Chapter 1 Approach and conduct of the Inquiry

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Establishment

On 1 July 2004, the South Australian Minister for Families and Communities, the Hon. Jay Weatherill MP, introduced a Bill into Parliament to set up a Commission of Inquiry into the handling of complaints of sexual abuse from people who were, at the time of abuse, children in State care. The Inquiry was intended to inform the State Government's child protection policy. On 19 July, the Hon. Rob Kerin, then Leader of the Opposition, presented Parliament with a petition signed by 219 South Australians, requesting the establishment of an independent inquiry to investigate and report allegations of sexual abuse of wards of the State and others in institutional care. On the same day, the Minister announced the appointment of Justice E P Mullighan as Commissioner of the Children in State Care Commission of Inquiry, and the Bill was passed on 4 August. On 28 October the Minister told Parliament:

> *… the essence of this inquiry is a healing process and crucial to that is to give people a forum at which they can tell their story. The telling of the story in a way which is respected and honoured is itself part of the healing process.*

The *Commission of Inquiry (Children in State Care) Act 2004*[1] (Commission of Inquiry Act) was proclaimed on 18 November and E P Mullighan QC (former Supreme Court judge) started his role as Commissioner on 6 December.

Raising awareness

The terms of reference in Schedule 1 of the Commission of Inquiry Act set out two topics for inquiry: allegations of sexual abuse of children in State care and allegations of criminal conduct resulting in the death of children in State care.

The Inquiry developed a campaign to raise awareness of its terms of reference and encourage people to come forward. It included distributing posters, pamphlets and information to relevant organisations throughout the State and promoting the Inquiry on radio and television news and current affairs programs. National, metropolitan and regional newspapers also provided extensive coverage about the Inquiry and its terms of reference. A website for the Inquiry was established in January 2005 and had a total of 20,540 visits—50 per cent were from Australia, 20 per cent from the United Kingdom and 10 per cent from other countries.

The Inquiry also advertised in publications with a target audience, such as *The Big Issue, Koori Mail, Blaze* and *Link* and in street press, and had information broadcast on community radio stations such as Three D in Adelaide and CAAMA in Alice Springs.

The Inquiry also developed an extensive outreach program for groups that could potentially be disadvantaged in getting access or coming forward to the Inquiry, namely prisoners and Aboriginal, elderly, young and disabled people.

Aboriginal people

The Inquiry immediately recognised that it needed a special focus to reach Aboriginal people. It expected that Aboriginal children, who were and remain over-represented in the child protection system, would be among those who had been sexually abused while in State care.[2] The Inquiry also anticipated that Aboriginal people would understandably lack confidence in a process established by the government, such as the Inquiry. This is given the historical removal of Aboriginal children to be 'brought up in a Christian atmosphere', which was intensified by the State's assimilation policies of the 1950s and 1960s and caused Aboriginal children to be placed in dormitories on mission stations, homes run by missionary and other church organisations, and other government and non-government institutions.

1 Amended on 28 June 2007 to the *Commission of Inquiry (Children in State Care and Children on APY Lands) Act 2004* (Commission of Inquiry Act).

2 In *Keeping them safe – in our care: draft for consultation* (Department for Families and Communities, 2006) the State Government reported that 23.9 per cent of children in care were Aboriginal children, whereas only 3.2 per cent of the general population in that age group were Aboriginal. See Chapter 4.1.

The Inquiry received information indicating that impediments existed in Aboriginal communities about discussing sexual abuse, such as acute shame for both the victim and the community, the absence of traditional language to name it, fear of recriminations and the effects of substance abuse. Given the small populations in remote communities, it may have been difficult for someone wanting to approach the Inquiry to do so unnoticed. Other more practical concerns included the need for interpreters and counselling. If these matters were not considered, disclosures could be limited and evidence misunderstood.

To enable Aboriginal people to participate equitably, the Inquiry:

- established an Aboriginal Advisory Committee within three months
- travelled to Aboriginal communities to provide information and take evidence
- engaged facilitators to assist communications with Aboriginal people in Adelaide
- took evidence from health and welfare professionals who were likely to have an awareness of sexual abuse of Aboriginal children.

The Aboriginal Advisory Committee's membership and objectives are set out in Appendix A. It assisted the Inquiry to develop and deliver outreach activities to Aboriginal people throughout the State by advising on the communities to visit, the people to meet, and traditional laws and customs that might influence Inquiry processes.

The Inquiry greatly benefited from the wise counsel of Kaurna elder Lewis O'Brien, who has a vast knowledge and experience of the law, customs and traditions of not only his people but also most Aboriginal communities.

Two Aboriginal women assisted the Inquiry by making it easier for individuals who had been sexually abused as children to give evidence. Amelia Campbell, who has worked extensively as a volunteer with the homeless in Adelaide and is well known in Aboriginal communities in Adelaide and Raukkan, referred numerous people who gave evidence in a variety of places, including the Inquiry's office, their homes, the premises of community and welfare organisations, and even the Adelaide Park Lands. Coral Wilson, who retired in 2006 as a Department for Correctional Services Aboriginal liaison officer at the Adelaide Remand Centre, helped the Inquiry in obtaining evidence from Aboriginal prisoners. She also travelled to Aboriginal communities with the Inquiry to help with the outreach program.

From March 2005 to late 2006, the Inquiry visited 10 Aboriginal communities, including regional centres such as Port Augusta, Murray Bridge and Mount Gambier, and smaller communities as far west as Ceduna and north to Iron Knob, Oodnadatta and Coober Pedy.

The outreach program involved meetings with Aboriginal communities and relevant professionals in the areas of health, family, youth, welfare, law, police and correctional services; promoting the Inquiry on Aboriginal radio and in regional print media; distributing posters and pamphlets; visiting prisons; and attending community social and sporting events. Meetings with Aboriginal women and elders were held in several locations.

During the outreach visits, a pattern emerged of Aboriginal people talking generally about the existence of child sexual abuse in their communities or alluding to knowing people who had been sexually abused as children. On occasions, people would name others they believed to have been abused as children in State care. Sometimes people would approach Inquiry staff at meetings and show an interest in giving evidence concerning their own abuse, but then would not proceed. Attempts to engage Aboriginal leaders to facilitate disclosure were largely unsuccessful.

One person in a regional centre said the Inquiry was 'a bit remote' from the community. Others said Aboriginal people in remote communities were used to white people

> *...flying in for five minutes, then they never see them again. If you want their trust you need to keep going back, spend time with them, get to know them and earn their trust.*

1 Chapter 1 Approach and conduct of the Inquiry

An Aboriginal worker in a remote community said:

> *The best way to earn the trust of Aboriginal people and get them to open up is to spend time with them doing fun and everyday things. In such an environment there is no pressure and when they see you are genuine they will start to open up.*

The Inquiry identified that other communities required outreach, for example, the Anangu Pitjantjatjara Yankunyjatjara (APY) Lands, Yalata on the west coast of the Yorke Peninsula and Gerard in the Riverland. However, the dilemma was that although communities such as Koonibba, Raukkan and the APY Lands were established by or with the consent of the State Government or at various times managed by the State, investigations of available historical records gave no indication that the alleged victims of child sexual abuse in those communities came within the Inquiry's terms of reference. Despite this, the information was too important to ignore and the Commissioner became involved in discussions with the Minister about the issue. In June 2006, the Minister and the Federal Minister for Indigenous Affairs, and others, discussed the issue of violence and child abuse in Aboriginal communities. Following a request by the Federal Minister, the Minister and the Commissioner prepared a proposal to expand the Inquiry to permit the investigation of sexual abuse of children in all Aboriginal communities in South Australia. Pending the outcome of the proposal, the Inquiry postponed its outreach to the outstanding regional and remote communities. Eventually the two governments agreed to the Commonwealth Government funding a more limited inquiry confined to some communities only on the APY Lands. The Commission of Inquiry Act was amended in June 2007 to establish the Children on APY Lands Inquiry, which is the subject of a separate report.

While waiting for the outcome of the proposal, the Inquiry and Aboriginal services Nunkuwarrin Yunti of SA Inc. and SA Link-Up held a public hearing on 6 December 2006 in Adelaide. The hearing was to enable Aboriginal people to provide information that could assist in the making of the Inquiry's recommendations. It was attended by 56 Aboriginal people, members of the Aboriginal Advisory Committee and Inquiry staff.

A woman who works extensively with Aboriginal people in prisons told the hearing she had spoken to many Aboriginal people affected by abuse and encouraged them to give evidence to the Inquiry 'because I feel they need to have some closure on these incidents that have affected their lives'. An Aboriginal woman who has worked with government for more than 22 years said: 'Sometimes I think the only way to change the system is to get into the system'. One man said that more than 45 years ago he lived in a boys home at Semaphore where the children were sexually abused. He said he felt safe only when the home was closed down:

> *I've never lost the feeling of being institutionalised. It stays with you forever and then you've got to force other institutions to put our cases. What a bloody joke in the 21st century. This country doesn't protect us. Until they acknowledge what they did …*

A woman told the hearing that while policy recommendation is good, 'talk is cheap, you know. But if it is not translated into anything to be done, without resources allocated to it, it's no good.' A Ngarrindjeri woman asked that the Inquiry discover the truth of what was happening because there is 'a lot of terrible things going on with those children that have been sexually abused'. She said governments did not want to deal with it because 'it is too political'.

Other people at the hearing said that children were masking the effects of sexual abuse by taking substances and sniffing petrol—a boy was offering sex for petrol or drugs in one community. One Aboriginal woman said:

> *We have to have enough guts to stand up and say 'leave our children alone'. All of us as adults have problems because of what happened. We are trying to fix what has happened and to take care of our children. I mean stop sexually abusing them. Everybody stop it and that's the only message. You know we are all supposed to be so-called bloody civilised people. It breaks my heart. Past generations were sexually abused.*

The hearing demonstrated the importance of the government consulting with and taking action in all Aboriginal communities.

There were 152 people of Aboriginal or Torres Strait Islander descent who told the Inquiry they were victims of child sexual abuse; the Inquiry was able to confirm from available records that 44 were in State care at the time of the alleged abuse.

Elderly people

The Inquiry was aware that publicity might have an adverse effect on elderly people (aged 70 and above), particularly those who were frail or had no family support, by activating dormant memories.

Various organisations, including the Council on the Ageing (COTA), Aged and Community Services SA & NT, Aged Care and Housing Group (ACH Group), Masonic Homes Inc., Helping Hand Aged Care and UnitingCare Wesley Port Adelaide Inc., advised and assisted the Inquiry in informing elderly people and ensuring they had access to the Inquiry.

The Commissioner attended or addressed meetings of COTA's Policy Council, the Association of Independent Retirees, the Seniors Education Association Inc. and a Seniors Organisation Forum on 20 July 2006 organised by COTA for advice on the best way for the Inquiry to reach elderly people. The meetings were well attended, with contributions from many people on a wide range of issues concerning the Inquiry, such as the motivation and punishment of paedophiles including elderly offenders, services for victims, the difficulty of disclosing to family members and the training of foster carers and workers.

An Inquiry staff member participated in the World Elder Abuse Awareness Day Conference held in Adelaide on 15 June 2006, which provided the Inquiry with extensive material about abuse, as well as its application to childhood sexual abuse.

Information about the Inquiry was also sent to a range of organisations and specialist publications.

Twenty-two people aged 70 or older came forward to the Inquiry; six were in State care at the time of the alleged child sexual abuse.

People with disabilities

The Inquiry was aware that people with disabilities would generally have difficulty in approaching, and disclosing allegations of sexual abuse to, the Inquiry. On 2 December 2005 about 80 people attended a forum held by the Inquiry in Adelaide to raise awareness of its role among the State's disability sector and better understand how to communicate effectively with people with disabilities. Presenters included the South Australian Guardian for Children and Young People, Pam Simmons, who outlined her office's role in the protection of children and young people in State care with disabilities from abuse; the director of the Office for Disability and Client Services, Department for Families and Communities, Dr David Caudrey, who spoke about government policy for the protection of vulnerable people in the disability services sector; and the acting director Central Coordination, Department of Education and Children's Services, Trish Winter, who discussed the challenges across schools in responding to allegations of child sexual abuse.

The Inquiry further publicised its work through articles distributed to disability service providers via peak organisations such as National Disability Services (NDS) and the Association of Non-Government Organisations of SA (ANGOSA).

Inquiry staff also met non-government agencies including Anglicare SA, Novita Children's Services, CARA (Community Accommodation & Respite Association), Life Without Barriers, CanDo4Kids, Down Syndrome Society of South Australia, the Salvation Army, UnitingCare Wesley, Citizen Advocacy, Independent Advocacy, Disability Complaints & Advocacy Service, and Disability Action Inc. Other non-government agencies provided extensive written information and support.

The Inquiry received considerable help from State Government departments and agencies, including presentations and submissions from the Department for Families and Communities' Exceptional Needs Unit and Specialist Intervention & Support Service, as well as individuals with particular interests and expertise in disability.

Disability SA, the peak South Australian Government service provider for people with disabilities, brought 202 cases relating to alleged sexual abuse to the Inquiry's attention. Most of the cases are current, although a small number relate to abuse 30–50 years ago. As Disability SA and its predecessors have not kept a register of abuse cases, the identification of potentially relevant cases relied on the recall of staff. Thus there may be other cases not known to the Inquiry.

The Inquiry inspected the 202 client files, along with department and police records in most of the cases, to gain an understanding of the difficulties associated with disclosures of sexual abuse by children with disabilities, as well as the response to disclosures. However, only about 10 per cent came within the Inquiry's terms of reference.

Forty-four people who had a disability came to the Inquiry. Of those, it was established that 22 were in State care at the time of the alleged abuse.

Youth

The Inquiry understood that it would need a special effort to let young people (under the age of 18) know that it was safe and important to make disclosures. Adults who had been in State care told the Inquiry that as children they had no respect for institutions such as courts, police, welfare, education and health, and did not trust most of the people working in them. As self-described 'welfare children' they felt stigmatised and of lesser value and importance than other children.

The Inquiry appointed a member of staff as youth liaison officer, who worked with one of the Inquiry's investigators to contact organisations that provide assistance and services to youth, such as Side Street Youth Service (counselling, support and information for youth aged between 12 and 25 who are homeless or at risk of homelessness or who have experienced physical or sexual abuse), Second Story Youth Health Centres (provides health services to young people aged 12–25 years) and StreetLink Youth Health Service (provides a health service and outreach to homeless and at-risk young people).

The Inquiry received invaluable assistance in encouraging children in State care to come forward from organisations including the Commonwealth/State Youth Supported Accommodation Assistance Program, UnitingCare Wesley, the Youth Affairs Council of South Australia, Inner City Youth Services, the Port Youth Accommodation Program and the Second Story Youth Health Centres.

In mid 2006 the Inquiry established the Young People Advisory Group, which consisted of 10–13 members aged 16 to 26. The group's objectives are set out in Appendix A. The group met nine times, identified relevant issues for young people in State care today and expressed views which contributed to the recommendations in this report.

Fifty-one young people (under 18) came to the Inquiry and said they were victims of child sexual abuse; the Inquiry determined that 16 had been in State care at the time.

Prisoners

The Inquiry knew that prisoners wanting to give evidence or provide information may face special problems, such as feelings of isolation, lack of appropriate support and personal safety if other prisoners became aware of their actions.

The Commissioner addressed staff and prisoners at Yatala Labour Prison, Adelaide Women's Prison, Mobilong Prison, Adelaide Pre-Release Centre, and the Mount Gambier and Port Augusta prisons. To make it easier for prisoners to come forward, the Inquiry developed processes with the advice and support of the chief executive officer of the Department for Correctional Services, Peter Severin, and prison managers and staff.

The Inquiry heard evidence from 76 prisoners who alleged they were victims of child sexual abuse; the Inquiry determined that 20 were in State care at the time of the alleged abuse.

Reference to whether someone was a prisoner at the time of giving evidence has not been included in this report for privacy and safety reasons.

Determining who was a child in State care

In regard to allegations of sexual abuse, Schedule 1 of the Commission of Inquiry Act states:

(1) The terms of reference are to inquire into any allegations of:

(a) sexual abuse of a person who, at the time that the alleged abuse occurred, was a child in State care; (whether or not any such allegation was previously made or reported).

'Child' is defined in section 3 to mean a person under 18 years of age.

'Sexual abuse' is defined in Schedule 1 of the Commission of Inquiry Act as meaning conduct that would, if proven, constitute a sexual offence. 'Sexual offence' is defined in section 3 of the Act to mean a sexual offence within the meaning of section 4 of the *Evidence Act 1929*—in that Act the term 'sexual offence' is defined to mean rape, indecent assault, any offence involving unlawful sexual intercourse or an act of gross indecency, incest, any offence involving sexual exploitation or abuse of a child, or exploitation of a child as an object of prurient interest; or any attempt to commit, or assault with intent to commit, any of those offences. Some of the sexual offences as defined by the Evidence Act as at 18 November 2004 have changed in name, description or penalty over time in accordance with various amendments to the *Criminal Law Consolidation Act 1935.* (See Appendix B for a legal analysis of the changes.)

A 'child in State care' is defined in the Commission of Inquiry Act to mean a child who was, at the relevant time, placed under the guardianship, custody, care or control of a designated Minister (namely, a Minister responsible for the administration of the *Children's Protection Act 1993* or a corresponding previous enactment dealing with the protection of children) or another public official, or the former body corporate known as the Children's Welfare and Public Relief Board (CWPRB), under a relevant Act (namely, the Children's Protection Act or a corresponding previous enactment dealing with the protection of children).

The word 'placed' has a dual role in the definition. It requires the child to have been placed under the guardianship, custody, care or control of the Minister, a public official or the CWPRB; and second, it requires the placement to have occurred under the Children's Protection Act or corresponding previous enactment.

Therefore the Inquiry has had to consider the legislative history of how a child was placed under the guardianship, custody, care or control of the Minister, a public official or the CWPRB.

The Children's Protection Act deals with placing children into the custody of the Minister by virtue of a voluntary custody agreement[3], into the temporary custody of the Minister by virtue of a child being removed from a dangerous situation by a police officer or departmental employee[4] or by court order where the child is reasonably suspected of being at risk[5] or having been found to be at risk.[6] The focus is on the protection of children who, because of circumstances such as neglect, abandonment or unfit guardianship, are found to be 'in need of care'.

The placement of children who have been charged with criminal offences and are brought before a court within the juvenile criminal justice system is dealt with by the *Young Offenders Act 1993*, not the Children's Protection Act. For that reason, it could be said that the Inquiry's terms of reference do not include children placed in State care in the juvenile criminal justice system.

The Inquiry, however, has included those children for several reasons. From the *State Children Act 1895* until 1971, both the 'in need of care' and 'criminal justice' placements of children were dealt with in the same legislation.[7] In 1971 the two types of placements were split into separate pieces of legislation (the *Community Welfare Act 1972* for in need of care placements and the *Juvenile Courts Act 1971* for criminal justice placements). Eight years later, in 1979, the placements were again combined into a single piece of legislation (the *Children's Protection and Young Offenders Act 1979*) before being split in 1993.

[3] *Children's Protection Act 1993*, Part 3.

[4] ibid., Part. 4, Division. 2.

[5] ibid., Division. 4.

[6] ibid., Part 5.

[7] *State Children Act 1895; Maintenance Act 1926; Social Welfare Act 1926–1965.*

Chapter 1 Approach and conduct of the Inquiry

Second, the types of orders that could be made for children in need of care and those in the criminal justice system were almost identical. The only difference was the type of institution to which the child was sent, although that was not necessarily the case.[8] Even when the two types of placements were split into separate pieces of legislation from 1971–78, the Juvenile Courts Act provided for a complaint to be laid alleging that the child was in need of care and control (a complaint used for children 'in need of care') alongside the complaint setting out the criminal offences.

Finally, the legislative definition of 'State child' has included children who were placed in the juvenile criminal justice system ('convicted child') as well as those children being placed in the 'in need of care' system[9] ('neglected', 'destitute', 'uncontrollable', 'incorrigible' children).

The following legislation dealt with the placement of children in State care before the *Children's Protection Act 1993* and is considered to be a list of all 'corresponding previous enactments dealing with the protection of children' for the purposes of the Inquiry's terms of reference:

- *Children's Protection and Young Offenders Act 1979*
- *Community Welfare Act 1972*
- *Juvenile Courts Act 1971*
- *Social Welfare Act 1965*
- *Immigration (Guardianship of Children) Act 1946* (Cwlth)
- *Aborigines Act 1934–1939*
- *The Aborigines Act 1923*
- *Maintenance Act 1926–1937*
- *Education Act 1926–1972*
- *State Children Act 1895*

The Education Act contained a provision under which a child found to be a 'habitual truant' from school could be placed under the care and control of the State Children's Council (SCC), its successor the CWPRB or the Minister.[10] The relevant provision was repealed in 1993 but was then taken up by the Children's Protection Act in the definition of 'child at risk'[11] where it continues to be a basis for placing a child in State care.

The Immigration (Guardianship of Children) Act placed every evacuee child[12] and immigrant child[13] who arrived in Australia after 30 December 1946 under the guardianship of the Commonwealth Minister.[14] However, the Minister could place the child in the custody of a person representing any approved authority or organisation[15], which of course included the States. The Minister could delegate his powers and functions to any officer or authority of the Commonwealth or of any State or Territory of the Commonwealth.[16] If the Minister delegated his powers under section 6 of the Act, then regulation 4 under the Act applied. The regulation preserved guardianship of the child in the Commonwealth by not permitting the child to be committed under State laws, but allowed the State to exercise rights and powers over the child as if the child was formally placed under the relevant State legislation.

8 For example, under s. 111, *Maintenance Act 1926–1937*, only convicted children were to be sent to reformatory schools, unless the court believed that a neglected, destitute or uncontrolled child ought to be sent there. By s. 112, destitute, neglected and uncontrollable children only were to be sent to institutions other than reformatory schools but could be transferred to a reformatory school for misconduct with the approval of the Governor of South Australia or chief secretary. Similarly, a child in a reformatory school could be transferred to any other institution for good conduct.

9 Under the *State Children Act 1895*, s. 4, a 'State child' was convicted, destitute or neglected; under the *Maintenance Act 1926–37*, s. 5, a State child was 'any child who has been committed to an institution'; under the *Social Welfare Act 1926–1965*, s. 5, a State child was 'any person, whether under or over 18 years of age who … is being detained in an institution …'.

10 This provision was s. 48 from 1915; it was amended and replaced by s. 79 in 1972.

11 *Children's Protection Act 1993*, s. 6(2).

12 *Immigration (Guardianship of Children) Act 1946* (Cwlth), s. 4, 'Evacuee child' means a person under the age of 21 years who has, in pursuance of the arrangement made for that purpose during the year 1940 between the Government of the UK and the Government of the Commonwealth, been received into Australia for custody and care by the Government of the Commonwealth.

13 ibid., 'Immigrant child' means (a) an evacuee child, or (b) a person under the age of 21 years who comes to Australia as an immigrant otherwise than in the charge of, or for the purpose of living in Australia under the care of any parent or relative of that person.

14 ibid., s. 6, Until the child reaches the age of 21 or the child leaves Australia permanently or until the provisions cease to apply to the child.

15 ibid., s. 7.

16 ibid., s. 5.

The Senate report on child migration in 2001[17] stated:

> *The Minister delegated his powers as Guardian of the child migrants to State Welfare Authorities shortly after the legislation was enacted. The Department stated that it was 'Not intended that he exercise direct control over migrant children, but that State authorities should assume that role'. Indentures were made between the delegated State government, Welfare officials and voluntary organisations in which the organisations agreed to bear the responsibility for the care and welfare of the children placed under their care. The statutory scheme established by the IGOC [Immigration (Guardianship of Children)] regulations '… envisaged that the State authority would be primarily responsible for the supervision of the welfare and care of child migrants. The local State authority was likely to have better knowledge of the rights, powers and responsibilities of guardians and custodians under Child Welfare legislation and better understanding of local conditions. In addition to this, offices of the State authority dealing with the Child Welfare matters on a regular basis were better equipped to deal with these matters than the staff of the Immigration Department.' (Department of Immigration and Multicultural Affairs submission.)*

The CWPRB annual report in 1948 described the child migrants' status:

> *… under the provision of the Federal Immigration (Guardianship of Children) Act 1946, all immigrant children arriving in this State automatically come under the Guardianship of the Chairman of the [CWPRB] Board thus they will be, in the interests of their welfare, under the supervision of officers of the Department.*

In practice, therefore, it appeared to be the view of both the Commonwealth and the State that the children had been 'placed in State care' by virtue of the delegated legislation.

How a child was placed in State care

A child could be placed in State care if ordered by the court, CWPRB or Minister, or by written agreements under the relevant legislation as follows:

(1) A court order that the child be sent to an institution upon the court finding that a child was destitute, neglected, uncontrollable or incorrigible.[18] The child could then be apprenticed or fostered[19] to foster parents.

(2) A court order that the child be placed in the custody and under the control of the SCC[20], CWPRB[21] or under the guardianship, care and control of the Minister[22] or under the control of the director-general[23] upon the court finding that a child was destitute, neglected, uncontrollable or incorrigible. The child could then be placed by the SCC, CWPRB or the Minister in an institution or home, apprenticed or fostered with foster parents, placed with any guardian or relative or any other suitable person, or placed in a hospital.[24]

17 Senate Community Affairs References Committee 2001, *Lost innocents: righting the record – report on child migration*, SCARC, Canberra.

18 *State Children Act 1895*, ss. 33–4, for destitute, neglected, uncontrollable or incorrigible children, to 6 Apr. 1927; *Maintenance Act 1926*, ss. 102–3, for destitute, neglected, uncontrollable or incorrigible children, from 7 Apr. 1927 – 26 Jan. 1966; *Social Welfare Act 1926–1965*, ss. 102–3, for neglected or uncontrollable children, from 27 Jan. 1966 – 30 June 1972; *Juvenile Courts Act 1965–1966*, s. 44, for neglected or uncontrollable children, from 7 July 1966 – 30 June 1972.

19 *State Children Act 1895*, ss. 52–3, to 6 Apr. 1927; *Maintenance Act 1926*, ss. 127–8, from 7 Apr. 1927 – 26 Jan. 1966; *Social Welfare Act 1926–1965*, ss. 127–8, from 27 Jan. 1966 – 30 June 1972.

20 *State Children Amendment Act 1909*, s. 21, for convicted, destitute, neglected, uncontrollable or incorrigible children, to 6 Apr. 1927.

21 *Maintenance Act 1926,* ss. 102–3 and 113, for destitute, neglected, uncontrollable or incorrigible children or children found guilty of any crime or offence (other than homicide) punishable by imprisonment, 7 Apr. 1927 – 26 Jan. 1966.

22 *Social Welfare Act 1926–1965*, ss. 102–3, for neglected or uncontrollable children, from 27 Jan. 1966 – 30 June 1972; *Juvenile Courts Act 1965–1966*, Part v, from 7 July 1966 – 30 June 1972, and *Juvenile Courts Act 1971*, Part vi, from 1 July 1972 – 30 June 1979, for neglected or uncontrollable children; *Children's Protection and Young Offenders Act 1979*, s. 14, for children in need of care or protection, from 1 July 1979 – 31 Dec. 1993; *Children's Protection Act 1993*, s. 38, for children in need of care or protection, from 1 Jan. 1994.

23 *Children's Protection and Young Offenders Act 1979*, s.14, from 1 July 1979 – 31 Dec. 1993.

24 *State Children Amendment Act 1909*, s. 23, to 6 Apr. 1927; *Maintenance Act 1926,* ss. 109 and 127–8, from 7 Apr. 1927 – 26 Jan. 1966; *Social Welfare Act 1926–1965,* ss. 19 and 127–8, from 27 Jan. 1966 – 30 June 1972; *Children's Protection and Young Offenders Act 1979*, s. 23, from 1 July 1979 – 31 Dec. 1993; *Children's Protection Act 1993*, s. 51, from 1 Jan. 1994.

(3) A court order that the child be remanded to an institution or any other suitable place pending a final court order in proceedings in which the child was charged with being destitute, neglected, uncontrollable or incorrigible.[25]

(4) A written order by the CWPRB[26] for children under eight years considered to be destitute or neglected, placing them in the custody and under the control of the CWPRB or in an institution until the age of 18 years. Consent was required from both parents if the child was 'legitimate' and only from the mother if the child was 'illegitimate'. If the parents were deceased or could not be found, no consent was required.

(5) A written order by the Minister[27] for children considered to be uncontrollable or neglected placing them under the control of the Minister or an institution until the age of 18 years. Consent was required from both parents if the child was legitimate and only from the mother if the child was illegitimate. If the parents were deceased or could not be found, no consent was required.

(6) A written order by the Minister[28] that the child be placed under the guardianship of the Minister for such period as the Minister thinks fit, but not extending beyond the age of 18, if satisfied that the guardian has maltreated or neglected the child, or the guardians are unable or unwilling to maintain the child.

(7) A written agreement between a parent/guardian and the Minister for the child to be under the Minister's custody or care and control for three months[29] if the Minister considered it to be in the interest of the child.[30]

(8) A voluntary custody agreement between the guardians of a child (or a child above the age of 16) and the Minister for the child to be in the custody of the Minister.[31]

(9) The child was removed from any place by a police officer or officer of the department upon suspicion by that person on reasonable grounds that the child was in need of care or in immediate danger of suffering physical or mental injury or the child's safety was in serious danger or the child was at risk and then placed for a short period pending court proceedings.[32]

(10) The child was convicted of a criminal offence (found guilty of any crime or offence other than homicide punishable by imprisonment) and the court ordered that the child be sent to a reformatory school[33] or reformatory institution[34] or training centre.[35]

(11) The child was charged with, or convicted of, a criminal offence and the court ordered that the child be placed in the custody and under the control of the SCC[36], CWPRB[37] or under the guardianship, care and control

[25] *State Children Act 1895*, s. 117, to 6 Apr. 1927; *Children's Protection Act 1993*, ss. 23 and 39, from 1 Jan. 1994.

[26] *Maintenance Act 1926–1937*, s. 102a, from 30 Nov. 1950 to 26 Jan. 1966.

[27] *Social Welfare Act 1926–1965*, s. 102a, for children under 12 years, from 27 Jan. 1966 – 30 June 1972; *Community Welfare Act 1972*, s. 39, for any child on application by a parent, guardian or custodian but consent of child required if the child was over 15 years, from 1 July 1972 – 4 July 1979.

[28] *Community Welfare Act 1972*, s. 39, for any child on application by the guardian or, from 1981, by a child of or above the age of 15 but in that case the order could not exceed one year and the Minister had to consult with the guardian if the guardian could be found, and s.27, from 5 July 1979 – 31 Dec. 1993.

[29] Changed to four weeks in 1981, *Community Welfare Act Amendment Act No 67 of 1981*.

[30] *Community Welfare Act 1972*, s. 40, upon request from a parent, guardian or a child where the child is 15 years or over; the child's consent was required if the child was 15 years or over, from 1 July 1972 – 31 Dec. 1993.

[31] *Children's Protection Act 1993*, s. 9, if the child was 16 years or over, the child must consent; if the child was under 15, the child had to be consulted if it appeared that he or she had a sufficient understanding of the consequences of a custody agreement, from 1 Jan. 1994.

[32] *Children's Protection and Young Offenders Act 1979*, s.19, from 1 July 1979 – 31 Dec. 1993; *Children's Protection Act 1993*, Division 2, from 1 Jan. 1994.

[33] *State Children Act 1895*, s. 36, to 6 Apr. 1927; *Maintenance Act 1926–1937*, s. 113, from 7 Apr. 1927 – 26 Jan. 1966.

[34] *Social Welfare Act 1926–1965*, s. 113, from 27 Jan. 1966 – 30 June 1972; *Juvenile Courts Act 1965–1966*, s. 35, from 7 July 1966 – 30 June 1972.

[35] *Children's Protection and Young Offenders Act 1979,* ss. 51 and 100, from 1 July 1979 – 31 Dec. 1993; *Young Offenders Act 1993*, ss. 23 and 36, from 1 Jan. 1994.

[36] *State Children Amendment Act 1909*, s. 21, for convicted, destitute, neglected, uncontrollable or incorrigible children, to 6 Apr. 1927.

[37] *Maintenance Act 1926,* ss. 102–3 and 113, for destitute, neglected, uncontrollable or incorrigible children or children found guilty of any crime or offence (other than homicide) punishable by imprisonment, from 7 Apr. 1927 – 26 Jan. 1966.

of the Minister[38] or under the control of the director-general.[39] The child could then be placed by the SCC, CWPRB or the Minister in an institution, home or hospital; with any guardian or relative or any other suitable person; or apprenticed or fostered with foster parents.[40]

(12) The child was charged with a criminal offence and was remanded in detention or in custody to an institution or home or any other suitable place during those proceedings.[41]

(13) The child was apprehended by a police officer with or without warrant and then detained overnight pending court proceedings.[42]

(14) The child was a habitual truant from school and was ordered by a court to be sent to an institution or placed under the care and control of the Minister.[43]

(15) The child was Aboriginal and, with approval from the SCC[44] or CWPRB[45], there was an order by the chief protector committing the child to an institution by way of a written transfer of control (the child could then be apprenticed or fostered). Unless the Minister otherwise directed, this applied to legitimate Aboriginal children who had obtained a qualifying certificate within the meaning of the *Education Act 1915* or reached 14 years; and illegitimate Aboriginal children who, irrespective of age, in the opinion of the chief protector and the SCC/CWPRB, were neglected or otherwise proper people to be dealt with under the Act.[46]

(16) The child was Aboriginal and, with CWPRB approval, there was an order by the Aborigines Protection Board (APB) that the child be committed to an institution.[47] This applied to any Aboriginal child. The APB was responsible for determining, with the CWPRB, which children were neglected or otherwise proper people to be dealt with under the Act.

(17) The child was an evacuee child or immigrant child placed in South Australia.[48]

Assessing whether a witness was a child in State care

Many people who came forward to allege sexual abuse did not know whether any of the provisions outlined above applied to them. They were often very young at the time they were placed in a care arrangement or were simply not told the legal circumstances under which they came to be living, say, in an institution or with a foster family.

The Inquiry determined whether these witnesses were in State care under the relevant legislative provisions at the time of the alleged abuse by requesting records from the department or other relevant organisations such as the Anglican Church, Catholic Church and Salvation Army. Departmental records generally included:

38 *Social Welfare Act 1926–1965*, ss. 102–3, for neglected or uncontrollable children, from 27 Jan. 1966 – 30 June 1972; *Juvenile Courts Act 1965–66*, Part v, and *Juvenile Courts Act 1971*, Part vi, for neglected or uncontrollable children, and s. 42, for children charged with criminal offences, from 1 July 1972 – 30 June 1979; *Children's Protection and Young Offenders Act 1979*, s. 14, for children in need of care or protection, from 1 July 1979 – 31 Dec. 1993; *Children's Protection Act 1993*, s. 38, for children in need of care or protection, from 1 Jan. 1994.

39 *Children's Protection and Young Offenders Act 1979*, s. 14, for children in need of care or protection, from 1 July 1979 – 31 Dec. 1993.

40 *State Children Amendment Act 1909*, s. 23, to 6 Apr. 1927; *Maintenance Act 1926*, ss. 109 and 127–8, from 7 Apr. 1927 – 26 Jan. 1966; *Social Welfare Act 1926–1965*, ss. 19 and 127–8, from 27 Jan. 1966 – 30 June 1972; *Children's Protection and Young Offenders Act 1979*, s. 23, from 1 July 1979 – 31 Dec. 1993; *Children's Protection Act 1993*, s. 51, from 1 Jan. 1994.

41 *State Children Amendment Act No 996 of 1909,* s. 15; *Juvenile Courts Act 1941*, ss. 9, 13 and18; *Juvenile Courts Act 1965–1966*, ss. 18, 20, 32 and 33; *Juvenile Courts Act 1971*, ss. 30 and 40, from 30 June 1942 – 30 June 1979; *Children's Protection and Young Offenders Act 1979*, s. 44, from 1 July 1979 – 31 Dec. 1993.

42 *Children's Protection and Young Offenders Act 1979*, s. 42, from 1 July 1979 – 31 Dec. 1993.

43 *Education Act 1915–1972*, s. 48. From 1972, the Education Act provided that the truanting child shall be dealt with in accordance with the *Juvenile Courts Act.* Under that Act, s. 42, the court could order that the child be placed under the care and control of the Minister. The provision was repealed in 1993. The habitual truant provisions are currently dealt with in the *Children's Protection Act 1993.*

44 *Aborigines (Training of Children) Act 1923*, s. 6.

45 *Aborigines Act 1934*, s. 38, from 18 Oct. 1934 – 21 Nov. 1939.

46 *Aborigines (Training of Children) Act 1923*, s. 8; *Aborigines Act 1934*, s. 40.

47 *Aborigines Act 1934–1939*, s. 39, from 22 Nov. 1939 – 14 Nov. 1962.

48 *Immigration (Guardianship of Children) Act 1946* (Cwlth), ss. 4–7, regulation 4 of regulations made under the Act, notified in the *Government Gazette* on 19 Dec. 1946.

- A State ward index card (SWIC). Each child who was placed in State care should have had a SWIC, an administrative record used by the department until about 1985 to record the child's details, such as names of parents and placements or number of times they had absconded and when they were released from State care. The SWIC also included medical information, school report notes and brief comments on the child's care. The Inquiry found that a SWIC may be anything from one to eight pages. There were comprehensive details on some cards and others with no information other than the child's name and the date he or she was placed in State care.
- Client Information System (CIS) computer records. CIS developed out of the department's investigation into its information needs in the early 1980s. The department began information systems planning in conjunction with the Justice Information System (JIS) that was under consideration by the State Government in 1982.[49] JIS was an independent unit established to collect, store and sort information for government agencies including the departments of Community Welfare (DCW), Police, Correctional Services and the Attorney-General.[50] Planning for various DCW information systems to be integrated into the JIS computer network began in 1983, starting with foster care, child protection and the central file index. A project team was established to develop the department's involvement in JIS and further data systems.[51] CIS was introduced in 1991 as an application of JIS. It included juvenile justice, child protection, financial services, foster care and file movement information. The JIS suite of applications was completed in 1992–93.[52]
- Client file. The department created paper client files relating to children for different reasons, one being that the child was in State care. Generally, the client files contain correspondence, reports and notes relating to the department's care of the child.

On the basis of records, the Inquiry's investigations revealed that:

- Some people who came forward to the Inquiry had been children in State care. They had a SWIC, JIS computer record or departmental client file that contained or referred to a legislative order or agreement.
- In some cases it was not possible to determine whether or not the person was in State care due to the lack of available records. This may be because the department or other relevant organisations were unable to locate any or sufficient records (even though the person placed at the institution or in foster care remembered the involvement of the department) or because records had been destroyed. There were insufficient records to clarify the nature of the department's involvement and whether there were any orders or written agreements.
- The Aborigines Protection Board (APB) had placed some Aboriginal people when they were children during the 1940s to 1960s. Under the legislation[53] Aboriginal children could be placed in State care if the APB, with the agreement of the CWPRB, issued a transfer of control. The Supreme Court in *Trevorrow v. the State of South Australia (No 5)* [2007] SASC 285 considered the reality of what occurred to Aboriginal children under the legislative scheme. The court found that 'insurmountable difficulties arose because of the ongoing and consistent refusal' of the CWPRB to take part.[54] As a result, the Supreme Court found that:

49 Department for Community Welfare (DCW) annual report 1982–83, p. 61.

50 Department of Family and Community Services (DFACS) annual report 1990–91, p. 31.

51 In 1985 and 1986 work on data systems for Intensive Neighbourhood Care, supervised bonds and foster care had started. By 1987 the development of applications for tracking client files and information (child protection, substitute care) and juvenile offenders (secure care, panels, children's courts) had begun. The first DCW application centrally on JIS, client files, was implemented in 1988–89. This involved the conversion of 17,000 current files from the central card index, which was an index of all notifications made and maintained in DCW's central office. It contained personal information, client notifications and the region holding the client's case details. DCW annual reports 1983–84, p. 77; 1984–85, p. 57; 1985–86, pp. 15, 49, 50; 1986–87, p. 45; 1988–89, pp. 14, 91.

52 DFACS annual reports 1990–91, p. 31; 1992–93, p. 45; 1993–94, p. 44; DCW, *Community welfare work standard procedures*, SP. 507, p. 11.

53 *Aborigines Act 1934–1939,* s. 38.

it was the practice of the APB and the Aborigines Department to act to remove children thought to be neglected, and to do so with the state of mind that they lacked the legal authority or power to so act.[55]

In other words, Aboriginal children were placed in care (for example, in institutions or homes or foster care) by the APB but not in accordance with the existing legislation. Because of this historical finding by the Supreme Court, the Inquiry has included Aboriginal children placed by the APB as coming within its terms of reference.

- Some people were not the subject of legislative orders or agreements at the time of the alleged sexual abuse. However, records showed that the department was involved in placing the child with registered foster parents (who received guardianship payments), visited the child regularly, arranged counselling and support for the child, moved the child if the child was unhappy and kept a file on the child. Similarly, the department placed some children in homes and a departmental social worker would regularly attend their review meetings. There were also records of placements being arranged by the Child Guidance Clinic, which appears to have operated as part of the Health Department of South Australia and had responsibility for children generally, including indigenous children.[56] In all these cases, the records indicated there was a relationship between the child and the department although, because there was no legislative order or formal written agreement, the people were not 'in State care' as defined by the Commission of Inquiry Act at the time of the alleged abuse.
- There was no involvement by the department in relation to some people. Available records showed that they were living in institutions or foster care because of private arrangements between their parents/an organisation and an institution. These people were not 'in State care' as defined by the Commission of Inquiry Act at the time of the alleged abuse.

The process of examining allegations

The terms of reference in Schedule 1(2)(a) state that one of the purposes of the Inquiry is to examine the allegations.

Each allegation was initially examined by an 'investigator', who was a legal practitioner. The Commissioner appointed seven investigators over the period of the Inquiry. Each person who approached the Inquiry was allocated an investigator who prepared a brief summary of the proposed evidence and obtained relevant files from government and other agencies. Witness assistance was arranged at this time if required.

It was obvious that some people would have difficulty disclosing childhood sexual abuse and, to do so, they would need to have confidence in the Inquiry. The hearings were conducted without undue formality but in a manner to protect the importance and seriousness of the occasion. They were attended by the Commissioner, who heard all the evidence, the assigned investigator and any companion nominated by the witness. The evidence was elicited by the Commissioner, who attempted to develop the sense of confidence essential for disclosure, and at times by the investigator. Most hearings took between two and four hours.

The Commissioner did not adopt the technique of many Inquiries of accessing evidence by written statement with occasional brief supplementation by oral evidence. Instead, the Commissioner considered that it was important that each person be given the opportunity to be fully heard in person, unless they wanted to only give a written statement.

Most evidence was taken at the Inquiry's office, however hearings were also held in locations to suit witnesses, such as people's homes, regional centres, interstate and sometimes over the telephone. One witness would only give evidence in a public park so that he could run away if necessary, and another on the premises of the former Glandore Boys Home, where he alleged he was sexually abused as a child.

[55] ibid., s. 90.

[56] The Child Guidance Clinic is discussed in *Trevorrow v. State of South Australia [2007]* SASC 285, summarised at (27).

In setting up the hearings process, the Inquiry hoped that it might assist healing as far as possible. It was soon established that most people giving evidence about what had happened to them had suffered, and continue to suffer, greatly. Many had not been able to disclose the sexual abuse when it occurred due to guilt, shame or fear of a sense of powerlessness. If they had attempted to disclose they were disbelieved and usually punished.

At the end of the hearings, the investigator, under the Commissioner's supervision, further examined the allegations. This involved reading the evidence, obtaining and reading relevant files, comparing other available evidence and seeking additional materials where appropriate.

Provision of support

The Commission of Inquiry Act requires the Minister, after consultation with the Commissioner, to appoint a person with appropriate qualifications and experience in social work or social administration to assist in the conduct of the Inquiry. The consultation occurred and the Minister appointed the chief executive officer of Relationships Australia (SA), Judith Cross. Under an agreement between Relationships Australia (SA) and the Department for Families and Communities, Respond SA was established to provide assistance and counselling services to survivors of child sexual abuse, including those attending the Inquiry. The manager of Respond SA was Jodie Sloan.

During the course of the Inquiry Ms Cross and the Commissioner met periodically and sometimes with Ms Sloan and the Inquiry's witness support manager. Ms Cross provided advice about many matters, including the problems facing people making disclosures to the Inquiry, the services and facilities that should be provided to them, and the development of a witness support program for the Inquiry. Relationships Australia (SA) presented a substantial submission to the Inquiry and Ms Cross gave extensive evidence.

Witness support

The Inquiry appointed a witness support manager in June 2005. If a person who contacted the Inquiry requested support or was identified as possibly needing assistance by the investigator, the manager contacted them to discuss their participation. This service was provided to people in Adelaide, regional South Australia, prison or interstate.

The manager was available for hearings if requested and contacted witnesses after the hearing to provide counselling and/or support. The support included making referrals for counselling or providing other assistance. For example, people were helped to obtain copies of historical records through the Freedom of Information Act and to understand some of the outdated terminology. Also, some people who gave evidence did not have a permanent residence, for example, some were sleeping in motels on a nightly basis, in cars or in overcrowded hostels. The manager provided advocacy to assist these people with an emergency transition into safe, affordable housing, which included letters of support.

Over the period of the Inquiry, the witness support manager provided support, counselling or referrals for 448 people.

The experience of the witness support manager was part of the basis for the Inquiry's recommendation for an advocate for children in State care who have been sexually abused and the continuation of a service such as Respond SA.

Reporting on the failure of the State

Under the terms of reference, Schedule 2(2)(b), the Inquiry is to report on whether there was a failure on the part of the State to deal appropriately or adequately with matters that gave rise to the allegations.

The examination of allegations, as referred to in Schedule 2(2)(a), necessitates reaching some conclusions. But the extent of the examination and nature of any conclusions must be determined in the context of the Commission of Inquiry Act.

The Act states that the Commissioner must seek to adopt procedures that will facilitate a prompt, cost-effective and thorough investigation of any matter relevant to the Inquiry.[57] Yet it also contains significant confidentiality provisions that had an impact on the extent of the investigation, the examination of allegations and the nature of any conclusions.

The Commission of Inquiry Act creates an environment of confidentiality in regard to the disclosure of allegations of sexual abuse. It states that the Commissioner must take evidence in private unless he considers it in the public interest to conduct proceedings in public.[58] All the hearings with people who alleged they were sexually abused as children were held in private, as it was not considered in the public interest to do otherwise. The Inquiry believes the confidentiality provisions contributed to the overwhelming response from people who came forward to disclose their experiences of sexual abuse while in care. Many said they saw the Inquiry as an opportunity to disclose to someone 'in authority' and, as one person expressed it, felt 'validated' on doing so.

The Act also states that confidentiality is to be maintained once the allegations have been made. The Commissioner must take all reasonable steps to avoid the disclosure of information that may identify, or lead to the identification of, an alleged victim of a sexual offence, an alleged perpetrator if the interests of justice so require, and a witness who has provided information about a sexual offence (or suspected offence) against a child, if the public interest so requires.[59] This provision is absolute in relation to the alleged victims. The Act does not permit waiving confidentiality of the alleged victim's identity by anyone in the conduct of the Inquiry, including the alleged victim. This has affected the Inquiry's ability to investigate allegations of sexual abuse, for example by restricting the dissemination of information to potential witnesses to the issue of departmental responses to particular allegations.

The Commission of Inquiry Act also states that the Commissioner must take all reasonable steps to avoid prejudicing any criminal investigation or prosecution.[60] Dissemination of allegations by the Inquiry had the potential to prejudice past, present or future police investigations, for example, by alerting an alleged perpetrator who may then destroy or contaminate evidence, or warning of possible surveillance.

Finally, in regard to conclusions that may be reached following the Inquiry's investigation and examination of allegations, the Commission of Inquiry Act provides that the Commissioner must not make a finding of criminal or civil liability.[61]

These provisions of the Act are important. The appropriate tribunal to make findings about criminal conduct is the criminal court and the people involved in that process (the complainant, witnesses and the accused) must have the protections and safeguards of the criminal justice system. People involved in civil proceedings must also have the protection and rights available in that part of the justice system.

Also, a finding by the Inquiry that a particular perpetrator has sexually abused a child in State care (whether that be a finding made beyond reasonable doubt or on the balance of probabilities) may well prejudice a police investigation, a criminal prosecution or a civil court, particularly if the perpetrator can be identified in the Inquiry's report.

It is evident from the Commission of Inquiry Act that the Inquiry was never intended to take the place of the South Australia Police or a court. The Act specifically provides for the dissemination of information by the Commissioner of the Inquiry to the Commissioner of Police or the Director of Public Prosecutions under certain circumstances.[62] The Commissioner, under an arrangement with the Commissioner of Police, provided him with information concerning the commission, or alleged commission, of sexual offences against children that arose during the course of the Inquiry as required by s10(2) of the Commission of Inquiry Act.

57 Commission of Inquiry Act, s. 5(1)(b).

58 ibid., ss. 5(2) and 5(3).

59 ibid., s. 9(5).

60 ibid., s. 5(1)(f).

61 ibid., Schedule 1, clause 2(5).

62 ibid., s. 10(2).

If the Inquiry had been intended to receive allegations and then conduct hearings by calling all relevant witnesses as if it were a tribunal or court, the enacting legislation would have been quite different and there is no doubt that the Inquiry's work would not have been completed for more than a decade.

Consequently, the Inquiry has not conducted hearings to seek a response from alleged perpetrators or other witnesses on individual allegations. If the alleged victim of sexual abuse told the Inquiry that he or she reported the matter to the State Government (the department or the police), the Inquiry obtained all relevant records to determine whether that disclosure was recorded and the nature of the State response. Similarly, if it was apparent from other information that the State was aware, or should have been aware, of the matters giving rise to the allegations of sexual abuse, then the Inquiry has obtained all relevant records to determine the State's level of awareness and any recorded response.

Chapter 3 contains accounts from people who said they told members of staff at homes, their foster carers or departmental workers that they were being sexually abused as children. Sometimes a note was found in a person's departmental client file recording a disclosure of child sexual abuse; but many times not. If a note was not found, it does not mean that the disclosure was not made and the witness at the Inquiry should not be believed. Rather, it could mean that a disclosure was made, and as many witnesses at the Inquiry said, their disclosure as a child was rejected, discounted or ignored by the adult. If this was the case, then clearly the State's response, through its staff, was inappropriate and inadequate. There was such a significant number of witnesses who reported this experience of being disbelieved to the Inquiry that, put together, the evidence demonstrates a culture during the last century of not properly listening to, or acting on, disclosures by children of sexual abuse.

Where a record was made of a disclosure, the nature of the disclosure as recorded is set out in the summary of the particular person as well as the response of the State to that disclosure, as shown in the files. There are examples where the files do not show what, if any, response was given to the recorded disclosure. There is no doubt that such situations demonstrate a failure to keep appropriate and adequate records. There are some instances where the response was contained in the files, however, on the basis of the files, it could be said that the response was inadequate. There are other more recent instances where the response on the file shows that the department took appropriate action in, for example, reporting the allegation to the police and moving the child to another placement. However, there are some instances where the police appear to have discounted the allegations on the basis that there was no independent support for them. Such a response from the police could not be considered to be appropriate or adequate.

The Inquiry has also taken evidence from witnesses about the State's response to the sexual abuse of children in State care generally, including its *Keeping them safe* reform agenda (see Chapter 4.1) and its awareness of, and response to, children in State care who are sexually abused when they run away from placements (see Chapter 4.2).

A significant number of people came forward to give general evidence about the department's actions in individual cases or the foster care system generally or the child protection system overall. The fact that they did so is testament to their commitment for reform. However, it is not possible for this Inquiry to meet some of their expectations as it is not an inquiry into the department, the foster care system or the overall child protection system and is limited by its terms of reference. Nevertheless, much of their evidence has informed the recommendations made in Chapter 4.

The method of State record keeping

The terms of reference, Schedule 2(2)(c) state that another purpose of the Inquiry is to determine and report on whether appropriate and adequate records were kept in relation to allegations of the kind referred to in subclause (1) and, if relevant, on whether any records relating to such allegations have been disposed of or destroyed. (See chapter 6.)

The Inquiry requested all relevant records on alleged victims of sexual abuse who gave evidence to determine whether they were in State care and, if they disclosed the allegations as children, that disclosure was recorded. The Inquiry could then determine whether appropriate and adequate records were kept of the allegation.

The Inquiry also obtained evidence from general witnesses and information from other general records on the issue of record keeping where a child in State care may have made an allegation of sexual abuse.

Reporting on measures to assist and support victims

The terms of reference, Schedule 2(2)(d) state that another purpose of the Inquiry is to 'report on any measures that should be implemented to provide assistance and support for the victims of sexual abuse (to the extent that these matters are not being addressed through existing programs or initiatives)'. The Inquiry has taken evidence from many general witnesses on this topic and in February 2007 released its Issues paper, which sought submissions on 43 separate matters that had been raised by witnesses at the Inquiry, some of which related to the provision of assistance and support for victims of sexual abuse. The Inquiry received 36 submissions from organisations and individuals (see Appendix D). The Inquiry reports on the measures that should be implemented in Chapter 4.

How allegations are presented

Chapter 3 summarises the allegations of child sexual abuse while in State care made by people who came forward to the Inquiry. The summary is considered to be important for several reasons. It acknowledges each person who gave evidence that he or she was sexually abused as a child in State care and the impact that child sexual abuse has had on their lives. It is also an important contribution to the history of South Australia. Finally, putting the summaries together makes for a forceful and compelling message about the vulnerability of children in State care and the need to continue to make reforms to ensure their protection.

The allegations of the following people who came forward to the Inquiry are included in Chapter 3:

- People who were children in State care at the time of their allegation of sexual abuse.
- People in relation to whom the Inquiry could not properly determine whether they were in State care at the time of the allegation due to a lack of records or due to the historical actions of the APB, discussed earlier in this chapter.
- People who had been placed privately in non-government homes alongside people who came forward to the Inquiry were in State care and were living in those non-government homes. The evidence of these privately placed people is not only important in itself, but also, for the purposes of the terms of reference, is important because it supports the evidence of the people who were children in State care at those non-government homes.

There are many people who came forward to the Inquiry and made allegations of child sexual abuse but a summary of their allegations is not included in this report because they did not come within the terms of reference. They may have been sexually abused before they were placed in State care, after their term expired or their allegations occurred after 18 November 2004. Or they may not have been placed in State care as defined by the Commission of Inquiry Act (discussed earlier in this chapter). For example, there were people who gave evidence about child sexual abuse who were in a foster care arrangement, but they had not been formally placed in State care within the Inquiry's terms of reference as there was no court order or written agreement. Their evidence has not been ignored by the Inquiry. It was important for each person that they came to the Inquiry and made their disclosures; they did not know the technicalities of how they came to be in a placement, as they were only children at the time. It was also important to the Inquiry that they did so—their evidence has added to the Inquiry's knowledge about child sexual abuse, its long-term effects and the child protection system.

The allegations are presented according to where the person was placed at the time the sexual abuse is alleged to have occurred (for example, at a government home, cottage home, hostel or residential unit; in secure care, foster care or the family home). The various places referred

to in this report do not represent all the places that have existed during the past century for the care of children—this report only includes those where people said they were placed at the time of alleged child sexual abuse while in State care.

Also, children in State care were regularly moved from one placement to another, and the Inquiry heard evidence from 133 people who alleged they were sexually abused in more than one placement. This means that one person may have a summary written under more than one place. Each person's summary will note whether the person has made other allegations while living in another place.

The summaries are written to preserve anonymity of the complainant, as required under the Commission of Inquiry Act.[63] Rather than use people's names, the Inquiry has adopted the general term 'person in care', abbreviated to PIC/s. Also, despite the fact that most people shared important personal information in giving evidence, much of this has not been included to maintain anonymity. In each summary, the Inquiry has endeavoured to include some brief information about:

- When, how and why the person was placed in State care. This report identifies the relevant legislative order/agreements placing the child in State care, or whether insufficient records were available to make a finding about whether the person was in State care at the time.
- Some brief information from the person's evidence about their circumstances before being placed in State care.
- Their allegations of sexual abuse while in the particular placement.
- Whether they disclosed the sexual abuse when they were a child and, if so, the response they say they received.
- If a disclosure was made, whether that disclosure was recorded in the child's records and, if so, the recorded response of the State to the allegations.

The summaries in Chapter 3 vary in length for several reasons. Each person recalled or was able or wanted to disclose different levels of detail about the sexual abuse. Also, some personal details were omitted to preserve anonymity. Further, there were more records available for some people than others.

To comply with the Commission of Inquiry Act[64] the names of alleged perpetrators of sexual abuse do not appear in this report and all reasonable steps have been taken to avoid providing details that could identify them. The Inquiry has referred, with the consent of the complainants, the names of many alleged perpetrators to the police for investigation under section 10(2) of the Act. The Inquiry considered that preserving the anonymity of the alleged perpetrators was reasonable to avoid prejudicing current and future police investigations and prosecutions. Because the Inquiry was not set up to replace the police or criminal courts, it was not its role to notify alleged perpetrators or require them to respond, cross-examine witnesses or present a defence.

The Inquiry has continued the approach outlined in its Interim report[65], and the allegations are set out on the basis that it is reasonably possible that they are true, which is a different and lesser standard than that applied in the criminal or civil courts where witnesses would be cross-examined. There is no doubt that a complainant of child sexual abuse can be believed on his or her word alone and such was the case for some of the witnesses who came forward to the Inquiry. For other complainants who appeared before the Inquiry, their evidence was supported by available records and/or the evidence of other alleged victim/s who independently came forward. Using this standard, the Commissioner rejected the evidence of only two complainants who were children in State care on the basis of clear exaggeration indicating unreliability.

Further, although the rules and practices of evidence do not apply, the Inquiry has not set out allegations that are based only on rumour, speculation or mere repetition of hearsay information.

[63] ibid., s. 9(5)(a).

[64] ibid., s. 9(5)(b).

[65] EP Mullighan QC, *Children in State Care Commission of Inquiry interim report,* 12 May 2005, p. 76.