure that State prevention programs are implemented in a complementary and integrated manner, a Pro-active Services Co-ordinator shall be responsible for co-ordinating and overseeing State sexual assault prevention initiatives.

10.3 Protective Behaviours Programs

The Committee has heard evidence and received written submissions from several witnesses that advocate the importance of school children, of all ages being taught a protective behaviours program. Parents Against Sexual Assault wrote in their submission to the Committee that,

"We feel very strongly that the 'Protective Behaviours Program' should be introduced as a mandatory part of the school curriculum in every school" (Parents Against Sexual Assault, Written Submission #36).

According to one model presented to the Committee, in order for an offender to sexually abuse a child, four preconditions, following in sequence must be overcome.

The first precondition is the motivation of the offender to offend. The second involves the offender overcoming his/her own internal inhibitions against acting on his/her motivation. This is often overcome through drugs, child pornography, an impulse disorder or mental illness. Thirdly, the offender must then overcome the external inhibitions which can prevent the abuse, for example access to the child. The final precondition is overcoming the child's resistance to the abuse, usually by using the emotional power of an adult authority figure.

According to the senior police officer, a protective behaviours program can provide intervention at the third and fourth precondition.

10.4 Current Programs

There are several protective behaviour programs available within Victoria, run by either government agencies or private organisations. Many Victorian primary schools are currently using one of these programs, or in some cases a blend of programs, to educate primary school students.

109. The Committee recommends that the Directorate of School Education review all current protective behaviours programs available for use in Victorian primary and secondary schools.

Due to the proliferation of programs which the Committee has been made aware of, the Committee considers it imperative that a review be undertaken of all the programs, to determine their suitability for accreditation.

10.4.1 Primary Schools

In Victoria, protective behaviour programs do not form a compulsory component of the primary school curriculum, unlike in South Australia. As a result, the various programs are implemented and used on a regional, ad hoc basis, with some students completely missing training.

110. The Committee recommends that the Directorate of School Education shall accredit an appropriate comprehensive protective behaviours program which shall be compulsory in all State primary schools and encouraged in all private primary schools.

The Committee believe it is important that all Victorian state and private primary school students participate in a suitable protective behaviours program. The introduction of a uniform, accredited program will ensure that all

Victorian schools are consistent in their approach and that each child receives such training.

The accredited program shall be incorporated in the Curriculum Standards Framework, 1995.

10.4.2 Secondary Schools.

111. The Committee recommends that the Directorate of School Education shall accredit an appropriate, comprehensive protective behaviours program which shall be compulsory in all State secondary schools and be encouraged in all private secondary schools.

The Committee believes it is imperative that all Victorian secondary colleges expose adolescents to an accredited protective behaviours program that has been designed to suit a more mature audience.

The accredited program shall be incorporated into the Curriculum Standards Framework, 1995.

10.4.3 Training

112. The Committee recommends that all Victorian teachers undergo a professional development course prior to teaching the accredited protective behaviours program.

The Committee believes it is imperative that all teachers undergo professional development prior to teaching students the accredited protective behaviours program. Appropriate training is required to ensure that teachers do not instil in the students, excessive fear or anxiety. Teachers must be trained to respond to disclosures of sexual abuse by students, and to identify signs of sexual abuse victimisation. Most importantly, they must be trained to communicate the appropriate protective messages, and emphasise that if the child is unable to resist the abuse, the blame for the assault must rest with the offender and never with the victim.

10.4.4 Attitudes and Values

The attitudes and values that underlie adult behaviour are not suddenly formed in adulthood. They are shaped from childhood. Thus, the attitudes and values that underlie sexual assault against children and women are also shaped from childhood (Tomaszewski, 1992:2). These attitudes are to a large extent influenced by the media, family and peers.

Ms Flanagan, the Co-ordinator of the Children's Protection Society Inc. advised the Committee during a public hearing of the impact our early socialisation has on future attitudes and actions,

"Male socialisation, the stereotypes we give children in society and how they respond are important issues. Having listened to nine sex offenders talking about their experience, I can see how their thinking has been shaped by how they were raised in society and in their families, and in the choices they make. I am not excusing their offences, but we need to take responsibility as a society and give messages about what is alright and what is not" (Flanagan, Public Hearing, 23/5/1994).

10.5 "Life Skills"

During the Committee's extensive investigations, evidence was presented before the Committee by the Directorate of School Education outlining initiatives, other than protective behaviour programs, which are currently included in the education curriculum. The Ministry for Education and the Directorate of School Education is to be commended for these program initiatives, however it must be noted that the decision to use these programs and resources rests with the individual schools.

"Because of the nature of those subjects it is really up to schools as to whether they access those resources or not" (Ollis, Public Hearing, 28/9/1994).

Many schools are reluctant to address sexual and physical abuse in the curriculum because of the sensitive nature of

these issues. We must find a way to reduce the incidence of sexual assault in the long term, by changing the way we, as a community think. Children accept change more readily and are thus an ideal target group to commence such a program with. All schools of the future must begin to play a role much broader than just teaching academic skills.

If students are to gain maximum potential in their broad living skills, curriculum efforts need to be concentrated and comprehensive. Based on direct evidence from practitioners and educators overseas and in Victoria, the Committee considers that the following skills are important in the development of young people: communication; social; problem solving; assertiveness; anger management; networking; coping with change; building positive relationships; self esteem; job skills and negotiation skills.

The Committee further considers that the following issues should be addressed in the school curriculum: criminal law; victim empathy; sex, gender and socialisation; sexual education; sexual assault; child abuse; violence; domestic violence and drug and alcohol abuse. The program curriculum and class materials need to be adjusted to the age-appropriate cognitive functioning of the students.

The messages should be addressed sensitively and be easily understood and retained by the students.

The Committee is of the view that a balance should exist between teaching students academic skills and teaching students broader living skills.

"Adolescence is a time when sexual experimentation increases, as well as being a time when some begin to engage in abuse. It has also become evident that adolescents are using violence to deal with conflict in relationships, and that sexual assault during dating is occurring often" (Rogers, 1992:49).

The prevention of sexually offending behaviour can be achieved by equipping students with basic living skills. This is demonstrated when examining several sex offender treatment programs, nationally and internationally, that aim to prevent the sex offender from re-offending.

10.6 Schools for the Intellectually Disabled

113. The Committee recommends that schools for intellectually disabled students focus attention on teaching appropriate social, including sexual behaviour.

The Committee received evidence from representatives from the Epistle Intellectually Disabled Ex-offender Program, that intellectually disabled sex offenders pose a

significant problem in the community. Figures provided by Mr Calabro, the Executive Director, suggest that of the prison population of intellectually disabled offenders, 52 percent are in prison for crimes relating to sex offences. A far higher percentage than in the general population, which he estimates to be about 13 percent, or 300, sex offenders out of 2200 incarcerated offenders (Calabro, Public Hearing, 15/6/1994).

Mr Calabro attributes the reasoning for the high number of intellectually disabled sex offenders to the lack of prevention programs in schools attended by intellectually disabled persons.

"No human relations work was done with those people during their growth stage and they were not trained in appropriateness of behaviour" (Calabro, Public Hearing, 15/6/1994).

The Committee also recognises that intellectually disabled offenders may in some instances be easier to catch and subsequently convict as a result of their confessing to the crime.

Schools must make a concerted effort to teach intellectually disabled persons sex education, sexuality and relationships.

"Many professionals also believe that intellectually disabled offenders do not understand what they do, cannot take responsibility for their action . . . and that is, unfortunately, not true" (Mudaly, Public Hearing, 22/9/1994).

10.7 Public Awareness

114. The Committee recommends that a multi-media campaign addressing the issue of child sexual assault be developed.

Society must be made aware of the incidence, prevalence and impact of child sexual abuse. Society can no longer afford to deny that children, in alarmingly high numbers, are being sexually abused in their homes, in day care centres, in schools and in public places. Society needs to be made aware that the majority of child sexual abuse victims are being offended against by people they know.

"Society's denial and minimisation of the incidence, prevalence, and impact of sexual victimisation has supported the secrecy which enables sexual offending to occur" (National Council of Juvenile and Family Court Judges, 1988: 50).

The Committee received in confidence, a written submission from a member of the public which stated:

"The public must be aware of child sexual abuse. They must know it goes on. They must know what it involves. They must know of it's(sic) terrible effects. They must know how to recognise it. They must then know what to do when they suspect a child is being abused. Our society needs a substantial awareness campaign, the use of the mass media supported by an easy reporting system is essential. **The public will respond**" (Written Submission, #32).

"Considering the level of sex offending in the community, consideration could be given to a broad public education campaign, such as was conducted against domestic violence recently. This could be targeted towards the community as an initiative to reduce sexual assaults. " (Victoria Police, Written Submission #72).

A staged campaign incorporating public awareness, services available and pro-active initiatives should be developed using the technical expertise of private enterprise.

10.8 Employment Safeguards

115. The Committee recommends that prior to a person being employed, including voluntary employment, in a position which has a duty of care or supervision over children, a criminal history check must be undertaken to determine if they are a fit and proper person.

It is an indictment on our society that a large number of child sexual abuse victims are offended against by those in positions of trust and authority over them. Whilst the majority of persons who work with children are dedicated to their profession and hold the best interests of the child as paramount, there are persons who will use their positions to harm children entrusted in their care and supervision (National Centre For Missing & Exploited Children, 1993:35).

Up until 1994, there was no checking done by the State education system on the criminal history of its teachers and potential teachers. This has been rectified as a consequence of concerns being raised by this Parliamentary Crime Prevention Committee.

Still of concern though, is the fact that there is no co-ordination or routine checking of the credentials of teachers passing from the public to private education systems. As an example, the Committee heard of a case where a teacher had a string of allegations of child sexual assault alleged against him. Despite all these allegations, the teacher concerned was able to leave the state system on the grounds of ill health and be employed in the Catholic education system.

Paedophiles often deliberately seek employment in positions with high access to children within their target age. Alternatively they are drawn to volunteer for positions in organisations and clubs which cater for such

children. In order to stop such cases from occurring under the new system, all employed and voluntary staff in organisations that provide services to children will be required to have a criminal history check to determine if they are a fit and proper person.

The ability of sex offenders to manipulate the system to the extent where even known, if not convicted, sex offenders can seek and obtain employment in positions of trust with children, must be controlled.

The purpose of a criminal history check is to ensure the safety of children. The presumption is that children are entrusted by their guardians, to certain professions for their care and supervision. Services which provide care and supervision to children have a responsibility to children, and the community at large, to provide a safe environment, free from sexual assault.

The precedent has been set by the Private Agents Act, No. 7494 Section 19H which requires that Private Agents to be of `good character'. Crowd controllers must hold a Crowd Controllers Licence before gaining employment in the Liquor and Gaming Industry. This is on the presumption that it is imperative to prevent unsuitable individuals from seeking employment in these industries. The Committee proposes that such checking, monitoring and controlling of workers with children, could in a similar manner, be undertaken effectively.

10.8.1 Administration of Criminal History Checks

116. The Committee recommends that the Victoria Police be responsible for criminal history checks to determine if a prospective employee is a fit and proper person.

The Victoria Police, who have recorded all criminal convictions and investigations will be in the best position to conduct criminal history checks to determine if a prospective employee is a fit and proper person.

In addition, the Victoria Police will have the opportunity to make inquiries with the Police Child Exploitation Unit, the Rape Squad and the Sexual Assault Response Teams. Access to this information will be critical in screening out inappropriate persons who are currently employed or seek employment positions where services to children are provided. This is based on the presumption that only a very small percentage of child sexual offenders are arrested, and even a smaller percentage convicted.

The importance of making inquiries beyond merely criminal convictions is highlighted by the sexual abuse that is said to have occurred at the Mornington Child Care and Nursery School in 1992. Nobody was ever charged with the offences, despite "medical evidence that three of the girls had been sexually penetrated" (Herald Sun, 8/3/1992:19).

As there were no arrests or convictions recorded against any person, those responsible for the abuse could currently gain employment or a voluntary position anywhere in Victoria where services to children are provided.

10.8.2 Administration Costs

117. The Committee recommends that the fee incurred for the criminal history check shall be the financial responsibility of the applicant.

There will be a cost associated in conducting the criminal history check. The Committee views the fee incurred by the applicant to be justified on the same grounds that it is presently justified for persons with a Gaming Licence or a Crowd Controllers Licence. The fee incurred to possess a licence for the above mentioned industries rest with the individual although in some instances the employer may meet the licence cost on behalf of the applicant.

The Committee acknowledges that screening all personnel who provide services to children will be resource intensive and ultimately may only screen out a small number of sex offenders. One offender in such an industry can have access to literally hundreds of potential victims. The Committee feels that the cost is justified by the significant deterrent value the screening will have in discouraging child sexual offenders from seeking positions that provide services to children, where they will have easy access to children for the purpose of sexual gratification.

10.8.3 Offence to Employ

118. The Committee recommends that it be an offence to employ a person, in a position which has a duty of care or supervision over children, who has not passed a criminal history check by the Victoria Police.

Employers or administrators that provide services to children must take responsibility for employees or volunteer staff who come into contact with children.

It shall be an offence for employers/administrators to hire employees or volunteer staff and take the risk that the prospective employees have sought employment or a volunteer position for the purpose of sexually victimising children.

The Committee believes all applicants have a right to privacy. Consequently, only the Victoria Police and the individual applicant will be privy to the criminal history check. Employers and organisations shall not be privy to information of an applicant's criminal history.

10.8.4 Appeal Process

119. The Committee recommends that where the Victoria Police deem an applicant not to be a fit and proper person, a right of appeal exist to the Administrative Appeals Tribunal.

The Committee believes that it is imperative for applicants to have the opportunity to challenge and modify any incorrect information that relates to an arrest or conviction record for a criminal matter, which precludes them from obtaining employment.

Applicants who are not satisfied with a decision by the Victoria Police shall be entitled to appeal the decision to the Administrative Appeals Tribunal.

10.9 Foster Care and State Institutions

120. The Committee recommends that Health & Community Services implement and enforce the most stringent procedures for regulating and reviewing foster parents and institutions which provide care and supervision to children.

The Committee has heard evidence during Hearings that the current procedures for regulating and reviewing foster parents are not stringent enough.

The Committee has been provided with examples of a sole parent with three children, taking another six foster children and then providing child minding services on weekends to local government.

Persons of questionable character can only be prohibited from fostering children and providing care and

supervision, if the most stringent regulations and review procedures are enforced.

10.10 Summary

Prevention is an important component of the integrated sexual assault model created by the Committee. The diversity of Government programs currently provided and the additional services recommended by the Committee must be integrated and co-ordinated.

Education shall play a significant part, with a protective behaviours program being taught in all Victorian primary and secondary schools designed to equip students with skills to avoid or minimise sexual abuse victimisation.

The Directorate of School Education must increase efforts to educate intellectually disabled sex offenders in sex education, sexuality and relationships, in order to prevent them from committing sexual offences.

An extensive multi-media campaign addressing child sexual abuse will raise community awareness of the incidence, prevalence and impact of child sexual abuse and help ensure early intervention.

Parents or caregivers, by necessity place children in the care and supervision of other adults. Criminal history checks will ensure that persons with arrest or conviction

records criminal conviction, particularly sexual offences, are prevented from gaining access to children through their source of paid or unpaid employment.

The protection of our children will be significantly enhanced by a pro-active response to sexual assault.

CHAPTER ELEVEN

GENERAL

11.1 Introduction

Is a photograph of two 5 year old girls in a bath pornography? Is a video of a naked 10 year old playing at the beach pornographic? Is an adult dressed to portray a young person erotica or pornography? Is a department store advertisement which reveals a child's buttock obscene? Pornography is certainly in the eye of the beholder and what can and should be classed as pornography is a complex question.

Pornography can be professionally manufactured, or of the home video style. Pornography can be produced and distributed in the 'traditional' written, photographic, disc, film or video forms. There is now a new format for pornographers; computer generated or manipulated pornography, much of which is available through bulletin boards.

During the Committee's inquiry, it received evidence from both representatives of the pornography/adult erotica industry and from anti-pornography lobbyists, as well as psychologists, psychiatrists, prosecutors and police,

on the effects of pornography and the possible connection between its use and the commission of sexual or violent offences. There appears to be a great deal of debate raging between both these groups and experts, regarding the effects of such items on adults.

Margaret Bateman of The Voltaire Institute based the following statement in her written submission to the Committee, on works by B. Kutchinsky,

" . . . research relating to sex crime statistics in Denmark at the time of increased availability of sexually explicit materials indicates that, especially as far as serious sexual offences are concerned, increased availability of pornography leads, in fact, to a reduction in sex crime statistics" (Kutchinsky, cited by The Voltaire Institute, Written Submission, #5).

" . . . he did find that large decreases in child molestation could be directly attributed to the availability of hard core pornography" (Kutchinsky, cited by The Voltaire Institute, Written Submission, #5).

Ms. Bateman went on to argue at a Public Hearing on 2 May 1994 that current legislation is adequate and that,

"They are two distinct issues: erotica is erotica and violence is violence" (Bateman, Public Hearing, 2/5/94).

Mr Jack Sonnemann, Australian Federation for the Family in his submission cited contrary research such as that of the US Department of Justice, National Task Force on Child Exploitation and Pornography, and quotations such as the following by Dr Don Thompson,

"The conclusion I draw from the findings of the different lines of research is that pornography is causally related to sexually violent behaviour" (Dr Don Thompson, cited by Australian Federation for the Family, Written Submission, #8).

What one considers art or a relaxing diversion, another may consider pornography. The Committee is of the view that the effect of non-violent adult pornography on adults depends entirely on the viewer. It does not feel that the banning of what some call soft core pornography is an issue within the current Terms of Reference. What does concern the Committee however, is pornography which depicts children. The Committee is of the view that any sexually explicit depiction of a child is pornography and should be a criminal offence.

11.2 Child Pornography

Child pornography is now banned in Victoria, however the problem does not stop there, as it is still being

produced and circulated within the State, and the country as a whole. The existence of child pornography and its use, extends beyond the immediate sexual arousal and gratification of the so-inclined individual consumer and the problems that creates. The most obvious abuse is that of the children actually appearing in the pornography - this is a blatant abuse as you can actually see, read or hear about the child being assaulted.

11.2.1 Definition

The following definition of "child pornography" was attained by the Committee whilst in Canada. The definition is broad enough to cover all forms of pornography including those created or transferred by computer:

Definition of "child pornography"

163.1 (1) In this section, "child pornography" means:

(a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,

(i) that shows a person who is or is depicted as being under the age of eighteen years and is engaged in explicit sexual activity, or

(ii) the dominating characteristic of which is the depiction, for a sexual purpose, of a sexual organ of the anal region of a person under the age of eighteen years.

(The House of Commons of Canada, Bill C-128, Criminal Code and the Customs Tariff [Child pornography and corrupting morals], 1993: 2).

121. The Committee recommends that the Attorney General review the current definition of pornography to ensure the any sexually explicit depiction of a child, including computer generated images, is covered.

The existence of child pornography can validate in the paedophile's mind what they do. It can reduce the feelings of isolation of the paedophile by reinforcing that they are not a lone individual and that there are many other like minded people. In the paedophile's mind, it may show that it is not they who are wrong, but society, that child/adult sexual relations are not unusual and the laws are simply unreasonable. Child pornography often depicts the children being assaulted smiling. What it does not show is how the child was coerced or forced to participate in this activity.

Commercially produced child pornography is extremely expensive and a large quantity of it enters the country as prohibited imports. It is available through mail order and

can be sent by paedophiles overseas. Its size and the multitude of ways which such an item can be concealed means that it is exceptionally difficult to detect when passing through customs and in the paedophile's possession.

The expense and danger involved in purchasing child pornography makes home made pornography a financially viable alternative. A paedophile will often either photograph or video tape themselves assaulting their victim, or their victim placed in sexually explicit positions, rather than purchase the commercial alternative. By doing so the paedophile can save money in terms of an initial outlay and relive the event repeatedly when they do not have access to a child. It personalises the child pornography because it is actually 'their' victim.

Home manufactured child pornography can also be used to blackmail the child involved to tolerate continued sexual abuse.

11.2.2 Review of Penalties

122. The Committee recommends that the Attorney General review penalties relating to pornography to ensure that the seriousness of the offence is reflected in the penalty, particularly in cases of commercial gain.

Under the **Classification (Publication, Films and Computer Games) Act 1994** it is a Summary offence to deal in 'objectionable material'. Under the current rulings, child pornography is deemed to be 'objectionable material' and in this seemingly indirect way is banned.

As a result, child pornographers are faced with low penalties. It has been suggested to the Committee on several occasions that this is an inappropriate way to deal with child pornographers as it provides little, if any deterrent from this extremely lucrative, yet damaging trade.

Child pornography is both a marketable and an exchangeable commodity. This means that a paedophile can actually assault a child and derive immediate pleasure, tape and copy the act for resale. They therefore earn a great deal of money from their own sexual perversion, almost like a drug user dealing to finance their own habit. Another alternative, though risky, is for them to exchange their child pornography with other paedophiles.

The Committee believes the penalty for such an offence should reflect the seriousness of such an offence. Its use in the commission of sexual offences and the likelihood of it increasing the number of offences committed against children deserves a substantial penalty.

Where an offence of possession of child pornography can be proven and the penalty sufficiently high, the child

victim may not be required to give evidence and therefore be saved from the further re-victimisation of the court process.

11.2.3 The Context of the Pornography

Child pornography comes in many forms, not all of which fit into the traditional definition of pornography or which are as blatant as these. As experts have explained repeatedly to the Committee, a paedophile may use easily accessible and seemingly innocent items, such as children's clothing catalogues from department stores as an instrument of arousal and satisfaction.

They may plaster walls collage-style or fill exercise books with pictures. The photographs they use may simply be of a scantily clad child playing on a beach or of a naked child doing some everyday thing. They may look like photographs that any proud parent would take without a sexual thought and which can be found in almost every family home in Australia. In the context of use by the paedophile however, they are child pornography and are used to fantasise or masturbate.

Mr Richard Read, Prosecutor for the Queen gave an example at a public hearing, of a case which he recently dealt with, where a number of offences were allegedly committed against an 8 or 9 year old child and where many photographs were taken.

"The photographs were of a little girl in various nude poses on beds and all over the place" (Read, Public Hearing, 15/6/1994).

In this case Mr Read outlined how when the photographs were submitted to the Commonwealth censor,

" . . . he declined to send a 'restricted' certificate to the Director of Public Prosecutions, stating that the photographs would be classified as 'unrestricted" (Read, Public Hearing, 15/6/1994).

"The result was that by producing a certificate from the Commonwealth censor the offender was able to have a complete defence against the charges" (Read, Public Hearing, 15/6/1994).

"We need to examine the criteria for assessing this type of material because one could say that in certain circumstances a photograph taken by the stepfather of a young child in a nude pose is not pornographic, but in the circumstances of the sexual offences the matter would need to be examined in a different light" (Read, Public Hearing, 15/6/1994).

Items such as these are a dangerous tool, because they are easy for an unsuspecting partner to overlook and

therefore difficult to detect. It is not the items themselves which are offensive, but rather the context in which they are used.

11.2.4 Film Processors

Photographic forms of child pornography may be filmed on equipment which provides instant re-visualisation such as a video recorder or Polaroid camera or be developed. It is difficult to intercept these items because there need not be any other person involved who comes into contact with the image.

The paedophile needs darkroom facilities and the skills required to privately develop, or they will have to use a commercial film processor. This is one point at which child pornography could be easily intercepted, but which the current system is not capitalising on.

"In recent years a number of 'discreet' film processing laboratories have established themselves in most major cities in Australia. For an exorbitant sum, they will process films depicting any type of deviate behaviour or sexually explicit poses. These photo processors can usually be found in adult book stores or through contact magazines" (Hopley, Victoria Police Churchill Fellowship, 1994: 18).

123. The Committee recommends that child pornography legislation be created to provide that all commercial photographic processors and similar organisations, who have knowledge of, observe, or processes any photographic image, negative or slide that depicts a child in a sexually explicit way, be mandated to report the offence to the police.

Under the current system, there is no requirement that film processors and the like report to police if they receive a request to process child pornography. It is left up to the moral judgement of the individual employee or organisation to elect to report, without direction from the relevant authorities. Given the film processors feelings of moral obligation of confidentiality to their client, many obvious cases go unreported. This system is reliant on the policy of the company. Some companies may even direct their employees to ignore such film.

It will be necessary to inform the mandated processors what to look for and through what mechanism they are to report.

11.2.5 Pseudo Child Pornography

Professional pornography producers appear to partially avoid breaching the existing legislation relating to child pornography by producing varying forms of 'pseudo child' pornography. This 'pseudo child' pornography features people who are usually young looking adults,

dressed and made up to appear to be below the age of consent. A typical example would be a woman attired in something which resembles a school uniform with her hair in plaits and appearing in a pornographic pose.

Whilst the actual person is an adult, the role they are portraying is that of a child and the items may be targeted at those who have a preference for children. This, once again, does nothing to discourage the desires of the potential paedophile/incest offenders, reinforcing their attitudes and behaviour patterns, and yet under the current system such pornography can be used as a legal alternative to real child pornography.

11.2.6 Composite Images

Another difficulty arises with computerised 'pseudo child' pornography, where an original pornographic photograph is taken, scanned into a computer and manipulated using specialised software to look like a child. The original photograph is an adult, but by changing the face and altering the dimensions of the body, the resulting printed or computerised composite image is that of a child.

This is the same type of technology used by much of the print/photographic media and advertising organisations to manipulate images, but which can also be used on the

more modern home computers. Such pornography can be so realistic that it is impossible to detect that the image has been altered in any way. As the original photograph is of an adult, irrespective of what it may be manipulated to look like, it is not deemed to be child pornography.

The Committee has seen examples of computer enhanced photographs including changes in breast size, removal of pubic hair and even animation of still photographs.

Some of the commercial child pornography which has been seized in recent years consists of old foreign pornography which has been reused, sometimes with the assistance of computer manipulation to update the original image, but without the need to take new photographs. This effectively means that the child pornographer need not take any new photographs, simply recycle and reuse existing images.

11.2.7 Indictable Offence

124. The Committee recommends that the manufacturing, reproducing, selling or swapping of any kind of child pornography under the recommended definition be an indictable offence.

Legislation covering child pornography has not, as yet caught up with the expanding world of computerised pornography. Bulletin boards will be dealt with later in

this chapter, however pornography generated on computer, even if never exchanged, presents a problem in itself.

A pornographic style computer image of a child is not legally child pornography whilst it remains in the computer. If a copy of the image was to be printed, then the print would be deemed child pornography. What exists in the computer however, no mater how offensive, is not. This seems to be a gap in the existing laws, which means that the same image may, or may not be illegal pornography, depending on how it is stored, and authorities may be unable to remove it or to sanction the producer/user in any way. An image whether original or composite and whether in hard copy form or on a computer, computer disk, CD ROM or by another method should be included in the laws.

125. The Committee recommends that goods, equipment and materials being used in any way in the manufacture or duplication of child pornography be forfeited to Victoria Police upon conviction.

Under the current system police have no power to automatically seize computer and other equipment on a permanent basis, despite the fact that a computer for example may contain child pornography on the hard disk, floppy disk or CD ROM or other storage method.

Authorities need to be sure that all such pornography has been seized and that its use and reproduction cannot continue. They also need the ability to gather any other information related to likely offences which in the case of a computer, may be stored in its memory.

In addition, financial restraints mean that authorities are having difficulty keeping up with the changing technology and methods used by pornographers. The seizure of equipment used for such illegal purposes may assist them in the apprehension of other such perpetrators. The Committee does not feel however, that computer equipment, which is valuable and sensitive should be permanently seized without the owner being found guilty.

11.3 Offence to Entice Child Sexual Acts

126. The Committee recommends that it be an offence for any person to use any communication or other electronic device, instrument, implement, pornography , erotica or any other inducement to entice or attempt to entice a child to participate in a sexual act.

Child pornography can be and frequently is, used by paedophiles to reduce the child's objections and gain their co-operation during the grooming phase, when they are schooling the child to be receptive to the abuse, and

beyond. It is either left casually where the child can see it, shown directly to the child or incorporated into a game of some kind. It is used by the paedophile to make the child believe that sexual contact between children and adults is normal.

Paedophiles may also use computers to make contact with and ultimately entice a child to engage in a sexual act. The use of such equipment and/or pornography/erotica for enticing an unlawful act should be a specific offence.

11.4 Bulletin Boards

The Committee met with Senior Special Agent Don Huycke of the United States Customs Service, which is tasked with investigating the international trafficking of child pornography to and from the United States. Agent Huycke provided an insight into the complex world of child pornography and particularly the newest form of information transfer; the computer bulletin board.

The Committee was shown how easy it is for someone aware of the workings of the system, to access the type of child pornography from another country which would normally be prohibited in their own. There are descriptions and pictures of almost any sexual fetish or offence you can imagine including those which involve intergenerational sexual offences, violence and bestiality.

Agent Huycke advised that the levels of hard copy pornography and even video pornography were being overtaken by bulletin boards.

11.4.1 Definition

The Report of the Federal Task Force on the Regulation of Computer Bulletin Board Systems, Commonwealth of Australia, states, "Generally speaking, a 'computer bulletin board' is a computer program that simulates the functions of the physical bulletin boards found in supermarkets, universities and other public gathering places" (Report of the Federal Task Force on the Regulation of Computer Bulletin Board System, 1995:54, Attachment C).

The difference with computer bulletin boards is that the information is stored by electronic means. The user needs specific equipment to access them, including a computer, necessary software, a modem or the like and the user need never leave home to access almost any type of information they desire. Access is usually gained through the telephone network and via a central computer system, where details are registered and charges issued, although some may be free.

In addition there are Information Services which tend to have a greater number of users and information and national or international structures such as Internet or CompuServe. Such organisations may serve literally

millions of users world-wide and provide communication between individual users via electronic mail, discussion groups on interest topics and reference information.

This revolutionary technology involving the transfer of such a large quantity of information brings with it, enforcement difficulties in terms of countries and states legislative differences. Adult pornography is available on the bulletin board system.

11.4.2 Offence

The sheer quantity of use, plus the practice of code names and anonymous messages make keeping the system free of illegal items virtually impossible. As the Report of the Federal Task Force on the Regulation of Computer Bulletin Board Systems acknowledges

"BBS, or parts of BBS, dedicated to illicit or illegal activities often have the tightest security measures incorporated into them to prevent access by authorities" (Report of the Federal Task Force on the Regulation of Computer Bulletin Board System, 1995: 4).

127. The Committee recommends that existing child pornography legislation be amended to make it an offence to access or retrieve child pornography via any electronic means including bulletin boards.

Whilst this further reduces the chance of children or unsuspecting adults stumbling across such items, it does not mean that they are not available to the technologically minded paedophile. As the number of users increases and knowledge of the system spreads, the problem will exacerbate.

11.4.3 Enforcement

'Sting' operations are used in this country in an attempt to apprehend offenders. Law enforcement agencies need the resources to conduct 'Sting' operations to combat the growth of bulletin board pornography.

Recently a great deal of media attention has been paid to the types of information available on such systems and their accessibility. One article by Simon Winchester which originally appeared in the Spectator and was reproduced on page 13 of the Age on 14 February 1995, outlined what one user "not entirely accidentally" accessed.

"You want tales of fathers sodomising their three year old daughters, or of mothers performing fellatio on their prepubescent sons, or of girls coupling with horses, or of giving enemas to children. . . . Then you need do no more than visit the news group that is named . . . " (Winchester, 1995).

"Mat Wiklund, a researcher at Stockholm University's Institute of Computer and System Science counted 5651 messages or postings about child pornography in 'bulletin boards' during a seven day period in December and January" (The Herald Sun, P.M. edition, 7/2/1995: 2).

The Committee acknowledges the obvious difficulties in policing and limiting the contents of bulletin boards, as outlined in the Report of the Federal Task Force on the Regulation of Computer Bulletin Board Systems and its recommendations. Australia is not the only country having difficulty grappling with the problem of effectively and efficiently stopping the use of bulletin boards by child pornographers and other undesirable activities, however no country seems to have found an answer as yet.

As a result of concerns by the Police Federation [England], the Home Affairs Committee considered the use of registration of bulletin boards as a control mechanism. They found however, that,

"As the Police Federation put it a registration scheme would be expensive to introduce, difficult to police and would be ineffective in controlling the illegal material using computers" (Home Affairs Committee, First Report on Computer Pornography, 1994: xi., Evidence *35*).

The Committee wishes to emphasis that bulletin board pornography is a growth industry which requires early attention before it becomes beyond the scope of legal intervention. The same problems noted earlier in relation to the likely effects and uses of child pornography apply to that available through bulletin boards.

128. The Committee recommends that the Attorney General lobby other Australian State and Federal Governments to support uniform laws for the regulation of bulletin boards.

The Honourable Jan Wade, Attorney General advised the Committee regarding bulletin boards that,

"I will be pursuing it at the meetings of censorship ministers and I have taken a lead in trying to get an answer to the question: is it something we can do something about or is it not?" (Wade, Public Hearing, 24/11/1994).

Expansion of existing legislation to cover computer images as well as photographic, video and film images in the definition of child pornography as previously recommended in this chapter may assist in some way. The actual accessing of child pornography from a bulletin board should however count as another offence in order to discourage their use of such facilities.

Computerised child pornography may remain available however and users, whilst committing an offence, will be virtually impossible to apprehend unless 'caught in the act' of accessing or using it. It will still not be easy to retrace their steps.

The issue cannot be dealt with purely on a State level, as computer systems are not limited by State or even national boundaries.

11.5 Religious Organisations

The local priest/minister is expected to listen to the 'sins' of human kind, to counsel, advise and lead, but to do so whilst providing confidentiality to the individual concerned. As a result, it is the religious figure who often knows more about incidents such as sexual assault within the community than anyone else. They may hear from victims, secondary victims, offenders or members of the wider community about an alleged offence and find themselves torn between the confidentiality of the individual and the safety of the congregation or community.

Currently the reaction of a member of the clergy, who becomes aware of an assault either within or external to the church, whether or not to report to police, and if so when, depends on the official policy of the church. For example representatives of the Catholic Church in

Victoria referred to the Melbourne Protocol which at that stage was not finalised, but which tried to "spell out what the Australian Catholic Bishops Conference protocol has set down" (Monsignor Cudmore, Public Hearing, 28/9/1994).

Whilst these documents cover topics such as the reporting of an alleged offence to the police, they are clearly not given high consideration and often appear towards the bottom of the procedure as a whole. This is illustrated in The Australian Catholic Bishops' Conference, Special Issues Sub-Committee, `Protocol For Dealing With Allegations Of Criminal Behaviour', which states that a complaint may be made, concerning alleged criminal behaviour, to the following,

"6.3.1 the bishop, major superior, or superior, another cleric or religious, some other person, departmental officers, the media" (The Australian Catholic Bishops' Conference, Special Issues Sub-Committee, 1992: 7).

Departmental officers (the police) do not rate as a high priority of persons to whom a complaint concerning alleged criminal behaviour should be made. The hierarchy of the church and just about everybody else is notified before the police. The exception is the media who may by publicising the offence cause increased embarrassment to the church.

In addition to this, there are often the unwritten rules of the church which may contradict the official policy and in other cases it can be left to the individual's judgement to determine the action they take, if any.

Ms. Chris Wilding appeared before the Committee, representing the organisation Broken Rites (Australia) Collective Inc. at a Public Hearing. This organisation seeks to support victims and survivors of sexual abuse by leaders of religious organisations and the clergy and has been operating since March 1992.

Much of the information which a representative or member of a religious organisation may become aware of is told to them in the confessional. The Committee does not wish to question the sanctity of the confessional and the confidentiality offered to those who choose to cleanse their souls in such a way. The Committee recognises the assistance which churches can offer to offenders and victims alike, and the contribution bodies such as Helpline, which is funded by the Christian Brothers, St Patrick's Province, of Victoria and Tasmania, have made.

11.5.1 Obligation to Report

What does concern the Committee however, is the number of cases which come to the attention of the clergy outside the confessional and which are never reported to the relevant authorities. When asked about what action he would take if a member of the public admitted

committing a sexual offence to him outside of the confessional, Monsignor Cudmore replied in part,

"If I saw it was a serious accusation I would probably say, 'I think you should go to the police" (Monsignor Cudmore, Public Hearing, 28/9/1994).

129. The Committee recommends that protocols be developed within religious organisations to ensure that the SART is immediately notified of any suspected sexual assault.

Whilst the Committee recognises the churches' need to self govern to a degree, it feels that a child's safety should not be sacrificed to achieve this. SARTs should be notified immediately of all allegations of sexual offences committed either within the religious organisation or externally. In order to reduce the possibility of being pressured not to report, religious organisations shall review existing or develop new protocols which compel the immediate notification to police of any suspected sexual offence.

Another concern of the Committee is the number of assaults which have occurred within the church, committed by members of the clergy and people such as Sunday School instructors or church youth group leaders and the organisation's response to these offences.

When asked how many priests were currently on charges, Monsignor Cudmore replied,

"Off the top of my head I can really only say one that I know of in Melbourne, and investigations are underway into two others. There are five priests who have been stood down through admission rather than conviction" (Monsignor Cudmore, Public Hearing, 28/9/1994).

Such offenders may be paedophiles who may use the sanctity of the church to conceal their acts of perversion whilst betraying the communities trust. To emphasise the way in which such offenders manipulate their victims, Ms Wilding read the following portion of the police statement of one child allegedly anally penetrated by a Brother,

"He said to me that if I ever told anyone I would get the strap and go to hell and burn. He also told me that he was doing these things to me in order to take away my sins . . . " (Wilding, Public Hearing, 22/6/94).

The Committee has received evidence from victims and their families suggesting that there may be more offenders which church leaders may be aware of, but where little action has been taken.

It sometimes appears that there may be no legal proceedings for whatever reason arising from the alleged offence then,

" . . . the competent ecclesial authority must personally consider, in the light of all the information available to him, whether it is prudent to cease the period of administrative leave, reassign the accused or provide him with psychological therapy " (The Australian Catholic Bishops' Conference, Special Issues Sub-Committee, 1992: 9.8).

This is one way that allegations can be made against the same priest on multiple occasions and they can continue to practice and be moved to different areas.

"Many victims are told when making an official complaint about sexual assault to church authorities that it is an isolated incident and that the priest was 'going through a rough time in his life' and should be forgiven, even when the church is aware of multiple allegations against the same priest" (Wilding, Public Hearing, 29/6/1994).

Yet, at the Committee repeatedly heard examples of people reporting an offence to their church outside of the confessional, and the only response of the church has been to conduct its own internal investigation and either

take internal disciplinary action or move the alleged offender. The victims became disillusioned, resenting the feeling that they were ignored or silenced, whilst in some cases the offences were allowed to continue while the offender was apparently 'protected' by the church.

The Committee has heard how these cases of alleged abuse were never reported to the appropriate authorities by the church.

"The churches have a tendency to regard themselves as self-regulatory institutions that are 'just' and 'sacred' and therefore not in need of scrutiny. The reluctance of church leaders to report sexual abuse allegations to law enforcement authorities stems from their misguided, although fierce, loyalty to their institution whose image must never be tarnished" (Wilding, Public Hearing, 19/6/1994).

When asked at a public hearing how he would react to an admission by a priest that he had sexually abused somebody, Monsignor Cudmore replied,

"I would obviously be aware that something is seriously wrong and action would have to be taken. I think again I would advise and arrange for him to have psychological counselling" (Monsignor Cudmore, Public Hearing, 28/9/94).

Monsignor Cudmore went on to explain that he would automatically report the case to the archbishop.

The Committee assumes that the "action take" by Monsignor Cudmore would be to report the matter immediately to the police for investigation of a criminal offence. To ensure that this would be the case the protocols which religious organisations adhere to should include the immediate notification to police of sexual assault.

11.5.2 Internal Investigations

The Committee considers that a church's obligation to the community which it seeks to help, must be greater than its concerns regarding the organisation's image.

130. The Committee recommends that religious organisations develop protocols to ensure evidence is not contaminated by internal investigations or inquiries.

When asked on the 28 September 1994 if he undertook an investigation on the organisation's behalf, Monsignor G. Cudmore stated that,

"Usually that is the first port of call if they come to me - for a variety of reasons they may not have gone to the police" (Monsignor Cudmore, Public Hearing, 28/9/1994).

He also outlined how he would normally interview the person making the allegations and then,

"After the interview is concluded the matter is examined by a small group, who indicate whether it should be proceeded with. The priest is brought in and confronted with the allegation . . . evidence is taken. Action is taken" (Monsignor Cudmore, Public Hearing, 28/9/1994).

Such an investigation may result in the loss of essential evidence, intimidation of victims, who have to tell their story and convince yet another group of people that they are not lying and warn the alleged offender, giving them time to destroy any evidence. Whilst the Committee does not dispute the organisation's right to conduct its own investigation, the Committee wishes to ensure that any such investigation in no way jeopardises an official investigation.

11.6 Summary

The Committee feels that all professionally produced and home manufactured child pornography is abuse and that more must be done to discourage its trade, manufacture and use by paedophiles. Penalties must be reviewed and professionals in photographic development industries mandated. The Committee considers the definitions of child pornography must be extended to include computer

manipulated, generated and transmitted child pornography.

Official representatives of the various churches and religious movements within Victoria often gain information, in the confessional or outside, regarding alleged child sexual offences committed both within the church movement and the community as a whole. In the past, the organisation's policy or its 'sacred nature', meant such reports may not have been passed on to the authorities, and the offences continued to be committed.

If the alleged offender was a priest or religious leader then the hierarchy of the church often conducted its own investigation, contaminating evidence and warning suspects.

CHAPTER TWELVE

CONCLUSION

12.1 Report Overview

The Committee has developed an integrated sexual assault model which will take Victoria's response to child sexual abuse to the highest possible standard in the world.

The model, in its entirety will ensure early intervention in sexually offending behaviour and will minimise the trauma resulting from sexual assault victimisation. The radical changes to our judicial system will benefit all Victorians without impinging on the rights of the accused beyond that which the Committee considers reasonable.

Having identified areas of reform in both data collection and service delivery, particularly at the point of crisis intervention, the Committee sought solutions from experts within Victoria and overseas. In deliberating on its recommendations the Committee selected models and principles of best practise from existing frameworks within the State, in other Australian States and from overseas.

No single state or country has yet devised a successful model for sexual assault management. Governments

around the world focus on single issues rather than a global 'whole of government' approach. Some states for example focus almost single mindedly on victim services, which leaves offenders serving prison sentences, without treatment, and ultimately being released to commit further offences and create more victims. Other states provide excellent offender treatment services, but their legislative and judicial frameworks limit the effective prosecution rate. The Committee has amalgamated identified principles of best practice, to create its own model of sexual assault management.

The long term and most desirable effect resulting from the Committee's integrated sexual assault model will be preventing sexual abuse from occurring in the first instance. The Committee recognises that reports of sexual assault will most probably increase as a consequence of its recommendations, and that the recommendations also have resource implications for many government departments.

The Committee strongly believes that the integrated package of recommendations shall have the following benefits:

(a) In the short term we will see an increase in successful prosecution and quantifiable improvements to victims services.

(b) Medium term will realise a plateauing of reported crime and co-operation between government agencies, never seen before in the field of sexual assault services. Lower levels of recidivism due to the treatment and supervision strategies affected.

(c) The long term goal is for a reduction in the level of sexual assault of children.

The Committee believes that the long term goal of reduced levels of sexual assault is achievable, but only if the full and complete list of recommendations is implemented. Like any integrated model, removal or modification of key components will reduce the overall effectiveness exponentially.

Sexual abuse victimisation and sexually offending behaviour can be prevented in Victoria. If this is to be achieved, it will require a long term commitment from the government of the day, the education system and the wider community. Above all, it will require a change in public attitude to recognise the magnitude of child sexual assault and the personal, social, economic and financial impact of this abhorrent crime.

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Appendix 1

Inquiry into Sexual Offences Against Children and Adults

COMBATING CHILD SEXUAL ASSAULT: AN INTEGRATED MODEL

List of Witnesses who have appeared:

Public Hearings

2 May 1994

Ms. Fiona Patten
President
EROS Foundation

Ms. Margaret Bateman
Barrister
Voltaire Institute

23 May 1994

Mr. Jack Sonnemann
Director
Australian Federation For The Family

Mr. Michael Tizard
Director
Children's Protection Society Inc.

Ms. Karen Flanagan
Co-ordinator
Children's Protection Society Inc.

15 June 1994

Mr. Richard Read
Prosecutor for the Queen

Ms. Annarella Hardiman
Acting Co-ordinator
Centre Against Sexual Assault (CASA House)

Ms. Terese McCarthy
Project Co-ordinator
Project for Legal Action Against Sexual Assault

Mr. Tony Calabro
Executive Director
Epistle Post Release Service

Ms. Kathy Arentz
Manager
Epistle Intellectually Disabled Ex Offender Program

Mr. Zichy-Woinarski
Junior Vice Chairman
Victorian Bar Council

Ms. Janine Perlman
Defence Barrister

22 June 1994

Mr. Richard Read
Prosecutor for the Queen

Ms. Wilma Fleming
President
Victorian Parents Against Child Exploitation (VICPACE)

Ms. Sarah Crome
Psychological Research Consultant
Adult Rape Project

Ms. Chris Wilding
Covenor
Broken Rites (Australia) Collective Inc.

6 July 1994

Ms. Jacqueline
Victim of sexual assault

Ms. Walsh
Domestic Violence Outreach Worker
Shopfront Family Resource Centre

Mr. Gary Ching
Manager
Sexual Offences Section
Office of the Director of Public Prosecutions

7 July 1994

Ms. Karen Hogan
Co-ordinator
Gatehouse Centre
Royal Children's Hospital

Mr. David Bruce
Forensic Psychologist
Private Practice

22 September 1994

Dr. Roslyn Glow
Clinical and Child Psychologist

Mr. Tim Wilmot
General Manager
Policy and Primary Development
Correctional Services Division
Department of Justice

Mr. Patrick Tidmarsh
President
Victorian Offender Treatment Association

Ms. Neerosh Mudaly
Secretary
Victorian Offender treatment Association

Mr. Steve Fisher
Education Co-ordinator
Men Against Sexual Assault

28 September 1994

Mr. Bruce Kiloh
Manager, Special Initiatives
Quality Programs Division
Directorate of School Education

Ms. Debbie Ollis
Curriculum Services Branch
Directorate of School Education

Ms. Robin Clark
Assistant Director
Child, Adolescent and Family Welfare Division
Health & Community Services

Ms. Penny Armitage
Manager
Protective Services Unit
Health & Community Services

Monsignor Cudmore
Vicar General
Representative of the Catholic Church in Victoria

Father Glynn Murphy
Representative of the Catholic Church in Victoria

Mr. Shane Wall
Psychologist
Help Line

Dr. Barry Perry
Deputy Ombudsman Police
State Ombudsman's Office

Ms. Rhonda Day
Senior Investigative Officer
State Ombudsman's Office

26 October 1994

Ms. Lyn Gunawan
Advocate for victims of sexual assault by teachers.

Ms. Elizabeth Simmons
Manager
Complaints & Investigations Unit
Department of Education

The Honourable Justice Vincent
Chairperson
Adult Parole Board

Ms. Carmel Benjamin
Director
Court Network

Ms. Pauline Bloom
Volunteer
Court Network

27 October 1994

Mr. Bernard Bongiorno
Director of Public Prosecutions

His Honour Judge Waldron
Chief Judge
County Court

Dr. David Wells
Senior Lecturer
Forensic Medicine
Monash University

23 November 1994

The Honourable Michael John, M.P.
Minister
Ministry for Community Services (Victoria)

24 November 1994

Ms. Cathy Thomas
Project Officer
Family Research Action Centre

Mr. Greg Levine
Senior Magistrate
Children's Court

Ms. Jan Shepherd
Women's Health Advisor
Health & Community Services

Ms. Dell Stitz
Manager, Community Health
Health & Community Services

The Honourable Jan Wade, M.P.
Attorney General (Victoria)

Appendix 2

Inquiry into Sexual Offences Against Children and Adults

COMBATING CHILD SEXUAL ASSAULT: AN INTEGRATED MODEL

Site visits undertaken by the Committee during this inquiry:

17 March 1994

Criminal Investigation Branch
St. Kilda Road Police Complex

10 May 1994

Psycho-Sexual Therapy Unit
Her Majesty Metropolitan Reception Prison

6 June 1994

Male Adolescent Program for Positive Sexuality (MAPPS)
Melbourne Juvenile Justice Centre

1 July 1994

Gatehouse Centre
Royal Children's Hospital

6 July 1994

Travancore Development Centre
Royal Children's Hospital

7 July 1994

Psychosexual Treatment Program
Brunswick Road Clinic
Forensic Psychiatry Services

Appendix 3

Inquiry into Sexual Offences Against Children and Adults

COMBATING CHILD SEXUAL ASSAULT: AN INTEGRATED MODEL

List of interstate Industry Representatives who have met with the Committee during this Inquiry:

NEW SOUTH WALES

11 April 1994

Ms. Karen McCarthy
Constable First Class
New South Wales Police Service

Ms. Jennifer Choat
Sergeant
New South Wales Police Service

Ms. Melissa Gibson
Sexual Assault Committee
Ministry for the Status and Advancement of Women

New South Wales Continued.

Ms. Marion Brown
Sexual Assault Committee
Ministry for the Status and Advancement of Women

Ms. Annie Davie
Sexual Assault Committee
Ministry for the Status and Advancement of Women

Ms. Susan Kendall
Sexual Assault Committee
Ministry for the Status and Advancement of Women

Mr. Dale Tolliday [Location: Cedar Cottage]
Director
Cedar Cottage

12 April 1994

Dr Ferry Grunseit
Chairman
N.S.W. Child Protection Council
Mr. Garry Rogers
Executive Officer
N.S.W. Child Protection Council

Professor Neil McConaghy
Psychiatrist
Psychiatric Services
St. Lukes Hospital

Mr. Paul Seshold
Executive Officer
Independent Commission Against Corruption

New South Wales Continued.

Ms. Catriona McComish
Head of Psychological Department
Sex Offenders Assessment Programme
N.S.W Corrective Services

Ms. Megan Latham
Director
Criminal Law Review Division
Attorney General's Department

The Honourable Jim Longley, M.L.A,
Minister
Ministry for Community Services

Mr. Des Semple
Director General
N.S.W Department of Community Services

QUEENSLAND

23 January 1995

Ms. Anne-Louise Nilsson
Acting Manager, Program Development
Protective Services
Department of Family Services, Aboriginal and Islander Affairs.

Ms. Chel Quinn
Manager
Sexual Abuse Counselling Service
Department of Family Services, Aboriginal and Islander Affairs

Queensland continued.

Mr. Paul Testro
Acting Assistant Divisional Head
Protective Services
Department of Family Services, Aboriginal and Islander Affairs

The Honourable Anne Warner, M.P.
Minister
Ministry for Family Services, Aboriginal and Islander Affairs

The Honourable Dean Wells, M.P.
Minister
Ministry for Justice, Attorney General and the Arts

Mr. Royce Miller, QC
Director of Public Prosecutions

<u>24 January 1995</u>

Ms. Anne Lewis [Location: Victim Interview Suite/Queensland Police Service, Headquarters]
Inspector
Queensland Police Service

Dr. Maria Hanger [Location: Royal Children's Hospital]
Senior Consultant Child Psychiatrist
Child and Family Therapy Unit
Royal Children's Hospital

Mr. Bradley Lingard [Location: Moreton Correctional Centre]
General Manager
Moreton Correctional Centre

Queensland continued.

Ms. Kay Lancefield [Location: Moreton Correctional Centre]
Senior Psychologist
Sexual Offenders Treatment Program
Moreton Correctional Centre

Mr. S. Smallbone [Location: Moreton Correctional Centre]
Psychologist
Sexual Offenders Treatment Program
Moreton Correctional Centre

Mr. F. Dell [Location: Moreton Correctional Centre]
Acting Operations Support Officer
Moreton Correctional Centre

<u>25 January 1995</u>

Mr. Ian Davies
President
Victims of Crime Association of Queensland Incorporated

Dr. Wendell Rosevar
Psychologist
Gladstone Road Medical Centre

Ms. Anne Lewis
Inspector
Queensland Police Service

Appendix 4

Inquiry into Sexual Offences Against Children and Adults

COMBATING CHILD SEXUAL ASSAULT: AN INTEGRATED MODEL

The Committee has resolved not to release any submission made during this inquiry.

List of Submissions:

Submission #1
Confidential

Submission #2 (a, b, c)
VICPACE [Victorian People Against Child Exploitation Inc]

Submission #3
Confidential

Submission #4
Confidential

Submission #5
The Voltaire Institute

Submission #6
Confidential

Submission #7
Confidential

Submission #8
Australian Federation for the Family

Submission #9
Broken Rites

Submission #10
Endeavour Forum

Submission #11
Crime Prevention Consultancy Group Inc.

Submission #12
Victoria Police

Submission #13
Prosecutor for the Queen

Submission #14 a & b)
Victorian Bar Council

Submission #15
Confidential

Submission #16
Confidential

Submission #17
Confidential

Submission #18
Confidential

Submission #19
Hands off our Kids [H.O.O.K.]

Submission #20
Special Issues Committee, Diocese of Ballarat,
Catholic Church

Submission #21
Confidential

Submission #22
Confidential

Submission #23
Children's Protection Society Inc.

Submission #24
Confidential

Submission #25
Australian Association of Multiple Personality &
Dissociation Inc.

Submission #26
Confidential

Submission #27
Confidential

Submission #28
Victorian Offender Treatment Association [VOTA]

Submission #29
Confidential

Submission #30
Confidential

Submission #31
Epistle Post Release Service

Submission #32
Confidential

Submission #33
Confidential

Submission #34
Quality Programs Division, Directorate of School Education

Submission #35
The Scout Association of Australia

Submission #36
Parents Against Sexual Assault [P.A.S.A.]

Submission #37
Davey House, Paediatric Community Service

Submission #38
Bouverie Family Therapy Centre,
Health and Community Services [Victoria]

Submission #39
Health and Community Services [Victoria]

Submission #40
Confidential

Submission #41
Confidential

Submission #42
Men Against Sexual Assault [M.A.S.A]

Submission #43
Confidential

Submission #44
Against Male Assault Network [A.M.A.N.]

Submission #45
MCH Nurses' Special Interest Group,
Australian Nursing Federation [Victorian Branch]

Submission #46
Confidential

Submission #47
Melbourne Children's Court

Submission #48
Archdiocese of Melbourne,
Catholic Church of Victoria

Submission #49
Help Line

Submission #50
Confidential

Submission #51
Office of the Ombudsman [Police Complaints]

Submission #52
Quality Services Division,
Directorate of School Education

Submission #53
Confidential

Submission #54
Confidential

Submission #55
Confidential

Submission #56
Court Network

Submission #57
County Court

Submission #58
Department of Forensic Medicine, Victoria Police

Submission #59
Confidential

Submission #60
Endeavour Forum

Submission #61
Complaints Investigation Unit, Department of Education

Submission #62
Child Exploitation Unit, Victoria Police

Submission #63
Legal Aid Commission of Victoria

Submission #64a & b)
Confidential

Submission #65 a & b)
Confidential

Submission #66
Australian Family Association

Submission #67
Confidential

Submission #68
Confidential

Submission #69
Confidential

Submission #70
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Submission #71
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Submission #72
Rape Squad, Victoria Police

Submission #73
Confidential

Submission #74
Children's Court

Submission #75
Confidential

Submission #76
Family Research Action Centre Inc.

Submission #77
Women's Health , Health & Community Services [Victoria]

Submission #78
Minister for Community Services

Submission #79
Confidential

Submission #80
Department of Justice

Submission #81
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Submission #82
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Submission #83
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Submission #84
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Submission #85
State Forensic Science Laboratory, Victoria Police

Submission #86
Confidential

Submission #87
Corporate Policy, Planning and Review, Victoria Police

Submission #88
Confidential

Submission #89
Parents Inquiry into Children Under Protection [P.I.C.U.P]

Submission #90
Psychiatric Services, Health and Community Services

Submission #91
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Inquiry into Sexual Offences Against Children and Adults

Combating Child Sexual Assault - An Integrated Model

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