

Children in State Care

Commission of Inquiry

ISSUES UPON WHICH
THE COMMISSION SEEKS
SUBMISSIONS



15 Feb 2007

The Children in State Care Commission of Inquiry commenced on 18 November 2004 and is now entering the final stages of its work.

To date 1849 persons have contacted the Commission regarding sexual abuse of children. 592 persons alleged that they were sexually abused as children while in State care. Information received indicates that another 211 children were allegedly sexually abused. They were, or are, children with disabilities and investigations are proceeding. It is anticipated that many of them were, or are, in State care. Allegations have been made by persons who were not victims that another 265 persons who were, or are, in State care were sexually abused. A further 315 persons have alleged abuse but after investigation it has been established that these allegations do not fall within the terms of reference. A further 200 persons contacted the Commission alleging abuse but investigation was not required as these allegations were clearly outside the terms of reference. In addition, it is likely that 266 general witnesses will give evidence as to matters within the terms of reference.

The Commission has ascertained from records presently available since 1908, and evidence and other information received by the Commission, that 721 children died while in State care. Investigations are continuing to ascertain if criminal conduct was involved in any of those deaths. So far it has been established that 401 of the deaths of those children were not as a consequence of criminal conduct and those investigations have been completed.

The Commissioner has conducted 783 hearings and further hearings will occur during the course of the first half of this year.

Many issues have been identified during the course of the work of the Commission. A list of these issues is now published and written submissions relating to those issues, and any others thought to be relevant to the terms of reference, are requested from interested persons and organisations by close of business on Friday, 30 March 2007. The list of issues appears on the

state care inquiry website. Anyone who is unable to access the website may request a copy from the Children in State Care Commission of Inquiry at Level 1, 33 Franklin Street, Adelaide, 5000; GPO Box 858, Adelaide 5001. Telephone number 1800 258 668.

In this list the expression 'Families SA' includes, where appropriate, its predecessors in name and the expression 'children in State care' includes children over whom the government has, or should have, exercised control, care or responsibility.

Written submissions can be provided to the Commission by the following means:

- Via Mail to: Children in State Care Commission of Inquiry, GPO Box 858, ADELAIDE SA 5001
- In person or via Courier to: Children in State Care Commission of Inquiry, Level 1/33 Franklin Street, ADELAIDE SA 5001
- Via Email to: cisc@statecareinquiry.sa.gov.au. Electronic submissions should be in PDF format.

Submissions should be clearly marked with details of the author or organisation of origin and identify which issues are being addressed using the index and numbering system from the CISC Issues document.

People who have given evidence or made submissions already, do not need to provide further information. Their evidence and submissions are important and the Commission is already taking them into consideration.

Terms of reference

- (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; or*
 - (b) *criminal conduct which resulted in the death of a person who, at the time that the alleged conduct occurred, was a child in State care,*
(whether or not any such allegation was previously made or reported).
- (2) *The purposes of the inquiry are—*
 - (a) *to examine the allegations referred to in subclause (1); and*
 - (b) *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 referred to in subclause (1); and*
 - (c) *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 destroyed or otherwise disposed of; and*
 - (d) *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).*
- (3) *The inquiry is to relate (and only to relate) to any conduct or omission occurring before the commencement of this Act.*
- (4) *The inquiry need not (but may, if relevant) relate to a matter that has been the subject of the Review within the meaning of the Child Protection Review (Powers and Immunities) Act 2002.*
- (5) *The person conducting the inquiry must not purport to make a finding of criminal or civil liability.*

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1. Terminology

- 1.1 Are the terms 'State Child', 'Foster Carer', 'Foster Parent', 'Foster Child', and 'Guardianship of the Minister' still appropriate in the best interests of children and carers.
- 1.2 Does the use of these terms unintentionally disparage or categorise the child in a negative way.
- 1.3 If not appropriate what other expressions should be used.
- 1.4 Should such terms be dispensed with altogether.

2. Prevention of sexual abuse of children

- 2.1 How effective is current training with regard to educating about child sexual abuse.
- 2.2 What further processes can be undertaken to educate children, parents, other carers, school teachers and other persons with whom children regularly come into contact, about protection from sexual abuse.
- 2.3 Should there be widespread publicity about:
 - the extent of child sexual abuse
 - the circumstances in which it frequently occurs
 - what to do if it is suspected that a child is at risk
 - the need to report suspicious circumstances to Families SA or SA Police.
- 2.4 Should education about these matters be introduced in primary, secondary and tertiary education and particularly in the training of school teachers, social workers, allied health workers, clergy

and the medical and legal professions, family and school committees and pre-school carers.

- 2.5 Should Families SA and non-government agencies involved in child care and protection widely publish information and services which may assist in the correct interpretation of suspicious circumstances.
- 2.6 How and when should children be taught and assisted to understand what constitutes sexual abuse and how they may avoid it.
- 2.7 What initiatives would assist the community, teachers, youth leaders, child care workers, allied health workers, and medical practitioners to recognise and identify the effects of sexual abuse of children.
- 2.8 What other initiatives should be considered and developed.

3. The recognition and identification of sexual abuse of children

Nearly every child has regular and frequent contact with school teachers and periodic contact with school counsellors, the medical profession and sporting, social, cultural and religious organisations.

Last year the State Government introduced the SMART (Strategies for Managing Abuse Related Trauma) program in government schools for the training of all teachers and some others in those schools.

Developed by the Australian Childhood Foundation in partnership with the National Research Centre for the Prevention of Child Abuse and the Indigenous Health Unit at Monash University, this program was

specifically designed to assist in the recognition and identification of sexual abuse of children.

- 3.1 What are the signs and symptoms of child sexual abuse.
- 3.2 What are the physical, psychological, emotional and other effects of child sexual abuse.
- 3.3 Should all persons involved in these aspects of the lives of children receive education and regular information about:
 - the extent and effects of sexual abuse of children
 - how to recognise and identify indications of sexual abuse of a child.
- 3.4 What is the measure of success of the SMART program thus far.
- 3.5 What other programs should be developed and instituted and for whom.

4. Disclosure of child sexual abuse

- 4.1 How can children be encouraged and assisted to report sexual abuse.
- 4.2 Does the mandatory reporting of suspicions of sexual abuse of a child (s.11 *Children's Protection Act 1993*) impede the disclosure of the abuse by some children.
- 4.3 How can the system of mandatory reporting be improved to enhance the provision of essential assistance to ensure safety, counselling and therapy.

- 4.4 Should persons with whom the child has regular contact and in whom the child has trust and confidence such as a school teacher or an out of home carer, be obliged to report the disclosure if the reporting could compromise that relationship.
- 4.5 Should such persons be permitted to postpone reporting the abuse while encouraging the child to disclose to a suitably trained counsellor who can assist the child in that process and, where appropriate, inform the child of the consequences of disclosure.
- 4.6 Should suitably trained counsellors with adequate experience be engaged at all government and non-government schools to facilitate disclosure of sexual abuse and facilitate the appropriate response to that disclosure.
- 4.7 Should there be regular meetings of counsellors and school teachers to address the identification and recognition of child sexual abuse and the appropriate procedures to facilitate disclosure and reporting.
- 4.8 Can the reporting of sexual abuse of children be facilitated by establishing safe and neutral places at school and elsewhere where children may develop the confidence and sense of safety to disclose.
- 4.9 It is recognised that the reporting rate of sexual assault in South Australia is very low, perhaps below 20% and the evidence received at the Commission indicates that the rate is very low with respect to children. What can be done to increase that rate.
- 4.10 What factors have contributed to the low report rate.

- 4.11 Should members of an extended family be informed of disclosure of sexual abuse by a child in appropriate circumstances so that they may assist with the care and support of the child.

5. Response teams and assessment facilities

Upon disclosure or identification of sexual abuse frequently the child is removed from home and placed in alternative care. This removal usually occurs in circumstances of crisis causing detriments to the child.

- 5.1 Should response teams of suitably qualified persons see and assess the child in circumstances which minimise trauma for the child and lead to stability in the care of the child.
- 5.2 Should assessment facilities be established in appropriate locations to facilitate assessment and provide appropriate therapeutic care for the child while decisions about the best care of the child are being made so that:
- the assessment process in these circumstances could be made without haste and having regard to the wishes and best interests of the child
 - the assessment could involve members of the family of the child and school teachers and other persons closely involved in the life of the child
 - if the alleged perpetrator is a member of the family the assessment should include whether the child could safely return to the home and the alleged perpetrator live elsewhere on appropriate conditions.
- 5.3 What sort of persons should be part of the response team and who should operate the assessment facility.

- 5.4 If more than one child in a family discloses sexual abuse should it be the policy that all siblings should be kept together wherever possible, except in cases where the abuse involves a sibling as the perpetrator.
- 5.5 Should children disclosing sexual abuse be provided with appropriate treatment including counselling and therapy in an attempt to reduce the adverse effects of the abuse. Who should provide that treatment.
- 5.6 Wherever possible should children be consulted about their short term care and be informed about all that is involved in such care including place of residence, school to be attended and contact with family, relatives and friends.
- 5.7 Should foster carers with whom the child is to be placed be informed as to the disclosures made by the child and the features of the assessment of the child relevant to the care of the child.
- 5.8 Before the placement is effected should there be a period of introduction of the child to the carers during which the wishes of the child could be ascertained.
- 5.9 Should a social worker employed by Families SA be assigned to the child while the assessment is being undertaken and assist in the process of placing the child.

6. An alternative to the criminal justice system - restorative justice

In cases of allegations of intra-familial child sexual abuse or where there is some other form of close relationship between the victim and the perpetrator, there could be an option available in appropriate cases other than the prosecution of the alleged offender through the criminal justice system.

An approach, based on restorative justice may be the best option in appropriate cases.

Restorative justice is a process widely used overseas and in parts of Australia with respect to many types of crime and to child sexual abuse in some places. It has been used in the Youth Court with the name Family Conferencing. The object of the process is to place the victim of a crime and the offender back into their respective positions before the crime was committed so far as is possible.

The process includes bringing the victim and the offender together at a meeting facilitated by a suitably trained person with appropriate experience. Each of them is encouraged to understand the position and circumstances of the other. An offender learns of the effect of the crime upon the victim. A victim learns about the offender and the reasons for the offence. The restorative justice approach assists the victim to move on with a full understanding of the circumstances of the offence and the perpetrator, and assists in a healing process. It assists the offender in rehabilitation and enables the requirements of both the victim and the offender to be addressed in the nature of treatment and services. It involves both of them in reaching the best outcomes in their interests and in the interest of the community.

In the context of intra-familial child sexual abuse essential features of the restorative approach would include:

- the perpetrator must acknowledge guilt to the victim and accept full responsibility for the conduct
- the victim must be counselled to accept that no responsibility, blame or shame can attach to the victim
- the perpetrator would be required to observe strict conditions as to residence, employment, appropriate treatment and contact, if any, with the victim and the other members of the family. Failure to observe conditions could result in prosecution for the offence
- the emphasis would be upon protection and treatment of the child.

This approach should only be used with the consent of the victim and the perpetrator both of whom must be fully informed about all options. Neither could be forced to participate.

Likely consequences of this approach if embraced by the victim, perpetrator and other relevant family members and if successfully undertaken, could be:

- the child would not have to leave home, school, friends, relations, pets, neighbourhood and sporting, cultural and social interests
- the child would not be involved in the criminal justice system and would not feel, albeit wrongly, responsibility for the prosecution of the perpetrator and any punishment.

A possible consequence of the restorative approach in cases of the nature described could be a significant increase in the rate of reporting of child sexual abuse.

Employment of the perpetrator could continue, if appropriate, enabling the preservation of the economic aspect of the family unit with benefits to the victim and other family members.

There would be no need for publicity of the offending conduct which should assist in the treatment and development of the victim and the treatment and rehabilitation of the perpetrator.

The detail of a restorative approach would need discussion and development after which a trial process could be undertaken. It would be necessary to ensure that although the perpetrator will not be involved in the criminal justice system the acknowledgement of guilt is recorded by the appropriate authority and used to prevent further child sexual abuse so far as is possible.

If the restorative approach was successful in particular cases there would potentially be considerable financial savings as the criminal justice system would not be employed in those cases. The savings, at least in part, could be used in the provision of services for the victim, perpetrator and other family members and in the development of the restorative approach in other types of cases if thought to be appropriate.

- 6.1 Should consideration be given to the restorative justice approach in cases of intra-familial sexual abuse of children.
- 6.2 Could the restorative approach be used in cases where the perpetrator is not a member of the child's family but has a close connection with the child which may impede disclosure.
- 6.3 Should the Centre for Restorative Justice be asked to consider a process of restorative justice in cases of intra-familial child sexual abuse with assistance from SA Police, prosecutors,

Yarrow Place Rape and Sexual Assault Service, the Courts Administration Authority and suitably qualified experts.

7. Children in need of assistance

Evidence given to the Commission reveals that Families SA is frequently involved with a family before a child is taken into care. The intention of social workers employed by Families SA is to assist families to resolve problems so that the removal of children will not be necessary. Regrettably these efforts are not always successful and children are removed and placed in care. The following matters need to be considered:

- 7.1 Should the law provide that Families SA may take a family into care for the purpose of giving assistance and direction to the family, particularly parents, but including step-parents and children of appropriate age, so that obligations may be imposed which are enforceable. These obligations may relate to any conduct which has an adverse effect upon the family:
- alcohol and other substance abuse
 - physical, emotional and other types of abuse apart from sexual abuse
 - adequate supervision of children
 - provision of education as required by children
 - undertaking family counselling by parents and step-parents.
- 7.2 Could a consequence of failure to comply with an obligation be the removal of the person concerned from the home and the imposition of other obligations.

- 7.3 Should the imposition of obligations be the subject of review by the Youth Court upon the application of any person affected by them.
- 7.4 Should an object of the intervention be the preservation of the family as a unit and to prevent breakdown of the relationships in the family.
- 7.5 Should Families SA be able to provide services within the family home as needed from time to time to resolve problems and disputes.
- 7.6 If so, what services should Families SA provide and what additional resources, if any, would be required.
- 7.7 It may be expected that there is a significant number of young people who are parents and who need advice and assistance during the early months and years after the birth of their child or children. Without appropriate assistance and services, relationships may break down and children may have to be taken into care. What services should be provided, by whom, and at what cost.

8. Foster and relative care

Government has always regarded the placement of children with families as the preferred form of substitute care. Since the early 1970's fresh prominence has been given to the placement of children into foster and relative care wherever possible.

- 8.1 What are the good and unsatisfactory aspects of foster care and relative care. Relative care is to be understood as relatives of the child acting as carers.

- 8.2 Should preference be given to relatives of a child as foster carers.
- 8.3 Is the present method of recruitment, selection, training and screening of foster carers satisfactory and if not, why not.

9. Recruitment of foster carers and relative carers

- 9.1 Is there currently a shortage of foster carers.
- 9.2 How can that shortage be overcome.
- 9.3 Is the increase of carers on an annual basis insufficient because of the extent of the increase of children requiring foster care or relative care.

10. Training and registration of foster carers and relative carers

- 10.1 What changes, if any, should be made to the training of foster carers.
- 10.2 Should present and past foster carers, relative carers, and children in State care, be involved in the training of carers.
- 10.3 Should training include information about:
- managing children with challenging behaviours
 - the possibility of allegations of abuse
 - acquiring skills as a carer
 - the resources, services and facilities which are available to assist in the care of children

- other.

- 10.4 Should an applicant who is refused registration be entitled to reasons for refusal and have the opportunity to correct any factual information which is incorrect or should the decision to refuse registration be binding and final.
- 10.5 Should the person seeking registration carry the onus of establishing that he or she is a fit and appropriate person to be a carer.

11 Screening process

- 11.1 In the process of screening proposed carers what should be undertaken other than a police check.
- 11.2 Should Families SA keep records of information relevant to the screening process.
- 11.3 What type of information should be kept by SA Police and Families SA. Should all information contained in mandatory reports be kept. Should there be a threshold test as to accuracy such as 'it is reasonably possible that it is true' or should all information be kept and assessed in its entirety each time a check is made.
- 11.4 Are the provisions of Part 4 and Part 5 of the *Freedom of Information Act 1991* adequate to permit challenges to the accuracy and significance of information, about a person, retained by SA Police and Families SA.

12. Placement of children

12.1 Is the present system of placement of children and the selection of particular foster carers satisfactory.

12.2 Should a process for placement be established which involves some or all of the following:

- the selection of the most suitable type of care for the particular child including care other than foster care
- the selection of the most suitable type of foster carer including consideration of age, gender, skills and experience, location of residence of the carer, presence of other children, special needs of the child and particular skills of the carer to accommodate those needs
- the suitability of other persons in the foster carer's home to accommodate the needs of the child
- the availability of the type of care and the carers in the medium to long term should the placement prove to be successful
- the least possible disruption in the life of the child that is desirable in the particular case such as contact with family and friends, medical care, education, and social and sporting contacts.

12.3 Should assessment facilities as mentioned in section 5 be used until all preparations for placement have been undertaken.

12.4 Should foster carers be fully informed of the circumstances and behaviour of the child before placement is made.

12.5 Should information about a child provided to a carer include:

- disclosure of sexual abuse by the child

- previous complaints of sexual or other abuse by a previous carer or carers
- the mental health of the child
- significant features of previous behaviour of the child
- the education history of the child
- previous medical and other treatment of the child.

- 12.6 Should proposed foster carers be informed of any existing reports by experts about the child and have access to them at their request. If a policy of confidentiality is to prevail, what information should be given to proposed carers and by whom.
- 12.7 Should there be child placement principles for non-Aboriginal children along the lines of the Aboriginal Child Placement Principles.
- 12.8 Should there be a principle that continuity of carers is important.
- 12.9 Is a policy of reunification with birth parents or a parent desirable and in what circumstances might there be exceptions.
- 12.10 Should foster carers be consulted about whether birth parents should have contact with their children while they are in foster care and the nature and extent of that contact.
- 12.11 Should the predominant consideration governing whether, how and when reunification takes place be in the best interests of the child.
- 12.12 If reunification is not achieved within the first few years of the child being placed in care should reunification no longer be a priority in the long term planning for the child.

12.13 Is the practice of placing some children in State care with carers in hotels, motels, or caravan parks satisfactory and in the best interests of the children.

12.14 Is the practice undertaken because there are insufficient foster carers or for what other reasons.

12.15 Should other facilities be established for the care of such children, and if so, what type of facilities.

13. Respite carers

13.1 Should carers be recruited and registered who are unable or unwilling to undertake full time care of children but will undertake regular respite care of children as required.

13.2 Should respite carers be aligned with long term foster carers of a child so that the child has regular contact with them and an understanding of the method and style of care of the long term carers and the particular needs of the child.

13.3 Should regular carers be involved in the selection of respite carers for the child in their care.

13.4 Should the members of the extended family of carers and children be accepted as respite carers.

13.5 Is there a shortage of respite carers and what is required to address that shortage.

14. Assistance for foster carers and relative carers

- 14.1 Is the current level of financial support for carers adequate and if not, in what respect.
- 14.2 What further financial support is required.
- 14.3 What types of assistance should be given:
- financial
 - support services
 - ongoing training
 - mentoring
 - grievance resolution
 - advocacy.
- 14.4 Should foster carers and relative carers be regarded and equipped as professional carers. If so, to what extent and how.
- 14.5 Is there some different concept or aspect of professionalism required where care is provided to children with special needs, and if so, what type of needs.
- 14.6 Should there be a support and resource centre where caregivers can obtain professional and other advice about problems encountered by the child, or by them about the child, and how those problems may be addressed.
- 14.7 If family centres are established to assist parents and children including young children, should foster carers and relative carers also have access to those centres free of charge.
- 14.8 Should it be recognised that some children with disabilities require specialised care which may be intensive and be beyond

the capacity of most foster carers without additional information, education, personal support and finance.

- 14.9 Should there be a general meeting of foster carers and respite carers at least each year at which presentations by Families SA and others can be made about current issues and matters of importance concerning out of home care of children. Could this meeting also provide an opportunity for carers to raise and discuss matters of mutual interest.
- 14.10 Should there be more frequent meetings of foster carers and respite carers in various locations at which they can discuss matters of mutual interest and issues and problems which any of them have encountered.
- 14.11 When long term foster carers are unable to manage the care of a child who requires considerable time and commitment, should Families SA provide assistance and services to the carers including necessary professional and domestic assistance in the house rather than remove the child for placement elsewhere. The purpose would be to enable the placement to continue and prevent breakdown and subsequent disruption for the child.

15. Financial assistance from near relatives

Part 6 of the Family and Community Services Act 1972 imposes liability upon near relatives for maintenance of a child, including a child under the guardianship of the Minister. A 'near relative' is described as a parent or step-parent of the child and 'maintenance' includes the cost of clothing, support, training and education. If satisfied that a near relative is able to pay for, or contribute towards, the past or future maintenance of a child, a court may make an order for the payment of maintenance for a child and also for a person who has attained the age

of 18 years for the purpose of enabling the person to pursue education or training.

There are many expenses to be paid during the life of a child which may be beyond the reach of foster carers, relative carers and foster parents. By way of illustration these may include:

- unusual medical and dental expenses
- acquisition of a musical instrument or equipment for education or training for a trade
- travel in appropriate circumstances
- sporting and theatrical equipment
- setting up expenses for independent living.

15.1 Should near relatives contribute to the expenses of children in State care.

15.2 Should those contributions be collected by Families SA and kept in an independent trust fund for the child with Public Trustee as the trustee.

15.3 Should the monies collected be used only for unusual expenses of the child and to provide for the passage into adulthood, education, training and independent living.

15.4 Should the disparity between the capacity to contribute by near relatives be a reason not to implement such a system.

15.5 Should Families SA and foster carers and relative carers be prevented from using the monies collected for day to day living expenses.

15.6 Should the unexpected balance of monies collected in relation to a particular child be paid to that person at a specified age, say

25 years, or earlier at the direction of the trustee for good reason.

16. Foster carers and foster parents - a difference?

In this section foster carers and foster parents includes relative carers and parents.

Many children are placed with foster carers in circumstances of crisis or urgency which do not take into account their long term placement. On occasions that first placement is successful and develops into a long term placement. On other occasions a child has a number of placements and eventually long term placement is achieved. The supervision and involvement of Families SA should be extensive in the early stages of the placement but, in many cases, much less so after the passage of a few years.

There may be foster carers who prefer short term placements and do not wish to care for children in the long term.

There may be foster carers who prefer long term placements, including for many years, who develop close relationships and ties with the foster children. There may be good reasons why the adoption of the child is not desired or appropriate.

This difference is acknowledged in s.80 of the *Family and Community Services Act 1972* which provides:

- (1) *Where a child who is under the guardianship of the Minister pursuant to any Act has been in the care of a foster parent for three or more years, the Minister may, by instrument in writing, delegate to the foster parent such of the Minister's powers as guardian of the child as the Minister thinks fit.*

- (2) *A delegation under this section -
 - (a) may be varied or revoked at any time by the Minister; and
 - (b) does not prevent the exercise of the delegated power by the Minister.*
- (3) *The Minister must keep the child, the child's guardians (if their whereabouts are known) and the foster parent informed of any exercise of powers under this section.*

- 16.1 Is it appropriate to refer to such carers as foster parents once a satisfactory long term relationship with the child has been established.
- 16.2 Should the nature and degree of supervision of, and intervention in, the care of the child by Families SA differ between the two types of fostering. Once the situation has developed into a foster parenting relationship, should decisions as to the day to day care of the child and the imposition of reasonable rules and discipline for that type of care be left to the foster parents and not be the subject of direction or interference by Families SA. Should the involvement of Families SA be restricted to general vigilance to ensure the safety, wellbeing and development of the child.
- 16.3 If such a distinction is justified, should the extent of the role of Families SA be defined at least in a general way so that the authority of the foster parents is supported and maintained.
- 16.4 Should foster parents who have established a long term satisfactory relationship with the child be consulted by Families SA before any significant decisions are made about the child, including access of birth parents, type of education, important medical or psychiatric treatment or care, reunification with birth parents and independent living.

16.5 To what extent are delegations made under s.80 of the *Family and Community Services Act* and what assessments are, or should be made of their success.

17. Continuity of carers and social workers

Many persons who were children in State care allege that while in care they had many different carers and Families SA social workers. The consequence of this was a lack of opportunity to develop appropriate relationships with them or most of them.

17.1 Is continuity of carers and social workers desirable and how can it be achieved.

17.2 Should the child from an appropriate age be consulted about a change in carer or social worker.

18. Volunteers and mentors

Families SA has been working with volunteers throughout the State since the early 1970's. Volunteers assist carers of children in State care in various ways to support staff and their contribution is greatly valued. At present there are about 300 volunteers who provide in excess of 40,000 hours of their time each year and it is proposed to increase the number of volunteers.

It seems that there are many men and women who have retired from full time employment while in good health and by reason of their skills, experience, capacities and attitudes, are well able to provide valuable assistance to children in State care and their carers as mentors and advisers. An example of a very successful, valuable and widely known mentoring system is the assistance provided by Legacy.

- 18.1 Is the Families SA volunteer program working satisfactorily.
- 18.2 Should it be expanded and, if so, in what way.
- 18.3 Are there sufficient volunteers and if not, what should be done to assist recruitment.
- 18.4 Does the program include appropriate volunteers for Aboriginal children and children with disabilities.
- 18.5 What safeguards and protection exist to ensure the safety of the children, carers and volunteers.
- 18.6 Should a system of mentors be developed or expanded so that the range of assistance for children in State care and their carers can be increased.
- 18.7 Who should organise and supervise such a system.
- 18.8 What safeguards and protection should be put in place to ensure safety of the children, carers and mentors.
- 18.9 What role should be undertaken by mentors.
- 18.10 Should mentors only be assigned to a child with the approval of the carers of the child.
- 18.11 Is there a role for mentors in respect of children in detention.

19. De-registration

- 19.1 Where consideration is to be given to de-registration of a foster carer or relative carer should that person be informed of the relevant allegations and their factual basis and an opportunity to be heard be given to the carer.
- 19.2 Should there be a right of review given to the carer of the decision to de-register.
- 19.3 Who should conduct the review and what procedure should be adopted.
- 19.4 Should the review process be independent of Families SA.

20. Grievances

From time to time some carers and persons applying to be carers will feel aggrieved by decisions of Families SA and agencies relating to them and children in their care.

- 20.1 Should there be a grievance process for carers.
- 20.2 Who should hear and resolve grievances.
- 20.3 Should the procedure be summary in nature, expeditious and not unduly formal.
- 20.4 Should the procedure involve full disclosure of the reasons for the decision which is the subject of the dispute.

- 20.5 Are there circumstances in which such disclosure should not be made.
- 20.6 Should there be a review process for a person whose application for registration as a carer has been rejected.
- 20.7 If so, what type of person should conduct that review.
- 20.8 Should the applicant be entitled to the reasons for the rejection.
- 20.9 Should the applicant always carry the onus of establishing that the applicant is a fit and proper person and in all respects suitable to be a carer.

21. Families SA Social Workers

- 21.1 Is there difficulty in recruiting social workers to assist children in State care and in retaining them in this work.
- 21.2 If so, how can these difficulties be resolved.
- 21.3 What workforce planning strategies exist within Families SA, or should exist, for those involved in the care of children.
- 21.4 Should persons who have been children in State care be involved in the training of social workers by making presentations to inform them of relevant matters to children in State care.
- 21.5 Should cadetships be introduced or expanded for trainee social workers with obligations of post-graduation service to enlarge the level of expertise of social workers in Families SA at the operational level.

- 21.6 Should a monitoring system be introduced in Families SA so that social workers at the operational level have assistance and advice as required from persons with considerable experience.
- 21.7 How can able, effective and experienced social workers be retained by Families SA as operational workers.
- 21.8 Is there sufficient continuing education and opportunity for mutual exchange of ideas and problems for social workers at Families SA.
- 21.9 Should experienced and able social workers be assigned to each social worker as mentors when commencing operational duties and should a mentoring system continue thereafter.
- 21.10 Is the workload required to be undertaken by social workers manageable and if not what must be done to enable them to work effectively.
- 21.11 A considerable body of evidence has been placed before the Commission which indicates a widespread lack of adequate supervision of children in State care in both foster care and institutionalised care over many years. Evidence also indicates that many visits to foster homes by social workers did not involve discussion with the child outside the presence of the foster parent or parents. Has supervision of children in State care been inadequate and, if so, in what respect.
- 21.12 Should standards be developed to establish the required minimum amount of personal supervision and contact with the child.

- 21.13 Should children be made aware that they may discuss matters of relevance to them freely and frankly with their social workers without recrimination and exposure to punishment.
- 21.14 What are the features of a satisfactory relationship between child and social worker.
- 21.15 Do social workers when working with children in care experience conflicts of interest, those interests being:
- the interest of Families SA in maintaining the placement
 - the interest of protecting the child, making the child safe and improving the quality of care and the child's relationship with the carers
 - the interest of the carer in undertaking the care of the child in a manner and style which accords with their attitudes towards, and standards of, raising children.
- 21.16 When a child makes a complaint about a carer or discloses conduct in the home which is relevant to child protection and satisfactory care, what duty does the social worker have to the child, the carers and Families SA. Likewise if disclosures are made by a carer what duty does the social worker have to each of them. Likewise what is the position when a child makes a complaint or disclosure about the social worker. Can conflicts of interest arise depending upon to whom the complaint or disclosure is made.
- 21.17 Is the procedure for resolving complaints about social workers and other persons in Families SA in the context of child protection and care adequate and effective and if not, what change is required.

22. Disclosure and Advocacy

Evidence received by the Commission establishes that over many years children in both institutionalised care and foster care when treated abusively or otherwise inappropriately felt powerless and unable to disclose. The inability to disclose was usually due to the absence of anyone in the child's life whom the child trusted and to whom they felt disclosure could be made with safety and protection.

- 22.1 Should there be a facility comprised of sufficient and suitable persons to whom children in care may make disclosures which they know will be treated in confidence and be followed by genuine assistance with working out what to do next. Should all children in State care be given the telephone number of that facility.
- 22.2 Should social workers, mentors, volunteers and carers be informed of that facility and how contact may be made and ensure that the child is aware of those matters.
- 22.3 Should the facility also be available in various regions within the State to facilitate its work with children living outside the metropolitan area.
- 22.4 Should the facility be independent of the State government.
- 22.5 Are the Office of the Guardian for Children and Young People, the Health and Community Services Complaints Commission (HCSCC) or Families SA able to fulfil the function of immediate and effective advocacy for State children. If not, why not.
- 22.6 If there are issues of independence and resources, how may they be addressed.

- 22.7 As the issue is appropriate and effective advocacy for children in State care, should the authority providing the service report to Parliament as is the case with public officers discharging important functions independent of government such as the Ombudsman, and the Auditor-General.
- 22.8 Should an advocacy facility be available throughout the lives of persons who have been children in State care who may require, and are not receiving, adequate support and facilities. This is likely to include persons with disabilities and persons with mental health or substance dependence issues, or who are socially isolated.
- 22.9 Who should provide that facility.

23. Adequacy of care

- 23.1 In the period before 18 November 2004, when the Commission was established, was the level of supervision of children in State care and carers by government and non-government organisations, adequate and if not, in what respects and why.
- 23.2 What is the present position.
- 23.3 What is required to resolve the difficulties faced by Families SA and non-government organisations in ensuring the adequate and safe care of all children in State care.
- 23.4 Should government assess and monitor the adequacy and safety of services provided to all children in care in government and subsidised non-government agencies. What would be the essential components of such a process.

24. Residential care

The application of the policy of providing out of home care by placement of children in foster care, given fresh prominence since the early 1970's, resulted in the closure of the large government and non-government homes and orphanages.

Government has established small residential units for assessment, short term care and transition to living in the community which have also provided long term care for some children although that is not what was intended. Also government has subsidised small residential facilities of this kind run by non-government agencies.

- 24.1 Is it appropriate to assume that foster care affords the best type of care for all children in State care.
- 24.2 While it may be said that the long term retention of children in these small residential facilities is largely due to lack of alternative facilities, is there a need for some form of longer term residential care for some children.
- 24.3 If so, what form should this take:
- therapeutic homes where specialised services are provided
 - cottage homes with home parents
 - central support home with associated independent living units
 - other.
- 24.4 Should these homes be limited to six to eight children with a focus, where possible, on keeping siblings together.
- 24.5 Should compatibility be a factor in the selection of children who are not related.

- 24.6 Should children without a criminal history be placed in residential care with children who have a serious criminal history.
- 24.7 Should respite care, mentors and volunteers be available to the children in these homes.
- 24.8 Could these homes be used for respite care of children who are in foster care or relative care.
- 24.9 Should a purpose of these homes be to support, train and develop the skills of children with a view to independent unsupervised living so far as that is possible.
- 24.10 In response to the effects of sexual and other abuse, should homes with targeted, specialised supports be established to provide services to some children who may include those:
- with disabilities
 - with behavioural disorders
 - with drug or alcohol dependency
 - with brain damage through substance abuse
 - with the effects of foetal alcohol syndrome.
- 24.11 Is it reasonable to assume that in association with child sexual abuse, petrol sniffing and other substance abuse will increase the incidence of brain damage and other impairments, requiring additional resources in health and human services, including residential care and intensive medical, and psycho-social interventions.
- 24.12 If the incidence of substance abuse and sexually transmitted diseases, in association with child sexual abuse, is increasing, is

there a need to establish a strategy for the care of the children based upon the information presently available, and reasonable projections, so that future generations are prepared and able to deal with the increasing problem.

24.13 Is it recognised that open, genuinely collaborative planning approaches between government and non-government agencies provide the best mechanism for planning services for children, with particular impairments, who have suffered sexual abuse.

25. Sexual abuse of children with disabilities in State care

25.1 Has the extent of sexual abuse of children with disabilities not been known or appreciated.

25.2 Has sexual abuse of children with disabilities when known been left unaddressed and not reported and, if so, to what extent, and by whom.

25.3 What are the obstacles to identifying, recognising and addressing the sexual abuse of children with disabilities.

25.4 Have appropriate and adequate records been created and kept of allegations and investigations of sexual abuse of children with disabilities.

25.5 What records should be kept and by whom.

25.6 Has there been, and is there now, appropriate and sufficient education and support of children with disabilities about sexual

abuse and inappropriate physical contact. How could the provision of this education and support be improved.

- 25.7 Has there been and is there now, appropriate and sufficient information available to children with disabilities about making complaints about sexual abuse and inappropriate physical contact. How could the provision of this information and support be improved.
- 25.8 Is there an adequate response by government and service providers funded by government to allegations of sexual abuse of children with disabilities or about such children.
- 25.9 What is the effectiveness of the Child Abuse Hotline for children with disabilities.
- 25.10 What is the effectiveness of Mandatory Reporting of sexual abuse of children with disabilities.
- 25.11 Has there been, and is there now, appropriate and sufficient training, information and support for carers of children with disabilities to recognise and identify sexual abuse.
- 25.12 Is special training of carers required to recognise and identify such abuse and to communicate with the children about such matters.
- 25.13 Is the level and nature of support for carers of children with disabilities who are in State care sufficient.
- 25.14 What further or other support is required.
- 25.15 Should a response group of persons with appropriate training, expertise and experience be established to receive allegations

of sexual abuse of children with disabilities, investigate them and provide or advise about the necessary therapeutic care and support services required by the children.

- 25.16 Should there be special training for investigators and prosecutors concerning allegations of sexual abuse of children with disabilities and adults with disabilities who allege sexual abuse of them as children.
- 25.17 Should there be special arrangements and facilities for the investigation and prosecution of perpetrators of sexual abuse of children with disabilities and which will facilitate the giving of evidence.
- 25.18 Should evidence, explaining well recognised difficulties of persons with disabilities in disclosing and relating sexual abuse of them, be permitted in courts where relevant to an alleged victim upon the trial of the alleged perpetrator.
- 25.19 During their transition out of State care should there be specialised and particular support for children with disabilities who were sexually abused while they were in State care.
- 25.20 Should the State provide life long services and assistance for persons with disabilities who have been children in State care and were sexually abused, or subsidise the services which are provided by non-government organisations.
- 25.21. Should there be an agency to investigate the underlying causes and factors surrounding the sexual abuse of children with disabilities, the reasons for it, the incidence of it, and the ways of eradicating it.

- 25.22 Is there a need to review human rights legislation to strengthen legislative and human rights measures for the protection of children with disabilities from sexual abuse, physical abuse, torture, emotional abuse, deprivation and discrimination.
- 25.23 Are advocacy services sufficiently funded and available to support individuals with a disability who have been sexually abused as children in State care.
- 25.24 In strategies to address the sexual abuse of children with disabilities, are there particular issues concerning Aboriginal children and communities.
- 25.25 In strategies to address the sexual abuse of children with disabilities from non-English speaking or culturally diverse backgrounds, are there particular issues requiring consideration.
- 25.26 Are support services for victims of crime accessed by children with disabilities and appropriate for them.

26. Sexual abuse of children in State care

Evidence placed before the Commission indicates that sexual abuse of children has life long effects in many, if not all, cases which may become symptomatic immediately, or at any time during life. Evidence also indicates that the response of governments, other services and carers over the years has included one or more of the following:

- rejection of, or indifference to, the allegations
- removal of the child
- placement of the child in an attempt to ensure safety of the child
- placing the child under the guardianship of the Minister or making other arrangements for supervision

- investigation of the allegations in many cases resulting in some referrals to SA Police and the prosecution of some alleged perpetrators.

Where action was taken this evidence indicates children were protected by minimising and reducing the risk of further abuse, but the consequences of the sexual abuse was not addressed by appropriate treatment and personal support.

- 26.1 Attitudes and responses by successive governments and new generations of carers have changed but is the approach to allegations of sexual abuse sufficient and adequate.
- 26.2 Should there be an emphasis on therapeutic treatment of every child in State care who discloses sexual abuse as a child.
- 26.3 Should that type of treatment and other appropriate treatment as indicated be provided for every such child for so long as it is required.
- 26.4 Should that treatment be arranged and provided by the State and should appropriate financial resources be provided to carers as required to enable that treatment to continue as is necessary.
- 26.5 Should carers be informed of the nature of the treatment, what is required for its success and how to assist the child to participate.
- 26.6 Should social workers of Families SA be kept fully informed as to the nature and extent of such treatment and how to assist the child to participate.
- 26.7 Should government ensure that there are adequate facilities for the treatment of children in State care, indeed all children, who have been sexually abused. Should these facilities be staffed

by suitably qualified experts such as those involved with the Sexual Offender Treatment and Assessment Program (SOTAP) and Mary Street Adolescent Sexual Abuse Prevention Program.

26.8 Evidence received by the Commission indicates that some children, including children in State care, who were sexually abused, experienced confusion about their sexuality. Some were unable to develop sexually in a normal and natural manner with consequential anger, frustration, disillusionment or inability to make suitable choices in relationships and sexual matters. Should facilities be available free of charge to children in State care to explore with suitable experts the issues which they confront so as to improve their sexual development and understand the effects upon them of the sexual abuse.

27. Detention

Evidence received by the Commission indicates that since the early 1970's there has been a substantial shift in the attitude of government as to the way to keep children in State care safe. No longer should children be placed in detention centres for 'safe keeping'.

However, many young persons who have been sexually abused have committed crime and been placed in detention, on remand or under sentence. While in detention some children form positive and valuable relationships with staff at the centres and develop attachments to them. Many children do not have a safe and suitable home in which to live and upon release have no supportive relationships. Without the structure and supervision of the centres it is easy for them to resume crime with the consequence of further detention in prison which is usually disastrous for them and the community.

- 27.1 Should consideration be given to allowing children in State care to return to detention centres voluntarily when unable to cope without assistance in the community so that they can re-establish the positive relationships with staff and live in purpose built accommodation at the centres for short periods of time while they assimilate into the community.
- 27.2 Should children who have been released from detention be able to have contact with staff from time to time and receive advice and other assistance from them.
- 27.3 Should such children be permitted, on invitation, to return to the centres occasionally for meals and to use facilities.
- 27.4 Should suitable former detainees be involved in life style presentations to detainees including the adverse consequences of their conduct.
- 27.5 What other assistance can be given to recently released detainees to minimise the risk of re-offending.
- 27.6 What additional training and direction can be given to children in detention to improve their ability to live independently, manage their lives and obtain education or employment.
- 27.7 Is there a need for an open model of detention.
- 27.8 What can be done to further minimise the risk of sexual abuse of children while in detention and to assist those who are abused.

28. Remand Intensive Neighbourhood Care (RINC)

RINC is part of a detention alternative program for children and young people who enter the criminal justice system. It is an alternative care program. Children who are placed in Magill Training Centre on remand may be placed in the care of registered foster carers. These carers are specially selected and trained and are able to provide positive instruction, example and care for the children.

According to a submission made by Families SA to the Commission:

The aim of the program is to support young people to reduce offending patterns of behaviour, minimise the level of risk and harm they place themselves at and to develop appropriate independent living and problem solving skills, which will enhance their life opportunities and support their integration into mainstream society.

Many of the young people come from extreme social, developmental and economic disadvantage and have often been involved within the child protection system.

It would appear that there are obvious advantages to children placed in RINC. It may be expected that many of them have not experienced many positive influences in their lives and there are many causes for their offending.

The submission by Families SA indicates that in the financial year 2005-2006 11 young persons were placed in RINC and there are currently six registered carers and three are completing training.

28.1 Should placements in RINC be increased in order to further reduce the placement of young persons in detention centres.

- 28.2 What is required to recruit and train more carers.
- 28.3 What is required to expand RINC placements for young Aboriginal persons.
- 28.4 How can more Aboriginal carers with cultural connection to young Aboriginal offenders be recruited and trained.
- 28.5 Should RINC placements also be used as a sentencing, or part of a sentencing option controlled by using the obligation procedure.
- 28.6 What services and facilities are required by the carers to provide the necessary care for the young persons and to provide further assistance in education, health and employment opportunities for the young persons.
- 28.7 Should respite carers be available in RINC placements.
- 28.8 Should appropriate mentors and volunteers be available to young persons in RINC.
- 28.9 One feature of the success of the Family Conferencing system in the Youth Court has been the aspect of restorative justice where offender and victim participate in a facilitated conference an object of which is to understand the impact of the crime on the victim and the reason for the offending. Should conferences of this nature be undertaken for younger persons in RINC and the victims with a view to not only assisting the victim but to facilitate the rehabilitation and development of the offender.

29. Additional issues relating to Aboriginal children in State care

In addition to the issues mentioned in this document consideration must be given to other issues which may be particularly relevant to Indigenous people.

The Commission has not yet embarked upon the investigation of allegations of sexual abuse of Aboriginal children in remote communities and consequently mention is not made of the many and complex issues which exist in relation to child sexual abuse in those communities. However, a number of other issues arise from evidence before the Commission.

Many Aboriginal persons related their loss of connection with country, culture and language when taken into State care or after being in State care for some time. Indeed some of them did not learn of their Aboriginal heritage until many years later.

There is an over representation of Aboriginal children in detention and the criminal justice system. It is possible that many of them have been sexually abused and turn to substance abuse to mask the effects of the abuse which has led to crime. It is also possible that some children have been, or will be, sexually abused while in detention.

It should not be assumed that because young Aboriginal persons were born and raised in suburban areas they have no desire for connection with their Aboriginal heritage, including culture, language and tradition.

29.1 Has the extent of sexual abuse of Aboriginal children not been known or appreciated.

- 29.2 Has sexual abuse of Aboriginal children when known been left unaddressed and not reported and, if so, to what extent, and by whom.
- 29.3 What are the obstacles to identifying, recognising and addressing the sexual abuse of Aboriginal children.
- 29.4 Are appropriate and adequate records kept of allegations and investigations of sexual abuse of Aboriginal children.
- 29.5 What records should be kept and by whom.
- 29.6 Is the current Aboriginal Child Placement Principle appropriate for all Aboriginal children. Should consideration also be given to placement of Aboriginal children with non-Indigenous foster carers.
- 29.7 To what extent is the Aboriginal Child Placement Principle currently implemented and how effective is its application.
- 29.8 Is kinship or relative care used sufficiently often in relation to Aboriginal children in need of care.
- 29.9 Are there sufficient Aboriginal kinship or relative carers. If not, what may be done to redress that problem.
- 29.10 Are there special problems in the implementation of the Aboriginal Child Placement Principle if the child has been sexually abused and the alleged perpetrator is a member of the same kinship or relative group.
- 29.11 Where the alleged perpetrator is a member of the same group could the carers with whom the child is placed possibly be compromised in their care of the child.

- 29.12 What are the culturally appropriate ways of assessing, registering, training and mentoring Aboriginal foster, kinship and relative carers.
- 29.13 Are Aboriginal carers required or encouraged to ensure that the child is connected with country, culture and language and receives instruction about those matters.
- 29.14 SA Link-Up is an organisation which assists many Aboriginal people, some of whom were children in State care, to trace and re-unite with family and culture. What further facilities should be put in place to enable Aboriginal people to locate family and connect with their culture. What services should be provided by the government for this purpose.
- 29.15 What government supervision is in place to ensure that Aboriginal children in State care are educated in these matters.
- 29.16 Should a panel of Aboriginal women and men with cultural authority and knowledge of Aboriginal heritage be established. Members would be selected as appropriate to teach Aboriginal children about matters relevant to their culture.
- 29.17 Should more young Aboriginal persons have RINC placements.
- 29.18 Should Aboriginal elders from different communities be encouraged, and subsidised, to arrange periodic gatherings of Aboriginal children with emphasis on heritage, culture, tradition and stories.
- 29.19 Should Aboriginal persons be engaged as mentors for Aboriginal children in care.

29.20 What other steps can be taken to counter any consequences of dispossession of Aboriginal children who are taken into care.

29.21 Are there any difficulties unique to Aboriginal people, particularly children, in disclosing and reporting child sexual abuse.

29.22 Are the existing mandatory reporting requirements appropriate for sexual abuse of Aboriginal children.

30. Leaving State care

30.1 Should the responsibility of the Minister for a young person in State care end when that person attains the age of 18 years.

30.2 Should the time when State care ends depend upon the circumstances of the young person.

30.3 Should State care continue to whatever age is suitable for the young person up to and including the age of 25 years or some other age.

30.4 Should the leaving of State care be acknowledged and recognised, and in what way could this be done.

31. Preparation for leaving State care

31.1 In what way should a child be prepared for independent living.

31.2 How should foster parents be encouraged and assisted to take part in that preparation.

- 31.3 Should there be special training and assistance where appropriate before a young person is placed into independent living.
- 31.4 Should homes be established where young persons in State care who need assistance, can live together for sufficient time and learn independent living skills such as cooking, cleaning, washing and other domestic skills, financial management, basic personal safety, how to access medical and dental care and support and facilities to assist in independent living.
- 31.5 Should arrangements be made by the State to assist children in State care to obtain an education commensurate with their skills and abilities and other qualifications to assist in obtaining employment, and occupational qualifications.
- 31.6 Should these opportunities and facilities for leaving State care continue to be available to them after attaining the age of 18 years.
- 31.7 Families SA has produced a leaving care kit which is entitled *My Stuff*. It contains important information about available resources, contact people and benefits. Should any other information be contained in the kit.
- 31.8 What other information and facilities should be provided for young persons leaving State care in circumstances appropriate to the particular young person:
- managing finances
 - assistance in obtaining a licence to drive a motor vehicle
 - literacy and numeracy skills
 - vocational and educational advice, assistance and counselling

- computer skills
- developing social and relationship skills
- management of anger
- counselling and therapy for those who have been sexually abused
- obtaining Centrelink and Medicare cards
- learning appropriate and safe sexual behaviour
- avoiding alcohol and drug abuse
- protection from sexually transmitted diseases and illnesses
- access to volunteers and mentors
- legal advice and representation
- other.

32. After State care

The State Government has announced that children in State care, present and past, will proceed to the top of the queue in relation to facilities provided by the State.

32.1 Should children in State care, present and past, be given priority regarding:

- education
- medical and hospital treatment, counselling, therapy and other services provided by the State.

32.2 Should these services and facilities be provided at no charge to the person entitled, and if not, should they be subsidised.

32.3 What type of services for persons with disabilities should be provided.

- 32.4 Should access to these services be free of charge to such persons.
- 32.5 Should the services be available in regional areas as well as in the metropolitan area.
- 32.6 Is the present level of support for persons with disabilities, who are or have been, children in State care, adequate and if not what further support and facilities are required. Should the government provide particular and specialised post care support services for persons with disabilities who have been children in State care.
- 32.7 Is there a need for gender specific services and facilities for people who were abused while children in State care, and if so, what type of services.
- 32.8 Should services be made available to men and women who were sexually abused as children and are also perpetrators of sexual abuse.
- 32.9 The Government established The Dame Roma Mitchell Trust Fund in 2003 to make grants to assist children and young persons who are, or have been, under the Guardianship of the Minister. The Trust was established in response to research indicating that young people who have been in State care generally have poorer education, health, employment and socio-economic outcomes than their peers. The grants are made to assist applicants to:
- achieve personal goals
 - contribute to their health and wellbeing
 - provide developmental opportunities for them.

The demand for assistance has been greater than the funds available for allocation each year.

Should the financial resources of The Dame Roma Mitchell Trust Fund be regularly augmented by the State in order to assist more children effectively overcome the disadvantage they have suffered through being in State care.

32.10 Should that Fund, its Trustees and operation be independent of government.

33. Recognition of the effects of sexual abuse of children and appropriate response

Information and evidence provided to the Commission establishes that many people who were sexually abused as children experience life long and serious consequences. Also, there is growing acceptance that sexual abuse, including of children, is a form of trauma and that post traumatic stress disorder is a likely consequence.

Symptoms of the abuse may vary from time to time and become more pronounced and disabling during middle age to advancing years. The Commission will continue to receive expert evidence about the matter.

Accepting this proposition it may be acknowledged that children in State care who were sexually abused suffered severely while in the care of the State even though the full consequences may not manifest until later. The children were not to blame. They were not responsible. The arrangements for their care put in place by successive State governments and, in some instances the Commonwealth Government, were inadequate.

There is a precedent in our history for special arrangements to be made for persons who suffered trauma, in various forms, and severe consequences while in service of the State during war. They were appropriately and enthusiastically regarded by the community as requiring special assistance and services for life, provided by the State. Many required full time expert care from time to time and in later years the well known veterans affairs system was developed and maintained.

The issue arises as to whether any distinction in that regard should be made between those who were injured in the service of their country and those who were injured while in the care of their country and when vulnerable as children.

33.1 Should children in State care, present and past, who were sexually abused while in State care and who suffered injury and disabilities, receive benefits and services in a manner similar to veterans injured at war.

33.2 Should those benefits and services include:

- medical and hospital care, including covering costs of prescriptions
- access to loans, services and other benefits which enable independent living
- counselling and assistance from psychologists when required
- preference and support in education and employment
- pensions and allowances during periods of incapacity for employment
- nursing and dental care when required
- access to a healing centre
- other services and benefits provided to veterans.

34. Other governments - co-operation and involvement

- 34.1 The provision of services and benefits to persons who have been children in State care as raised in the previous paragraph, would be possible with the co-operation and involvement of the Commonwealth Government using the existing structure and operation of the Department of Veterans' Affairs or a similar model. Also provision of the benefits and services through such an agency would provide them nationally in a uniform and consistent manner. Should a national approach along these lines be implemented.
- 34.2 If a national approach is not undertaken, should all State governments be involved in the provision of benefits to persons who have been in State care.
- 34.3 It appears from information and evidence received by the Commission that because some persons who have been in State care move from State to State they may be denied benefits and services. Should there be reciprocal arrangements between the States to enable the person resident in a State other than where they were in State care, to be eligible for the services and benefits available.

35. Government response to past sexual abuse of children in State care

Many persons giving evidence to the Commission alleging that they were sexually abused while in the care of the State say that they were not able to disclose the abuse to carers or if they did disclose they were disbelieved with the consequence that further abuse was not disclosed.

For most of them the disclosure to the Commission and the giving of evidence has been the first time they felt they could disclose. For many it was the first time their disclosures were heard and accepted.

Some persons disclosing to the Commission are, or were, prisoners, street children, and persons in detention. Much important evidence has been given which would not be given to police, investigators from Families SA or some other persons they regarded as being in authority. They preferred to disclose to the Commission because of its independence and style and also because all information was received in confidence and not passed on to anyone without their knowledge and consent.

Most persons who have given evidence to the Commission have taken considerable time to gain confidence in themselves and in the Commission in order to disclose matters causing significant pain to themselves. It may be accepted that many persons have not yet developed that confidence but may do so in the future and would then benefit from revealing what happened to them.

The number of persons making disclosure to the Commission about themselves or others indicates that sexual abuse of children in State care has been, and is, widespread. However, it is likely that these disclosures represent a mere scratching of the surface as to the extent of the sexual abuse of children in State care over many years.

Many persons alleging sexual abuse of them as children in State care contend that government should acknowledge responsibility of previous governments for not keeping them and many other children in State care safe and free from sexual abuse and other abuse.

35.1 Should a Commission independent of government and its agencies such as this Commission, but differently constituted,

be established by the Parliament with suitable personnel to continue to receive evidence and information from persons who were sexually abused while children in the care of the State.

35.2 What should be the terms of reference of such a Commission and what should be the nature and extent of its role and function.

35.3 Should a function of the Commission be to assist in a healing process for those who have been sexually abused and to make recommendations to Parliament about matters arising from the evidence and information which it has received which may assist:

- in establishing appropriate responses by government, its agencies and the community to disclosures of sexual abuse by children
- continuing development of strategies to prevent, recognise and identify, child sexual abuse and to provide treatment, services and facilities for children in State care who have been, or are being sexually abused
- to make recommendations about the development of research into child sexual abuse while also having regard to worldwide research and responses
- to assist in the education and training of persons involved in the identification and recognition of sexual abuse and those involved in the investigation of such abuse and the identification and prevention of perpetrators
- to develop procedures and attitudes which will facilitate the disclosure and reporting of sexual abuse
- to promote awareness of child sexual abuse in the general community and in particular communities
- to receive information disclosing the sexual abuse of children in State care when the person making the

disclosure will not disclose to Families SA, the police or any other government agency.

35.4 Should there be a formal government response acknowledging that children in State care were treated inappropriately and harshly in the past and that this included sexual abuse while in State care.

35.5 Should such a response include:

- the establishment of a memorial in a suitable place where those who were formerly children in State care can attend
- a remembrance day along the lines of the Remembrance Day which is part of Child Protection Week in Queensland, where persons who were abused may attend and draw strength and composure from the occasion and others attending
- a healing centre.

35.6 Should the response include assistance to those who were formerly children in State care to learn about their families and where possible be re-unified with them.

36. Young Persons Advisory Group

The Commission established the Young Persons Advisory Group to consider issues which have arisen and to provide information and assistance to the Commission in the resolution of these issues and the matters which arise under the terms of reference.

The members of the group formerly had been children in State care with various experiences in detention, foster care and assessment units. The range of their ages is 17 to 25 years. Their contribution to the work of the Commission has been valuable and substantial.

- 36.1 Should a Young Persons Advisory Group be established to assist Families SA, SA Police and the Office of the Guardian for Children and Young People.
- 36.2 Should such groups also be established in the regional areas.
- 36.3 If groups are established how should they be selected, and who should be responsible for administration.
- 36.4 Should members be appointed for limited terms so that there is rotation of membership.
- 36.5 If another Commission is to be established after the work of the Commission is concluded, should that Commission have the responsibility for the establishment and administration of the group or groups.

37. Responses to allegations of sexual abuse of children in State care

Evidence received by the Commission establishes that in past years, welfare, police and prosecution authorities and members of religious, sporting and social organisations were inclined to disbelieve allegations of sexual abuse made by children.

Also there has been a culture that sexual abuse was not significant or important.

To a much lesser extent these attitudes still exist.

- 37.1 Is there a reluctance by some police officers to act upon allegations of sexual abuse of children and, if so, what may be done to change that attitude.
- 37.2 Is there an attitude by some investigators and prosecutors that alleged perpetrators should not be prosecuted unless there is reliable, corroborative evidence even though there is no such requirement in the law . What should be done to change that attitude.
- 37.3 How can victims with particular disadvantages by reason of young or old age, disabilities, race or ethnicity, be assisted to articulate and report.
- 37.4 Should the Special Investigation Unit of the Department for Families and Communities investigate allegations of sexual abuse of children in State care given that Families SA will have been involved in the care of the child in important respects. Is there the potential for a conflict of interest.
- 37.5 Is the Unit adequately resourced and trained and does it have sufficient expertise.
- 37.6 Should the Unit undertake any aspect of investigation if an investigation by police has been undertaken or is likely.
- 37.7 Should investigators and prosecutors of matters involving child sexual abuse have special training and experience.
- 37.8 What additional resources should be available to investigators or prosecutors.
- 37.9 Once a person alleging child sexual abuse has gained the confidence to disclose and makes disclosure, substantial delay

in investigation and prevention usually has a deleterious effect upon the complainant. How can long delays be avoided.

37.10 In view of the extensive disclosure to the Commission should substantial additional resources be made available to SA Police, the Director of Public Prosecutions and the courts to facilitate the prompt resolution of complaints and prosecution.

37.11 How can the effectiveness of prosecution of persons alleged to have sexually abused children be improved.

37.12 Is adequate protection from perpetrators and alleged perpetrators provided for victims of child sexual abuse by investigators, police and Families SA during investigations.

37.13 Should there be special courts or specialists within the judiciary to hear cases involving sexual abuse of children.

37.14 What changes, if any, should be implemented to the procedure of a criminal trial to facilitate justice but ensure a fair trial. Reference is made to the discussion paper prepared by Ms Liesl Chapman at the request of the Attorney General entitled *Review of South Australian Rape and Sexual Assault Law* and dated March 2006.

37.15 When the Director of Public Prosecutions declines to institute or continue a prosecution involving sexual abuse of a child or children, should the Director provide reasons for the decision to the complainant and to the police.

37.16 Should specialised legal and other services, such as medical, psychiatric, counselling and accommodation services be made available free of charge to children in State care who have been sexually abused.

37.17 Should churches, charities and other non-government organisations which provided institutionalised care for children under State responsibility at which they were sexually abused, respond to those persons by:

- public acknowledgement of the organisation's role and that sexual abuse occurred
- the establishment of localised memorials
- full access to records
- participation in remembrance day events
- counselling and other appropriate assistance.

38. Street children

Many children in State care have given evidence to the Commission who are, or were, 'street children'. They related their reasons for running away from home or care and how they lived and survived.

It has not been possible to determine the number of children and young persons currently living on the streets in Adelaide and the metropolitan area but the estimate of about 300 may be accurate. Evidence also establishes large numbers of street children in regional cities and large country towns.

There has been a long history of the exploitation of street children by men and women who have led them into drug addiction, prostitution and drug distribution. Many have been exploited sexually giving sexual favours for money and other crime is committed to provide a means of support. Well known haunts for persons exploiting children and young persons include Veale Gardens, the banks of the River Torrens and a public lavatory near Jolley's boat house.

Families SA, churches, charities and other groups have provided services and facilities for street children free of charge. Many children sleep in vacant buildings and not all of them will access the voluntary services.

38.1 What services should be provided for street children that are not presently available.

38.2 Should those services include accommodation where children are safe.

38.3 Is there a need for communal accommodation and facilities for street children who are in State care in Adelaide, the metropolitan area and the regions so that children who will not embrace foster care or units run by Families SA have accommodation.

38.4 Who should provide such facilities and staff. Should the staff be persons who have been in State care and street children who are suitable for that role.

38.5 Is there a need for financial subsidy or further subsidy of the services provided by churches, charities and other non-government organisations.

38.6 Should Families SA supervise such facilities.

39. Prisoners

It has not been possible to obtain accurate information as to the incidence of sexual abuse of prisoners when they were children. As may be expected feelings of guilt, shame and responsibility, although

misplaced, and fear of ridicule are likely to be experienced more intensely in prison.

Evidence received by the Commission from a number of persons who have worked with prisoners indicates that it is estimated between 70 per cent and 90 per cent of women prisoners and at least 50 per cent of male prisoners have been sexually abused as children.

It has been established by other evidence that the lives of many children who were sexually abused have been disrupted. They were taken into State care. Many of them became runaways and regressed from minor to serious crime and from detention to prison. Disclosure of the sexual abuse has been sporadic.

- 39.1 Are the estimates of the incidence of child sexual abuse among prisoners and former prisoners likely to be approximately accurate.
- 39.2 Should all prisoners who have suffered sexual abuse as children have access to appropriate counselling and treatment on a confidential basis while in prison and after release as required.
- 39.3 Should appropriate treatment programs be available in all prisons for prisoners who have committed sexual offences and also for those who have suffered sexual abuse.
- 39.4 Where sexual abuse as a child is a significant and relevant part of the background and antecedents of a prisoner, should that abuse be considered in the sentencing process and in what way and to what extent.
- 39.5 Should special and appropriate facilities be established in prisons to facilitate the healing of victims of child sexual abuse.

- 39.6 Should such facilities be available to prisoners who are raped in prison.
- 39.7 Should Corrections' officers be educated as to the extent and consequences of child sexual abuse and trained in the appropriate manner to assist prisoners who continue to suffer those consequences.
- 39.8 What is required to reduce the incidence of rape and other sexual assault upon prisoners in prison.

40. Duty to maintain confidentiality

S.58 of the *Children's Protection Act 1993* provides:

- (1) *A person engaged in the administration of this Act who, in the course of that administration, obtains personal information relating to a child, a child's guardians or other family members or any person alleged to have abused, neglected or threatened a child, must not divulge that information.*

Maximum penalty: \$10,000.

- (2) *A person who attends a family conference (not being the child, a guardian of the child or any other member of the child's family) must not divulge any personal information obtained at the conference relating to any of those persons.*

Maximum penalty: \$10,000.

- (3) *This section does not prevent -*
- (a) *a person from divulging information if authorised or required to do so by law; or*
 - (b) *a person from divulging statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates; or*
 - (c) *a person engaged in the administration of this Act from divulging information if authorised or required to do so by his or her employer.*

Are there circumstances in which these provisions may obstruct the provision of information about a perpetrator of sexual abuse of a child in State care or otherwise prevent adequate protection of children. Should the Act be amended to enable the Executive Director of Families SA to disclose information in the public interest. An example could be where a child in State care is a perpetrator and is about to be placed in close proximity to children in the community.

41. Research

- 41.1 Should Families SA engage suitably qualified resources to regularly research literature around the world relating to the cause, incidence, consequences and treatment of sexual abuse of children and developments in prevention and child protection.
- 41.2 Should Families SA undertake, or continue research as to whether the number of children who are sexually abused, or otherwise require protection, is increasing and to what extent.
- 41.3 Should such research also include research as to the causes of the sexual abuse of children and any factors affecting its increase, including the extent of alcohol and other substance abuse in the community.
- 41.4 Should Families SA regularly disseminate the results of such research to all staff with a relevant interest and facilitate discussion and understanding.

42. Deaths of children in State care

- 42.1 Should a Coronial Inquest into the deaths of all children while in State care be undertaken.

42.2 Should there be a legal representative appointed to represent 'the interests' of the child.

43. Records

Evidence and information received by the Commission indicates that some State records and records of churches, charities and other non-government organisations relating to children in State care have been, or allegedly been, destroyed.

43.1 Are, and were, appropriate and adequate records kept of allegations and investigations of sexual abuse of children in State care.

43.2 What records are, and were, kept and by whom.

43.3 Should all allegations and investigations of sexual abuse of children in State care be recorded and investigated, and by whom.

43.4 Are the standards for creation, control and storage of records relating to children in State care adequate.

43.5 Should records relating to children in State care ever be destroyed and if so, in what circumstances, in what manner, by whom and to whom should notice be given.

43.6 Are all agencies of government and non-government involved with the care or management of children in State care, or in the investigation and prosecution of allegations of the sexual abuse of children in State care, adequately monitored and assessed to ensure best practice of records management.

- 43.7 Should there be a requirement that if records are sentenced for destruction, that the child in State care, or former child in State care to whom the records relate, and Families SA (if Families SA are not the agency responsible for those records) be informed before any records are destroyed.
- 43.8 Are the present standards and procedures for the creation, control, storage and destruction of records relating to children in State care, the institutions in which they were placed and relating to their placement, care and discharge by churches, charities and non-government organisations appropriate and adequate, and if not, in what respects. Are these standards adequate to prevent loss of records which should be retained.
- 43.9 Should the same standards apply to non-government organisations with respect to children in State care, and how can that be applied to those organisations.
- 43.10 Should the standards to be applied relate to the creation, control, management and destruction of records.
- 43.11 Are all persons included in the management of State records relating to children in State care trained appropriately and adequately.
- 43.12 Is information relating to children in State care which is captured electronically, described, stored and maintained effectively.
- 43.13 Have all records relating to Aboriginal children in State care been adequately listed.
- 43.14 Are records of sexual abuse or death of children in State care kept only in their individual files.

- 43.15 Should a central register of all records relating to children in State care, including the sexual abuse or death of children in State care, be kept so as to enable ready access to the extent of such abuse or deaths of such children.
- 43.16 Prior to the *State Records Act 1997* coming into operation were the creation, control, storage and destruction of records relating to children in State care supervised and by whom.
- 43.17 Does the operation of State and Commonwealth Freedom of Information legislation assist or impair access by children in State care, present and past, to their records and information about them.
- 43.18 What assistance should be made available to children in State care, present and past, to access and understand records relating to them.
- 43.19 Should records relating to children in State care, present and past, be described, arranged, kept, managed or accessed in any manner that is different from other records.
- 43.20 Should the Freedom of Information legislation be amended insofar as it relates to children in State care, present and past, or their families and, if so, in what respects.
- 43.21 Should such legislation apply to churches, charities and other non-government organisations which have provided, or do provide services to children in State care.
- 43.22 Are all persons within government and non-government organisations dealing with freedom of information requests for records, trained appropriately.

44. Conclusion

The Commission hopes that there will be widespread response to these issues so that the conclusions will be based upon reliable and accurate information from persons with relevant knowledge and experience. Also persons making written submissions are encouraged to address any other issues and solutions relevant to the terms of reference which they believe should be considered. Much evidence has been received to date but it is not suggested that all issues relevant to the terms of reference have been raised by that evidence.