REPORT OF AN INQUIRY
CONDUCTED BY
THE HONOURABLE D G STEWART
INTO ALLEGATIONS OF OFFICIAL MISCONDUCT
AT THE BASIL STAFFORD CENTRE

MARCH 1995

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Dear Sirs

In accordance with section 26 of the *Criminal Justice Act 1989*, the Commission hereby furnishes to each of you its report on an inquiry conducted by the Honourable D G Stewart into allegations of official misconduct at the Basil Stafford Centre.

Yours faithfully

R. S. O'Regan

R S O'REGAN QC
Chairperson

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10 March 1995

Mr P M Le Grand
Director
Official Misconduct Division
Criminal Justice Commission
557 Coronation Drive
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Dear Mr Le Grand

I refer to resolutions of the Commission dated 26 November 1993, 10 December 1993, and 10 January 1994 resolving to conduct an investigation into allegations of official misconduct concerning the Basil Stafford Centre and related matters, and further resolving to appoint me to conduct such an investigation.

I now present to you a report of my investigation in order that you may report to the Chairperson in the discharge of your responsibilities under the *Criminal Justice Act 1989*.

Two further confidential reports, as referred to in section 1.12 of the enclosed report, will be forwarded to you in due course under cover of separate correspondence.

Yours sincerely

The Honourable D G Stewart

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ABBREVIATIONS

ALS	Alternative Living Service
AWU	Australian Workers' Union
Centre	Basil Stafford Centre
C Ex	Confidential exhibit
CT	Confidential transcript
Department	Department of Family Services and Aboriginal and Islander Affairs
Division	Division of Intellectual Disability Services
Ex	Exhibit
HEU	Health Employees' Union
IPP	Individual Personal Plan
ITEP	Individual Training and Environment Plan
JAB	Juvenile Aid Bureau
PRO	Principal Residential Officer
PSMC	Public Sector Management Commission
QAI	Queensland Advocacy Incorporated
QPOA	Queensland Professional Officers' Association
RCO	Residential Care Officer
RDO	Residential Duty Officer
RPO	Residential Program Officer
SCAN	Suspected Child Abuse and Neglect
SPSFQ	State Public Service Federation of Queensland
SSU	State Service Union
T	Transcript
TAFE	Technical and Further Education

SUMMARY OF MAJOR CONCLUSIONS AND RECOMMENDATIONS

Pursuant to resolutions dated 26 November 1993, 10 December 1993 and 10 January 1994, I was appointed by the Criminal Justice Commission to undertake an investigation into allegations of official misconduct involving staff of the Basil Stafford Centre. The Centre is a residential facility, administered by the Department of Family Services and Aboriginal and Islander Affairs, which provides services to individuals with severe or profound intellectual disabilities.

The investigation ("the Inquiry") largely proceeded by way of public hearings. The Inquiry sat on 63 separate days and heard evidence from over 70 witnesses. Approximately 6,000 pages of transcript were generated, and 430 exhibits (including attachments), comprising many thousands of pages, were admitted into evidence. Oral submissions were concluded on 19 August 1994 and a final written volume of submissions, of Counsel for the State of Queensland, was received by the Commission on 15 September 1994.

The proceedings of the Inquiry, including the preparation of this report, have taken a considerable time. The reasons for this are many: while some are set out in the relevant sections of this report, for present purposes, it suffices to note that the Inquiry's terms of reference called for an investigation of many issues of a most important and wide-ranging nature. The state of affairs of the Centre, as revealed by the evidence, demands that substantial reforms and improvements be undertaken so that the welfare of the intellectually disabled residents, whose interests are the paramount concern, may adequately be protected in the future. It was therefore necessary to give full and detailed consideration to the host of complex and serious issues that arose, so that informed and useful recommendations, rather than hasty and ill-advised suggestions, could be made. It must be borne in mind that other bodies, such as the Department and the Police Service, have previously attempted to investigate and resolve the problems at the Centre. For the most part, they were unsuccessful. In many respects, this Inquiry represented the last opportunity for those problems to be exposed and redressed.

Within the body of this report I have at times expressed opinions, outlined considerations, made recommendations and otherwise addressed the various issues that arose during the Inquiry's hearings. In some individual Chapters, where applicable, I have specifically set out my conclusions and recommendations apropos the particular matters of relevance therein, generally at the end of the Chapter or the relevant section. Included below is a summary of the major conclusions that I have reached, and the corresponding major recommendations that I make. These lists are not exhaustive, nor are their contents expressed in any order of preference, with the exception of a recommendation that the Basil Stafford Centre should be closed, as soon as possible, which is my primary recommendation.

While a perusal of the table of contents will disclose where in the report my findings and recommendations are discussed in detail, the relevant references are noted after each recommendation for ease of understanding.

CONCLUSIONS

In the period from 1 January 1985 to 31 December 1993, I am satisfied, to the standard of proof as set out in this report, that:

1. A number of unlawful assaults were perpetrated by staff at the Basil Stafford Centre upon severely and profoundly intellectually disabled persons residing there (clients). Additionally,

there were instances of clients being neglected by their care-givers; on occasions, that negligence was gross.

2. While a proportion of staff at the Centre were caring and committed in their endeavours, a not insignificant number of staff members were ignorant of their responsibilities, had an attitude of indifference, and in some cases were unwilling to act decently, toward the intellectually disabled persons placed in their supposed care.

3. An insidious institutional culture existed at the Centre. This culture promoted the occurrence of client abuse and gross neglect, and the harassment or intimidation of staff members who reported or could have reported such occurrences, by other staff members. This culture provided the climate, and thus the opportunity, for acts of official misconduct to take place and minimised the likelihood of both the act and the offender being detected. The situation existing at the Centre had the effect of discouraging, to the point of stifling, the reporting of such acts of official misconduct. The situation cannot be explained away as arising from the actions of a few individual "rotten apples".

4. The various instances of client abuse and gross neglect that were brought to my attention during the Inquiry were not isolated occurrences, but rather, were indicative of a pattern and represented instances that came to light in spite of the system existing at the Centre, that system being one where acts of client abuse or gross neglect would, more probably than not, remain undetected or unreported.

5. A number of both past and present staff, from all employment levels, were subjected to serious and distressing campaigns of harassment as a result of their employment at the Centre. Some officers were harassed, or at best thereafter shunned and distrusted, as a result of reporting incidents of client abuse or gross neglect, while others were harassed because of their perceived role in either assisting with investigations of such matters, or attempting to administer the Centre's operations in a manner most beneficial to the intellectually disabled clients in accordance with their duty as employees and decent human beings. That decent men and women should have been so subjected to such behaviour, merely as a result of attempting to do their duty, in accordance with the Department's aims and procedures, and as caring human beings, is a situation which can only be described as abhorrent, disgraceful and intolerable.

6. Management at the Centre, and in the Department, has been unable to effectively counter the problems presented by the insidious culture existing at the Centre; in particular, the problems of staff harassment and intimidation.

7. A feature of the culture was a deep division between staff holding managerial positions, and other staff (in particular the Residential Care Officers) at the Centre. At the time of the hearings, staff morale was for the most part low.

8. In many cases, there has been a wide divergence between the noble and enlightened aims, practices and procedures promoted and adopted by the Department, on paper, and the day to day realities of the lives of some of the Centre's clients, and the level of care afforded to them.

9. The Department's own attempts at investigating suspected incidents of client abuse or gross neglect have been marked by a lack of success. It is inappropriate, for a variety of reasons, for such "internal" investigations to be carried out.

10. All of the above compels a conclusion that it is more probable than not that further acts of official misconduct will continue to occur at the Centre until such time as it is closed. However, further safeguards and reforms can be instituted and undertaken to protect the rights of the clients pending the closure of the Centre.

11. In relation to the six specific and representative allegations of client abuse and/or gross neglect examined during the Inquiry's hearings:

(a) In relation to one incident, a report should be made by the Director of the Official Misconduct Division, pursuant to Section 33 of the *Criminal Justice Act 1989* to the Chairperson of the Commission for consideration as to whether it is desirable and appropriate that a report be forwarded to the Director of Public Prosecutions with a view to such prosecution proceedings, as the Director considers warranted, against a Residential Care Officer.

(b) In relation to one incident, a report should be made by the Director of the Official Misconduct Division, pursuant to Section 33 of the *Criminal Justice Act 1989* to the Chairperson of the Commission for consideration with a view to determining whether a Misconduct Tribunal should exercise jurisdiction in respect of a Residential Care Officer.

(c) The evidence has not established how the first head wound was sustained by Client 1; however, there is no evidence to support any suggestion of official misconduct against any staff member. The evidence establishes that the second head injury sustained by Client 1 occurred accidentally, and that there was no official misconduct on the part of any staff member.

(d) In relation to the allegation of unlawful assault on Client 7 by a Residential Care Officer, that complaint cannot be substantiated on the available evidence.

(e) In relation to Client 4:

i) Client 4 suffered an extensive and totally unacceptable series of injuries in October 1990, with at least some of those injuries arising as a result of an unlawful assault committed upon him by a person or persons unknown. My task in attempting to identify the perpetrator in that regard was hampered by the failure of the relevant staff members to accurately observe and record, and consequently investigate, the aforementioned injuries at the relevant time.

ii) Client 4 suffered a serious and lengthy history of gastrointestinal infections during part of his period of residence at the Centre; however, there was no gross neglect by any staff member in that regard.

iii) The teeth fractures suffered by Client 4 in November 1991 were sustained as a result of some unknown traumatic incident. Two Residential Care Officers failed to properly perform their duties in terms of detecting and reporting this injury.

(f) In relation to the death of Client 8 at the Centre in April 1991:

i) Two senior officers were unable to respond appropriately to the emergency situation presented by Client 8's distress; in this regard their inadequate first aid training was a factor, although their failure to so respond was not ultimately a contributing factor to Client 8's death.

ii) There was no official misconduct on the part of the house Acting Senior Residential Officer concerning the question of Client 8's access to the kitchen in his house, which led to his death. The evidence did not establish the identity of the officer who left open the kitchen door on the day in question, thus allowing Client 8 to gain access to food in the refrigerator, the ingestion of which killed him.

iii) Although Client 8 was unsupervised for a brief period prior to his death there was no official misconduct on the part of any staff officer, in all the circumstances.

iv) The listing of "epilepsy" as a contributing factor on Client 8's death certificate, by the Centre doctor, was not supported by the evidence, but was not made with any intent to deceive or conceal any of the relevant facts.

v) The decision not to undertake a post mortem examination of Client 8's body was understandable in the circumstances, but the holding of a post mortem examination, and a coronial inquest, would have been preferable and helpful in establishing the cause of death.

vi) Residential Care Officer AC was not subject to any improper attempts by senior officers to alter her report about the circumstances relating to Client 8's death, nor was the interviewing of her, by senior officers, about an associated disciplinary matter, inappropriate.

[Note: The evidence before the Inquiry concerning the six specific incidents investigated, revealed a considerable number of instances where staff members had failed to observe applicable standards and procedures, particularly concerning the reporting of client injuries and suspected abuse. Although that conduct in all but two cases fell short of that required to amount to official misconduct, arguably, such omissions might reasonably expose the relevant officers to disciplinary action. With the exception of the aforementioned charge of official misconduct, I have not, within this report, recommended that the Chief Executive Officer of the Department consider bringing disciplinary action against any staff member. My reasons for not recommending such action are expressed in Chapter 10 of this report, and include the fact that in many cases the facts constituting the possible disciplinary breach were brought to the attention of supervising officers who failed, at that time, to take action upon them.]

12. Mrs A, while employed as a Residential Care Officer at the Centre, witnessed, or became aware of, a number of instances of clients being mistreated by her colleagues. While in some respects Mrs A's evidence was exaggerated and somewhat unreliable, and failed to establish any connection between some of the more dramatic incidents of harassment complained of by her, and staff at the Centre, it is clear that she became unpopular with some staff members as a result of her activist stance in reporting improper treatment of clients. In context, her continued

reporting was courageous and is to be commended. The Department did not act opportunistically or inappropriately in accepting Mrs A's resignation, although it was unable to respond adequately to the problems presented by her situation.

13. There is no evidence to directly link Mr F with any act of harassment of any staff member, concerning the reporting of client abuse or gross neglect, nor is there any evidence to directly link Mr F with any act of client abuse or gross neglect. However, the evidence does establish that Mr F had attitudes unsuited to the duties of a person entrusted with the care of people with intellectual disabilities.

14. The broad issue of the funding and resources available at the Centre was within the Inquiry's jurisdiction insofar as it was related to the detection, prevention and occurrence of official misconduct. Many factors relevant to the occurrence of official misconduct at the Centre are related to funding issues.

15. Steps must be taken in an attempt to attract more suitable applicants for Residential Care Officer positions. It is a matter of concern that applicants for positions within the Division of Intellectual Disability Services are only required by law to disclose their criminal histories, where relevant, in relation to limited classes of offences.

16. Although improvements have been made in recent years, in many respects the training given to the Residential Care Officers at the Centre has been inadequate, particularly in regard to the provision of ongoing training.

17. The ratio of staff to clients at the Centre is the poorest in Australia, is inadequate, and inextricably linked to the prevalence of official misconduct. It is not only desirable that two staff members should be allocated to work with client groups in the circumstances outlined in section 20.5, but is necessary to ensure that an acceptable standard of care is afforded to them.

18. There is a degree of ignorance or misunderstanding amongst Centre staff about the right to obtain outside medical opinions for clients.

19. Some staff have participated in absurdly unhygienic practices which expose the clients, and themselves, to health risks.

20. The trade unions associated with the Centre have not gone beyond the limits imposed by law in their provision of assistance to union members accused of matters such as client abuse, although a perception to that effect has arisen in the minds of some staff. There was some degree of over-sensitivity on the part of management to possible union influence in such matters, and some officers were placed in a position where a conflict of interest arose by virtue of simultaneously holding managerial roles and union representative positions. There was a substantial degree of mutual support between the ranks of union representatives and the ranks of those officers involved in the preservation of the insidious institutional culture at the Centre.

21. There is no need for a further independent investigative body to be established for the purposes of inquiring into allegations of client abuse, as the Criminal Justice Commission and the Queensland Police Service are adequately equipped to carry out this role. The existence of a number of other agencies and mechanisms suggested in evidence as constituting "checks or balances" in terms of preventing, detecting or satisfactorily investigating acts of client abuse do not in fact constitute adequate safeguards. The only involvement of such bodies has been retrospective and ineffective.

22. There is a clear need for advocacy to be undertaken, by suitable persons and groups, on behalf of the Centre's clients, on individual and group bases.

23. Many of the conclusions expressed by the then Senior Constable Angel, of the Queensland Police Service, in his report dated June 1991 about investigations conducted at the Centre by the Juvenile Aid Bureau, were correct and have been validated by the evidence adduced at this Inquiry.

24. There is a need for periodic reviews of the Centre's operation to be undertaken in the future in order to ensure that the recommendations contained herein are implemented, and that appropriate standards are being maintained.

25. I reject without reservation the submissions made by Mr Plunkett of Counsel, who was granted leave to appear at the Inquiry's hearings on behalf of the Crown in right of the State of Queensland, first, to the effect that there has been a denial of procedural fairness by the Commission in the conduct of this Inquiry, and secondly, that the reporting of the Inquiry's proceedings by the media has been other than generally fair and accurate.

[Note: It is regrettable that in this report I have found it necessary to refer, at length, to a number of the submissions made by Counsel for the State of Queensland which, even after the granting of an extended time in which to deliver those submissions, were often without foundation and expressed in intemperate terms. In light of the Commission's statutory obligations to act independently, impartially, fairly and in the public interest, it is necessary to deal in detail with some of the more serious of those submissions in this report.]

RECOMMENDATIONS

1. The primary recommendation of this report, foreshadowed by me during the hearings, was to be that the problems at the Centre, including the instances of official misconduct as revealed by the evidence, were of such a nature that the only practicable solution was to close the Centre at the earliest possible opportunity. On 19 October 1994, prior to the release of this report, the Director–General of the Department informed the Chairperson of the Criminal Justice Commission that the Government had announced that it intended to close the Centre within the next three to four years. This decision is in accordance with the Government's long–term policy of deinstitutionalising people with intellectual disabilities, and the stated recognition that there exist more appropriate models of care than that provided by institutions such as the Centre. I endorse that decision, and recommend that all possible steps be undertaken to expedite the process of the Centre's closure. I also recommend, as set out below, that a number of safeguards and reforms be instituted and undertaken in the period prior to that closure so that the rights of the intellectually disabled clients are protected to the greatest possible extent. I note that deinstitutionalisation does not mean abandonment; happily, abandonment of clients is not on the Government's agenda. [Section 13.8]

In addition to the above, I recommend:

2. In relation to one incident, a report be made by the Director of the Official Misconduct Division, pursuant to Section 33 of the *Criminal Justice Act 1989* to the Chairperson of the Commission for consideration as to whether it is desirable and appropriate that a report be forwarded to the Director of Public Prosecutions with a view to such prosecution proceedings, as the Director considers warranted, against a Residential Care Officer. [Section 1.12]

3. In relation to one incident, a report be made by the Director of the Official Misconduct Division, pursuant to Section 33 of the *Criminal Justice Act 1989* to the Chairperson of the Commission for consideration with a view to determining whether a Misconduct Tribunal should exercise jurisdiction in respect of a Residential Care Officer. [Section 1.12]

4. The Department review and update its procedures relating to the treatment of gastrointestinal infections amongst the client population, and in so doing heed the advices, given in evidence, of Dr Cleghorn. [Section 10.6(E)]

5. The Department review its present first aid training procedures, with a view to ensuring that *all* officers at the Centre, whether working directly with people with intellectual disabilities or not, including those holding managerial positions, receive instruction in the application of appropriate first aid techniques. As part of this review, the Department should ensure that all officers working with people with intellectual disabilities receive continuing first aid training on a regular basis. [Section 11.11]

6. The *Queensland Coroners Act 1958* be amended to provide that the Coroner be required to hold an inquest into any case of the sudden death of an intellectually disabled person, where that person has died in a residential institutional facility operated and administered by the State, or other privately operated facility. [Section 11.15]

7. The Department take all steps that are open to it, in a thorough and conscientious effort, to ensure that Mr AJ is not further prejudiced or inconvenienced, as a result of being exposed to serious and disgraceful harassment by other staff members as a consequence of diligently performing his duties. [Section 15.3]

8. The Department endeavour to attract more suitable applicants for Residential Care Officer positions. The selection criteria for the Residential Care Officer position must be upgraded, with the imposition of a basic educational qualification, and improvements in salary and working conditions. [Section 19.2]

9. The *Criminal Law (Rehabilitation of Offenders) Act 1986* be amended so that applicants for positions, within the Division of Intellectual Disability Services, are required to disclose any and all contraventions of or failures to comply with any provision of law, whether committed in Queensland or elsewhere. [Section 19.4]

10. The Department adopt rigorous, fair and realistic standards of performance appraisal for staff, in order to lessen the occurrence of official misconduct at the Centre. [Section 23.2(C)]

11. Further improvements be made to the training provided to Residential Care Officers. In particular, an initial training period must be provided which, in all the circumstances, adequately prepares newly-appointed Residential Care Officers for their duties. Those officers must also receive appropriate formal instruction to ensure, as far as possible, that they hold the correct values and attitudes towards the intellectually disabled. The critical importance of the observance of the Department's procedures relating to the reporting of client injuries must be stressed in any training program. A realistic career pathway for Residential Care Officers must be created in order to attract more suitable applicants. All staff should receive continuing training, with attendance by Residential Care Officers at such training being compulsory. [Section 19.6]

12. The staff/client ratio be improved. The Department must take all steps open to it to ensure that two staff are allocated to work with the clients in each house at the Centre at all possible times, particularly during the morning and afternoon shifts. More stringent supervision of Residential Care Officers, by an increased number of direct line managers, is required. [Section 20.5]

13. As a matter of urgency, the Department take whatever steps are necessary in order to upgrade the facilities at the Centre's medical premises to an acceptable level. [Section 21.3]

14. The Department immediately take steps to improve the knowledge and practices of staff concerning basic hygiene matters. [Section 21.3]

15. The Department, or any other body charged with the duty of investigating allegations of staff misconduct, not be influenced or deterred in any way in the pursuit of necessary inquiries by considerations of possible industrial unrest or difficulties relating to the various trade unions associated with the Centre. [Section 22.3]

16. Disciplinary action be taken, as a matter of course, in each and every case where a staff member does not comply with the Department's procedures concerning the reporting of client injuries, or other suspicious occurrences. The recording of client injuries, by staff, must be improved. The Department must actually enforce, rather than simply implement, procedures and policies in this area. [Section 23.2(B)]

17. The investigation of allegations of client abuse or gross neglect at the Centre be carried out, to the greatest possible extent, by the appropriate bodies, namely, the Criminal Justice Commission and the Queensland Police Service. Injuries and other suspicious circumstances, when detected, must be reported immediately to management, and to those investigative bodies. Consultation and continual liaison must take place between the Department, the Commission and the police in order to ensure that more matters are investigated as satisfactorily as possible. No further independent investigative body is required. [Section 23.3]

18. The Department consult with concerned and reputable advocacy organisations in the field of intellectual disability, such as Queensland Advocacy Incorporated, with a view to ascertaining how the resources and abilities of such organisations can best be deployed for the benefit of clients. [Section 23.8]

19. The benefits of strong individual advocacy, for each client at the Centre, be recognised, and steps be taken to promote the achievement of that objective. [Section 23.8]

20. The Department liaise with this Commission with a view to implementing methodology allowing the undertaking of periodic reviews of the Centre's operations in order to ensure that the recommendations contained herein are implemented, and that appropriate standards are being maintained. As part of this liaison the aforementioned bodies are to determine, and consult with other bodies if necessary, as to the appropriate entity or entities to undertake such periodic reviews. [Section 23.10]

PART A
INTRODUCTORY AND BACKGROUND MATERIAL

CHAPTER 1
INTRODUCTION

1.1 APPOINTMENT TO CONDUCT AN INVESTIGATION

On 26 November 1993, I was appointed by the Criminal Justice Commission (the Commission) to undertake an investigation into allegations of official misconduct involving staff of the Basil Stafford Centre (the Centre), a residential facility providing accommodation and services to persons with intellectual disabilities. Generally, the Centre's residents have a "severe" or "profound" level of intellectual disability. Administrative responsibility for the Centre rests with the Department of Family Services and Aboriginal and Islander Affairs.

The investigation resulted from the receipt, by the Commission, of a number of complaints alleging that some of the Centre's residents had been subjected to abuse and gross neglect by staff members entrusted with their care, and that fellow officers who had reported such matters in turn experienced incidents of harassment and intimidation. The investigation largely proceeded by way of public hearings.

Before embarking upon an analysis of the evidence obtained, it is necessary to deal with some issues of an introductory or explanatory nature.

1.2 THE DEPARTMENT

The Department of Family Services and Aboriginal and Islander Affairs (the Department) provides and supports a range of services to people with intellectual disabilities, amongst others. The current Director–General is Ms Ruth Matchett. The Honourable Anne Warner MLA is the present Minister for Family Services and Aboriginal and Islander Affairs. The Department's structure is comprised of a number of divisions and decentralised regions. The 1992–1993 Annual Departmental Report (Ex 13 - Departmental Overview Material), commences with the Department's statement of purpose:

> The Department strives to achieve social justice and well–being for communities, families and individuals in Queensland's culturally diverse society. (p. 2)

1.3 THE DIVISION OF INTELLECTUAL DISABILITY SERVICES

The Division of Intellectual Disability Services (the Division) provides –

> . . . a wide range of services to assist people of all ages who have high support needs owing to severe or profound intellectual disability, or intellectual disability compounded by challenging behaviours which place limitations on their lifestyle options.

These services –

> . . . are based on recognition of the person with an intellectual disability as an individual with needs and aspirations as well as a member of their family and the wider society. (Annual Report, p. 36)

The use of the word "challenging", in this context, is euphemistic. The evidence before the Inquiry indicates that such so–called "challenging" behaviour may range from a potentially fatal eating disorder to a propensity to violently attack other clients or staff members. I do not make this observation with any intention depreciatory of the intellectually disabled, but rather in an endeavour to illustrate that the language employed by the Department and its officers often does not adequately convey the true picture of the Centre's operations, as has emerged from the evidence.

At the time of the hearings, the Divisional Head was Mr Jeffrey Whalan, who was appointed on 15 March 1993. His predecessor was Ms Robin Shepherd, who held similar positions between 1977 and January 1993.

The Division's program goal, as stated in the Annual Report, is:

> Increased individual competence and inclusion in community life for people with intellectual disabilities and support for them and their families in planning and realising their desired futures. (p. 36)

The Division's program expenditure for 1992–1993 was $60.1 million. An organisational chart of the relevant Departmental/Divisional structure appears at Figure 1.

1.4 THE BASIL STAFFORD CENTRE

The Brisbane South Region of the Division provides accommodation services and associated care to people with intellectual disabilities, in part, through a residential facility known as the Basil Stafford Centre (the Centre), situated at Wacol in Brisbane's west. The Centre itself, and its residents, staff and the services provided by it, are more comprehensively detailed at Chapter 7 herein.

At the date of the hearings, the Centre provided accommodation for approximately 122 persons, the majority of whom resided at the Centre permanently, although six beds were available from time to time on a respite basis. Respite care is the provision of residential services to an intellectually disabled person on a temporary basis. It appears to be an option utilised from time to time by families when they cannot, for a variety of reasons, manage the continual requirements of caring for a person with intellectual disabilities. The residents of the Centre, all of whom on the evidence would appear to have severe or profound levels of intellectual disability, have been referred to in this Inquiry as "clients". This is the term currently favoured by the Department when referring to the persons residing at the Centre; in previous times they have been referred to as "residents" or "patients". As the term "clients" was used extensively by witnesses in giving their evidence, for ease of reference I have adopted the use of that term when referring to the persons residing at the Centre. Seventeen of the clients were children aged 16 years and below. I have heard evidence that some clients had ongoing contact with their families, while others did not.

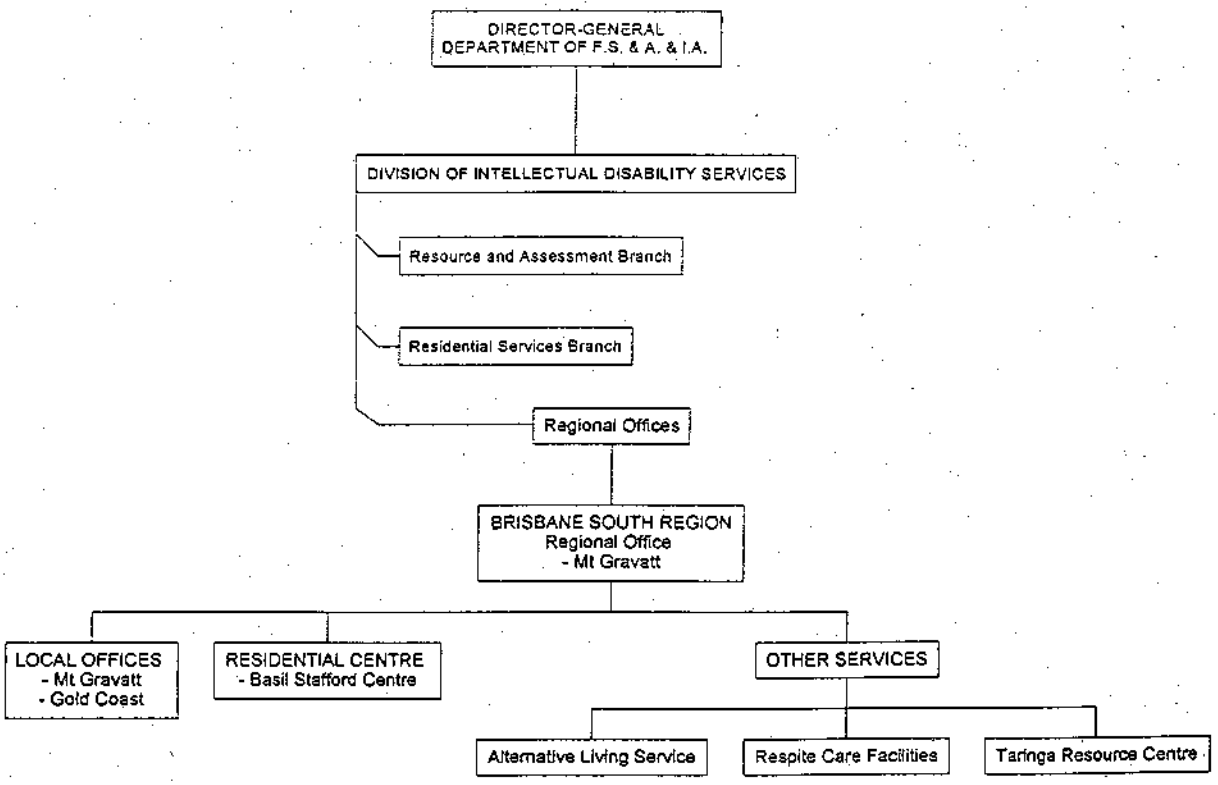

FIGURE 1 – DEPARTMENTAL/DIVISIONAL STRUCTURE

1.5 RESIDENTIAL CARE OFFICERS

The clients' primary care givers are known as Residential Care Officers (RCOs). It is axiomatic to observe that the regular duties of an RCO may, at times, be extraordinarily difficult, involving the full–time care and supervision of up to six profoundly intellectually disabled clients, who may be unable to personally attend to even their most basic needs. It is a vocation, as was commented upon during the hearings, to which not every person is suited. Mr Whalan remarked (T 5789):

> You have to have the right people with the right attitude. You have to select the right people, you have to train them well.

Between 1986 and 1993, Mr Gerry Rohan held various positions within the Division, such as the Program Director for the Centre, Centre Manager, and Regional Residential Services Co–ordinator. The duties associated with Mr Rohan's positions involved the general oversight of the Centre's functions and operations. For ease of reference, throughout this report, he is referred to as the Centre Manager. In his statutory declaration (Ex 346) Mr Rohan stated:

> RCOs were selected on the basis that applicants had what appeared to be a reasonable interest in working with people with an intellectual disability, had appropriate attitudes towards people with disabilities, had a reasonable background of 'life experience' and satisfactorily passed a police criminal history check . . . given the number of people seeking positions as RCOs, *selection could be and was fairly picky and choosy*. [My emphasis]

During the course of these hearings, I observed the evidence of many RCOs. In addition, I have heard, and read, large volumes of evidence concerning other RCOs, their abilities, and their relationships with the clients. While I endorse the aims inherent in Mr Rohan's statement, I can now only determine that the conclusion drawn by him, when applied to the RCOs employed at the Centre, is surprising. In so concluding, I would stress that I do not now resile from the opinions that I formed, and expressed, during the hearings (T 4679–80):

> . . . Over the many weeks that I have been sitting here, a large variety of witnesses have been called, including a large variety of staff, from senior management down to the people at the work face, the RCOs. I . . . have, at this point anyway, come to a very positive view in relation to many of those people. The work that is being done by those people, I think is a tribute to them, in circumstances which can only be described as very difficult. Staff go back, time and again, to cope with almost insurmountable difficulties, and when they see even a slight improvement in the client, they get an enormous lift from that, and that is a very proper and positive attitude.

None of that which appears in this report should be taken, in any way, to diminish the application of those comments to a large proportion of RCOs, and other personnel, working at the Centre. The valuable and supportive efforts of those persons are to be commended, and where appropriate, I have endeavoured to do so in this report. However, after expressing those opinions, I continued:

> On the other hand, I have seen staff here, RCOs, who in my view are a disgrace to the human race.

Prior to the hearings, it had become a matter of public record that a number of brutal assaults had been perpetrated upon some of the Centre's clients by the very persons entrusted with the care of those clients, namely, the RCOs. A brief of documents was tendered in evidence (Ex 421) which was related to the prior prosecutions of four RCOs.

1.6 A GROSS BREACH OF TRUST AND AN "UNFORTUNATE" PREGNANCY

On 8 February 1991, a former male RCO appeared before Judge Healy in the Brisbane District Court charged with an offence pursuant to Section 216 of the Criminal Code; unlawful abuse (carnal knowledge) of an intellectually impaired person. It was alleged that the offence occurred on a date unknown between 1 January and 1 March 1990. The defendant pleaded guilty, and was sentenced to a term of imprisonment. Upon subsequent appeal by the Attorney–General, his sentence of imprisonment was increased.

At the time of the offence, the RCO was employed at the Basil Stafford Centre. The victim of his assault, Client 1, was then aged 22 years, and had a profound level of intellectual disability, as well as associated physical disabilities. Her care, and indeed her entire welfare, was from time to time entrusted to the defendant as one of her RCOs. In sentencing Judge Healy remarked upon the seriousness of the offence saying, amongst other things, that the same involved 'a gross breach of trust'.

During the course of this Inquiry an injury sustained by the same client in August 1992 was investigated, and accordingly various records relating to Client 1 were tendered in evidence. Her medical file (C Ex C) reveals that in mid–June 1990 it was ascertained that Client 1 was then approximately 20 weeks pregnant. In a letter to the Centre, a consultant gynaecologist, in what is a stark euphemism given these appalling events, noted that Client 1 was 'unfortunately pregnant'. Client 1's medical file indicates that her pregnancy had not been detected prior to this time, despite regular medical examination by the Centre's nursing personnel and the attentions of various RCOs who were required to habitually assist Client 1 with even her most basic daily needs and functions. In September 1990, Client 1 gave birth to a male child. The file indicates Client 1's child was born with microcephaly, a condition linked to the prevalence of intellectual disability.

During the current hearings, a psychological assessment of Client 1 was admitted (Ex 85), prepared by Dr Attwood, then a senior clinical psychologist with the Department. In that assessment, dated 9 July 1990, Dr Attwood stated:

> From my observations and assessment of Client 1, her level of emotional maturity is one similar to an infant of under six months . . . I would expect her to trust adults in much the same way as an infant . . . she is profoundly intellectually disabled with a mental age equivalent to an infant of five months. On first meeting her, any ordinary person would be aware she is someone with a severe disability. Although she can follow simple instructions such as 'come here' she has not developed any effective means of spoken or gestural communication and has a level of emotional maturity similar to an infant.

1.7 A CONTINUOUS RAINING OF BLOWS

On 12 January 1991, another male RCO was arrested by Detectives attached to the Child Abuse Unit, Task Force (Crime Operations), Juvenile Aid Bureau, of the Queensland Police Service. He was charged with an offence pursuant to Section 343A of the Criminal Code; an unlawful assault occasioning bodily harm upon Client 2, on 17 May 1989. At the time of the alleged assault the defendant was an RCO at the Centre, and Client 2 was a resident. The matter did not proceed to trial, as the Crown Prosecutor decided not to proceed with the prosecution.

Thereafter, that allegation was further investigated by the Commission. As a result of a report by the Director of the Commission's Official Misconduct Division pursuant to what is now Section 39 of the *Criminal Justice Act 1989* (the Act) the Director–General of the Department preferred a charge of

official misconduct against the RCO arising from the same facts alleged in the police prosecution. That charge was heard and determined by Misconduct Tribunal member Mr Gaffy QC in March 1993. Mr Gaffy QC found the charge proved, and ordered that the RCO be dismissed from his position. In delivering his decision, Mr Gaffy QC made the following remarks, (at pp. 32–33 within Ex 421):

> It must be said that the nature of the assault that I have found to be completely satisfactorily proved to myself is, indeed, a very serious one. One cannot overlook that the behaviour described by a fellow officer [a witness] was indicative in my view of virtually a complete loss of control by [the RCO] in all the circumstances. It is not as if in a sudden burst of anger he lashed out and struck an individual, but here, there was a continuous raining of blows on an intellectually handicapped person with a mentality of 2 to 2½ years, of such a nature that it prompted the fellow RCO to intervene and to preserve the safety and welfare of the individual.
>
> There can be hardly envisaged a more damaging situation to a totally dependent person . . .

Mr Gaffy QC found, as an ancillary fact, that Client 2 received a fractured jaw as a result of the assault.

1.8 A LOSS OF TEMPER

On 13 August 1991, a male RCO appeared in the Magistrates Court at Inala in relation to a charge of assault occasioning bodily harm. The victim of that assault was Client 3, then aged 17 years, who resided at the Centre due to his severe level of intellectual disability. The defendant was a casual RCO, to whom Client 3's welfare was entrusted at the time of the alleged assault. The Prosecutor's facts sheet (QP9, within Ex 421) states:

> The defendant was interviewed by police and he readily admitted that the injuries occurred to the complainant [Client 3] that night at about 10pm. He told police that he was under stress as a result of a custody battle . . . and also that his mother was suffering a brain tumour . . . He was trying to get the complainant into bed when the complainant grabbed on to him. He lost his temper with the complainant as a result of this stress he was under and he struck the complainant two to three times to his mouth with a half-closed fist . . . [the complainant] had a number of lacerations to the inside and outside of his mouth, which required six stitches, and two missing front teeth and another broken tooth.

The defendant pleaded guilty to the charge. He was convicted, and ordered to perform 150 hours community service.

1.9 PROCEDURES FOUND WANTING

On 30 May 1991, a former female RCO stood trial in the Magistrates Court at Brisbane in relation to four charges of aggravated assault pursuant to Section 344 of the Criminal Code. The assaults were alleged to have occurred at a time when the defendant was employed as an RCO at the Centre, and were alleged to have been committed against two intellectually and physically disabled female clients (three counts) and an intellectually disabled male child (one count). The defendant was found not guilty of each count, and was discharged. She was dismissed from her employment with the Department as a result of charges unrelated to the Centre.

During the course of delivering his decision, the Magistrate remarked (at pp. 45–46 of the transcript of those proceedings, within Ex 421):

> Some interesting observations can be made of the witnesses . . . [Two fellow RCOs who gave evidence for the prosecution in relation to two of the alleged assaults.] They, if they are to be believed, were

aware of an assault committed by a fellow work mate and chose to take no action or report same for the reason of fear of the defendant. [One RCO] not only did not report the incident to her superior but first lied to the Police before later implicating the defendant. It is all very well to come to this court and indicate that in hindsight they should have reported the incident, however, the fact remains that both were in a special position in relation to the care of special people and saw fit not to report, again if it can be believed, a serious breach of conduct by a fellow worker . . . I was not satisfied as to their explanation of fear as to why a report was not made. Fear coupled with whatever else may have been involved but I do not accept fear alone . . . I find I cannot place reliance upon the evidence of [the two RCOs] to satisfy me [beyond a reasonable doubt].

Now, in relation to my decision I have purposely not made any findings adverse to the witnesses here today, that is, the witnesses from the Basil Stafford Centre. However, due to the fact that procedures to alleviate this type of alleged treatment of clients [ie assault] is found wanting, and should be remedied by the establishment itself.

1.10 THREE AREAS OF CONCERN

Although the language of the latter part of the ruling is somewhat stilted (it may not have been recorded or transcribed accurately), the Magistrate's concerns are clear, and indeed apposite in the context of the abovementioned charges and the evidence given to this Inquiry. They highlight three areas of concern; namely, the suspected abuse of clients, the intimidation of staff who may have been witnesses to such abuse, and the procedures relevant to the prevention of client abuse.

Those remarks were made in mid–1989. They are neatly analogous to the three primary 'terms of reference' of this Inquiry.

1.11 THE INQUIRY'S TERMS OF REFERENCE

A copy of a resolution adopted by the Commission, and dated 10 December 1993 (Ex 1) appears herein at Appendix 1. That resolution notes that the Commission received a number of complaints involving the Centre's staff which may constitute official misconduct within the meaning of that term pursuant to the Act (for a further explanation see section 4.5 herein). The Commission resolved to conduct an investigation into cases of alleged or suspected official misconduct by persons holding appointments at the Centre concerning:

- The abuse or gross neglect of clients; and
- The harassment or intimidation of those persons who have complained of or would be likely to complain of the abuse or gross neglect of clients;

for the period 1 January 1990 to 31 December 1993.

As part of the abovementioned investigation, the Commission also resolved to:

- Consider generally and make recommendations concerning any statutory provision, policy, practice or procedure relevant to the treatment of clients of the Centre or the reporting of treatment of such clients, and any related matters.

By a further resolution (Ex 5) the period under investigation was further extended to include the period from 1 January 1985 to 31 December 1993.

1.12 THE STRUCTURE OF THIS REPORT

To facilitate matters, the Commission's resolutions will throughout this report be referred to as the three limbs of the Inquiry's 'terms of reference', namely the abuse or gross neglect of clients, the harassment or intimidation of staff, and procedural issues relating to the treatment of clients.

The report is divided into four sections, Parts A–D. Part A deals with matters of introductory and background relevance to the Inquiry. Parts B–D correspond, respectively, to the abovementioned three distinct facets of the Inquiry's terms of reference and the evidence presented to the Inquiry in relation to those issues. The specific incidents of alleged client abuse and gross neglect examined by the Inquiry have been treated separately in Part B because clarity requires that the evidence relevant to each incident be dealt with in some detail. My conclusions and recommendations are contained throughout the report, and are collated in the preceding summary.

In the interests of those who may stand trial or face a charge of official misconduct as a result of my recommendations, I have arranged for the preparation of separate and confidential reports for provision to the Director of the Commission's Official Misconduct Division, detailing my conclusions and findings upon the relevant evidence, so that he, in compliance with Section 33 of the Act, may make reports to the Chairperson of the Commission:

(a) For consideration as to whether it is desirable and appropriate that a report be forwarded to the Director of Public Prosecutions with a view to such prosecution proceedings, as the Director considers warranted, against one RCO; and

(b) For consideration with a view to determining whether a Misconduct Tribunal should exercise jurisdiction in respect of one RCO.

Accordingly, the two brackets of evidence relevant to those reports are not discussed herein for the obvious purpose of avoiding prejudice of any forthcoming hearings.

Where, in this report, the official transcript of the Inquiry's proceedings or the exhibits tendered in evidence before the Inquiry are cited or otherwise referred to, the relevant reference is given in brackets in the text. The abbreviation "T" refers to open transcript, and "CT" confidential transcript, while "Ex" refers to open exhibits and "C Ex" confidential exhibits.

In order to preserve the privacy of past and current clients of the Centre I have adopted a system of identification referring to such persons as Client 1, Client 2 and so on. Analogous references have been adopted in referring to any client's family members, or other persons, where to name such persons might lead to a client's identification.

Similarly, in keeping with the non–publication orders made by me throughout the hearings (see section 4.4) the majority of the witnesses who appeared at the hearings are referred to in this report by the adoption of letters of the alphabet, and their appropriate title. As will become apparent to any reader of this report, a situation of a most insidious nature existed at the Centre, which understandably was of concern to many of the witnesses appearing before me, some of whom sought assurance as to the confidentiality of their identity and were permitted to give evidence in closed sittings of the Inquiry. This methodology has not been employed in cases where it would be meaningless to do so, as in situations where only one person held, or holds, a particular position and thus can be readily identified, or in the case of police or medical witnesses, or witnesses who gave evidence of a brief, formal or non–contentious nature. A full index of the relevant witnesses will be provided to the relevant parties and authorities in due course.

Also, in the public interest, some material previously the subject of non-publication orders is included or referred to in this report, for the purpose of completeness, and in order to enhance the coherence of the report and my recommendations and the discharge of my functions and responsibilities.

1.13 ALLEGATIONS OF CLIENT ABUSE AND GROSS NEGLECT

It is pertinent to note, at the outset, the inherent difficulty involved with investigating allegations of the abuse or gross neglect of persons with an intellectual disability. The reasons for this difficulty are manifold, and include the usual incapacity of the victim to give evidence as to what transpired, the fact that such atrocities often occur in the absence of other witnesses regarded as "capable" by the law, the delay that may occur between a client sustaining an injury and circumstances of suspicion arising and so on. These difficulties are multiplied greatly when allied to other factors such as were also alleged in evidence, at times, during this Inquiry; for example, a belief by staff of managerial indifference to such allegations, an institutional culture of staff "non-reporting", and a perception by staff of an exposure to reprisals should reporting occur.

As is discussed more fully at Chapter 3 herein, prior to and during these hearings the Commission received notification, from various sources, of many complaints of client abuse and gross neglect, and staff harassment, concerning the Centre and other establishments. From time to time, in the course of interviewing witnesses and inspecting relevant records, Counsel Assisting the Inquiry and Commission staff uncovered further issues of concern relevant to the Inquiry's terms of reference. In those circumstances, I readily concluded that it would be impossible to attempt to examine each and every complaint referred to the Commission, in the context of the public hearings, and still usefully investigate and consider all the major issues raised within the terms of reference. Reasons of time and resources; not only of the Commission, but also of the Centre, the Department and the parties granted leave to appear at the hearings, dictated that the process of public inquiry was not the most appropriate method of investigating each and every complaint received by the Commission.

Accordingly, only six complaints of alleged instances of client abuse and gross neglect were selected for investigation by way of public inquiry. These six incidents were selected on the basis of their perceived illustrative and/or representative nature in the context of the major issues arising from the Inquiry's terms of reference. That process of selection should not be taken, by any person, as in any way discounting the other complaints made to the Commission which, I have no doubt, are of great and very real concern to the individual complainants and should be of equal concern to us all. Each and every complaint and matter has been referred to the Commission's Official Misconduct Division for consideration, investigation if appropriate, and ultimate reporting, in accordance with the Commission's statutory obligations to investigate alleged official misconduct. In this way, the matters raised by the various complainants will not go unattended.

I should note, in this context, that at an early stage of the hearings Counsel Assisting indicated for the record (T 1443) that if any person, be they counsel appearing or a member of the public, believed that any other matter should be publicly examined, they were free to raise those concerns before the Inquiry. I believe, as the Inquiry unfolded, that there was a general consensus amongst the parties as to the correctness of the decision to limit the public hearings to the six specific incidents referred to herein.

1.14 ABOUT MY FINDINGS AND RECOMMENDATIONS

There may be those who read this report, or parts of it, and comment that, in relation to the resources invested in the conduct of the Inquiry, only a relatively small number of recommendations for criminal

and disciplinary charges have resulted. Such comments would be naive and over-simplistic, and would ignore the width of the terms of reference of the Inquiry, the great bulk of the evidence given at the hearings, and the more general findings, observations and recommendations contained herein. Four of the six specific incidents of alleged abuse and gross neglect of clients which were investigated have not resulted in the recommendation that criminal or disciplinary charges against any officer should result; nevertheless, the comprehensive examination of those allegations was of invaluable assistance to me in terms of providing required information about the operations of the Centre, the lives of its clients and staff, and the multiplicity of complex issues raised by all three limbs of the terms of reference. On many occasions during the course of the hearings, it was noted that issues such as client abuse, staff harassment, or the adequacy of a departmental procedure, could not be sensibly examined in isolation. I am satisfied that sufficient evidence was adduced during the hearings to place me in an appropriate position to discharge the duties incumbent upon me, presiding as I was over the investigation, and the requirement to present this report. There may be those who became involved, either directly or indirectly, with the investigation, who now complain that the investigative process was overly intrusive or costly. I cannot agree with such sentiments. Conclusions of such a nature would only be appropriate if the evidence, and recommendations arising from this Inquiry, fall on deaf ears.

Given the entirety of the evidence heard by the Inquiry, and the fallibility of human nature, it would be naive in the extreme to anticipate that the Inquiry, and this subsequent report, will lead to the ideal situation of institutions such as the Centre being free in future of allegations, or indeed the reality of criminal behaviour and other misconduct by staff. The type of behaviour by staff revealed in this Inquiry is not unique; there have been many instances of similar behaviour in like institutions in the past, and I dare say there will be again. The care of the intellectually disabled is not an area with precise boundaries, to which neatly defined answers can be given to the problems that arise. Nevertheless, the recommendations later expressed within this report are made in an attempt to address what I perceive to be the most important areas where improvements, having regard to practical considerations, can be made in an endeavour to lessen the prevalence of such misconduct, and to detect the same, and the identity of the perpetrators, should it again occur.

It is my fervent hope that the consideration and adoption of these recommendations by the appropriate bodies will be of benefit to all persons associated with the provision of services to the intellectually disabled within Queensland, including the Department and all of its relevant officers, but most importantly, the intellectually disabled themselves.

CHAPTER 2
A PERSPECTIVE

At a very early stage of this Inquiry, the Divisional Regional Manager, Mr Geoff Ross, gave evidence describing the Centre's residents. In the course of his examination the following was said (T159):

> Mr Ross: . . . In a less civilised society these people would end up being derelict and just die.
> The Commissioner: Indeed, I think it has been said, quite truly Mr Ross – would you agree – that the degree of civilisation in any community can be measured by the way that it cares for its disadvantaged people?---It certainly has been said. Yes . . . I do agree with that.

The history of society's treatment of the intellectually disabled does reflect, to a large extent, the views expressed within the abovementioned comments. The Department advised:

> Individuals with a conspicuous intellectual disability have been treated with scorn and persecution throughout much of history. Until recently they were subject to euthanasia (they were the first group of people to be exterminated in Nazi Germany) or scientific experimentation such as in the studies of radiation conducted in the USA in the 1950s. In the 19th Century large institutions were built for those who could not cope with the industrialised society, i.e. those with a disability or mental illness. These institutions were usually given the title of hospital and until the 1970s most people with an intellectual disability lived in large hospitals under the care of medical doctors and nurses. This included those with a mild level of disability, as it was assumed the person was ineducable, socially incompetent, prone to promiscuity and required institutional care. A variety of terms were created to describe people with an intellectual disability starting with the terms "idiots", "morons" and "imbeciles" to be replaced by the term "mental deficiency", "mentally subnormal", "mental retardation". The term used to describe the same people today is "people with an intellectual disability" . . .
>
> Since the 1960s there has been a radical rethink of what intellectual disability and indeed other disabilities are all about. New principles and concepts are having a major influence on attitudes and on the modification of existing services and the development of new ones . . .
>
> It is now recognised that people with an intellectual disability have a lot of similarities to their fellow citizens, a fact that has been overlooked in the past as a result of over-emphasising "differences". People with an intellectual disability have rights, needs, interests and capacities, and are able to participate in ordinary community life with appropriate support. (Ex 13, Departmental Overview Material, Vol. 3 – *Historical Overview of Developments in the Field of Intellectual Disability)* , pp. 1–5.)

Those views are now enshrined within Queensland statutory law, and various international declarations which Australia has ratified. The Queensland *Disability Services Act 1992* provides, inter alia:

> 9(1) People with disabilities have the same basic human rights as other members of society and should be empowered to exercise their rights.
>
> (2) People with disabilities have the right to –
>
> a) respect for their human worth and dignity as individuals; and
> b) realise their individual capacities for physical, social, emotional and intellectual development; and
> c) services that support their attaining a reasonable quality of life in a way that supports their family unit and their full participation in society; and
> d) participate actively in the decisions that affect their lives, including the development of disability policies, programs and services; and

e) any necessary support, and access to information, to enable them to participate in decisions that affect their lives; and

f) receive services in a way that results in the minimum restriction of their rights and opportunities; and

g) pursue any grievance in relation to services without fear of the services being discontinued or recrimination from service providers; and

h) adequate support to enable pursuit of grievances in relation to services.

(3) This section applies regardless of the age of the person with the disability or the origin, nature, type or degree of the disability.

(4) Services, and the information necessary to support a right, should be provided in a way that is appropriate taking into account the disability and the person's cultural background.

(5) Subsection (2) does not limit subsection (1).

The 1971 United Nations Declaration on the Rights of Mentally Retarded Persons contains the following tenets:

1. The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings.

2. The mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential.

3. The mentally retarded person has a right to economic security and to a decent standard of living. He has a right to perform productive work or to engage in any other meaningful occupation to the fullest possible extent of his capabilities.

4. Whenever possible, the mentally retarded person should live with his own family or with foster parents and participate in different forms of community life. The family with which he lives should receive assistance. If care in an institution becomes necessary, it should be provided in surroundings and other circumstances as close as possible to those of normal life.

5. The mentally retarded person has a right to a qualified guardian when this is required to protect his personal well-being and interests.

6. The mentally retarded person has a right to protection from exploitation, abusive and degrading treatment. If prosecuted for any offence, he shall have a right to due process of law with full recognition being given to his degree of mental responsibility.

7. Whenever mentally retarded persons are unable, because of the severity of their handicap, to exercise all their rights in a meaningful way, or it should become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights must contain proper legal safeguards against every form of abuse. This procedure must be based on an evaluation of the social capability of the mentally retarded person by qualified experts and must be subject to periodic review and to the rights of appeal to higher authorities.

The concepts expressed within these instruments are commendable, and are to be endorsed without reservation. Unfortunately, the evidence presented to this Inquiry demonstrates that mere enunciations of principle, such as the above, are not in themselves an adequate safeguard, for the rights of the intellectually disabled to which they refer. This Inquiry has heard evidence of some of the Centre's residents being subjected to violent and loathsome assaults, and less than adequate supervision and care, by a not insignificant number of their care givers who were frequently incompetent and whose attitudes toward the care of clients at times exhibited a stance of indifference, and even an unwillingness to act

decently. While these remarks do not apply to a significant number of RCOs, the Inquiry has heard evidence of attitudes which reasonably could be suggested to have much in common with outmoded and misguided beliefs concerning the intellectually disabled, which of course are repugnant to the precepts of modern thinking.

The dichotomy between the written expression of admirable aims concerning the care of people with intellectual disabilities and the official policies and procedures drafted with due deference to those aims, and the realities of the actual lives of some of those persons was glaringly apparent from the earliest days of this Inquiry. The oral evidence and exhibits illustrate that while the Government and the Department have implemented a range of policies, procedures and strategies aimed at the prevention, reporting, detection and investigation of abuse or neglect of clients, abuses and neglect of clients have still undoubtedly occurred. Queensland Advocacy Incorporated have submitted to me that such abuses and neglect will be likely to continue to occur at the Centre, due to its institutional character. I cannot disagree with that submission.

The aforementioned division is one in the nature of "theory" versus "practice"; a distinction which, in various forms, permeated the evidence given to the Inquiry and which will arise at times within this report. A general evaluation of these practices, policies and strategies falls squarely within the Inquiry's third term of reference, and is necessary for any informed contemplation of how practical effect might be given to the somewhat idealistic aims contained within instruments such as the *Disability Services Act* and the United Nations Declaration. As Brennan J observed in the High Court decision of *The Secretary, Department of Health and Community Services v J.W.B. and S.M.B.* (1992) 175 CLR 218 [Marion's case], in the context of discussing the application of general legal principles to issues involving the intellectually disabled, at page 277:

> The history of intellectually disabled people contains a surfeit of examples of degrading treatment administered under laws which reflected the standards of the time – standards which were a reproach to the civilisation then enjoyed.
>
> If equality under the law, human rights and the protection of minorities are more than the incantations of legal rhetoric, it is in this area of the law that they have real work to do.

CHAPTER 3
THE BACKGROUND TO THE INQUIRY

3.1 THE COMPLAINT OF MRS A

In October 1990, Mrs A, then employed as an RCO with the Department and working in an Alternative Living Service house, contacted the Commission with various complaints. Mrs A alleged that acts of physical abuse and neglect had been committed by RCOs upon clients at the Centre. She also complained of a lack of action by her superiors to whom she reported her concerns, and that she had been subjected to threats and other forms of harassment as a result of making such complaints.

Prior to this time, Mrs A had raised these complaints in a personal interview with the then Divisional Head, Ms Shepherd. At that time Mrs A provided Ms Shepherd with a one-page typed statement (Ex 331, annexure H), in which she stated:

> I have gone home from work many times in tears and feeling so helpless. I am frustrated that I am unable to protect clients from this abuse. I feel guilty for not reporting this every time I see it, but I am also frightened of what will happen to me if I do report such things. I have reported such things in the past and it only seems to make the matter worse. I can no longer work under such conditions, but I am so concerned about the clients' well-being, and I no longer know what to do, or where to turn. There is not one working day that goes by where I am not in tears, feel sick to the stomach, or have headaches, and I feel that it is caused from all of the frustrations I have regarding my job.
>
> Intellectually handicapped people have their disability to cope with, and I feel that I as an RCO, am employed to help them as much as I can, and I do not see that abusing anyone is a form of help.
>
> There are many more things that I have seen but I would prefer not to think about them as they make me sick and feel disgusted with the Department, and with myself for allowing them to occur.
>
> I am sure that a lot of parents admit their children to our Department, believing that we (staff) will care for and protect their children and improve their quality of life, but I feel that sometimes the client's home becomes a prison where they can be abused in private.
>
> The present system needs to be changed so that staff such as myself, who care about intellectually handicapped people can speak out when something is wrong (abuse) without being afraid of other staff, and receive support from their superior officers.

Mrs A also wrote to the Minister and other relevant parties, and circulated a further letter ventilating her concerns (Exs 34 and 20 respectively). Upon receipt of Mrs A's complaints, both the Department and the Commission commenced making inquiries. Pursuant to the responsibility imposed by what is now Section 37(2)(b) of the Act, the Acting Director-General of the Department also formally referred notice of Mrs A's allegations to the Director of the Commission's Official Misconduct Division, by way of a letter dated 31 December 1990 (Ex 38), as those allegations raised a suspicion that official misconduct had occurred.

Mrs A appeared as a witness before the Commission's hearings; her evidence, the relevant submissions and my conclusions are dealt with separately herein at Chapter 13.

3.2 A MOTHER COMPLAINS

On 2 November 1990, Mrs B went to the Eight Mile Plains Special School to collect her son Client 4, a student of the school, who was then aged 11 years. Client 4 has a severe intellectual disability and some autistic behaviour problems. He cannot speak. At that time he was residing at the Centre as a respite client. His mother later completely withdrew him from the Centre's care.

Upon collecting her son from school Mrs B became aware of a number of bruises on her son's body, of apparent varying degree and age. She brought the matter to the attention of staff at the Centre, and her local medical practitioner. Mrs B also made a complaint to the police, mentioning not only the bruising injuries to her son, but her concerns with the medical and general level of care provided by the Centre. These matters, and other allegations relating to Client 4, were examined by the Inquiry in the course of its public hearings; see Chapter 10 herein for a detailed summary of the relevant evidence and findings.

Mrs B's complaints were originally investigated by detectives attached to the Juvenile Aid Bureau (JAB) of the Queensland Police Service. Client 4's situation was also referred to a Royal Childrens' Hospital Suspected Child Abuse and Neglect team (SCAN). The police undertook a number of interviews and inquiries but were unable to assemble sufficient evidence to support any charges relating to Client 4's injuries.

3.3 THE JUVENILE AID BUREAU INVESTIGATIONS

During the course of investigating the bruising injuries sustained by Client 4, the JAB detectives were led to other areas of complaint. In early December 1990, a Task Force of four officers was formed to work full–time on an extensive investigation of alleged client abuse at the Centre. In all, the detectives interviewed some 50 persons, including both suspects and complainants, and parents of some of the clients. Their inquiries included a lengthy interview with Mrs A, conducted on 2 January 1991. Throughout the police investigation the Commission was kept apprised of, and monitored, the progress of matters.

As a result of the police inquiries prosecutions were commenced against two RCOs (see sections 1.7 and 1.9), for alleged offences of unlawful assault upon clients. Both criminal prosecutions were unsuccessful.

3.4 SENIOR CONSTABLE ANGEL'S REPORT

At the conclusion of the JAB investigation, in June 1991, Senior Constable Jeffrey Angel (who held the rank of Sergeant at the time of the hearings) prepared a report (Ex 406), as one of the investigating officers, for submission to his superior officers and the Commission. In his report, Senior Constable Angel drew attention to a number of issues relevant, in his opinion, to the welfare of clients residing at the Centre:

- The existence of an institutional "culture" which lent itself to information being withheld by persons intent upon concealing client abuse.

- A hierarchy of old staff resistant to change, and a strong union presence, at the Centre combined to curtail any effective reporting of client abuse.

- An atmosphere of perceived intimidation leading to a reluctance on the part of staff members to assist the JAB investigations.

- Concerns as to the level of attention given to clients in terms of their personal safety (supervision, injury protection and safety), personal hygiene, privacy and medical care.

- Possibly inadequate staffing numbers and supervision arrangements.

- Allegations of less than full co–operation given to the police officers, in the conduct of their investigations, by senior staff.

- Concerns expressed by parents of some clients about their children's welfare.

- The majority of RCOs performed their duties admirably and generally performed a difficult task with compassion and forthrightness.

Senior Constable Angel was of the opinion that abuse could still be occurring at the Centre. He was called as a witness in the latter stages of these investigative hearings, and his evidence is dealt with more comprehensively at section 23.9.

3.5 FURTHER INQUIRIES BY THE COMMISSION

At the conclusion of the JAB investigations the Commission obtained from the Queensland Police Service all relevant records that had been gathered, including transcripts of interviews and statements. The Commission also commenced further independent inquiries in relation to the allegations raised by Mrs A, and others, which, in part, resulted in an RCO being brought before a Misconduct Tribunal and dealt with as mentioned in section 1.7.

During the course of these inquiries a number of further incidents and allegations came to light, involving the possible abuse or gross neglect of clients. These allegations included, amongst many others, the six specific incidents eventually examined in evidence before the Commission's public hearings, namely:

1. An alleged assault upon a child client, by an RCO, in late 1990;

2. Bruising injuries sustained by a client in December 1990;

3. The injuries sustained by Client 4 in 1990 and 1991;

4. The accidental death of a child client in April 1991;

5. Burn injuries sustained by a female client in January 1992; and

6. An unexplained head injury sustained by Client 1 in August 1992.

With the exception of the first matter, which was only ever reported to the JAB officers, all of these matters were initially investigated by the Department and referred to the police. No recommendations for criminal or disciplinary charges resulted from either the Departmental or police investigations.

During the Commission's investigations, there also emerged evidence that a number of staff, including senior Divisional officers, had been subjected to what they perceived to be harassment or intimidatory action directed towards them as a result of their adopting an active stance in relation to matters of client rights. This alleged harassment took many forms, including being abused or shunned by co-workers, receiving nuisance or obscene telephone calls and mail, and having personal property such as motor vehicles interfered with or damaged.

3.6 "THUMP THERAPY"

As well, during interviews, a number of RCOs spoke of work practices suggestive of client abuse, or at least of a serious disregard of the clients' needs and welfare, by some RCOs at the Centre. For present purposes, one example will suffice. There are many others, some of which are referred to in other discussions of evidence herein.

RCO Ms C was interviewed by JAB officers on 14 January 1991. A transcript of her interview was admitted as Ex 93. In that interview, Ms C indicated that she had heard the term "thump therapy" used by a staff member in the context of 'hitting clients' (p. 7). She also said that staff members frequently used terms such as "goobs", "retards" and "brain dead" when referring to their clients (pp. 7–8).

3.7 A CLEAR PICTURE OF CONCERN EMERGES

As all parties granted leave to appear before the investigative hearings could attest, it was common for some witnesses, when giving evidence about matters of client abuse and neglect, to include in their evidence various allegations either directly or indirectly implicating other staff members in such practices. Counsel for the State of Queensland, Mr Plunkett, submitted to me that there had in fact been 'a veritable blizzard of allegation and counter allegation' during the hearings. A perusal of the statements and transcripts, (most of which were later tendered in evidence), resulting from the various inquiries of the Queensland Police Service, the Department and this Commission indicated that the occurrence of this phenomenon was not exclusively limited to oral evidence given before the Commission's investigative hearings; witnesses appeared to have routinely made similar claims during questioning preceding the hearings.

From all of the above matters, a clear picture emerged, comprised of a number of indisputable facts. First, a number of assaults and incidents of neglect had been perpetrated upon some of the Centre's intellectually disabled residents. Secondly, many allegations had been made that some incidents of assault and neglect were perpetrated against clients by the staff themselves, some of whom were alleged to participate in conduct, or to hold attitudes, completely at odds with the philosophical and practical aims of the Department and the Division in relation to the support of people with intellectual disabilities. Thirdly, little success, both in terms of identifying perpetrators and stemming the tide of allegations of abuse and neglect, had been made by conventional methods of investigation undertaken by the Department, a special JAB Task Force of experienced officers of the Queensland Police Service, and most recently, the Commission. Fourthly, the alleged occurrence of client abuse and neglect appeared to be perceived, by many staff, to be linked to an institutional culture of non-reporting of such behaviour, and a fear of reprisals being exacted upon those who "broke ranks" within the atmosphere of conspiratorial silence concerning such behaviour. Finally, there were reports from staff members, who had come forward on behalf of clients, that they had consequently been harassed.

The above facts presented a bleak and unpalatable scenario; not only for the lives and welfare of the Centre's clients who were directly affected by such matters, but also for those staff members who performed their duties with compassion and diligence. As I have found herein, such staff appear to be

in the majority at the Centre. Nevertheless, such a scenario as described above unfortunately reflected adversely upon the standing of all persons associated with the Centre.

Added to this, of course, is the considerable disturbance that must have resulted to the parents, relatives and friends of those residing at the Centre, and indeed, to all right–minded members of the community upon hearing allegations of the most serious assaults being committed upon intellectually disabled persons in a Government–funded institution, by the public servants entrusted with their welfare.

Within this report, at section 1.14, I have already referred to what I have termed the fallibility of human nature, and how one must expect, from time to time, that isolated incidents of client abuse and neglect will occur at institutions such as the Centre. However, the Department, this Commission, and indeed the public, should not adopt the attitude that such occurrences should be accepted or tolerated; to my mind, there is no such thing as an "acceptable" or tolerable level of abuse or neglect in the care of the intellectually disabled.

The consistent pattern and the frequency of serious allegations of misconduct arising from the Centre's operations would have been, I have no doubt, a cause of the most serious alarm to all parties concerned including the public at large.

It was against this background that the Commission resolved to further its investigation, by way of public hearings, into the allegations of official misconduct concerning the Centre.

CHAPTER 4
THE ESTABLISHMENT OF THE INQUIRY AND THE INVESTIGATIVE PROCESSES AND JURISDICTION OF THE COMMISSION

4.1 THE ESTABLISHMENT OF THE INQUIRY AND ITS TERMS

As is noted in section 1.11, I was appointed by a resolution of the Commission (Appendix 1), as an 'independent qualified person' to conduct the Commission's investigation into allegations of official misconduct concerning the Centre. The terms of the Inquiry are apparent from the Commission's resolutions and relevantly provide:

> The Commission has resolved:
>
> (1) ...
>
> (2) to conduct an investigation into cases of alleged or suspected official misconduct by persons holding appointments at the Basil Stafford Centre concerning:
>
> (a) the abuse of clients;
> (b) the gross neglect of clients;
> (c) the harassment or intimidation of those persons who have complained of or would be likely to complain of the abuse or gross neglect of clients;
>
> for the period 1 January 1985 to 31 December 1993;
>
> (3) as part of the investigation referred to in paragraph (2) hereof to consider generally and make recommendation concerning any statutory provision, policy, practice or procedure relevant to the treatment of clients of the Basil Stafford Centre or the reporting of treatment of such clients, and any related matters; and
>
> (4) to engage the services of an independent qualified person pursuant to section 2.55 to the Act, that person being THE HONOURABLE DONALD GERARD STEWART to conduct the investigation and to report thereon to enable the Commission, the Commissioners and the officers of the Commission to discharge the functions and responsibilities imposed by the Act.

4.2 COUNSEL ASSISTING AND THE COMMISSION STAFF

Pursuant to what is now Section 91 of the Act, Mr Mark Twain O'Sullivan, a member of the Queensland Bar, was engaged by the Commission as Counsel Assisting me in the conduct of hearings relating to the investigation. Legal officers of the Commission instructed Mr O'Sullivan throughout, and also assisted police officers attached to the Commission in the undertaking of the necessary inquiries prior to and in connection with the hearings. At this point it is timely that I recognise the assistance afforded to me and the above persons by various other Commission personnel, including the support staff, hearing orderlies and security officers, whose efforts greatly facilitated the conduct of the hearings and the completion of all ancillary tasks.

4.3 THE DECISION TO HOLD PUBLIC HEARINGS

I have already noted the grave character of the allegations of misconduct surrounding the Centre that demanded the Commission's assessment and investigation. I have referred to the perception of many persons holding positions absolutely critical to the effective investigation of such allegations, that the reporting of client abuse and neglect was frustrated by an institutional culture of non-reporting and fear of reprisals. Indeed, on several occasions during the hearings Counsel appearing on behalf of the State of Queensland, Mr Plunkett, admitted that the problem of harassment of potential and relevant witnesses did in fact exist at the Centre. Mr Plunkett also acknowledged the debilitating ramifications of such a situation. The following exchange took place at an early stage of the Inquiry (T 1438):

> Mr Plunkett: . . . possibly the only opportunity, the only institution in this State specifically set up under the statutory scheme which can really deal with this matter of harassment is this Commission.
>
> The Commissioner: Yes.
>
> Mr Plunkett: Now, if this Commission is not successful, then it will be very, very bad for the future of the Division. So, the Division of the Department are earnest in its endeavours that this Commission fully do its job on harassment and fully do its job on any other matters such as an abuse, because we are - - -
>
> The Commissioner: There is no doubt, is there, that there has been harassment?
>
> Mr Plunkett: No doubt at all, your Honour, and that has been from the lowest of the ranks all the way up to senior management and if this Commission does not break it, then it may never be broken and that would be a serious matter for the operation of the Basil Stafford Centre. So, if the Department and the State is as earnest as is the Commission clearly earnest in getting to the bottom of it and smashing it, it can be done. Now, similarly with regard to abuses. If there are people out there that have abused in the past, that have demonstrated any propensity at all to abuse, then the Department and the Government does not want them there.

Mr Plunkett's comments contain an inherent recognition of the fact that other bodies, such as the Queensland Police Service and the Department, have been unable to investigate the allegations of harassment to any satisfactory resolution.

Accordingly, it would seem to me that had the Commission merely undertaken an investigation similar in nature to a standard police investigation, and I speak in this context of the private interviewing of witnesses and assembly of documents and so on, such an investigation would have undoubtedly encountered the very same and significant difficulties previously found by the Department and the Queensland Police Service in their inquiries. Any hope for the effective investigation and resolution of the allegations may have been thwarted, to the dissatisfaction of all parties concerned, save for those responsible for such acts of misconduct. In addition, public disquiet surrounding the allegations of misconduct at the Centre would not have been allayed.

By reference to the issues raised in the aforementioned resolution, allied to the concept of holding investigative hearings, I considered that all matters of concern could best be addressed. Also, and significantly, given that some persons had been nominated as subjects of the most grave manner of allegations, that is, the abuse of the intellectually disabled, such persons could then be properly informed of the matters under inquiry by the Commission and afforded an opportunity to obtain legal advice and representation and to be heard in that regard. The holding of investigative hearings also enabled the makers and the subjects of allegations to have their evidence fully tested by cross-examination.

Moreover, the conduct of investigative hearings afforded the opportunity for legal representation of certain groups, beyond the right of representation accorded to individual witnesses. For example, various rights of representation throughout the inquiry were accorded to the Crown in right of the State of Queensland, trade unions affiliated with the Centre, Queensland Advocacy Incorporated – a public interest group providing advocacy services for the disabled, and the statutory offices of the Public Trustee and the Legal Friend, who perform certain statutory duties in relation to some persons with intellectual disabilities. (The appearances by Queensland Advocacy Incorporated are more fully discussed at sections 5.5 and 5.6.)

The Commission under the Chairmanship of The Rt. Hon. Lord Justice Salmon in its *Report of the Royal Commission on Tribunals of Inquiry, 1966,* (Great Britain, 1966) made the following comments at paragraphs 115–116:

> As we have already indicated it is, in our view, of the greatest importance that hearings before a Tribunal of Inquiry should be held in public. It is only when the public is present that the public will have complete confidence that everything possible has been done for the purpose of arriving at the truth.
>
> When there is a crisis of public confidence about the alleged misconduct of persons in high places, the public naturally distrusts any investigation carried out behind closed doors. Investigations so conducted will always tend to promote the suspicion, however unjustified, that they are not being conducted sufficiently vigorously and thoroughly or that something is being hushed up. Publicity enables the public to see for itself how the investigation is being carried out and accordingly dispels suspicion. Unless these inquiries are held in public they are unlikely to achieve their main purpose, namely, that of restoring the confidence of the public in the integrity of our public life. And without this confidence no democracy can long survive.

As a person with some experience in the conduct of such inquiries, in the present context I entirely agree with these observations.

The majority of the Inquiry's sittings were held in public session. Pursuant to Section 90(1) of the Act, hearings of the Commission are to be open to the public unless the Commission orders that the hearing should be closed. By subsection (2) the Commission may order that a hearing be closed to the public only if the Commission considers an open hearing would be unfair to a person or contrary to the public interest, having regard to the subject matter of the hearing or the nature of the evidence expected to be given.

From time to time during the hearings applications were made to me by Counsel Assisting or the other parties granted leave to appear, that certain evidence should be dealt with in private session. Generally those applications were predicated either on an expression of apprehension, by particular witnesses, that they could be prejudiced if their evidence was heard in public, or on the existence of allegations of a questionable and hearsay or a particularly speculative nature, the public making of which could also have resulted in undue prejudice being caused to persons.

4.4 ORDERS PROHIBITING THE PUBLICATION OF CERTAIN EVIDENCE

From time to time orders prohibiting the publication of evidence were made by me, upon application, pursuant to the provisions of Section 88 of the Act. Such orders were generally made in relation to evidence heard in confidence, and material which appeared to be of only tangential relevance to the Inquiry's terms of reference.

In addition, throughout the hearings a general suppression order existed prohibiting the publishing of the names of clients and witnesses. Such an order was made to protect the privacy of clients and their families, and also to prevent undue prejudice being caused to witnesses and others at a time when the relevant evidence was still to be tested completely.

4.5 THE COMMISSION'S JURISDICTION

Pursuant to Section 29(3)(d)(ii) of the Act the Official Misconduct Division of the Commission is empowered to investigate cases of alleged or suspected official misconduct by persons holding appointments in units of public administration that come to its notice from any source. The term "unit of public administration" is defined within Section 4(1) of the Act and includes a Department. For the purposes of this Inquiry I find that the relevant officers of the Department are, or were, the holders of appointments in a unit of public administration.

The general nature of official misconduct is defined by Section 32(1) of the Act, which relevantly provides, inter alia, that official misconduct is:

> (b) Conduct of a person while the person holds or held an appointment in a unit of public administration –
>
> (ii) that constitutes or involves a breach of the trust placed in the person by reason of his or her holding the appointment in a unit of public administration;
>
> and in any such case, constitutes or could constitute –
>
> (d) in the case of conduct of a person who is the holder of an appointment in the unit of public administration, a criminal offence, or a disciplinary breach that provides reasonable grounds for termination of the person's services in the unit of public administration; or
>
> (e) in the case of any other person, a criminal offence.

By Section 31(2), conduct may still amount to official misconduct notwithstanding that such conduct occurred before the date of commencement of the Act, or that the person involved in the conduct is no longer the holder of an appointment in a unit of public administration.

In addition, the Commission also has a responsibility under Section 29(3)(e) of the Act to offer and render advice or assistance, by way of education or liaison, to law enforcement agencies, units of public administration, companies and institutions, auditors and other persons concerning the detection and prevention of official misconduct.

In this context, I should perhaps note that the Commission's jurisdiction, as defined by the Act, did not empower me to undertake a wide-ranging Inquiry into every aspect of the administration of the Centre (or for that matter the Division and the Department) or the lives of intellectually disabled persons whether residing at the Centre or elsewhere. During the course of its investigation the Commission received a number of complaints of alleged impropriety relating to other establishments, particularly accommodation facilities involving the Alternative Living Service (ALS). Such complaints were outside the Inquiry's terms of reference. However, some complaints could, if substantiated, amount to official misconduct within the Commission's normal investigative jurisdiction, and have been dealt with as outlined in section 1.13. Other complaints, for instance a consistent complaint by parents regarding the lack of holidays provided for intellectually disabled persons, relate to a matter that would not in itself amount to official misconduct and accordingly would appear to be outside the Commission's jurisdiction.

4.6 THE COMMISSION'S POWERS

The Commission's hearings were conducted, and this report and the abovementioned confidential reports are forwarded, pursuant to the Commission's powers and obligations under the Act, of which some of the more relevant include:

- Section 25 – the Commission's authorisation to conduct hearings and receive evidence in relation to matters relevant to the discharge of its functions or responsibilities.
- Section 26 – furnishing of Commission reports to various entities.
- Section 33 – furnishing of reports by the Official Misconduct Division.
- Section 69 – the Commission's use of notices to discover information (a procedure employed during this investigation to obtain records from various entities, including the Department).
- Section 70 – the Commission's authorisation to enter public premises to obtain information (a procedure utilised on one occasion to obtain access to relevant client records).
- Section 74 – the Commission's power to issue a summons requiring a person's attendance before the Commission (utilised in the case of most witnesses appearing before the investigative hearings).

Pursuant to Section 94(2) of the Act a person attending before the Commission is not entitled to refuse to answer any question on the ground that to do so would tend to incriminate him or her. That is, the Act specifically overrides a person's common law right against self–incrimination, although pursuant to Section 96 such answers given by a witness, under compulsion, are not admissible in evidence against that witness in civil, criminal or disciplinary proceedings (except in very limited circumstances relating to offences of contempt and perjury).

I note that throughout these proceedings it was unnecessary to so "compel" any witness to answer questions requested of them.

Also, pursuant to Division 4 of Part 3 of the Act, the Commission is empowered to take certain steps to protect the interests of witnesses and other persons assisting the Commission. From time to time the protection afforded by those provisions was explained to various witnesses, for the purpose of their reassurance, who indicated to staff of the Commission their concerns that they may be prejudiced (primarily in terms of being subjected to harassing or intimidatory behaviour) as a consequence of assisting the Commission's investigation.

Now that the Inquiry has concluded, I am able to observe that without resort to the special powers invested in the Commission, particularly the power to conduct hearings and ensure the attendance of witnesses by way of summons, this Inquiry would not have been able to proceed so as to enable me to reach the findings and make the recommendations contained herein. Any investigation conducted by the Commission, without recourse to the abovementioned powers, would not have been capable of obtaining the necessary evidence which has enabled this Inquiry to partially, but not completely, overcome the obstacles faced by the Department and the Queensland Police Service in undertaking their previous inquiries.

4.7 QUESTIONS OF EVIDENTIARY RELEVANCE

Sections 92 and 93 of the Act provide:

> Commission not bound by rules or practice
>
> 92.(1) In discharging its functions and responsibilities, or exercising its powers –
>
> (a) the Commission is not bound by the rules or practice of any court or tribunal about matters of procedure and may conduct its proceedings as it considers proper; and
>
> (b) the Commission is not bound by rules or practice about evidence, and may inform itself on any matter in the way it considers appropriate.
>
> (2) Without limiting the operation of subsection (1), the Commission, other than a Misconduct Tribunal exercising its jurisdiction, may refer any matter on which it seeks expert evidence to a person of relevant competence, and may admit as evidence before it and act upon that person's report.
>
> Commission's reports
>
> 93.(1) The Commission must include in each of its reports –
>
> (a) its recommendations; and
>
> (b) an objective summary of all matters of which it is aware that support, oppose or are otherwise relevant to its recommendations.
>
> (2) The Commission may also include in a report any comments it may have on the matters mentioned in subsection (1)(b).

In determining questions of evidentiary relevance for the purposes of this report I have had regard to these provisions. In addition, as I have noted below, proceedings of an inquisitorial nature, such as these hearings, differ fundamentally from other proceedings. Questions of evidentiary relevance are not decided by the processes normally applied by courts of law. The Full Court of the Federal Court has stated:

> What questions the Commissioner should ask, or allow to be asked, is a matter for his own good sense and judgment . . . what the Commissioner can look to is what he bona fide believes will assist him in his inquiry. (*Ross v Costigan* (No. 2) (1982) 41 ALR 337 at 350–351.)

During the investigative hearings certain matters arose and were to some extent traversed in evidence, in circumstances where I could not always instantly ascertain whether those matters would ultimately prove to be within the Commission's jurisdiction. Counsel for the State of Queensland took a number of objections, increasing in frequency as the hearings progressed, to certain evidence and lines of inquiry. In accordance with the principles expressed by the Federal Court above, once it was established that a matter was outside the Commission's jurisdiction I, and those assisting me, did not undertake further investigations in relation to it. These principles have also been applied in relation to the final contents of this report.

4.8 DISTINCTIONS BETWEEN INQUISITORIAL PROCEDURE AND THE PROCEDURE IN CIVIL AND CRIMINAL CASES IN COURTS

There are fundamental distinctions between the procedure in an inquisitorial tribunal such as this Inquiry and the procedure, either criminal or civil, in a court. As was said by the Salmon Royal Commission in 1966:

> The inquisitorial Tribunal directs the inquiry and the witnesses are necessarily the Tribunal's witnesses. There is no plaintiff or defendant, no prosecutor or accused; there are no pleadings defining issues to be tried, no charges, indictments or depositions. The inquiry may take a fresh turn at any moment. It is therefore difficult for persons involved to know in advance of the hearing what allegations may be made against them. (*Royal Commission on Tribunals of Inquiry 1966:* Report of the Commission under the Chairmanship of the Rt Hon. Lord Justice Salmon (Great Britain, 1966) at paragraph 30)

These differences were pointed out in observations made by Gibbs CJ of the High Court in a case involving an inquiry by the National Companies and Securities Commission, and are also apt in this context. In that case, the Chief Justice, in drawing the distinctions between such an inquiry and a court of law, said that an inquiry was not required to proceed as though it were conducting a trial. He said:

> If the Commission were to accord to all persons whose reputation might possibly be affected by the hearing a right to cross-examine the witnesses and call evidence as though they were in a court of law, the hearing might become so protracted as to render it practically futile. (*National Companies and Securities Commission v News Corporation Ltd* (1984) 52 ALR 417 per Gibbs CJ at 429)

Agreeing as I do with the observations of the Salmon Royal Commission and His Honour the Chief Justice, and bearing in mind that this Inquiry was conducted in accordance with them, the question arises as to what standard of proof should apply in this Inquiry.

4.9 STANDARD OF PROOF

Section 92(1) of the Act provides that the Commission, in the conduct of an Inquiry such as this, is not bound by the rules of evidence applicable in a court, but is silent as to what standard of proof is required to be met before the Commission may find facts, particularly those which amount to a finding adverse to any person.

I have considered the authorities on this point, as well as the findings of others, including the Hon. W J Carter and the Hon. R H Matthews, who have conducted inquiries under the Act.

In particular, I have had regard to the judgment of Dixon J in the case of *Briginshaw v Briginshaw* (1938) 60 CLR 336, and the case of *Rejfek v McElroy* (1965) 112 CLR 517 at pages 520 and 521. The first report of the *Parliamentary Judges Commission of Inquiry* (1989), which examined the conduct and behaviour of the former Mr Justice Angelo Vasta is instructive on this point. The authors of that report, namely the Rt Hon. Sir Harry Gibbs, formerly Chief Justice of the High Court, the Hon. Sir George Lush, formerly a Judge of the Supreme Court of Victoria, and the Hon. Michael Helsham, formerly the Chief Judge in Equity of the Supreme Court of New South Wales, at paragraph 1.6.9 said the following:

> 1.6.9 The Commissioners considered that the civil standard of proof on the balance of probabilities was the proper standard to apply. When this standard is used as the measure of proof, it is sufficient if a fact is proved to the reasonable satisfaction of the tribunal evaluating the

> evidence. However, since the High Court decision in Briginshaw v Briginshaw (1938) 60 CLR 336, it has been recognised that the degree of persuasion necessary to establish facts on the balance of probabilities may vary according to the seriousness of the issues involved. In that case, Dixon J expressed this proposition in the following words (p 362):
>
> > The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences.
>
> Subsequent High Court decisions have approved His Honour's statement. In Rejfek v McElroy (supra at page 521) the Court stated unequivocally that "the degree of satisfaction for which the civil standard of proof calls may vary according to the gravity of the fact to be proved". The Commissioners were of the opinion that, in conformity with the High Court's approach to the degree of proof, due regard to the seriousness of the issues must be had in applying the civil standard to the evidence adduced.

There are two standards of proof known to the common law: proof beyond reasonable doubt, the criminal standard: and proof on the preponderance of probability, the civil standard. I have concluded that the latter is the appropriate standard to be applied here, always bearing in mind those matters mentioned by Dixon J in *Briginshaw's* case at pages 360 to 363, and referred to by the Commissioners in the *Parliamentary Judges Commission of Inquiry* paragraph 1.6.9 supra, and with whose views I agree. Dixon J said at page 361:

> The truth is that, when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality.

He went on to say, comparing the criminal standard of proof with the civil standard:

> Fortunately, however, at common law no third standard of persuasion was definitely developed. Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved.

Then followed that part of his judgment as quoted by the learned Commissioners in the *Parliamentary Judges Commission of Inquiry* (see above).

Dixon J continued at pages 362 and 363:

> Everyone must feel that, when, for instance, the issue is on which of the two dates an admitted occurrence took place, a satisfactory conclusion may be reached on materials of a kind that would not satisfy any sound and prudent judgment if the question was whether some act had been done involving grave moral delinquency . . . This does not mean that some standard of persuasion is fixed intermediate between the satisfaction beyond reasonable doubt required upon a criminal inquest and the reasonable satisfaction which in a civil issue may, not must, be based on a preponderance of probability. It means that the nature of the issue necessarily affects the process by which reasonable satisfaction is attained. When, in a civil proceeding a question arises whether a crime has been committed, the standard of persuasion is, according to the better opinion, the same as upon other civil issues.

The issues in this Inquiry are extremely serious, and before making any findings of fact, I have applied the law as enunciated above.

4.10 CIRCUMSTANTIAL EVIDENCE

Another matter regarding the proof of facts to which I find it necessary to refer is that of circumstantial evidence.

The necessity in this Inquiry to rely on circumstantial evidence is particularly poignant. For the most part, the clients of the Basil Stafford Centre are intellectually disabled to the extent that they are unable to communicate in any intelligible way. The practical result has been that when physical injuries have been sustained by clients, neither the clients concerned nor other clients, have been able to describe how the injuries occurred. Denied first-hand evidence by this situation, and also by the unfortunate reality that those who had the care of the clients, namely RCOs, were often unwilling or unable, for whatever reason, to give direct evidence of these facts, the Inquiry has had to rely, in large measure, on circumstantial evidence.

It is no derogation of evidence to call it circumstantial. Circumstances are in many cases of greater force and more to be depended upon than the testimony of living witnesses. Witnesses may be mistaken or may wickedly intend to deceive others. Circumstances and presumptions necessarily arising out of a given fact cannot lie.

The Resolutions adopted by the Commissioners of the Criminal Justice Commission in relation to this Inquiry require me, constituting the Commission, among other things, to conduct an investigation into cases of alleged or suspected official misconduct by persons holding appointments at the Basil Stafford Centre concerning:

- the abuse of clients;
- the gross neglect of clients; and
- the harassment or intimidation of those persons who have complained of or would be likely to complain of the abuse or gross neglect of clients;

(for the period 1 January 1985 to 31 December 1993).

These are questions of fact. As mentioned, for the most part, these facts for one reason or another, or for a combination of reasons, are not able to be proved by evidence which proves the fact directly, such as evidence from someone who saw or heard something. These facts can, however, as in many like cases, be proven to the required standard of proof, that is on the balance of probabilities as described in section 4.9, circumstantially. This simply means that if facts and circumstances exist from which the fact in issue can be inferred, this will constitute sufficient proof without direct evidence from a witness to the fact.

I do not find it necessary to discuss the question of circumstantial evidence further, other than to quote briefly from two High Court cases, namely *Luxton v Vines* (1952) 85 CLR 352 and *Shepherd v The Queen* (1990) 170 CLR 573. In the first case, the High Court set out succinctly that a fact can be proved circumstantially as validly and as effectively as the same fact can be proved directly. At page 358 the Court said:

> The test to be applied in determining in cases like this whether circumstantial evidence suffices to support a finding . . . was restated recently by this Court in *Bradshaw v McEwans Pty Ltd* (unreported) . . . of course as far as logical consistency goes, many hypotheses may be put which the evidence does not exclude positively. But this is a civil not a criminal case. We are concerned with probabilities not

> possibilities. The difference between the criminal standard of proof in its application to circumstantial evidence and the civil is that in the former the facts must be such as to exclude reasonable hypotheses consistent with innocence whilst in the latter you need only circumstances raising a more probable inference in favour of what is alleged. In questions of this sort while direct proof is not available, it is enough if the circumstances appearing in the evidence give rise to a reasonable and definite inference; they must do more than give rise to conflicting inferences of equal degrees of probability so that the choice between them is a mere matter of conjecture. But if the circumstances are proved in which it is reasonable to find a balance of probabilities in favour of the conclusions sought, then, though the conclusion may fall short of certainty, it is not to be regarded as mere conjecture or surmise.

In the second case Mason CJ said at pages 575 and 576 that what had been said in the joint judgment of Gibbs CJ and himself in *Chamberlain v The Queen* (No. 2) (1984) 153 CLR 521, had appeared to give rise to some misconception. He referred particularly to the passage at page 379 of Chamberlain's case which he quoted on page 576 of Shepherd's case as follows:

> Nevertheless the jury cannot view a fact as a basis for an inference of guilt unless at the end of the day they are satisfied of the existence of that fact beyond reasonable doubt. When the evidence is circumstantial, the jury, whether in a civil or in a criminal case, are required to draw an inference from the circumstances of the case; in the civil case the circumstances must raise a more probable inference in favour of what is alleged, and in a criminal case the circumstances must exclude any reasonable hypothesis consistent with innocence.

Mason CJ went on to explain that when the discussion of the principles at pages 534–539 in *Chamberlain* (No. 2) is read in the light of the entire discussion, *Chamberlain* (No. 2) is not authority for the proposition that in cases based on circumstantial evidence, (in criminal cases) juries must be directed that they cannot use a fact as a basis for inferring guilt unless that fact is proved beyond reasonable doubt. In saying this he was agreeing with Dawson and McHugh JJ. It is not necessary, however, in the light of the conclusion I have reached, to set out these arguments in any detail; nothing that was said in Shepherd's case detracts from the proposition as set out in *Bradshaw v McEwans Pty Ltd*, as quoted in *Luxton v Vines* (supra) that in civil cases 'you need only circumstances raising a more probable inference in favour of what is alleged', and the passage from *Chamberlain* (No. 2) that 'in a civil case the circumstances must raise a more probable inference in favour of what is alleged'. The test of probability is the test I have applied in this Inquiry when finding facts based on circumstantial evidence.

CHAPTER 5
THE INVESTIGATIVE HEARINGS

5.1 STATISTICS

The first day's hearing took place on 13 December 1993 at the Misconduct Tribunal hearing room in Adelaide Street, Brisbane. The intention to hold public hearings had been advertised in the press prior to that date. At this initial hearing some matters of a preliminary and procedural nature were dealt with. The Inquiry was then adjourned, resuming on 10 January 1994, on which date I undertook an inspection of the Centre and commenced hearing evidence. From that date onwards all sittings of the Inquiry occurred at the Commission's premises at Toowong. The hearings concluded on 19 August 1994 with the receipt of final oral submissions.

In all, the Inquiry sat on 63 separate days. Seventy-one witnesses gave evidence and 430 exhibits, comprising many thousands of pages of records and the like, were tendered in evidence. Of these, 40 were tendered as confidential exhibits. The proceedings were recorded, and the transcript of evidence totalled 5,997 pages.

5.2 INITIAL APPLICATIONS FOR LEAVE TO APPEAR

On the first hearing day leave to appear was sought by Mr Plunkett of Counsel instructed by the Crown Solicitor's Office, on behalf of the Crown in right of the State of Queensland, and Mr A K Herbert of Counsel instructed by Messrs Quinlan Miller and Treston solicitors, on behalf of various trade unions affiliated with the Queensland branch of the Australian Council of Trade Unions, who had members at the Centre. These unions were principally the Australian Workers' Union and the State Public Services Federation of Queensland Union of Employees. I granted leave to appear to both Counsel.

In a document tendered in support of his application for leave to appear (Ex 4) Mr Plunkett stated:

> . . . The Department has co-operated fully with the Commission's investigations by providing information and access to relevant witnesses. At all material times the approach of the Government has been and will continue to be one of openness and accountability. The continued support by the Government in the conduct of the Commission's hearings is also assured.
>
> It is submitted that the State of Queensland is entitled to be granted leave to appear in the hearings because the Department –
>
> (a) has legislative functions, duties and obligations in respect of the persons with intellectual disability who are residents of the Centre and the alleged victims in these hearings;
>
> (b) is the occupier and operator of the Centre;
>
> (c) is the past and present employer of personnel against whom allegations may be made; and
>
> (d) is the body which referred at an earlier stage the allegations to the Commission and provided files, records, documents and other material to the Commission in the course of its investigations.

Mr Herbert, who initially sought leave to appear solely for the various trade unions themselves, also represented the majority of individual union members called as witnesses as the hearings unfolded. On the first day the obvious possibility of conflicts of interest arising was noted, and accepted by Mr Herbert. Despite this acknowledgment, as the Inquiry progressed, issues of conflicts regarding Mr Herbert's representation of certain witnesses did arise, and discussions and submissions relating to the existence and resolution of these conflicts and ancillary matters, occupied no small amount of the Commission's time.

5.3 THE HEARING PROCESS

On 13 December 1993, Counsel Assisting made some short opening comments which, inter alia, dealt with some procedural aspects of the hearings. He stated (T 24):

> The purpose of this hearing is to examine witnesses and documentation relevant to the resolution of the Commission. It is not intended that the Commission retry any issue that has been the subject of a successful prosecution. It is intended that the Commission will look at any matter that has been prosecuted unsuccessfully, but only so far as it is necessary to complete its function in accordance with the resolution made by the Commission. In relation to some of these matters, it is intended to tender before Your Honour transcripts of any previous criminal proceedings, within the time span appropriate to the resolution, in order for Your Honour to be able to consider, and the Commission to consider, and make recommendations concerning any statutory provision, policy, practice or procedure relevant to the treatment of clients, or the reporting of treatment of such clients as is required by the aforementioned resolution.
>
> Now let me say at this stage that any person who wishes to give evidence before this Inquiry will be required to furnish a statement in the form of a statutory declaration to myself as Counsel Assisting the Inquiry, and I will determine what evidence will be led at that stage. Where possible, the statutory declaration will be tendered in lieu of oral evidence. This will have the advantage that it will allow the appropriate ordering of the hearings, and it would save time. Although there may be reason in exceptional circumstances to depart from this course, it is intended that all evidence be led through myself.
>
> Now, in saying that, Your Honour, I wish to make it quite clear that any person who is dissatisfied with a decision made by myself as Counsel Assisting, whether to call a witness, whether to produce a person for cross-examination, any matter of that kind; is entitled to raise this matter with you, and submissions can be made in relation to it as would normally be the case. But we shall certainly be guided by the desirability of not stretching out public hearings by producing witnesses when their statutory declarations would suffice. We will give regard to any reasonable requirement if somebody wishes to cross-examine a person.

Generally, the hearings were conducted in accordance with these procedures, although the majority of witnesses were required to give oral evidence in chief, in addition to their statutory declarations, and were cross-examined at length.

A transcript of the hearings was prepared daily and was generally distributed to all parties on the following morning.

Prior to each bracket of evidence the Commission staff assembled briefs of evidence, comprising relevant statutory declarations, statements, transcripts, police records, Departmental records and other documents within its possession, and provided those briefs of evidence to the other parties. Mr Plunkett and his instructing solicitor, and from time to time, Mr Herbert and his instructing solicitor, also provided additional material relevant to particular witnesses and brackets of evidence. After some early problems, which I might describe as "teething difficulties" related to the sheer volume of material

relevant to the matters in question, a system of informal conferences between the parties was considered and instituted in an endeavour to ensure that all relevant material was brought to the attention of the parties, the Inquiry and necessary witnesses at an appropriate time. Of course, given the width of the Inquiry's terms, the duration of the period under reference, and the inherent nature of the Inquiry's proceedings, at times further material, originally conceived to be of little or peripheral interest to a particular line of inquiry, developed greater relevance and was provided, or obtained and provided, by the parties during the course of evidence. Such matters are to be expected in inquiries of this type; where necessary I granted adjournments so that all parties were afforded appropriate time for preparation and the taking of instructions.

However, all persons appearing would agree that the hearings took longer than originally anticipated. From the outset there was clearly an unrealistically optimistic estimate, by all Counsel, of the time the hearings would take. As the hearings progressed, Counsels' regular estimates of the time likely to be occupied by the cross-examination of particular witnesses attracted a certain degree of notoriety due to their inaccuracy, a trait I hasten to add is, in my experience, not limited to these hearings and those appearing before me. Nevertheless, on a number of occasions I addressed Counsel upon the issue of apparently repetitive and prolix questioning of witnesses, particularly in light of the fact that such witnesses had usually tendered statutory declarations, and often an additional transcript of evidence or statement, and had been extensively questioned by Counsel Assisting. From time to time objections to certain lines of questioning were made and dealt with by me. In relation to these issues Mr Plunkett and Mr Herbert frequently assured me, as at times did other Counsel granted leave to appear before me on behalf of other parties, that their questioning was particularly relevant, and accordingly I was loath to interrupt the continuing questioning of witnesses, which at times seemed to me to be repetitive and achieving little in terms of assisting my understanding and deliberations concerning the matters of relevance to the Inquiry's terms. To my considerable regret, upon reviewing the evidence for the purposes of compiling this report, I find my aforementioned perception, in relation to significant portions of cross-examination, unaltered. This situation contributed significantly to the length of the hearings, and reached its nadir in the following exchanges that took place between myself and one Counsel, who should perhaps not be identified (T 3278):

> The Commissioner: . . . what is the relevance of Client 5 butting things with his head in relation to the welt marks and bruises that he has on his buttocks and legs?
>
> Counsel: Possibly little, Your Honour.
>
> The Commissioner: Well, I would be obliged if you would stick to the point a bit, thank you.
>
> Counsel: Yes, Your Honour. I have no further questions for this witness . . .

And later, (T 3513):

> Mr O'Sullivan: Your Honour, I object to the questions. They do not seem to be relevant to any matter.
>
> The Commissioner: I am struggling, I must say, to ascertain what the relevance of these questions may be. Could you inform me as to what that could be?
>
> Counsel: I cannot at this stage, Your Honour, no.

5.4 THE REPORTING OF THE PROCEEDINGS BY THE MEDIA

The investigative hearings were regularly reported upon by a number of media sources, including several daily newspapers and radio programs. The benefits of regular reporting of such proceedings are, I would suggest, quite obvious. In the *Report of the Royal Commission on Tribunals of Inquiry, 1966* (see section 4.3), the Commissioners noted, at paragraph 119:

> It has been suggested to us that the Press should be prohibited from reporting the proceedings day by day and that the evidence should be made public only after the publication of the Tribunal's report. This would no doubt eliminate the pain sometimes caused to innocent persons by the glare of publicity. On the other hand we are satisfied by the evidence that on balance it is in the interests of innocent persons against whom allegations have been made or rumours circulated to have the opportunity of giving their evidence and destroying the evidence against them in the full light of publicity. If, as we believe, it is essential for the Inquiry to be held in public, it seems to us that those members of the public who are not able to attend the hearing in person are entitled to be kept informed through the national press of what is taking place. Moreover, if the evidence is not published daily, the public has to wait for weeks or months for authentic information about what is occurring before the Tribunal, rumours will grow and multiply and the crisis of public confidence will be heightened.

As is noted herein, during the hearings it was necessary for me to make a number of orders relating to the non–publication of witness details and evidence. With one insignificant exception, involving an incident when a police officer called as a minor witness was named in the report of a small suburban publication, my order prohibiting the publication of identifying details of witnesses was strictly observed. Similarly, whenever a request was made not to publish a particular passage of evidence there was compliance with that request. In my view the reporting by the media was done in a balanced and most responsible fashion; indeed, the media are to be commended for their efforts.

However, Mr Plunkett, Counsel for the State of Queensland, during the proceedings made a number of submissions of a nature which can only be described as attacks upon the media. On 1 February 1994, Mr Plunkett submitted (T 1446):

> And as for the press reporting about these sort of admissions, might I say this, Your Honour: I have apprehended since the beginning of this Commission a serious – an apparent serious contempt of this Commission. It seems to me that when I read the papers in the morning about these hearings that there must be a group of university students who have some prank mock Basil Stafford Inquiry down the road, because what I read in the papers is not what I see happening before us here, Your Honour.

Mr Plunkett's submission contained a direct allegation that the press had committed a 'serious contempt' of the Commission's proceedings. To my mind, that is a very grave allegation which, without particularisation, unjustifiably disparages the media in general.

Accordingly, when submissions about the matter then at hand had been completed, I drew Mr Plunkett's attention to this submission, and invited him to further address me on this matter (amongst others) if he wished to. He responded to this opportunity (T 1464–65);

> Your Honour, my reference to the serious contempt of the Commission this morning was at an attempt, it appears, albeit inadequate, at droll humour. This is not the forum, nor should it be, to address matters of inadequate press reporting, but the point I was trying to make is that there has been a selectivity or a sensationalising of some aspects of the evidence which has not been balanced . . .

There is a significant difference, in the eyes of the law, between a complaint alleging a 'serious contempt' of proceedings and one merely alleging 'inadequate press reporting' of a selective or sensational nature.

On 6 July 1994, Mr Plunkett made further submissions to me which were again critical of the press: this time he referred to a specific article published in that day's edition of *The Courier-Mail*. On the previous day Mrs A had continued her examination. At T 5208 et seq, after Mrs A had given evidence about some further specific alleged incidents of client abuse witnessed by her, I endeavoured to ascertain whether there were any additional relevant matters about which she could inform the Commission. In effect, I urged her to "lay all her cards on the table". At T 5209 she stated that while employed as an RCO at the Centre on one occasion she had been asked to take some female clients to the Wolston Park Centre where they were given an injectable drug, Depro-Provera, which apparently is a contraceptive medication affecting the menstrual cycle. Mrs A also stated that in recent times she had read that Depro-Provera had been released on the market after testing, so she assumed that the drug had been tested on the clients on that occasion.

I indicated to Mrs A that such an assumption might not be justifiable, but in any event, that was a matter her Counsel could raise with her in due course. I then drew Mrs A's attention to another area of her evidence. In due course Mr Plunkett cross-examined Mrs A about this specific incident (T 5215):

> Mr Plunkett: . . . are you suggesting that some sort of medical experimentation was taking place on these persons with intellectual disability?---All I know is that I had to take a group of female clients down to Wolston Park where there was a male there, and I was told that they were being given these injections of Depro-Provera – I think that's how you pronounce it . . .
>
> Yes?---To stop their menstrual cycle so that it would be more hygienic for the client to manage.
>
> What is the point of this, though? Are you suggesting some sort of, something sinister or bad is occurring here?---Well, I would be curious to know why I only just, it was only recently advertised in the paper, printed in the paper that that particular drug is being released in Australia this year, now, after they've – and when I rang up the pharmaceutical company . . .
>
> So? Yes, I see?---They told me that it was, either they'd just finished testing it and it was just released in Australia.
>
> When did you ring the pharmaceutical company?---Not long after it was in the paper but I'm not sure of the date.
>
> What, in the last month or so, is it?---The last couple of months, I think, within the last two months, I'd say.
>
> And you are suspicious of some sort of impropriety having occurred?---Well, I'm just curious as to why that drug was used on clients if it's only just been released here.
>
> Are you aware that such medical procedures cannot be administered to clients without permission of the Legal Friend?---I think, yes, I think I am aware of that.
>
> Would it be correct to say that you had an obsession about all this business with the Centre, and abuse?---No, I don't think that's correct.

Thereafter, Mr Plunkett briefly continued his cross-examination on this point. He did not apply to me for a non-publication order in respect of this evidence.

The next day, 6 July 1994, *The Courier-Mail* published a report of Mrs A's evidence under the headline, 'Patients "Drug Guinea Pigs" – Inquiry told of Contraceptives'. To my mind, the article was a fair and balanced report of the relevant proceedings, and stated the evidence accurately, with the exception of the headline's use of the phrase "Drug Guinea-Pigs". That phrase was not used by the witness and does not accurately quote any evidence that she gave.

This article prompted Mr Plunkett to make submissions, at the outset of the day's proceedings, in the following terms (T 5299):

> Your Honour, before the evidence commences today, can I bring to your Honour's attention a gross contempt of a serious defamation of the Centre? I hand up to your Honour a copy of this morning's Courier Mail on page 3. I say it is a gross contempt of a serious defamation because it does not represent a balanced account of yesterday's evidence, and if this inquiry is to adduce evidence such that, extraordinary, unsubstantiated, hearsay allegations of really an almost rat bag nature are being aired in the paper with such impact such as this one has, then the Government should really seriously think carefully about whether it wishes to continue to provide services to intellectual disability. This sort of evidence that comes out from that sort of a witness yesterday which leads to this sort of a headline can only mean that the public interest is seriously being disserved by such an institution as the Commission.
>
> This sort of an article can only have the effect of undermining public confidence in the continued ability of the Division to provide services to persons with intellectual disability; vulnerable people who desperately need assistance, and the Government is endeavouring, with its best abilities, to provide those services. Now, when relatives of clients, mothers and fathers, read articles such as this, they can only assume there is some sort of Belsen or Auschwitz being conducted out there and this sort of result from yesterday's hearing does not serve the public interest at all. All I can protest is in the strongest terms that this has done incredible damage to the confidence of those who have relatives at the centre, and it creates incredible unease and anxiety in them as to the safety of their relatives who may be in the care of the Division because of the most scurrilous allegations on those baseless material.

Mr Plunkett's submissions contained a number of allegations of the most serious import to various interests, including those very persons most relevant to this Inquiry, namely the clients. In particular, the suggestion that the Government might in any circumstances abandon its provision of services to the intellectually disabled was particularly disturbing.

Accordingly, I asked Mr Plunkett to clarify his submissions, in the course of doing so, he retracted his abovementioned comments concerning the Government's provision of services (T 5299).

After Mr Plunkett made the abovementioned retraction, Counsel Assisting indicated that he was obtaining copies of the relevant transcript of evidence. In due course, Counsel Assisting requested that Mr Plunkett particularise both the portions of the article which he said were unfair, and the manner in which the same were unfair. A comparison of the article and the transcript was then made, which led me to my aforementioned conclusion; namely that the article, with the exception of its headline, was fair and accurate. After a further exchange I said:

> At the outset or soon after the outset this morning, Mr Plunkett said that what he wished to do was to draw it [the article] to my attention and have it noted. It has been noted. In my view, there has been an over-reaction on the part of Mr Plunkett to a story, or at least to a headline, which does not do the newspaper which published it justice, in that it is an exaggeration and a distortion; but to take the quantum leap that Mr Plunkett has taken and say that anyone who reads this newspaper, including the parents and friends of people who are at the Basil Stafford Centre, have had all faith in the system completely destroyed, does not help to calm down what may be a reasonably difficult situation.
>
> I do not intend to say anything further about the matter, nor do I intend to try to place any sort of hindrance on the media from publishing what occurs in open session at this hearing, other than to observe the orders that have been made in relation to non-publication of names and the like. I ask, in the interests of fairness, that stories be reported as accurately as is possible, and I believe that I can do no more than that, and certainly as presently advised I do not intend to.

The next day, 7 July 1994, *The Courier-Mail* published a further article touching upon these matters. Counsel Assisting drew my attention to the article (T 5418). The gist of the article was an acknowledgment, in accordance with my expressed views, that the headline's usage of the phrase "Drug

Guinea Pigs" was not from the evidence given to the Inquiry. There was no compulsion on the newspaper to do this.

When this item was brought to my attention by Counsel Assisting, Mr Plunkett (T 5419) insisted on placing on the record an observation that the item was on a different page to the original article of complaint, and was juxtaposed with an advertisement for "cheap liquor".

The abovementioned incidents are examples, to my mind, of an unusual concern, expressed in the oral and written submissions of Mr Plunkett about any publicity which could be perceived as adverse to the Department. Mr Plunkett's submissions regarding the media ignore the fact that the people of Queensland had a stake in this Inquiry, that they were interested in what was going on and that the media had the right, and indeed the duty, to report the Inquiry's happenings. I repeat that I, as the Commissioner, regarded the media's reporting as generally objective and balanced. I am confident any fair-minded observer would agree.

I also do not accept Mr Plunkett's submissions that the Inquiry's hearings and the press reporting had somehow unjustifiably undermined the levels of confidence in the Centre held both by the public and the Department itself. Additionally, Mr Plunkett submitted that the public interest was being seriously disserved by an institution such as the Commission; presumably as the Commission provided the forum for the public airing of the allegations to which his submissions were directed.
Many of the findings and recommendations set out in this report will, to adopt the abovementioned language of Mr Plunkett's submissions, undoubtedly undermine public and Departmental confidence in the Centre itself. To my mind, that is the proper outcome; if such institutions are consistently associated with misconduct of such an appalling nature as the wilful or neglectful abuse of the intellectually disabled, then such institutions do not deserve to be the repositories of a single shred of public confidence. Allegations of such behaviour must be thoroughly investigated, exposed, and if found to be true, publicly condemned, for the benefit of all persons, but in particular for the benefit of the intellectually disabled clients. Given the failure of the conventional investigative agencies in the instant case, this is the very type of situation demanding an investigation, such as this Inquiry, by a body properly equipped with sufficient powers to adequately carry out the necessary tasks involved. The Criminal Justice Commission should not be criticised for undertaking the task of investigating such allegations; rather, it should be commended for carrying out in such a thorough way, its statutory duty. Nor should the media be criticised for reporting those proceedings. I have already remarked upon the importance of conducting a public inquiry and the media's role in relation to such proceedings, particularly where those most affected, the intellectually disabled, were unable to voice their own opinions.

5.5 INITIAL APPLICATIONS BY QUEENSLAND ADVOCACY INCORPORATED

On 22 March 1994, Mr Keim of Counsel, instructed by Mr Keeley, solicitor, appeared before me on behalf of Queensland Advocacy Incorporated (QAI). Mr Keim stated that QAI (T 2772), was 'a community legal centre which provides advocacy services for people with disabilities'. I should comment that I firmly believe the aims and objectives of QAI to be wholly honourable and worthy. I am confident that all fair-minded persons would agree with this belief.

Mr Keim made two applications to me, namely:

i) For leave to appear before the Inquiry to represent the residents of the Centre, and;

ii) For an adjournment of the Inquiry, of uncertain duration, in order to seek funding for such representation.

Mr Keim was supported in the making of these applications by Ms Scahill, a solicitor instructed by the Queensland Anti-Discrimination Commissioner.

Prior to Mr Keim's appearance, QAI had delivered a number of submissions to Counsel Assisting concerning various issues and the Inquiry, in particular, QAI's perception that there should be separate representation before the Inquiry for the Centre's clients. QAI had also submitted that the Commission should bear the expense of such separate legal representation. I note that there is no power vested in the Commission, under the Act, to allow such funding.

Mr Keim's applications were opposed by Counsel Assisting, and by Mr Plunkett, Counsel for the State of Queensland. Mr Herbert, for the unions, also made submissions indicating his clients' concerns at any suggestion that the proceedings of the Inquiry might be unnecessarily prolonged, and opposing the application for an adjournment.

Submissions in relation to Mr Keim's applications occupied the majority of the day's sittings. I therefore reserved my decision until the following morning, whereupon I stated that I would refuse both the application for leave to appear and the application for an adjournment. I later handed down my written reasons, for these decisions, on 29 March 1994. At that time, I indicated that I would welcome receipt of further written submissions (upon the evidence) from QAI, and that an earlier order, regarding the provision of a copy of the transcript to QAI, should continue.

5.6 SUBSEQUENT PROCEEDINGS AND APPLICATIONS INVOLVING QAI

QAI subsequently sought to review, in the Supreme Court, my decision and reasons for decision relating to my refusal of their application for leave to appear. That matter was argued before Justice White on 12 April 1994, and written reasons for judgment were delivered on 27 April 1994. In those reasons, Her Honour found that the clients residing at the Centre were 'persons concerned' within the meaning of Section 95 of the Act, and made certain declarations and orders, including an order setting aside my decision that QAI not be given leave to appear at the hearings to represent the interests of the clients. Her Honour ordered that leave should be granted to QAI to represent the interests of the residents, on terms and conditions not inconsistent with her reasons for decision. In that context, at page 15 of her decision Her Honour noted:

> As Section 95 of the Criminal Justice Act recognises, the person conducting the proceedings must have the discretion to control the proceedings which may entail limitation upon any general right to examine, cross-examine and participate in the proceedings and make submissions ranging over the whole Inquiry or limited to some particular, see *Re Whiting*, and *Annetts v McCann*. The present Inquiry is not a Royal Commission into the rights of the intellectually disabled in Queensland. There is, without doubt, a public interest in the subject matter of the Inquiry, but it is confined to that subject matter and the Commissioner is entitled to keep it within those bounds in the exercise of his discretion as he sees fit. Accordingly, limiting the representation to regular receipt of the transcript and to making submissions seems to me sufficient.

As at the date of that decision, the Inquiry stood adjourned for a short period. Hearings resumed on 9 May 1994, and on that date Mr Slater of Counsel appeared on behalf of QAI, seeking directions as to the form of representation that was to be permitted. Appearances on this date were also made by the Legal Friend and Counsel appearing for the Public Trustee; these applications are more fully discussed below.

In due course (T 4572) I granted leave to QAI to appear in the proceedings. That right of appearance was limited to regular provision of the transcript of proceedings, free of charge, other than transcript accorded the status of confidential transcript, and to a right to make further written submissions. I reserved the issue of QAI's right to be heard further in relation to whether its Counsel should be allowed to make oral submissions at a later stage.

Subsequently, QAI submitted a number of further written submissions to me. Mr Keim of Counsel also appeared before me and sought leave to cross-examine one witness, namely Mr Jeffrey Whalan, the Divisional Head. Mr Keim also sought leave to make certain oral submissions in support of QAI's written submissions. I granted leave to Mr Keim in both these respects.

For completeness, I note that the decision of White J was the subject of an appeal by the Criminal Justice Commission, and that the Public Trustee sought, and was granted, leave to join that appeal (see below). The appeal was argued before the Court of Appeal on 31 May 1994. QAI and the Public Trustee advised the Court of Appeal that they would not seek any stay, or adjournment, of the Inquiry's proceedings pending the Court handing down its decision. That decision was delivered on 8 March 1995 with the Court, by a majority (Davies JA dissenting), allowing the appeal and setting aside the orders of Justice White as made upon the original review application.

5.7 APPLICATIONS BY THE PUBLIC TRUSTEE

On 23 March 1994, the day following QAI's initial applications for leave to appear and for the Inquiry to be adjourned indefinitely, Mr Nickel, the Deputy Director of Legal Services within the Office of the Public Trustee, appeared before the Inquiry. Mr Nickel advised the Inquiry that if it was desired 'that there should be separate representation for the children involved in the Inquiry', the Public Trustee (Mr Kevin Martin) would be happy to volunteer to provide the same. Mr Nickel also indicated that the Public Trustee 'looked after' the affairs of the children at the Centre, and had a statutory right to act as their guardian under Section 27 of the *Public Trustee Act 1978*, if the Public Trustee chose to do so. Mr Nickel stated that the Public Trustee had an interest in the outcome of the Inquiry, and may wish to bring several proceedings against various people, as a result of findings that may be made. The statutory role and functions of the Public Trustee, in relation to the intellectually disabled, are more particularly discussed in Chapter 23.

Mr Nickel requested that the Public Trustee be allowed access to the transcript of the Inquiry's proceedings. I made an order to that effect. I also indicated to Mr Nickel that if the Public Trustee wished to make application, before the Inquiry, to represent the clients of the Centre, I would certainly hear such an application (as indeed was my duty). Mr Nickel suggested that it might be preferable to adjourn the making of any such application pending a final decision by the Public Trustee in relation to the issue of representation.

Prior to Mr Nickel's appearance there had been an exchange of correspondence between the Commission and the Public Trustee concerning the Inquiry and the Public Trustee's interests regarding some of the Centre's clients. These letters subsequently became Ex 226.

On 29 March 1994, the day I delivered my reasons for decision in relation to QAI's initial applications, Mr Nickel again appeared before the Inquiry. On that date, Mr Nickel stated that he had obtained further instructions to the effect that the Public Trustee did not, and would not, be seeking leave to appear before the Inquiry.

However, a further appearance on behalf of the Public Trustee was made before the Inquiry by Mr Fleming QC on 9 May 1994, following the delivery of White J's reasons for decision in respect of QAI's application for review in the Supreme Court. Mr Fleming QC made certain submissions concerning White J's reasons for decision, and indicated that the Public Trustee would be seeking leave in the Court of Appeal in order to lodge an appeal in relation to that decision. At T 4560, Mr Fleming QC also applied for the further hearing of the Inquiry to be adjourned until such time as the Court of Appeal had determined the appeal.

I did not find it necessary to decide the issue as to granting the Public Trustee leave to appear before the Inquiry at that time. However, I did continue my earlier order relating to the provision of a copy of the transcript to the Public Trustee, and I refused the application for an adjournment.

5.8 APPLICATION BY THE LEGAL FRIEND

On 9 May 1994, an application was also made before me by Mr Carter, who exercises the statutory powers, duties and authorities of the Legal Friend. Mr Carter addressed certain comments made by White J in her abovementioned decision, although he indicated that he did not intend to join in the appeal against the decision. Mr Carter sought leave to appear before the Inquiry on behalf of various "assisted persons" (within the meaning of that term pursuant to the *Intellectually Disabled Citizens Act 1985*), including Clients 1, 5 and 6. Mr Carter also sought provision of a copy of the transcript, and the right to make written submissions. I note that prior to the commencement of evidence before the Inquiry, the Office of the Legal Friend had been contacted by Counsel Assisting, and that Mr Carter had indicated that he did not at that time intend to seek leave to appear at the Inquiry to represent any client at the Centre, although he did intend to maintain "a watching brief" over the proceedings.

I granted leave to Mr Carter to appear for the three abovementioned clients; however, I limited that leave to the provision of non-confidential transcript and the right to make written submissions. I refused what I described as Mr Carter's application for "blanket leave" to appear, as he saw fit, and to cross-examine witnesses. I noted that I would entertain a further application in that regard if Mr Carter perceived a need to make one, in relation to any aspect of the Inquiry.

In due course, Mr Carter provided a written statement of evidence to the Inquiry (Ex 419) and delivered written submissions. These matters are dealt with, as are the statutory role and functions of the Legal Friend, in later sections of this report.

CHAPTER 6
SUBMISSIONS

6.1 REQUESTS FOR WRITTEN SUBMISSIONS

On 20 January 1994, at the conclusion of evidence in relation to the first specific incident of alleged client abuse or gross neglect examined by the Inquiry, namely the unexplained head injury sustained by Client 1 in August 1992, I raised with the parties then appearing the issue of their eventual submissions upon the evidence, (T 765 et seq). In particular, I indicated to the parties that I thought it would not be helpful for submissions to be made at the conclusion of each separate bracket of evidence. Rather, I suggested that I would find written submissions by Counsel to be helpful, and that the parties should be on notice that in due course I would request that the parties forward written submissions to the Commission, in sufficient time for Counsel Assisting and myself to give the same due consideration. I also stated that Counsel would thereafter be allowed a reasonable opportunity to speak to their respective written submissions, and that in the interests of fairness, Counsel Assisting should also prepare written submissions.

After indicating my intentions to proceed in this fashion, I sought the views of Counsel appearing before me. Both Mr Plunkett and Mr Herbert agreed that such an approach was satisfactory to them. Accordingly, the Inquiry then proceeded to call and hear evidence concerning the second specific incident of alleged client abuse.

I again raised the issue of Counsel's submissions on 21 April 1994 (T 4545). On that date, I indicated my intention to adjourn the Inquiry until 9 May 1994, whereupon I would resume hearing evidence for a period of only one week, thereafter adjourning until 4 July 1994, with the hearings then recommencing to receive additional evidence about matters such as harassment, the roles of the Legal Friend and the Official Visitor to the Centre, and other relevant and important issues. I advised Counsel that I would then hear oral submissions from them, supplementing their written submissions. I also expressed my hope that Counsel, and those instructing and supporting them, would turn their minds, during the periods of such adjournments, to working on their written submissions.

I reiterated my hopes in that regard at the conclusion of the abovementioned one week period of evidence, on 13 May 1994 (T 5606 et seq), exhorting Counsel and those instructing them to use the time between that date and the resumption of evidence on 4 July 1994 to prepare their written submissions for presentation upon the conclusion of the evidence. I expressed the hope that the Inquiry could complete its task of hearing all further necessary evidence within a period of approximately four weeks, consequent upon the Inquiry resuming on 4 July 1994. I also expressed the view that oral submissions should also be dealt with in that period. It was noted that it may be necessary for the Inquiry to adjourn briefly, so that all Counsel could have the benefit of absorbing each other's written submissions and making comment upon the same, if desired. Counsel Assisting also stated that the parties should be prepared to speak to their submissions within a short period following upon the conclusion of evidence.

6.2 THE COMMISSION'S LETTER OF 14 JUNE 1994

Apropos my abovementioned comments, on 15 June 1994 Counsel Assisting's instructing solicitor forwarded by facsimile letters to the Crown Solicitor, and to Mr Herbert's instructing solicitors, setting out, at my request, a proposed timetable for the completion and delivery of written submissions. At that time the Inquiry stood adjourned.

That correspondence requested, inter alia:

- That written submissions from the parties in relation to the six specific incidents of alleged client abuse, gross neglect or unexplained injury (only) were to be provided to Counsel Assisting by 5 p.m. on 1 July 1994;

- That Counsel should be prepared to speak to their written submissions if time became available during the further period of the Inquiry's hearings resuming on 4 July 1994, or alternatively, immediately upon the conclusion of oral evidence;

- That written submissions from the parties in relation to the other general issues arising from the Inquiry's terms of reference were to be provided to Counsel Assisting by 5 p.m. on 5 August 1994; and

- That it was tentatively proposed that the Inquiry would resume its sittings for a further two-day period, namely 18 and 19 August 1994, so that the parties might then speak to those further written submissions.

Similar letters were forwarded, in due course, to the other parties interested in the Inquiry, including the Legal Friend, QAI and the Public Trustee. I note that those entities were requested to provide any submissions in relation to the more general issues of staff harassment/intimidation, and the practices/policies/procedures relevant to the treatment of clients at the Centre, by 15 July 1994. That date was set so that any such submissions could be received, circulated amongst, and absorbed by, the other parties and therefore addressed in consequent submissions, prior to the intended date of receipt from those other parties of their final written submissions concerning the second and third terms of reference.

6.3 RESPONSES TO THE REQUEST FOR SUBMISSIONS

On 24 June 1994, Mr Herbert's instructing solicitors, Messrs Quinlan Miller and Treston, forwarded by facsimile a letter to the Commission in response to the Commission's letter of 14 June 1994, requesting provision of written submissions. Messrs Quinlan Miller and Treston stated within their letter:

> This request and program has caused us serious concern, particularly since we have attempted to formulate the requested submissions . . .

The letter listed the six specific incidents of alleged client abuse/gross neglect/unexplained injury examined in the evidence, and cited part of the Inquiry's terms of reference, and later continued:

> In attempting to formulate these submissions requested by the Commissioner, we are entirely unsure as to the extent of the submissions which are actually required. We understand our Brief to be to defend the persons who are perceived to be in jeopardy in these proceedings and yet we are most wholly unaware as to who those persons might be, and the exact nature of any allegations which are made against them . . .
>
> We ask that you refer this matter to the Commissioner and at the earliest possible time and seek some indication as to the limits that should be placed on such submissions. We have great difficulty in making a submission in relation to cases of alleged or suspected official misconduct by particular persons, as the terms of reference require, when we are ourselves required to identify the persons concerned and the suspected official misconduct concerned and then to formulate a defence to a charge which has not yet been laid.

> Please let us have your response at the earliest time, so that the submissions might be concluded within the time frame proposed by the Commission. We should mention that that time frame is significantly shorter than the one that we had expected and that Counsel's present court program will make the preparation of these submissions in that time extremely difficult, even if they are limited in the way that we have suggested.

On 28 June 1994, the Crown Solicitor, instructing Counsel for the State of Queensland, forwarded by facsimile a letter to the Commission also responding to the Commission's aforementioned letter. The Crown Solicitor's correspondence addressed similar issues to those raised by Messrs Quinlan Miller and Treston, as set out above. The Crown Solicitor suggested that:

> In the absence of the Commission isolating for the attention of the parties the relevant issues to be addressed, the parties should not be required to provide their written submissions prior to Counsel Assisting setting out the matters required to be addressed, particularly given the body of material canvassed in the individual cases.

In due course, both letters were referred to me. I must remark that, in light of the nature of the Inquiry's proceedings concerning the six specific incidents of alleged client abuse/gross neglect, and the evidence thereby elicited, I found it surprising that the aforementioned assertions were made. Both Mr Herbert and Mr Plunkett, or their instructing solicitors, were present for the entirety of the proceedings in relation to the six particular brackets of evidence. Those Counsel were fully aware of the Inquiry's terms of reference, and had been provided either before, or during each bracket of evidence, if the need arose, with a brief and any additional relevant materials pertaining to each particular incident, (see section 5.3). Both Counsel at times addressed me at length upon evidentiary matters such as the relevance of, and the Commission's jurisdiction to pursue, particular avenues of evidence and investigation. A copy of the transcript was provided to each party on a daily basis.

The complaints aired in the aforementioned letters were indicative, to my mind, of a lack of appreciation of the nature of this Inquiry's function and proceedings. I have already within this report (see section 4.8) referred to the fundamental distinction in nature between inquisitorial proceedings such as those undertaken here, and the procedure in criminal or civil cases before the courts. It is to be emphasised that the instant proceedings were not adversarial in nature. I consider it trite to note the significant distinction between the roles of, on the one hand, Counsel Assisting the Inquiry, and on the other hand, myself constituting the Commission for the purposes of the Inquiry. In the present context, it is unnecessary to refer further to that distinction other than to emphasise the independent nature of the role of Counsel Assisting in respect of my eventual findings and recommendations. His submissions could not be determinative or conclusive of the matters which arose for my consideration and ultimate report. Indeed, Counsel Assisting himself emphasised this point at the outset of his oral submissions, stating (T 5566):

> My submissions have been made available to all the parties. I just want to indicate very clearly on the record that the submissions by myself as Counsel Assisting are submissions made, first, in good faith, and secondly with a view to providing the Commission hopefully with a balanced view of the evidence and a consideration of the options open after the evidence has been considered.

Later, the following was said (T 5601):

> Mr O'Sullivan: . . . I might reinforce this issue that my submissions do not bind the Commission.
>
> The Commissioner: Well, that ought to be made perfectly clear. You have made it clear, and I want to make it clear. I will take as much notice of you as I will take of any other Counsel, Mr O'Sullivan. What you have put to me is not necessarily my view. If I disagree with anything you have put to me, I

> shall say so in the report, just as I shall say so in regard to Counsel appearing for particular parties in the Inquiry. If that were not so, there would be no need to have me sitting here. You could have done it all.

Similarly, I did not wish to limit the parties, in any manner, as to the content of their submissions, and in particular, the subjects upon which they may have wished to address me. To my mind, the areas of concern for the Inquiry were readily apparent from an analysis of the Commission's jurisdiction, the Inquiry's terms of reference and the course taken by the proceedings, in relation to the evidence and interlocutory submissions. I do not accept that any party could validly claim that their attentions had not been drawn to the subjects that I would be required to address, in this report, concerning the six specific investigations. That being so, I did not wish to confine Counsel, who represented various and diverse interests, to any rigid framework of set points for submission.

Further facsimile correspondence, consistent in general terms with the observations expressed herein, was forwarded in reply to Messrs Quinlan Miller and Treston and the Crown Solicitor, on 28 and 30 June 1994 respectively, over the hand of Mr Le Grand, the Director of the Commission's Official Misconduct Division. In addition, and in specific response to the requests that the issues of relevance to the Inquiry (in respect of the six specific incidents) be isolated by the Commission for the benefit of the other parties, Mr Le Grand in his aforementioned letters stated that, bearing in mind the jurisdiction of the Commission, the primary issues might generally involve a consideration of:

(i) Whether any person was directly or indirectly responsible for the clients' injuries (or in the case of Client 7, the alleged assault; and in the case of Client 8, his consequent death) and;

(ii) Whether there was any gross neglect or misconduct by any officer in relation to the treatment/reporting/investigation of the injuries/incident.

One might be forgiven for thinking that those issues were somewhat apparent in the context of the Commission's jurisdiction, the Inquiry's terms of reference and its lengthy and thorough examination of the six specific incidents chosen for investigation by way of public hearings.

Thereafter, on 30 June and 1 July 1994, telephone conferences occurred between Counsel Assisting and Mr Plunkett, and Counsel Assisting's instructing solicitor and Mr Herbert's instructing solicitor respectively, advising that each party would have the opportunity to raise with me, upon the resumption of the hearings, any concerns they held regarding the matters to be addressed by their written submissions (T 5571–5572). Upon the hearings resuming on 4 July 1994, none of the parties chose to address me upon any such matters.

For the sake of completeness, I should also note that during the course of the Inquiry examining one specific incident of alleged client abuse or gross neglect, I granted leave to another Counsel (and his instructing solicitors) upon application, to appear for a particular RCO. As the evidence concerning this incident has led to me recommending that a report might in due course be forwarded, pursuant to Section 33(2)(a) of the Act, to the Director of Prosecutions (as referred to herein at section 1.12), I will not further identify that Counsel, his instructing solicitors or their client. However, I note that those solicitors also sought, by way of correspondence, that the Commission isolate the issues of relevance to their client, and were in due course advised in similar terms as to those employed in the correspondence of Mr Le Grand to Messrs Plunkett and Herbert's instructing solicitors as referred to above.

6.4 THE SUBMISSIONS CONCERNING THE FIRST TERM OF REFERENCE

Eventually, Counsel Assisting, Counsel for the State of Queensland and Counsel for the unions, delivered detailed written submissions in relation to each of the six specific incidents examined by the Inquiry. Counsel granted leave to appear for a particular witness in relation to one incident (as referred to in section 6.3) also delivered a detailed written submission, and a supplementary written reply to the written submissions of Counsel Assisting. All of the abovementioned Counsel, on 19 and 20 July 1994 also spoke to their written submissions.

As mentioned, the Public Trustee, the Legal Friend and QAI were also invited to make written submissions, if they wished, in relation to the six specific incidents. The Public Trustee forwarded a short submission indicating that he did not wish to make specific submissions in relation to any of the discrete incidents raised in the Inquiry. However, the Public Trustee did state, inter alia;

> My office is aware that the Legal Friend has instructed private solicitors in relation to two of the matters raised in the Inquiry and after certain investigation has referred two others to this office for action. This is part of the continuing co-operation between my office and the Legal Friend in the interests of our mutual clients. On instructions from the Public Trustee the Official Solicitor to the Public Trustee is considering the six matters and a number of additional matters with a view to commencement of action.
>
> If so advised by the Official Solicitor the Public Trustee intends to commence legal action where appropriate on behalf of clients that the office believes have been subjected to injury, abuse or gross neglect. The findings of the Inquiry will be relevant in considering what action is to be taken.

The Legal Friend also delivered a brief submission 'directed at shedding light on the involvement of the Legal Friend to date in assisting the following persons . . . '

a) Client 1 (in relation to her sexual assault and consequential pregnancy, see section 1.6);

b) Client 2 (see section 1.7);

c) Client 5; and

d) Client 6;

all of whom were assisted persons pursuant to the *Intellectually Disabled Citizens Act 1985* . The Legal Friend also included within these submissions some general comments and observations upon his role, which are dealt with more fully at section 23.6(F).

QAI delivered a submission touching upon the investigations concerning Clients 4, 7 and 8, noting that the Legal Friend was providing representation for the other three residents who were the subject of discrete investigations during the public hearings. QAI's submissions could fairly be described as being general in nature, addressed to wider concerns such as the overall best interests of the clients, the concept of deinstitutionalisation and suggestions for reform; rather than examining the specific evidence in relation to each incident and proposing recommended findings.

All of the aforementioned submissions were circulated amongst the parties.

I do not propose, at this stage, to comment upon the content and recommended findings of any of the aforementioned submissions (with the exceptions discussed below). Rather, the particular submissions made by the parties will be addressed in the specific Chapters of this report dealing with the relevant

incidents examined by the Inquiry, with the exception of the submissions concerning the incidents involving Clients 5 and 6, which may be the subject of separate reports to other entities (see section 1.12).

6.5 SUBMISSIONS BY COUNSEL FOR THE STATE OF QUEENSLAND REGARDING THE SIX SPECIFIC INCIDENTS

Notwithstanding the exchange of correspondence (see section 6.3) between the Commission and the Crown Solicitor, and the affording of the opportunity to raise directly with me on 4 July 1994 any concerns regarding the formulation of submissions – an opportunity which no party availed themselves of – Counsel for the State of Queensland raised, in his submissions, a number of criticisms and complaints of the Commission's investigation, the conduct of the hearings and the conduct and submissions of Counsel Assisting. Regrettably, many of Mr Plunkett's submissions were expressed in language that was intemperate. Upon further examination, it is evident that a not insignificant number of those submissions were predicated upon errors of a factual, procedural or logistic nature.

In his first volume of written submissions, Mr Plunkett raised a number of points under a general heading "Denial of Procedural Fairness by Commission", relating to the request for written submissions in respect of the six specific incidents. I cite the same verbatim, with the addition of numbering for ease of understanding my responses:

1. The parties were required to address the Commission on the facts of this matter without any notice as to the issues despite a request for such a formulation as properly occurred in other Commission investigations. This was the practice adopted in the investigation by Mr L Wyvill QC in a report of an investigation into the arrest and death of Daniel Alfred Yock (letter dated 17 January 1993 from Commission to parties and page xiv to xx of the report) and a report by the Honourable R H Matthews into allegations of Lorrelle Ann Saunders concerning circumstances surrounding her being charged with criminal offences in 1982 and related matters (letter dated 10 December 1992 from Commission to parties and page 2–4 of the report).

2. It should not have been sufficient to require the parties to speculate as to issues express or implied in the evidence, particularly concerning persons holding appointments at the Centre where no notices of allegations have been given.

3. There had been no consultation between the legal representatives for the Commission and the parties where such issues could be isolated to the benefit of expedition for all.

4. It is not proper nor fair that the parties should have been required to address the issues in a vacuum.

5. No opportunity was provided to the parties to address the Commission on the revised timetable concerning the provision of written submissions which is a substantial departure from what was raised in public hearings.

6. In the absence of the Commission isolating for the attention of the parties the relevant issues to be addressed, the parties should not have been required to provide their written submissions prior to Counsel Assisting setting out the matters required to be addressed, particularly given the great body of material canvassed in the individual cases.

In the course of his oral submissions Counsel Assisting responded to these issues. His submissions, in summation, were to the effect that Mr Plunkett's submissions alleging a denial of procedural fairness by the Commission were 'a nonsense' (T 5579). At T 5582–5583, I indicated that I wished to allow Mr

Plunkett the opportunity to respond to the matters raised by Counsel Assisting, and thereafter Mr Plunkett made some submissions, referring to 'notions of fairness' (T 5618) before expounding upon the law which he submitted was of relevance to my decision-making task vis-à-vis the evidence and findings of fact. After concluding those submissions, Mr Plunkett then moved to an analysis of Counsel Assisting's written submissions concerning the matter of Client 8's death. He did not further specifically address me upon the claims of denial of procedural fairness, contained within his aforementioned written submission, nor upon Counsel Assisting's detailed responses to the same.

During the second series of submissions, on 18 August 1994, after dealing with some preliminary issues, I said the following, (T 5866-5867):

> . . . there is one further matter that I would like to hear Mr Plunkett on. On the last occasion, and indeed, from time to time throughout the hearing, Mr Plunkett has referred to various aspects of the Inquiry; in particular, some matters that have to do with lack of particulars, lack of written notices of allegations and the like, and on the last occasion that I heard evidence, or perhaps that is not quite accurate, on 19 July 1994, there was lengthy argument, particularly by Counsel Assisting, relating to submissions that have been made by Counsel for various parties.
>
> Throughout the course of those submissions, Mr O'Sullivan referred to various aspects of Mr Plunkett's submissions, and whilst I think that it was quite clear during the course of Mr O'Sullivan's submissions, I indicated to Mr Plunkett that if there was anything he wished to say further to his submission concerning what he described as denial of procedural fairness, then he certainly would be encouraged to do so, indeed, on any matter that was raised by Mr O'Sullivan. It is my earnest wish that there be no denial of procedural fairness to any person.
>
> However, it might be seen that I did not ask Mr Plunkett directly whether there was anything further he wanted to say, but was putting it to him, as it were, through Mr O'Sullivan. To avoid any difficulty there, I accordingly ask you, Mr Plunkett directly, if there is anything further you wish to say about the points you raised in those paragraphs that I have mentioned in other places concerning any matter concerning procedural unfairness.

Mr Plunkett accepted this opportunity, and at T 5867 et seq made some further submissions. He referred to a number of authorities, and cited a passage from the decision of the Privy Council in *Mahon v Air New Zealand* [1984] AC 808, which included that part of the judgment appearing at page 821, where their Lordships said:

> The second rule (of natural justice) requires that any person represented at the Inquiry who will be adversely affected by the decision to make the finding should not be left in the dark as to the risk of a finding being made and thus deprived of any opportunity to adduce additional material of probative value which, had it been placed before the decision-maker, might have deterred him from making the finding even though it cannot be predicted that it would inevitably have had that result.

The gist of Mr Plunkett's further oral submissions was to the effect that there may have been various parties affected by the Inquiry who, by virtue of the process adopted, might 'be required to speculate as to whether or not they are going to be the subject of an adverse finding' (T 5871). That submission by Counsel for the State of Queensland does not accurately reflect the abovementioned rule as stated in *Mahon*; at the conclusion of an Inquiry's proceedings many persons may speculate, pending the publishing of the final report, whether they will in fact eventually be the subject of an adverse finding. It is only if such persons are not advised of the *risk* of an adverse finding being made, that a breach of natural justice may occur, due to the fact that those persons may not then have had an opportunity to place before the Inquiry material or submissions, supporting their position, aimed at deterring the decision-maker from drawing a conclusion adverse to them.

Continuing at T 5871, Mr Plunkett asserted that the correct approach:

> Was to outline for the parties a concrete and a specific set of propositions whether or not such and such happened, whether or not such and such happened.

At T 5871–5872, Mr Plunkett stated:

> Now, naturally enough, when written submissions are produced and oral submissions supplementing those are given, that it is quite clear as far as the parties are concerned what Counsel Assisting's position is and they can obviously address it. And, to that extent, the complaint of procedural unfairness is ameliorated but not entirely so.

Mr Plunkett submitted that issues should be particularised with clarity, and stated (T 5872):

> . . . but I wonder if this other host of issues is required of us to be addressed, but if there are other matters which [Counsel Assisting] has not touched upon but which your Honour proposed to put in the final report, then procedural fairness requires us to be given notification of those and an opportunity to respond to them.
>
> It is not good enough to simply say, well, you have heard all the evidence, you know what the issues are, because what might be an issue to your Honour's mind as the fair inquirer might be completely different to an issue to a party and, being a party, might have a partisan view. The legal representatives of the various parties might have instructions on the particular point, so they are not engaged in the same exercise as your Honour, namely, doing a general tour de horizon and looking around and saying, well, what ought to be recommended to the full Commission about these matters. The legal representatives are there to carry out their instructions.
>
> So if something appears to your Honour which has not been a matter for Counsel Assisting to draw to the attention of the parties, then well it ought to be drawn to the attention of the parties during the course of these proceedings. But my complaint is that it should have been done with sufficient time to prepare – I am not saying we have not got sufficient time now – but should have been done, as Mr Wyvill did it, weeks in advance of being called upon to address. So that is the essence of what I complain about by lack of procedural fairness and no more than that.

I then asked Counsel Assisting if he wished to say anything in response to Mr Plunkett's oral submissions. Mr O'Sullivan, at T 5873, briefly submitted that the requirements of procedural fairness had been adequately addressed, in the circumstances, as:

- The parties who were legally represented were present for all of the evidence;
- Those parties were able to cross-examine witnesses on issues arising during the course of the Inquiry where, in particular, some persons had received notices of allegation, or upon attending, in the case of one RCO, were given a warning that a finding might be made against them; and
- Submissions were supplied, and addresses made.

The submissions made by Counsel for the State of Queensland raise criticisms of a most fundamental nature regarding the fairness of the Inquiry's proceedings and the integrity of my ultimate findings. In those circumstances, I am firmly of the view that those matters should be addressed within this report. The Commission, pursuant to Section 22 of the Act, is under a statutory duty dictating that it must 'at all times act independently, impartially, fairly and in the public interest'. Counsel for the State of Queensland, in essence, has suggested that the Commission has not observed these requirements. To my mind, in discharging its duty of acting fairly and in the public interest, it is essential that this report of the Commission, comprising as it does the ultimate outcome of the investigation and consequential hearings, should set out in detail the actual facts and the law which, when properly analysed, demonstrate the unsubstantiated nature of these submissions. In simple terms, I consider it necessary, in the public interest, for the record to be set straight.

I will deal with Mr Plunkett's six specific submissions, alleging a denial of procedural fairness concerning the six specific incidents, seriatim:

(1) The parties were required to address the Commission on the facts of this matter without any notice as to the issues despite a request for such a formulation as properly occurred in other Commission investigations. This was the practice adopted in the investigation by Mr L Wyvill QC in a report of an investigation into the arrest and death of Daniel Alfred Yock (letter dated 17 January 1993 from Commission to parties and page xiv to xx of the Report) and a report by the Honourable R H Matthews into allegations of Lorrelle Ann Saunders concerning circumstances surrounding her being charged with criminal offences in 1982 and related matters (letter dated 10 December 1992 from Commission to parties and page 2–4 of the Report).

It is simply incorrect for Mr Plunkett to submit that he, or any party appearing before the hearings, did not have 'any notice as to the issues'. I have already referred to the factors which, to my mind, constitute the giving of adequate notice of the issues to the parties appearing. Given the nature of this Inquiry, it would have been nothing less than entirely impractical for any person to have attempted to formulate some sort of neat and self–contained list of issues to be addressed by the evidence, submitted upon by the parties and decided by myself, either in respect of the six incidents themselves, or the more global issues to which that evidence was also relevant, in light of the Inquiry's terms of reference.

As was readily apparent from Mr Le Grand's aforementioned letter (see section 6.3) in terms of each specific incident examined by the hearings, the primary issues eventually arising for my consideration were based upon the attribution of responsibility, where possible, for each of the incidents of alleged client abuse or gross neglect so examined. Again, I emphasise that these proceedings were not adversarial in character. If authority is sought for that view, it can be found in the succinct remarks of Wilcox J in the decision of *Bond and Others v Australian Broadcasting Tribunal (No. 2)*. (1988) 84 ALR 646 where His Honour stated at 656–7:

> But in an inquiry . . . there may be many people . . . whose interests are potentially affected, for better or for worse and perhaps significantly, by particular outcomes. The inquiry would become unmanageable if, in relation to each party potentially disadvantaged by each possible result, the Tribunal were bound to treat the inquiry as inter partes litigation with a concomitant obligation to supply particulars of possible contemplated decisions.
>
> . . . the inquiry remains throughout an investigative proceeding.

Wilcox J's judgment in the *Bond* case is, in my opinion, instructive in the present context. That case involved an inquiry into various licences held by the applicants (Bond and others), and a request by the applicants for further particulars of issues before the relevant tribunal. While the current factual situation is somewhat different, many of the remarks made by Wilcox J in his judgment, concerning the function of particulars in an inquiry, and procedural fairness, are apposite to the present matter.

His Honour at 659–70 of the decision referred to the contrasting nature of civil and criminal litigation and the process of an inquiry, before citing a lengthy passage from the New South Wales Court of Appeal judgment in the decision of *Moss v Brown* [1979] 1 NSWLR 114 (at 129–130); a case involving the consideration of differences between an inquiry and a trial (in the context of a committal for trial under New South Wales legislation):

> The function of particulars to confine issues, and hence the evidence to be given, is inappropriate, or almost so, at an inquiry. Subject to misuse of power to inquire into a particular charge: . . . the Magistrate has the power, and indeed the duty, in the end to consider whether the evidence is sufficient to warrant the defendant being put on his trial for "an indictable offence": s 41(6). Subject to the observance of rules of fairness, he may indict a defendant upon a different charge from that the subject

> of the inquiry; . . . subject again to the observance of rules of fairness, and the bona fide conduct of the inquiry, if the evidence provides prima facie evidence of the indictable offence inquired into, it would be contrary to the dictates of s 41(6) for the Magistrate to confine his decision by the limits of an issue as on a trial arising from "particulars" . . . it is an inquiry. It is possible that neither side may be quite sure, or even know, what will be the true content of the evidence of witnesses, when they come to give sworn evidence, and are cross-examined. The Crown may not be sure that witnesses will adhere to earlier assertions; or, while believing a witness is able to give evidence in relation to the charge, it may not know its content, because the witness elects to be silent until called to give evidence.
>
> Some danger exists, where advance information is given, that it be labelled as 'particulars', so that they are used as an instrument of pressure upon Magistrates to confine the legitimate conduct of the inquiry as to evidence or otherwise as on a trial.
>
> In an inquiry, there are many different means by which a Magistrate may ensure that persons charged have sufficient information to enable them reasonably to exercise rights of participation in the inquiry . . . in some inquiries, particularly in a long one, it may be appropriate to take steps progressively to ensure that the defendants are aware of the Crown case as it emerges, sufficient to facilitate cross-examination, leading evidence in reply and making final submissions.

Later, at 662–663, Wilcox J referred to the particular facts of the specific matter then arising for his consideration, and remarked:

> Presumably, as the evidence unfolded, the three members of the Tribunal who were conducting the inquiry each formed impressions about various matters. Their impressions may, or may not, have coincided. But these impressions ought to have been – and, no doubt, were – merely tentative impressions open to reconsideration as further evidence was adduced, and subject to whatever emerged in submissions and even in the ultimate deliberations upon the case of the Tribunal members. Under these circumstances, it would be quite mischievous to require the members of the division to agree on, and to articulate, their tentative views in the form of particularised allegations. Were the members to take this course, a serious question would arise as to whether those members could continue in the inquiry: see *R v Watson; ex parte Armstrong* (1976) 136 CLR 248; 9 ALR 551; *Livesey v New South Wales Bar Association* (1983) 151 CLR 288; 47 ALR 45; *R v Maurice; ex parte Attorney-General* (NT) (1987) 73 ALR 123.
>
> The above considerations impel me to the conclusion that it is a fundamental misconception to see the subject inquiry as an occasion for the supply of the type of detailed particulars sought by the applicants. As is indicated by *Mahon*, the duty of the Tribunal is to ensure that the applicants are made aware of the material placed before the Tribunal, and which is relevant to the exercise of any power in a manner adverse to their interests, and that they have a full opportunity to put to the Tribunal such additional material – by way of both evidence and submissions – as they may think helpful in persuading the Tribunal against the exercise of such power.
>
> . . . the existence of an obligation to cause the supply of particulars of allegations depends upon the question whether the subject proceeding is one in which specific allegations are being made – in which case considerations of both fairness and efficiency would support the particularisation of those allegations – or whether it is a general inquiry into a particular topic without precise allegations as to conduct – in which case particulars are both impractical and potentially embarrassing to the proper conduct of the inquiry; the point made in *Moss v Brown*.
>
> The present applicants have been represented throughout the course of the inquiry. They are aware of all of the material so far put before the Tribunal. They have had the opportunity of cross-examining all of the witnesses who have given evidence. There is no suggestion that this situation will change or that the applicants will be precluded from putting before the Tribunal such relevant evidence and submissions as they may wish. The only possible question is whether, accepting that no formal allegations have yet been made and that the detailed particulars sought are inappropriate, the Tribunal has caused, or is likely to cause, the applicants to be 'left in the dark' as to the type of findings and orders which may be made.

These comments are to my mind applicable to a public inquiry conducted pursuant to the *Criminal Justice Act 1989.*

Mr Plunkett cannot submit that he was unaware, in any respect, of the material placed before the Tribunal for my consideration, and which might be of relevance to the exercise of my powers. He was afforded every opportunity to address me upon any chosen matter. The six specific incidents investigated during the public hearings, with the exception of the alleged assault of Client 7 (in respect of which a direct notice of allegation was issued), were by their very nature general inquiries 'into a particular topic without precise allegations as to conduct'. In relation to those alleged incidents of client abuse or gross neglect, I have little doubt that the fact that a perpetrator could not immediately be isolated or identified, and that precise conduct constituting abuse or gross neglect could not therefore be minutely particularised, played no small part in the Commission's original decision to investigate those matters further by way of public hearing.

To my mind, in the context of Mr Plunkett's submission, the requirements of procedural fairness for any person represented at the Inquiry, who may ultimately be adversely affected by a finding of the Inquiry, are satisfied if the person is not left in the dark as to the risk that such a finding could be made against them – *Mahon v Air New Zealand Limited* [1984] AC 808.

Here, Mr Plunkett, representing as he did the State of Queensland, was in the best possible position to follow the directions taken by the Inquiry, given his attendance throughout the totality of the hearings, his unlimited access to all relevant materials, and the privileges afforded him in terms of being allowed to make submissions and cross–examine witnesses, inherent in his role as an advocate granted full leave to appear before the hearings.

This Inquiry could not have been sensibly or effectively conducted if it had been constrained in its operation by some defined list of particulars. Such a procedure would be totally contrary to the purpose of carrying out such an investigation, and would no doubt be 'both impractical and potentially embarrassing to the proper conduct of the Inquiry', (as stated above by Wilcox J), and contrary to the powers of myself as Commissioner, (see section 4.7 herein and *Ross v Costigan* (No. 2) (1982) 41 ALR 337 at 350–351).

It is similarly inappropriate to submit that some requirement exists compelling myself, constituting the Commission (or for that matter any other person such as Counsel Assisting) to furnish a list of particulars of possible adverse findings against various persons who may be affected by the Inquiry. Such a procedure would only be relevant if this Inquiry had been conducted so that some such party had in fact been "left in the dark" as to the *possibility* of an adverse finding being made against them, at the conclusion of the Inquiry itself. Such a situation might have arisen, by way of example, if a relevant party had not been allowed to be represented and heard during the Inquiry, as was the case in *National Companies and Securities Commission v News Corporation Ltd* (1984) 156 CLR 296 where Gibbs CJ of the High Court said at 316:

> Further, when the Commission said that it would give the respondents an opportunity to be heard, it must have meant a proper opportunity, and there is no reason to think that the Commission will not give to the respondents adequate notice of any adverse conclusion which it has tentatively reached, or of any criticism which it tentatively proposes to make, or that it will not listen with an open mind to whatever material is then put before it by the respondents and give full weight to such material.

After citing that passage, Wilcox J stated in the *Bond* case at 664:

> [The applicants] submit that this sentence indicates a view that tentative conclusions ought always to be disclosed to a person potentially affected by the outcome of an inquiry. I cannot accept this submission.

> It seems to me inconsistent with the acceptance by Gibbs CJ of the adequacy of the requirements stipulated in *Mahon*. The statement made by the Chief Justice must be read in the light of the facts of the case then under consideration. The appellant Commission was engaged in a private hearing. The High Court held that News Corporation was not entitled to be represented throughout that hearing. It followed that, in the absence of some intimation of relevant matters, the company might not become aware of the issues which it needed to address. An obvious way of ensuring that the company would not be "left in the dark" would be for the Commission to give notice of any tentative adverse conclusion. But this can hardly be necessary in a case where the subject matter of a potential criticism has been flagged as an issue, in the presence of the affected person, during the course of the inquiry; and particularly if questions have been directed to that matter by Counsel Assisting or by members of the tribunal themselves.

His Honour then noted that occasions may arise in which it might be appropriate for a tribunal to direct the attention of a party to a particular matter, and said at 665:

> In rare cases the investigator might do this by indicating a tentative view upon a point: see, for example, the procedure suggested by Woodward J in *Freeman v McKenzie* (1988) 82 ALR 461. The investigator might simply express concern about the adequacy of the material relating to an aspect of the case. Judges frequently take this course, in an endeavour to gain the maximum assistance from the parties in resolving an issue. In an unusual case – like *Mahon*, in which the adopted procedure obscured from Air New Zealand the significance of evidence which the Royal Commissioner regarded as condemnatory of that party's conduct – there may be a positive obligation upon the investigator to call attention to a point. But this course will hardly be necessary in a case where the relevant matter has been clearly identified as an issue and has been the subject of contested evidence.

Having presided over this Inquiry, and reviewed the evidence extensively in the course of my deliberations, I am completely satisfied that there has been no denial of procedural fairness in relation to the provision of notice of relevant issues to all relevant parties.

Mr Plunkett also referred me to what he has termed the practice of other Commission inquiries, namely the Yock and Saunders matters. The references cited by Mr Plunkett from the Saunders report, upon examination, revealed that the so–called "formulation of issues" for the parties was no more than a restating of that Inquiry's formal terms of reference, as drafted by the Hon R H Matthews QC (see T 5874–5875). In any event, that Inquiry dealt with a number of specific allegations, raised by an individual complainant, and all of particular reference to that complainant. Similarly, the issues contained in the Yock report references highlighted by Mr Plunkett relate to a term of reference in that Inquiry, concerning the investigation of whether there was any evidence of a criminal offence, misconduct etc., by any member of the Queensland Police Service, concerning only one specific incident, namely Mr Yock's death.

An inspection of the Yock and Saunders reports emphasises the fundamental differences between the nature of each of those inquiries and the present investigation. The procedure adopted in other inquiries is not binding upon this Inquiry. Questions of the according of procedural fairness depend upon the entirety of the circumstances of the relevant hearing. The fact that certain procedures were followed in one investigation does not cause any subsequent investigation, which follows a different procedure, to be procedurally unfair. As Gibbs CJ stated in *National Companies and Securities Commission v News Corporation Ltd* (1984) 156 CLR 296, at 312:

> The authorities show that natural justice does not require the inflexible application of a fixed body of rules; it requires fairness in all the circumstances, which include the nature of the jurisdiction or power exercised and the statutory provisions governing its exercise.

I find that the measures adopted in relation to this Inquiry amounted to the affording of procedural fairness to the relevant parties who were at risk of an adverse finding being made upon the evidence.

(2) It should not have been sufficient to require the parties to speculate as to issues express or implied in the evidence, particularly concerning persons holding appointments at the Centre where no notices of allegations have been given.

The submission by Counsel for the State of Queensland to the effect that the parties were required to speculate 'as to issues express or implied in the evidence', is no different in substance to his first mentioned point, and it is therefore unnecessary to further consider it. However, I do wish to comment upon the issuing of notices of allegation by the Commission.

Prior to receiving evidence at the investigative hearings, the Commission issued a number of notices of allegation to various persons. In essence, those notices were to the effect that evidence would be given before the hearings alleging that the recipient of the notice had committed certain acts, which were particularised to the extent of the then available evidence (which acts were potentially capable of amounting to official misconduct). Initially, in relation to the six specific incidents, one notice of allegation was issued to RCO D, concerning the alleged assault upon Client 7 (see Chapter 9). As the hearings progressed, a further notice of allegation was delivered to Mrs E, concerning the incident of the unexplained injury suffered by Client 1 (see Chapter 8). This notice was in imprecise terms, reflecting a suspicion that may have arisen, in the minds of some, as to the cause of that particular injury. It was issued in an abundance of caution in circumstances where Mrs E, unlike the vast majority of witnesses before the Inquiry, did not have legal representation and may well have been from one interpretation of the then available evidence, at some risk of having unfavourable submissions or an adverse finding made in relation to her conduct. I should note, at this stage, that I have not, within this report, made any such adverse finding against Mrs E on the evidence. The notice given to Mrs E was provided so that she could, without any doubt at all, fully appreciate her position before being called to give evidence.

In relation to one later incident investigated, which is the subject of a further report (as discussed herein at section 1.12), another witness who faced the possibility of an adverse finding being made against him, personally appeared before the Inquiry prior to giving his evidence, so that his position could be made emphatically clear to him. I note that special circumstances existed in that instance; it was not until Counsel Assisting opened this bracket of evidence that it was ascertained that Mr Herbert and his instructing solicitors, due to a potential conflict of interest, would not be acting for the particular witness. All relevant persons, certainly myself, assumed that Mr Herbert and his instructing solicitors would be acting for that particular witness, and would therefore be aware of his situation and the particular evidence pertaining to his alleged conduct. After this witness was fully advised of the nature of the proceedings, alternative legal representation was obtained for him, with Mr Herbert's commendable assistance, over the period of a weekend recess.

The Commission did not issue notices of allegations to persons upon whom the available evidence, prior to the commencement of the Inquiry, could only cast some amorphous or fanciful shadow of suspicion, nor did it issue notices of allegations to persons against whom some form of ancillary complaint was made "on the run" so to speak, during the course of the evidence itself. Indeed, at a very early stage of the Inquiry, on 12 January 1994, Counsel for the State of Queensland specifically decried the adoption of any procedure requiring notices of allegation to be issued in those circumstances, stating 'that would be unworkable and silly' (T 217).

With the exception of the alleged assault on Client 7, in respect of which a relevant notice of allegation was issued, there were no readily identifiable suspects in any of the other five specific incidents which were focussed upon by the investigative hearings. I have already (see section 1.13) emphasised the peculiar difficulties inherent in investigating allegations of client abuse. In respect of the aforementioned five incidents, it was not always clear, at the outset, whether misconduct had been involved at all in the particular matter, or whether a client's injury or the like had arisen in a purely innocent or accidental fashion. There were no direct eyewitness accounts asserting misconduct by a

named officer. Accordingly, the evidence itself did not directly cast any substantial suspicion upon any individual.

During the course of receiving evidence the focus of responsibility for some incidents did in fact narrow, and when that occurred, the parties and their representatives who were present, with full rights of appearance and cross-examination, should have been cognisant of any such development. The fact that these developments occurred indicated to me that the hearings were achieving at least one dominant purpose, namely, the identification of possible culprits responsible for suspected acts of official misconduct. It is a self-evident proposition that if those culprits could have been directly identified prior to the conduct of public hearings (to an extent that a directly framed notice of allegation could have been prepared) the Commission might not have had to expend the significant resources involved in the conduct of public hearings investigating those matters by means of the mechanism of this Inquiry. In this regard, with the exception of the alleged assault of Client 7, each of the other five incidents had initially been investigated by the Department itself, and in some cases, the Queensland Police Service. Those investigations did not highlight any readily identifiable person as a "suspect"; the adequacy, or otherwise, of the Department's internal investigations is a matter commented upon at a later stage of this report (see Chapter 23).

In any event, in order to afford procedural fairness to relevant persons who are entitled to be heard, it is necessary that such persons should be given prior notice of the hearings and allowed sufficient time and information to prepare and present their own cases effectively, and to attend before the hearings and make submissions. There is no formula or similar contrivance imposed by the law which dictates that adequate notice to that effect can only be provided by the furnishing of a written notice of allegations.

I am satisfied that all of the necessary persons associated with this Inquiry received adequate notice in respect of each of the six specific matters investigated during the public hearings.

(3) There had been no consultation between the legal representatives for the Commission and the parties where such issues could be isolated to the benefit of expedition for all.

I have already referred in section 5.3 to the series of informal conferences held between the legal representatives of the parties, and Counsel Assisting and his instructing solicitor, in relation to the provision and exchange of all relevant material concerning each bracket of evidence. It would seem to be implicit in any such endeavour that all parties participating would have turned their minds to the issues in order to make considered decisions as to the relevance of particular documents held or sought by them. Those remarks are particularly apposite to the position of Mr Plunkett, representing as he did the State Government, which was the custodian of all relevant Divisional and Departmental records tendered to, and the employer of the majority of witnesses called before, the public hearings.

I have already referred to the exchange of correspondence between Mr Plunkett's instructing solicitor and the Commission regarding the issues for written submissions, and Counsel Assisting's telephone conference with Mr Plunkett advising of the opportunity to raise directly before me any further queries in this regard. I do not believe that Counsel for the State of Queensland is suggesting that either he, or his instructing solicitors, experienced any difficulty in ever approaching Counsel Assisting or the legal staff of the Commission, should the need have arisen. Indeed, such a situation would be antithetical to the nature of Mr O'Sullivan's role as Counsel Assisting the Inquiry. Accordingly, I am of the opinion that Mr Plunkett's submission in this respect does not accurately reflect the relevant facts.

(4) It is not proper nor fair that the parties should have been required to address the issues in a vacuum.

I have already dealt at length with submissions to this effect.

(5) No opportunity was provided to the parties to address the Commission on the revised timetable concerning the provision of written submissions which is a substantial departure from what was raised in public hearings.

I have already referred to the various, and numerous, times at which I foreshadowed the requirement for the provision of written submissions. On the first occasion when I raised this matter (see section 6.1), Counsel for the State of Queensland specifically agreed that my proposed general course of action was satisfactory to him (T 766). I do not accept that the procedure eventually adopted by the Commission in that regard is in any sense of the word a 'departure', whether substantial or otherwise, from the gist of my comments made during the public hearings.

Further, I note that the timetable set out in the Commission's letter of 14 June 1994 to the parties was not strictly enforced; indeed, volume 2 of Mr Plunkett's submissions concerning the six specific incidents was not received by the Commission until approximately 7:20 p.m. on 18 July 1994, the day before oral submissions relating to the six specific incidents were to be made (T 5556 et seq). Mr Plunkett (T 5566) stated that the late delivery of those submissions was consequential to a need to receive his client's instructions upon Counsel Assisting's written submissions, which had in turn, only very recently been provided to him. That being so, I make no further comment in that regard, other than to note that in drafting the timetable reflected in the Commission's letter of 14 June 1994 I was seeking for the parties to provide their own submissions to the Commission, and to thereafter avail themselves of the opportunity, afforded by the right to make oral submissions, to comment upon the written submissions of the other parties, where appropriate. As the proceedings were non-adversarial in nature, I did not envisage that any party would feel constrained to withhold their own written submissions pending the provision of any other party's written submissions, as the opportunity to address the submissions of other parties was provided for in the right to make additional comment by way of address.

(6) In the absence of the Commission isolating for the attention of the parties the relevant issues to be addressed, the parties should not have been required to provide their written submissions prior to Counsel Assisting setting out the matters required to be addressed, particularly given the great body of material canvassed in the individual cases.

This particular submission appears to be taken from the Crown Solicitor's letter to the Commission of 28 June 1994 (see section 6.3).

Given the above, this aspect of Mr Plunkett's submissions is at odds, to some extent, with his fifth ground. I reiterate my remarks in respect of that fifth submission and again draw attention to my earlier remarks herein concerning the role of Counsel Assisting vis-à-vis my own role, constituting the Commission for the purposes of this Inquiry. Those two roles are not identical, nor am I in any respect either bound to place particular weight upon the submissions of Counsel Assisting, or constrained, in terms of this report, by their content.

I note that written submissions of the parties were accepted up until the very day of the hearings themselves recommencing for the purposes of hearing oral submissions, and together with the affording of an opportunity to address me upon all written submissions, no party could validly assert that they were left unaware of the gist of the submissions made, and the issues addressed, by Counsel Assisting, and were thus left without an opportunity of responding. I note again that the matters and issues raised by Counsel Assisting were not conclusive of the issues arising for my own determination, in any event.

6.6 FURTHER SUBMISSIONS BY COUNSEL FOR THE STATE OF QUEENSLAND

Apart from the abovementioned submissions regarding the first term of reference of the Inquiry, Counsel for the State of Queensland made a number of other general submissions relating to alleged shortcomings in the Inquiry's process. In general, I was disappointed with those submissions. I have already stated my view (see section 6.5) that some were expressed in intemperate language, and could not be substantiated when properly analysed in the context of the applicable law, the relevant evidence and the facts pertaining to the conduct of the Inquiry itself.

Counsel Assisting successfully rebutted many of the points advanced by Mr Plunkett during the course of oral submissions (see transcript of 19 July and 18 August 1994).

Although I have considered all of Mr Plunkett's submissions, I do not propose to deal with each and every matter raised by him, in this report. It will suffice to note that some submissions are more referrable, and comprehensible, in the context of certain discrete brackets of evidence, and where appropriate, such submissions are dealt with herein during the discussion of those passages of evidence.

6.7 THE SUBMISSIONS CONCERNING THE SECOND AND THIRD TERMS OF REFERENCE

The Commission's letter to the parties of 14 June 1994 advised that written submissions in relation to the second and third terms of reference were to be provided to the Inquiry by 5 August 1994 (in the case of parties granted full rights of appearance, and by 15 July for other parties), and that it was tentatively proposed to reconvene the hearings on 18 and 19 August so that the parties might speak to their written submissions. On 21 July 1994, while discussing the request for these submissions, Counsel Assisting stated (T 5849):

> It is proposed that we will provide to the parties a list of issues that we see as relevant to the remaining matters so that they might direct their attention to those issues.

After Counsel Assisting made that statement, Counsel for the State of Queensland indicated that he may not be able to comply with the timetable due to the degree of consultation between himself and various necessary entities, that may be required, the anticipated duration of which could not be accurately ascertained until Counsel Assisting had circulated the list of issues. I then stated (T 5850):

> . . . I want to afford the Department and all other parties every opportunity to cover these matters as fully as they wish to do and not to place any impediment in anyone's way. Having said that there has to be some sort of cut off point. I do not want to come up on the 18th or the day before or something like that and not have submissions.

Accordingly, at Mr Plunkett's suggestion, it was eventually agreed that the parties would exchange their written submissions by 11 August 1994.

In due course, on 26 July 1994, the Commission, over the hand of Mr Le Grand, wrote to all of the parties regarding the submissions upon the second and third terms of reference. That correspondence, which is reproduced herein in its entirety, stated:

> I refer to the remarks of Mr Mark O'Sullivan, Counsel Assisting the Inquiry, and the Honourable D G Stewart, of the 21st instant, concerning the issues that may be relevant to the parties' further written submissions.

Based upon the evidence put before the Inquiry to date, it is suggested that the following may be relevant issues for the parties to address by written submissions:

- Whether or not there has been harassment or intimidation of persons associated with the Basil Stafford Centre, including:

  (a) the type of harassment or intimidation,

  (b) the reason for such harassment or intimidation, including whether or not the same has occurred to persons who have complained of, or would be likely to complain of, the abuse or gross neglect of clients, and

  (c) the person or persons responsible for such harassment or intimidation, and whether official misconduct has been committed by any person who can be so identified.

- Whether or not an institutional culture exists at the Basil Stafford Centre, and if so:

  (a) the features of the same,

  (b) the relevance of that culture in the context of the occurrence and reporting of instances of client abuse or gross neglect, and

  (c) the impact of any such culture in terms of the statutory provisions, policies, practices or procedures relevant to the treatment of clients.

- Whether any of the unions, whose membership includes persons employed at the Basil Stafford Centre, and whether any person associated with those unions, including Mr F, have had any adverse or undue influence upon the reporting and investigation of alleged incidents of client abuse or gross neglect.

- Specifically, concerning the witness Mrs A, any issues relating to her reporting of alleged client abuse/gross neglect and her treatment by the Division of Intellectual Disability Services/Department of Family Services and Aboriginal and Islander Affairs;

- The existing provisions, policies, practices and procedures relating to the reporting and investigation of suspected incidents of client abuse/gross neglect or the harassment or intimidation of staff in the context of the reporting of alleged client abuse/gross neglect including:

  (a) staff/client ratios,

  (b) RCO recruitment, selection and training,

  (c) funding levels applicable to the Basil Stafford Centre,

  (d) the role of existing structures such as the Office of the Public Trustee, the Office of the Legal Friend, the Official Visitor scheme and the present investigative procedures employed by the Department and whether a need exists for any further independent body (in terms of the reporting and investigation of suspected incidents of client abuse/gross neglect or the harassment or intimidation of staff),

  (e) the medical treatment available to, and required by, the clients of the Centre.

Also, I note that Mr Stewart has made reference to the making of a possible recommendation involving the closure of the Basil Stafford Centre. It is not proposed that Counsel Assisting will present submissions to the parties, or to the Inquiry, on matters relevant to any such "general" possible

> recommendation that may be open to Mr Stewart. However, it is envisaged that the other parties may wish to refer to these matters in their written submissions, and are quite welcome to do so.
>
> I would emphasise that, in accordance with his role as Counsel Assisting, Mr O'Sullivan's written submissions should not be taken to be conclusive, by the parties, of the issues that may validly arise for Mr Stewart's consideration. Similarly, the contents of this correspondence are not in any way intended to confine the parties in terms of the issues to which they may wish to direct their written submissions. The total ambit of those submissions is only defined by the evidence given to the Inquiry and this Commission's jurisdiction.
>
> Should Counsel at any time have any queries as to the issues relevant to their written submissions, it would be in order for Counsel to directly contact Counsel Assisting, Mr Mark O'Sullivan, to discuss the same.

Eventually, most of the parties found that they were unable to provide their written submissions by 11 August 1994, and some submissions were exchanged after that date. Indeed, during the course of oral submissions on 18 August 1994, Counsel for the State of Queensland stated (T 5877) that he was only able to provide a copy of his fourth volume of submissions, entitled 'Recommendations Concerning any Statutory Provisions, Policy, Practice or Procedures Relevant to the Mistreatment of Clients', in a draft form. Mr Plunkett indicated that 'it would be one week or so before that can be finally settled but we will certainly circulate it to the parties and to your Honour'. On 2 September 1994, the Commission wrote to the Crown Solicitor seeking a copy of that volume of submissions, which was in turn eventually provided to the Commission on 15 September 1994.

In all, written submissions upon the second and third terms of reference were received from Counsel Assisting, Counsel for the State of Queensland (two volumes), Counsel for the unions, Counsel for Mrs A (Mr Clutterbuck), Counsel for Mr F (Mr Logan), the Public Trustee (who also provided an affidavit of relevance to those issues – Ex 420), and QAI (which provided a total of eight submissions, all of which touched upon these terms of reference). I should note that the earlier submissions and statement of the Legal Friend, as referred to herein in section 5.8, were also of relevance to these areas and were considered by me in this context.

Throughout the course of the Inquiry I, and the Criminal Justice Commission itself, also received letters and submissions from a small number of interested community groups, such as the Association of Queensland Parents of People with Disabilities, and a considerable number of letters and submissions from parents and relatives of persons residing at the Centre. Copies of all of these submissions were provided to me, and to the other relevant parties. I have read all of the various submissions; understandably, many contained references to matters probably outside the Inquiry's strict terms of reference, and claims and allegations that were not tested in evidence. However, I wish to assure the authors that I have given due consideration to all such submissions, and I thank those people concerned for taking the time to inform the Inquiry of their views, which I have no doubt are sincerely held.

In relation to the second and third terms of reference, Counsel for the State of Queensland again submitted that the Commission should have somehow provided a list of relevant particulars at an earlier date. Within volume 3 of his submissions, Counsel for the State of Queensland said:

> By a letter dated 28 July 1994 the Crown Solicitor wrote to the Commission requesting that before the parties were required to make final submission the Commission should provide issues it wished to hear the parties address. Originally, the parties were required to address the Commission on the facts of this matter without any notice as to the issues despite a request for such a formulation as properly occurred in other Commission investigations . . . [thereafter Mr Plunkett again cited the references to the Saunders and Yock reports] . . . complaint was made in the written submission on the individual cases about the failure of the Commission to adhere to its previous practices when submissions were heard on the

individual cases. Finally on 21 July 1994, the Commission indicated that it would provide the parties with a list of issues that were relevant to this bracket of the investigative hearings.

I do not wish to again traverse the relevant law, and the facts of this Inquiry, pertaining to Mr Plunkett's assertions regarding the forwarding of particulars. Many of the matters discussed at section 6.5 are of equal application to this additional submission by Counsel for the State of Queensland. Accordingly, it will suffice to make only the following brief observations.

In commenting upon Mr Plunkett's abovementioned submission (T 5878 et seq), Counsel Assisting noted that there was in fact no letter in existence from the Crown Solicitor dated 28 July 1994, and that Counsel for the State of Queensland may have meant to refer to the Crown Solicitor's letter of 28 June 1994. In due course, Mr Plunkett did not take issue with that proposition, noting that a typographical error had been made. Counsel Assisting also suggested that the request for particulars contained within that letter from the Crown Solicitor really related, in context, to the six specific incidents investigated by the Commission. I am minded to agree.

The submission by Mr Plunkett to the effect that the Commission only 'finally', and by implication, somewhat grudgingly, consented to the supply of some particulars on 21 July 1994, is to my mind, a submission which is unsupported by the facts. The relevant passages of transcript, and the correspondence of the Commission dated 26 July 1994 do not indicate any unwillingness or recalcitrance on the part of Counsel Assisting or the Commission staff.

Oral submissions concerning the second and third terms of reference were made by the parties on 18 and 19 August 1994. I will deal herein with these oral submissions, and the content of the written submissions, where appropriate, in the context of the relevant evidentiary issues themselves.

PART B
PARAGRAPHS 2(A) AND (B) OF THE TERMS OF REFERENCE – THE ABUSE AND GROSS NEGLECT OF CLIENTS

CHAPTER 7
THE BASIL STAFFORD CENTRE AND THE INTELLECTUALLY DISABLED

[Note: Much of the information of an historical or explanatory nature within this Chapter has been gleaned from the contents of Ex 12 (the statutory declaration of Mr Ross), and Ex 13, comprising five volumes of relevant materials of the Department (as tendered by Counsel for the State of Queensland). In the interests of brevity, I have not herein repetitively sourced general pieces of information or commentary extracted from this material.]

7.1 A DEFINITION OF INTELLECTUAL DISABILITY

The clients residing at the Centre are people with intellectual disabilities. So that one might more usefully understand what follows herein, I believe that it may be helpful to briefly consider what the term "intellectual disability" involves.

The Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (the DSM–III), lists three primary diagnostic criteria for intellectual disability:

i) Significantly sub–average general intellectual functioning;

ii) Deficits or impairments in adaptive behaviour (that is, the skills required to cope with ordinary daily tasks); and

iii) An onset of these difficulties before the age of 18.

Four categories of intellectual disability are recognised by DSM–III, viz. mild, moderate, severe and profound. These categories are based upon Intelligence Quotient (IQ) testing levels, which are constructed so that a score of 100 represents average intelligence. Robinson and Robinson (*The Mentally Retarded Child* (2nd ed.) New York, McGraw–Hill, 1976) have offered the following descriptions of individuals at the levels of "severe" and "profound" intellectual disability/mental retardation, which, while somewhat dated, are illuminating in a practical sense (at times it will be necessary within this report, for the purposes of accuracy, to refer to connotative and pejorative terms used by persons, including witnesses, which have now been superseded by the use of the term "intellectual disability", and more modern concepts):

> **Severe mental retardation (20–34 IQ)**
>
> About 7% of those with IQs of less than 70 are severely retarded. They commonly have congenital physical abnormalities and limited sensory motor control. Most are institutionalised and require constant aid and supervision. For children in this group to be able to speak and take care of their own basic needs requires prolonged training; the self–care training that is provided in the special classes within the school system is usually inadequate except for the upper portion of this group. As adults the severely retarded may be friendly but can usually communicate only briefly on a very concrete level. They engage in very little independent activity and are often lethargic, for their severe brain damage leaves them relatively passive and the circumstances of their lives allow them little stimulation. They may be able to perform very simple work under close supervision. Genetic disorders and environmental insults, such as severe oxygen deprivation at birth, account for most of this degree of retardation.

Profound mental retardation (below 20 IQ)

> Less than one percent of the retarded are profoundly so, requiring total supervision and often nursing care all their lives. Very little training is usually given them because it is assumed that they can learn little except possibly to walk, utter a few phrases, feed themselves, and use the toilet. Many have severe physical deformities as well as neurological damage and cannot get around on their own. There is a very high mortality rate during childhood. (Davison and Neale, *Abnormal Psychology*, 3rd ed., John Wiley and Sons, New York, 1982, at p. 487)

7.2 CAUSES OF INTELLECTUAL DISABILITY

The literature indicates that there are two underlying, yet different, sets of causes of intellectual disability:

> The majority of retarded persons are those whose IQs fall by chance within the lower ranges of the normal curve. A bell shaped distribution results when a score is determined by the action of many somewhat independent factors, each of which can exert only a little influence. In the case of intelligence, the factors probably include numerous gene pairs and a broad variety of environmental events. Most people are in the middle, some are lucky and fall heir to favourable combinations, and others are unlucky and receive unfavourable combinations.
>
> As you should expect, most retarded persons are mildly retarded ... very few persons would fall within the more seriously retarded ranges if it were simply a matter of chance. In addition, however, retardation can stem from any of a number of catastrophes which by themselves prevent normal development. The catastrophe might be a genetic or chromosomal defect, a prenatal infection, severe deprivation of oxygen at birth, or any of a host of other factors. There are many more persons with IQs which are moderately to profoundly retarded than would be expected by chance. Most, but not all, show physical evidence of their handicap. Because such catastrophes can happen to any family, the backgrounds of such children are only slightly weighted toward the lower end of the socio-economic scale. (Morgan, King and Robinson, *Introduction to Psychology*, 6th ed., McGraw Hill, Tokyo, 1979, p. 494)

The intellectually disabled person may also experience related impairments in his or her neurological (e.g. epilepsy), neuromuscular (e.g. Cerebral Palsy), sensory (e.g. visual impairment), and cardiovascular systems. Such associated impairments may be present to a degree relative to the severity of the individual's intellectual disability, and may further influence a person's adaptive functioning and increase his or her dependency. Developmental factors (e.g. home environment, educational opportunities etc.) and psychiatric disorders (e.g. emotional disorders, schizophrenia etc.) may also constitute additional impairments (Ex 13 - Departmental Overview Material, Vol. 5, *An Introduction to Intellectual Disability*, pp. 6-7).

It should be emphasised that people with intellectual disabilities (while some may also have a psychiatric disorder or disorders), are not necessarily mentally ill; there is a fundamental distinction between intellectual disability and psychiatric illness. This distinction has not always been recognised, and I expect is still somewhat blurred in the eyes of many members of the public.

7.3 SOME HISTORICAL ASPECTS OF CARING FOR THE INTELLECTUALLY DISABLED

In Chapter 2, I have already referred to the history of society's sometimes unenlightened treatment of the intellectually disabled. History also demonstrates that different models of care for the intellectually disabled have from time to time been adopted by the authorities. In the early 19th Century, "work

houses" were employed in Britain as a means of placement for the poor, the disabled and the aged. Such institutions have attracted a popular notoriety that makes unnecessary any further reference to their unsuitability as a method of caring for, or supporting, the intellectually disabled. Alternative models of care were considered and adopted from time to time, and for a significant period, the care of the intellectually disabled was seen in terms of medical and nursing issues. The "medical model" persisted as the basis for Government-provided funding and management services in this area until approximately the mid-1970s, as is reflected in the actual history of the Basil Stafford Centre itself (see section 7.7).

Similar attitudes to the care of the intellectually disabled are reflected in Australian history. Until relatively recently, the mentally ill and intellectually disabled were not distinguished. Originally, prisons were used to house such persons, with asylums and institutions later being employed:

> Invariably within a few years of the establishment of a new institution, administrators would be critical of over-crowding. The quality of life provided would inevitably decline and rarely approach the level initially sought by the institutional founders. A second aspect was the frequency with which services were located in cast off buildings and facilities often previously used by other devalued groups. This is still a common occurrence in the 20th Century. (Ex 13, Volume 3, *Historical Overview of Developments in the Field of Intellectual Disability*, p. 3)

Well into the 20th Century in Australia, it appears that in some quarters attitudes were held to the effect that the intellectually disabled were a social menace:

> . . . in 1939, the Government Speaker in the Victorian Parliament introduced a Bill which contained a power whereby children with an intellectual disability could be compulsorily detained in institutions. He said:
>
> > "This Bill aims primarily at an endeavour to prevent defectives and retarded children from becoming a menace to the community because of their absolute dependence on the State or others, and the frequency with which such persons are found in the ranks of derelicts, prostitutes, criminals etc." (Ibid.)

Modern attitudes now appear to accept that there are models of care more appropriate and suitable in this field than placing such persons in institutions. Indeed, in the course of this Inquiry, QAI, in its written submissions, strongly advocated the concept of deinstitutionalising the intellectually disabled.

Before moving to the Centre itself, it is necessary to touch upon some concepts which have permeated much of the evidence before the Inquiry.

7.4 THE CONCEPTS OF NORMALISATION AND SOCIAL ROLE VALORISATION

Material provided by the Department within Ex 13 suggests that the principle of "normalisation" was the major thrust behind the abovementioned attitudinal shifts regarding appropriate methods of caring for, and supporting, the intellectually disabled. This principle originated in Scandinavia in the 1960s and focussed on enabling people with an intellectual disability to experience a normal rhythm of life:

> Thus service directions reflected that people with an intellectual disability should experience the normal life cycle of childhood, adulthood and old age and also the daily, weekly, yearly routines and happenings that ordinary citizens of the society experience. The means used to achieve these outcomes should also be those that ordinary citizens would expect as usual for

> themselves . . . clear emphasis was placed on the value of integration and the use that should be made by people with an intellectual disability of services that were available for all other citizens. (Ibid. p. 4)

The original principle of normalisation has now been developed by, amongst others, Wolfensberger (1983) who has sought to clarify the principle by reference to the concept of "social role valorisation":

> The precise meaning of the term social role valorisation is "giving value to social roles" and it was developed to describe Wolfensberger's belief that the most explicit and ultimate goal of normalisation must be the creation, support, and defence of valued social roles for people who are at risk of social devaluation.
>
> Hence, he subsequently redefined the normalisation principle as:
>
> > "As much as possible the use of culturally valued means in order to enable, establish and/or maintain VALUED SOCIAL ROLES FOR PEOPLE."
>
> The basic premise of social role valorisation is that if a person's social role is a societally valued one, then other desirable things will be accorded to that person almost automatically, at least within the resources and norms of his/her society.
>
> In virtually all societies, certain characteristics or attributes of people come to be highly valued, while others are very much devalued. In western society for example, positively valued characteristics include wealth, youth, beauty, intelligence and independence. People who do not possess these attributes ie the poor, people with disabilities, aged persons, etc get to be devalued and consequently seen as having little or no worth.
>
> Devalued people are usually treated badly by their society. They tend to be rejected and treated in ways that diminish their dignity, growth, competence and general well–being.
>
> Being seen as filling a valued social role may help reduce or prevent a person from becoming devalued on the basis of some attribute or characteristic they possess. (Ibid. Divisional Information Pamphlet, *Social Role Valorisation*, p. 1)

Wolfensberger proposed that there were two ways of working towards the attainment of valued social roles and life conditions for people at risk of devaluation, such as the intellectually disabled:

> (a) By enhancement of people's social image or perceived value in the eyes of others, and
>
> (b) By enhancement of their personal competencies. (Ibid.)

In his development of social role valorisation theory, Wolfensberger identifies a number of elements that influence the social image attached to devalued people, and the extent to which devalued people have opportunities to develop personal competencies.

> For example, the physical settings in which people live, work, etc convey certain impressions and images depending on how aesthetically pleasing and comparable they are to physical settings used by valued people. As well, people can be either assisted or hindered in developing personal competencies by the particular characteristics of the physical setting. Thus a person who lives in a segregated setting a long way from transport may have difficulty in developing skills in accessing the community. (Ibid.)

The concepts of normalisation and social role valorisation have clearly been of significance in the drafting of the *Disability Services Act 1992*, as evidenced by, for example, the following sections:

> Section 12 – Programs and services should be designed and implemented to ensure that the conditions of every day life of people with disabilities are –

(a) the same as, or as close as possible to, the conditions of every day life valued by the general community; and

(b) appropriate to their chronological age.

Section 16 – Programs and services should be designed and implemented to –

(a) promote recognition of the competence of people with disabilities; and

(b) promote a positive image of people with disabilities; and

(c) enhance the self–esteem of people with disabilities.

Section 17 – Programs and services should be designed and implemented to promote the inclusion of people with disabilities in the life of the local community.

7.5 THE LEAST RESTRICTIVE ALTERNATIVE

The principle of the least restrictive alternative, in terms of delivering services to the intellectually disabled, has been embodied in Queensland Government policy since 1982:

> The principle refers to the limitation of special intervention in an individual's life to the minimal extent required by his handicap. The provision of more services or supervision than are necessary only serves to discourage the developing independence of the individual. The principle recognises the right of an individual to live in that environment which is the most supportive and the least restrictive of his freedom. (Parliamentary White Paper on Services for Intellectually Handicapped People in Queensland – A View for the 80s and Beyond, 1982, within Ex 13)

The principle is to be contrasted with other principles which permit the intellectually disabled to become and/or to remain dependent upon others.

Similarly, this principle is also referred to within the *Disability Services Act 1982*:

> Section 9(2) – people with disabilities have the right to –
>
> (f) receive services in a way that results in the minimum restriction of their rights and opportunities.

The following is given by the Division as an example of the least restrictive alternative principle:

> It is more restrictive to have a staff member or parent "control" the daily routine or personal resources of a person with an intellectual disability rather than seeking ways by which the individual can exercise increasing degrees of freedom over aspects of his/her own life.

7.6 SOME OBSERVATIONS UPON THESE PRINCIPLES

As stated herein, the abovementioned principles were frequently referred to in the evidence of some witnesses who appeared before the Inquiry, and have received more than passing recognition in the drafting of the *Disability Services Act 1992*. The principles are also emphasised in RCO training (see for example page 23 of Ex 42 – RCOs' working manual, Basil Stafford Centre 1992).

Most would agree that the principles themselves are worthy and commendable in object, and provide a useful basis or starting point for considerations of appropriate support methods for the intellectually disabled. However, like all such principles, particularly in an area as complex and broad as intellectual disability, which is not readily amenable to the imposition of inflexible principles, they cannot be of universal and unbending application. These principles are expressed in terms of application to *all* people with intellectual disabilities, which, as will readily be apparent, encompasses a range of persons with disabilities of widely varying severity. The clients of the Centre, being either severely or profoundly intellectually disabled, have high support needs, and generally a lack of ability to communicate effectively, which must be considered in any practical application of the principle of least restrictive alternative. Evidence before the Inquiry, regarding the death of Client 8 (see Chapter 11) well illustrates the potential difficulties of interpreting this principle in light of practical realities, and the divergence of opinion which can occur amongst even the staff themselves, as to the best course of action to be adopted having regard to the individual client's welfare.

Similarly, the Department's own literature, herein referred to, accepts the difficulties inherent in institutional life which affect the application of the principle of social role valorisation.

It was beyond the scope of the Inquiry, and consequently this report, to delve too deeply into such matters of theory. However, these issues are of a general underlying, and occasionally a specific, relevance to concerns of client abuse and gross neglect examined by the Inquiry, and to the third term of reference concerning practices/policies and so on, related to client treatment. Some understanding of the issues is therefore required. To my mind, that understanding should be not only upon a theoretical level; it is necessary to pay due regard to the practical realities of the Centre as an institution, the characteristics and capacities of the severely and profoundly intellectually disabled clients themselves, and the abilities and understanding (or unfortunately, sometimes the lack thereof) of their immediate care givers, the RCOs, as borne out by the totality of the evidence before the Inquiry.

7.7 THE HISTORY OF BASIL STAFFORD CENTRE

The Centre was originally part of the Wolston Park Special Hospital complex, which itself was founded in 1865 as a "lunatic asylum". For nearly a century the hospital provided residential care services of a custodial nature to the intellectually disabled, receiving funding and management through the Queensland Government Department of Health. Care was primarily provided, within the framework of the abovementioned "medical model", by nursing assistants, subject to the supervision of qualified nursing and medical personnel.

In the mid-1960s a separate Children's Centre was established, providing hospital-style accommodation. In 1968 this facility was named the Basil Stafford Centre, in honour of a Dr Stafford who had been the medical superintendent of the Wolston Park Hospital during the 1930s.

As stated, the 1970s saw sweeping ideological changes in the provision of services to the intellectually disabled, and as a result a residential care model was adopted by the Department, based upon the provision of family-sized living units for residents based at the Centre and the recognition of specialised staff training. During this period, many intellectually disabled people were discharged from Government facilities and returned to live with their families, or were placed in less restrictive facilities. As a result, the residents of the Centre were predominantly persons of all ages with a severe or profound degree of intellectual disability. Staffing for the Centre was provided on two levels, namely a residential level and a subprofessional or resource/program level (staffing issues are more fully discussed at section 7.9).

In the early 1980s the practice of establishing Alternative Living Service (ALS) houses commenced. The number of persons living in ALS houses administratively associated with the Centre and the region has increased from 9 as of July 1980, to 96 as of June 1992. Correspondingly, the number of clients residing at the Centre has declined from a peak of 241 in July 1980 to the present number of approximately 120 (Ex 346, statutory declaration of Mr Rohan, p. 2). In turn, a number of the Centre's older buildings were no longer required for residential use.
In modern times, funding and administration of the Centre was originally vested in the Division of Psychiatric Services, Department of Health, with the Division of Intellectual Handicap Services being established in 1977. It is relevant to note that at that time the Department "inherited" some of its RCO staff from the Division of Psychiatric Services. The former Centre Manager, Mr Rohan, stated (Ex 346, statutory declaration, p. 7):

> Some of these people have been around for more than 15 years and had a history within Psychiatric Services. While they had been through a course of RCO training, years of attitudes and practice are not always changed by that. Some have been able to move with the change. A culture, however, exists amongst these people. That culture is quite foreign to the sort of culture we wanted to uphold in a place like the Basil Stafford Centre where people care for people with intellectual disabilities.

I have heard a not insignificant amount of evidence concerning, and from, a number of such persons. Mr Rohan's comments are of relevance to an understanding of the institutional culture existing at the Centre, and the relevance of that culture to this Inquiry, especially in relation to the commission, reporting and investigation of acts of official misconduct.

In December 1987, the Department of Family Services and Aboriginal and Islander Affairs assumed responsibility for State funding and management of services concerning the intellectually disabled, with the Division of Intellectual Disability Services subsequently evolving from the old Division of Intellectual Handicap Services.

7.8 PHYSICAL LOCATION AND LAYOUT OF THE CENTRE

The Centre is located at Wacol, an outer suburb of Brisbane, situated approximately mid-way between Brisbane and Ipswich. The Centre itself is adjacent to the Wolston Park Hospital, and is approximately two kilometres from the Wacol Railway Station and one kilometre from the Brisbane–Ipswich Highway.

The Centre itself occupies some 20 acres of bushland, elevated in parts. Its outer perimeters are unfenced.

Within Ex 13 (Volume 4, *Description of the Basil Stafford Centre*) the Department has noted that, 'a number of other human service facilities are based in this area'. The use of the term "human service facilities" in this context is a euphemism of the type I have already referred to at section 1.3. Indeed, Counsel for the State of Queensland, who on occasions sought to defend the Centre against criticisms or media publicity which he submitted created adverse impressions, provided a description of the Centre's physical location, at page 58 of Volume 2 of his own written submissions, under a heading reading – 'Alcoholics, Drug Addicts, Prowlers, Thieves, Intruders Occasionally Traverse the Area'. Within that portion of his written submissions, Counsel for the State of Queensland stated, of the Centre's location:

> To the north there is a Prison for those of unsound mind who have committed criminal acts, the John Oxley Memorial Hospital, to the south a juvenile detention centre, the John Oxley Youth Detention Centre, to the south-west, the Sir David Longland Correctional Centre, the Moreton Correctional

> Centre, the Wacol Prison, and further south, the Arthur Gorrie Remand Centre. There is also an open prison farm.

An abandoned quarry also lies to the north of the Centre, as does a frozen food factory. During one bracket of evidence, RCO G was cross-examined about this particular area by Counsel for the State of Queensland (T 3573-3574):

> RCO G: . . . We often get crowds of young louts – well, mightn't be louts, young fellows wandering around the bush down there that come from around Goodna; they are free to wander around in the bush down there, and it is not unusual . . . there's always people wandering around that place. All sorts of people go through that area.
>
> Mr Plunkett: Have you seen that yourself?---Yes, oh, yes.
>
> Have you ever challenged them?---Depends what they – yes, we have, we found people wandering in there that didn't belong there that came from Wolston Park, and they just got, sort of, quietly sent off on their way home.
>
> When you say people from Wolston Park, are you talking about patients?---Yes.
>
> Have you ever known anyone wandering that area?---Well, they use it for – the young people go through that area on motor bikes.
>
> Have you ever known of any incidents of violence associated with these unauthorised entries?---I can't think, can't recall any.
>
> Do you know any bad behaviour by people who come in this area?---Well, a lot of loud behaviour. As I say, motor bikes and young people making a lot of noise, yes.
>
> What sort of noise?---We get prowlers around that area at night sometimes, because we are right next door to the prison. A lot of the staff lock themselves up when they are bloody frightened at night, especially the ladies.
>
> Is there any evidence of drinking activities, for example, empty beer cans and stubbies?---Oh, we get them up the road, yes, quite often.
>
> What about in this area of the frozen food factory, have you seen evidence of that?---Well, I don't go down there very much myself unless it is to take clients for a walk. I don't recall seeing any cans or anything down there.
>
> You mentioned this activity, or prowlers at night time, are you aware – do you have any knowledge at all about people coming into this area and making a lot of noise, say, during the daylight hours?---Not that I can recall. We have a security system which is on the move all the time there because of this, because of outsiders coming in there that shouldn't be there.

I entirely accept that anybody charged with the duty of providing services to the intellectually disabled is limited, by a variety of factors, as to the type and location of the facilities available for that purpose. However, the above matters are undoubtedly of some relevance, particularly in the context of Wolfensberger's identification of physical environment as an element influencing the social image of devalued people and the opportunities for personal development by those people.

The Centre's buildings include an administration complex (formerly ward accommodation) and client housing comprised of five units. Units 1-4 consist of four houses, grouped into what are known as "villas". Each house is low-set and accommodates six clients in four bedrooms. The houses bear the names of Australian floral species:

Villa one	–	Acacia, Boronia, Cassia and Hakea.
Villa two	–	Allamanda, Eucalypt, Dryandra and Grevillea.
Villa three	–	Hibiscus, Pandorea, Bauhinia and Lobelia.
Villa four	–	Casuarina, Darwinia, Tristania and Eugenia.

Unit 5 consists of Banksia, which accommodates a total of 11 clients in two sections, and Melaleuca, which is divided into two flats and accommodates 15 clients. In evidence before me, various RCOs regularly referred to Banksia and Melaleuca as "wards", presumably because of their dormitory–style accommodation. Evidence was also heard by the Inquiry of the former use of a ward or dormitory–style building known as Poinciana, which was particularly used, in previous times, for the accommodation of children.

Six of the available beds within the various units are utilised for the purposes of respite care (see section 1.4).

In addition, there are a number of facilities directed towards the provision of activities for the clients, including a swimming pool, barbecue and garden areas, a recreation hall and swings. Also, a number of mini–buses are available to be utilised for client outings and journeys etc.

On 10 January 1994, I undertook an inspection of the Centre, accompanied by Counsel Assisting and the Counsel then granted leave to appear before me.

7.9 THE CENTRE'S STAFF

[Note: The figures listed herein are those supplied in evidence, current as of early 1994. I understand that the relevant figures, as at the date of this report, are comparable for all significant purposes. Also, the staffing structure portrayed herein is that applicable to the unit management system introduced at the Centre in February 1992, in place of an earlier and more centralised model of management.]

A total of 166.5 full–time staff are employed at the Centre consisting of:

- 109 Residential Care Officers;
- 5 Senior Residential Officers;
- 9 Residential Duty Officers;
- 8.5 professional and resource staff;
- 6 medical and nursing staff;
- 19 maintenance staff; and
- 10 administrative and management staff (3 of whom have other regional responsibilities).

Residential Care Officers (RCOs) are the primary or direct care-givers to the clients (see section 1.5 herein). Generally, there is only one RCO rostered to work with each group of clients at any one time. RCO:client ratios range from 1:7 in one house (2:7 in peak times) to 1:5, 1:6, or 2:10 in the other houses. These staff ratios are discussed more fully at Chapter 20, but for present purposes, it will suffice to note that the Divisional Regional Manager (Mr Ross) in his evidence, stated that every other Australian State has a better ratio, in terms of more staff to clients, than does Queensland (T 49-50). Occasionally, "double-up" shifts occur when an additional RCO is rostered to work in a house for particular reasons; for example, to assist with the clients undertaking a particular activity, to provide additional care to clients displaying very difficult behaviours, for training purposes or when an RCO is subject to an unfinalised investigation concerning an allegation of client abuse or gross neglect.

RCOs work on a system of three eight-hour shifts each day (hereinafter referred to as the 'morning', 'afternoon' and 'night' shifts), working in total 40 hours per week. They receive five weeks' recreation leave per year and an annual average salary, inclusive of overtime and penalties, of approximately $33,000 (T 4477). Generally the RCOs are rostered to the same locations each shift.

There is one Senior Residential Officer (SRO) for each unit, charged with the responsibility of that unit's daily management. The duties of the SRO position are to:

1. Facilitate and monitor the development of systems and procedures relating to the enhancement of clients' quality of life, in accordance with service principles and philosophies.

2. Participate in the selection, induction, orientation and on-the-job training and development of direct care staff and in the review of these processes.

3. Deploy, counsel, monitor and review performance, and manage direct care staff and resource staff as appropriate.

4. Facilitate staff involvement in development and implementation of client plans for enhancing quality of life.

5. Facilitate and participate in planning and decision making for resident services at a unit, section and regional level as appropriate.

6. Undertake administrative duties and record-keeping and prepare reports and submissions as required.

7. Participate in meetings, committees and task groups including assuming the role of group co-ordinator as required.

8. Maintain contact with community agencies, individuals and families on matters relevant to clients and their needs.

(Ex 42 - SRO Manual, October 1993)

The Residential Duty Officers (RDOs) also work shifts and provide back-up and co-ordinating support to the RCOs. RDOs also arrange out of hours cover for particular shifts by utilising the services of casual RCOs or overtime arrangements.

The professional and resource staff include the Residential Program Officers (RPOs) and specialists from the disciplines of social work, psychology and physio/speech/occupational therapy. These staff provide services to the clients on both an individual and group level. Prior to 1994, RPOs were attached to individual units. At the present time, a part-time Education Liaison Officer is also employed by the Division.

An organisational chart depicting the Centre's staffing profile for the period prior to July 1993 (which covers the greater period of the Inquiry's terms of reference) appears at Figure 2.

7.10 MEDICAL AND NURSING CARE FOR THE CLIENTS

The Centre has an on-site nursing surgery, which provides 24-hour nursing assistance. There are a total of four full-time registered nurses and one nursing administrator (who works between the Basil Stafford Centre and the Challinor Centre which is another institution, located in a nearby suburb, administered by the Department and providing residential services for the intellectually disabled), employed at the Centre.

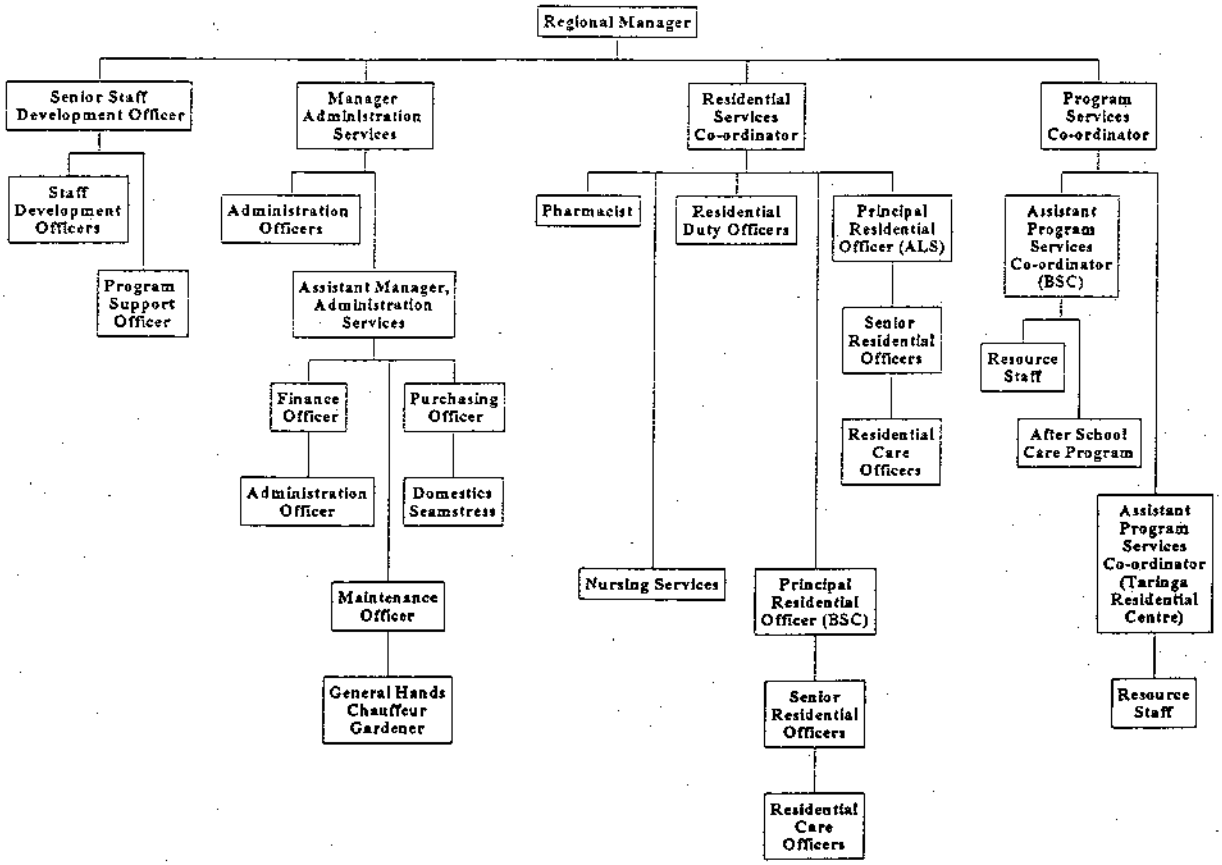

FIGURE 2 – ORGANISATIONAL CHART – BASIL STAFFORD CENTRE (BSC) – PRIOR TO JULY 1993

From the evidence, it appears that there is sometimes only one nurse available at the Centre during a shift, for the purposes of attending to routine nursing matters and medical emergencies.

There is no doctor permanently stationed at the Centre. The Divisional doctor is based instead at the Challinor Centre and provides medical services to the clients at the Basil Stafford Centre during three regular three-hour sessions conducted at that institution each week. The current Divisional doctor is Dr Annis Reid, who gave evidence on a number of occasions before the Inquiry. Outside these three sessions the Duty Medical Officer at the Wolston Park Hospital provides an emergency medical service if required. If that officer is unavailable, the services of a private medical centre located at Goodna (an adjoining suburb) can be accessed.

The incidents of alleged client abuse and gross neglect examined by the Inquiry have necessarily brought into sharp focus some particular and general aspects of the nursing and medical care available to the Centre's clients. The relevant evidence, and my conclusions arising out of it, are more fully detailed within later sections of this report, and particularly within Chapter 21.

7.11 HOUSE REPORT BOOKS

In each house or ward a daily report book is kept by the RCOs. Mr Ross, in his evidence (T 43) gave the following description of the report books and their purposes:

> The report book really is the official recording of day to day information that needs to be passed on for the good running of the house, so it would detail who was on shift, what time, what happened during that shift, any notable events that the RCOs coming on after them might need to know or take into account when taking on this shift, visitors, anything that happened to a client during the period of the shift, any visits by people like nursing service or seniors or RDOs or people like that. So it is the official record of the shift for the person who is the RCO on shift at that particular time and gives them a chronological recording of what happens within that module. It is most important for the RCO at handover, of course, that this information is there for them should there be something that has happened in the shift before that they need to take note of and carry on in the shift that they are taking up duty on.

For the early part of the period relevant to this Inquiry's terms of reference, a simplified report book format was used, consisting of a foolscap-sized pad with one day to a page, divided into two columns, headed "Name of Client", and "Report" respectively. Thereafter, in or around 1990, a new form of report book was adopted (Ex 15) set out over two pages with the following headings appearing.

- Staff on duty
- Administration of medications and treatments (sign at end of shift)
- Appointments/activities/visitors
- Significant behaviours/incidents (both positive and challenging behaviours)
- Nursing/medical/injuries/illness
- General communication (including important telephone calls, household maintenance)

At the beginning of each report book is a page of explanatory information. Therein, the following instructions appear:

Report book – this official report book replaces all previous report books, diaries and communication books. All information relevant to client programs, development and services provided must be recorded in this book. Staff should note that this is an official record, and may be called upon at any time by senior Departmental officers. No frivolous or irrelevant comment is to be included.

Individual plans - this report book is for general residential recording. ALL RELEVANT INFORMATION MUST STILL BE RECORDED IN EACH CLIENT'S FILE.

Injuries - include every injury sustained by clients, staff or visitors.

There is also a Divisional procedure relating to the use of report books (Ex 30) which states, inter alia:

> Report Books
>
> The Director–General of Family Services and Aboriginal and Islander Affairs is required to keep report books in each residence in the Centre. Report books are official documents therefore entries must be accurate, and signed by the appropriate responsible person. Notes made regarding clients, as a group or as individuals, must reflect the dignity of each as a person.
>
> Any person who wilfully makes a false entry or statement in any report or document with the intention to deceive, or make use of an entry or statement known to be false, is guilty of an offence . . .
>
> Information to be recorded
>
> - Details of medical appointments, treatment and P.R.N. [Pro Re Nata medication]
> - Unusual events necessitating physical restraint, time out or seclusion.
> - Visitors to the house.
> - Outings.
> - Incidents/injuries or illness.
> - General helpful information regarding clients' welfare and activities.
> - Any other information as indicated in the report book . . .

Many report books were tendered or inspected during the course of evidence. Certainly the modern format of reporting is some improvement upon the earlier version; however, as is the case with any such system, the value and utility of the same is inherently dependent upon the adherence to the system by the individual RCOs and their ability and willingness to accurately and comprehensively report all requested information. The reporting practices and standards amongst the individual RCOs appear to have varied greatly in this regard. Many wrote quite detailed reports, some prepared entries of a conversational nature, while others restricted themselves, particularly in relation to entries for the night shift in some of the earlier report books, to entries of a very brief nature. Sometimes all relevant information was not recorded at the end of a shift: see, for instance, the evidence concerning the report, or lack thereof, of some of the injuries suffered by Client 4 as referred to in Chapter 10.

Disturbingly, some books contained entries of a demeaning nature to the intellectually disabled clients. For instance, one report book (admitted as Ex 263) contained the following entries about various clients (written by more than one RCO):

- Good till tea then he was right off his face for the rest of this night. After his shower he squatted on the bathroom floor and shit, heaps of grunting.
- . . . no real problem. He pulled himself silly and blew all over his legs again.
- . . . off his face all day, very noisy.
- . . . pain in the butt, refused to get out of his bed this a.m.
- . . . shit the bed this morning.
- . . . playing mind games with me – "I can't get in the wheel chair".
- . . . away with the pixies all day.

Several witnesses before me, including, for example, RPO H (T 4689), stressed in their evidence their perception that it was most important for RCOs to hold appropriate values with respect to the intellectually disabled. To my mind, the aforementioned entries reflect neither a caring nor compassionate attitude towards the intellectually disabled as fellow human beings, nor an embracing of the appropriate values as spoken of by witnesses such as RPO H and inherent in the Division's adoption of the philosophy of social role valorisation.

7.12 OTHER RECORDS KEPT BY THE CENTRE

In addition to the report books, a number of other records are kept by the staff. These include:

- Medical or nursing files for each client – containing nursing and doctors' notes, pathology records, medical reports and correspondence etc.
- Individualised training and environment plans (ITEP), or planning files – these are kept for each client. The files themselves are divided into a number of sections including correspondence, information regarding programmed activities and plans for the client, biographical information, some medical and financial correspondence, assessments etc.
- Communication books – which were kept for a period of the Inquiry's terms of reference in some houses, apparently as an informal aid to communication between the RCOs.
- RDO communication books or logs – containing reports upon each shift by the RDOs, and communications between RDOs and SROs.
- Various nursing records and notes, kept by the Nursing Service, and injury reports.

Various staff, such as Mr Rohan, also kept individual diaries and records. Furthermore, in any Departmental investigation or inquiry into incidents such as unexplained client injuries or suspected client abuse, a variety of records in the nature of statements and internal reports were brought into existence. In addition, various Departmental publications and memoranda were circulated amongst the staff dealing with policy and procedural matters.

As stated, the Inquiry had access to a vast array of records kept by the Centre and the Departments. In some cases, all relevant records could not be located and provided by the Department, for example, the original report upon the death of Client 8 prepared by RCO I (T 2905 et seq). I do not suggest, in this

regard, that there should be any suspicion attached to the failure to locate or produce such documents, although it is naturally a matter of some concern that every record of possible relevance to the particular incidents investigated by this Inquiry could not be produced. However, in so commenting, I am mindful of the practical difficulties associated with assembling and keeping custody of such a multitude of documents, particularly given the multiple purposes for which particular documents may be created and the various parties, at diverse locations, who may wish to access the same.

7.13 DEPARTMENTAL PROCEDURES RE CLIENT ABUSE AND GROSS NEGLECT

The Department has issued a number of documents, of a procedural nature, of relevance to the alleged abuse or gross neglect of clients.

A Divisional memorandum of 24 December 1990, under the hand of the then Divisional head, Ms Shepherd (referred to in Ex 356), sets out the practice of the Division where abuse or suspected abuse of clients had occurred:

> According to normal practice incidents involving client assault are to be referred to the police. Any instance of abuse or suspected abuse of a client by any person is to be reported immediately to a senior officer. In turn, this is to be reported to the regional manager. Failure to report an incident or pass on a report of an incident could result in disciplinary action of a very serious kind.
>
> I wish to make it clear that all staff have a responsibility to ensure that clients' rights are respected and upheld at all times.
>
> There is a clear expectation that client abuse will not be tolerated and any person proven to have been involved in client abuse will be dealt with by the police and the Department respectively.
>
> Client abuse includes:
>
> - assault
> - verbal abuse
> - using unsafe practices with clients outside the guidelines of that client's Individual Plan.
> - neglect of a client resulting in injury or accidents.
>
> I wish to make it clear that a high standard of care is expected and senior officers are expected to be actively involved and accessible within the residential services.

A further memorandum dated 27 February 1991 was subsequently circulated, under the hand of Mr de Glas, the Assistant Divisional Head. That memorandum (Ex 356) related that the Divisional practices in cases of abuse had been raised 'at the January 1991 Divisional meeting with industrial unions and clarifications sought with respect to the examples of abuse or suspected abuse categories cited'. Accordingly, explanatory notes were circulated which stated:

> Explanatory notes with reference to client abuse cited in the Divisional memorandum of 24.12.90 titled "Divisional Practice where abuse or suspected abuse of clients has occurred"
>
> Assault – any hitting, grabbing, slapping, punching, flicking which is not associated with any self–defence or where a client's personal safety is at risk.
>
> Verbal abuse – swearing, voice raising, yelling, screaming, use of derogatory terms, talking in a demeaning fashion. The exception to this would be where a raised voice (excluding use of swearing and

derogatory terms) is used as part of an approved Behaviour Management Plan or for the purpose of self-defence or where a client's personal safety is at risk.

Using unsafe practices with clients outside the guidelines of that client's IPP – eg allowing client to cross a road independently prior to having been assessed as road safe in terms of having fulfilled the correct number of observed practice trials.

Neglect of a client resulting in injury or accident – eg leaving a residential area or client unattended without authority or inconsistent with any client's Individual Plan.

– failure to intervene or seek assistance in the situation where a client is being assaulted eg pinched/bitten/punched/scratched.

The issue of client abuse is also dealt with, in similar terms, in the RCOs' working manual, which states, inter alia (Ex 42 at page 26):

Remember you are working with people – consider how you like to be approached and treated by others.

If you suspect or know that a person has been abused, it is your responsibility to bring it to the attention of senior staff, eg Senior Residential Officer or Principal Residential Officer.

There presently exists a procedure, dated July 1992 (Ex 30), regarding the reporting of, and following up on, injuries to clients. That procedure dictates that injuries 'that are outside those that would be caused by normal day to day bumps and bruises' are to be reported to the appropriate managerial staff and medical service. The procedure notes that further reporting (including to the police) may be necessary 'depending upon the nature and extent of the injury'. An injury report is also to be completed.

I should also note, that in addition to being contrary to the Department's policies, client abuse or neglect may also constitute offences pursuant to the criminal law. Such conduct, if committed by a public servant, may also amount to official misconduct under the Act (see section 4.5), or breach the provisions of the Code of Conduct for officers of the Queensland Public Service (Ex 29) or the provisions of Section 29(1) of the *Public Service Management and Employment Act 1988* , which relevantly provides:

An officer of the Public Service is liable to disciplinary action upon any of the following grounds shown to the satisfaction of the prescribed authority to exist, namely –

(a) incompetence or inefficiency in the discharge of the duties of office;
(b) negligence, carelessness or indolence in the discharge of the duties of office;
(c) misconduct;
(e) wilful failure to comply with a lawful direction issued to him by any person having authority over him;
(f) wilful failure to comply with any provision of a Code of Conduct approved by the Governor–in–Council for officers in the public service.

Within that legislation "misconduct" is defined within Section 4 as meaning –

(a) disgraceful or improper conduct that shows unfitness to be or continue as an officer of the Public Service;
(b) Behaviour that does not satisfy a standard of behaviour generally expected of officers of the Public Service.

7.14 CRITERIA FOR ADMISSION TO THE CENTRE

It is desirable to briefly touch upon the policies and procedures of relevance to a person's admission to the Centre. A Departmental publication entitled 'Admission Policy and Procedures' was tendered in evidence before the Inquiry (Ex 31). That document sets out various policies and criteria regarding the different Departmental instrumentalities. Policy 3 provides for the 'Criteria for Admission to the Basil Stafford Training Centre', and states:

Admission Age:	6 years upwards (preference will be given to admitting children from 8–16 years). Short-term placements the preferred option from 6 to 8 years. Banksia – 16 years onward.
Level of Retardation:	Severely and profoundly retarded. Moderately and mildly retarded clients will only be considered if they have secondary problems which may precipitate a family crisis unless placement is offered (a behaviour disorder or medication condition of such a nature as to preclude living in a community facility).
Additional Handicaps:	Multiply handicapped persons are accepted except for the totally immobile. Semi-mobile persons may be admitted to a specific living area. A secure environment is available for a small number of children and adults.
Admission Types:	1. long-term 2. short-term
Fees:	None for children under 16 years. However, parents are encouraged to apply for and sign over the Isolated Childrens Allowance or to provide adequate weekly pocket money. "Adequate" to be determined (from time to time) by negotiation between parents and Centre. For persons over 16 years, a percentage of the pension is deducted to cover board.
Geographical criteria:	Available only to Queensland residents.
Admission sequence:	1. referral to Brisbane north or south RAC (Resource Assessment Centre) 2. assessment by Brisbane north or south RAC or other RAC on Brisbane's behalf.

This publication is dated 1 January 1986.

CHAPTER 8
THE INVESTIGATION OF THE INJURY TO CLIENT 1

Public hearings in relation to the investigation of an injury sustained by Client 1 commenced on 13 January 1994 (T 283) and concluded on 20 January 1994 (T 763). Ten witnesses were called to give evidence. In due course, written submissions concerning this bracket of evidence were received from Counsel Assisting, Counsel for the unions and Counsel for the State of Queensland. Those written submissions exhibited a broad consensus in terms of suggested conclusions and findings, and accordingly, the parties did not significantly expand upon any of the matters addressed therein during the period of oral submissions in July.

8.1 CLIENT 1

Client 1 was born in early 1968, and was 24 years of age at the time of sustaining the injury (22 August 1992) investigated by the Commission. She is a woman of small build, standing 138 centimetres in height. Her medical file was admitted in evidence as C Ex C. I have read the same. That file reveals many details about Client 1; I consider that it may be useful to briefly refer to some of those matters. In so doing, I do not relate these details for the purposes of criticising any person concerned with Client 1's care or involved with the particular matters, some of which were briefly touched upon in evidence before this Inquiry but which were not fully examined or tested. Rather, I seek to refer to these matters in an illustrative fashion so that readers of this report might gain a better appreciation, from these details, of Client 1's particular situation and her lifestyle at the Centre.

The medical file shows that as early as 1970, Client 1 was diagnosed as having microcephaly, epilepsy and at least some degree of mental retardation. At the age of 4 years she was admitted to the Prince Charles Hospital, and subsequently to the Centre in October 1979, upon the closure of the Hospital's Handicapped Childrens Unit. I understand Client 1 continues to reside at the Centre.
Documents within the medical file indicate that Client 1 was hospitalised in October 1986 following a period of unexplained weight loss. It was noted that Client 1 had been eating inappropriate substances, for example, dog faeces. At the time of her admission she weighed 28.7 kilograms. After careful supervision and feeding, Client 1 gained some weight, and her treating doctor, in the hospital discharge summary, concluded that her weight loss could have been due to an inadequate diet.

In May 1987, Client 1 was admitted to the Wolston Park Hospital for a period in connection 'with behavioural disturbances due to the inhalation of an unknown quantity of kerosene'. It would appear that Client 1 has a propensity for ingesting inappropriate substances. RCO J said in her evidence concerning Client 1 (T 5084):

> . . . As far as I can remember she was losing a lot of weight. Nursing Service and the doctors had checked her over and because she was getting into garbage bins and drinking excessively, a lot of water – she was playing, actually eating dirt and stuff like that. I think that there was a problem medically that way, that she was getting very sick by what she was doing.

Similarly, Mrs A, while describing her duties involved in the provision of one to one care during Client 1's pregnancy, stated (T 4305):

> The one to one was to ensure that she didn't eat poisonous substances and things.

I have already herein referred to that abhorrent episode whereby Client 1 was sexually abused by one of her RCOs and consequently became pregnant, eventually giving birth to a child, after her pregnancy remained undetected by her care givers until a stage of advancement of some 20 weeks was reached. The written submissions of Mr Carter, the Legal Friend, indicate that in due course an application for criminal injuries compensation, arising from this offence, was pursued by solicitors acting on Client 1's behalf. An award of $20,000 (which I understand was the then maximum award available - T 4269) was eventually made, and after unsuccessfully pursuing the offender personally for payment of that sum, action was taken against the Department, with that action being settled in June 1994, with the judgment sum being forwarded to the Public Trustee as manager of Client 1's financial affairs.

It was alleged in evidence by Mrs A that Client 1 had also been physically assaulted by an RCO in late 1986. That matter was reported by Mrs A at the time, and investigated by the Department (some records relating to this investigation were admitted in evidence - Exs 331 and 404). That investigation did not result in any action being taken against the RCO who was accused of assaulting Client 1, the investigator concluding that there was insufficient evidence to substantiate the allegation. The allegation itself was quite central to Mrs A's general complaints of harassment, and was therefore touched upon in the evidence before the Inquiry, without being extensively re-examined. The RCO accused of the assault by Mrs A was issued with a notice of allegation to that effect and called as a witness. He denied any participation in any incident of client abuse, and I find, on the evidence presented to the Inquiry, that the allegation cannot be proved to the requisite standard.

Ex 85 admitted before the Inquiry was a psychological assessment of Client 1, dated June 1990, and prepared by Dr Attwood, then a Senior Clinical Psychologist attached to the Department. Dr Attwood stated, inter alia:

> On first impression, I noticed that despite being 22 years of age, Client 1 is quite small and had a noticeable discharge around one eye. Her stance and gait were fairly rigid and she did not respond to my greeting. She displayed little interest in social interaction and did not occupy herself by any constructive activity but wandered about, briefly looking at anything that momentarily interested her. On three occasions she approached one of the three staff present and spat a considerable amount of saliva over the person. The reason for this behaviour was not obvious. During this preliminary observation she did not say any words, but made occasional vocalisations. It was immediately apparent that to any ordinary person she would appear very severely intellectually disabled.
>
> Assessment of the degree of intellectual disability - although her level of thinking, expression and understanding are an infantile level, she is clearly not an infant in terms of her size and gross motor skills. Unlike an infant, she can walk and over many years she has learnt to follow simple instructions such that she can respond appropriately to "come here", but her responses to such a request are inconsistent. However, she still requires a similar degree of support, care and supervision as an infant.
>
> Diagnosis - The Diagnostic and Statistical Manual of Mental Disorders (3rd edition, revised) provides diagnostic criteria for Mental Retardation. The Intelligence Quotient of Client 1 is below 25, ie she has profound mental retardation. Such people require "a highly structured environment, with constant aid and supervision, and an individual relationship with a care giver" (p. 33). I could not identify the presence of a specific syndrome but her level of disability has been apparent since she was a child and will continue for the rest of her life.
>
> Level of emotional maturity - From my observations and assessment of Client 1, her level of emotional maturity is one similar to an infant of under six months. Her need for affection and comfort is displayed in a similar manner (eg resting her head on the chest of a member of staff) and I would expect her to trust adults in much the same way as an infant.

Due to Client 1's inability to communicate she was unable to assist with the provision of any information regarding the injury sustained by her in this case.

At the time of sustaining the wound examined in this bracket of evidence, Client 1 resided at Hibiscus house.

8.2 THE INJURY

On the morning of Saturday, 22 August 1992, Client 1 was reported to have sustained an injury to her head, consisting of a laceration to the frontal part of her scalp, commencing near her hair–line.
Two photographs were taken of the injury, and annexed to an Injury Report (Ex 16). The photographs are of an "instant development" type and are of poor quality, being under–exposed and out of focus. Nevertheless, the photographs show, as noted by Counsel for the State of Queensland in his written submissions:

> . . . a particularly ugly wound to the top of her head. The injury is shown as an open bloody gash running down the centre of her scalp from crown to hair line and was about one centimetre wide and five centimetres long. This horrible laceration had all the appearances and was consistent with her having been delivered a brutal blow to the head.

8.3 RESULTS OF DEPARTMENTAL AND POLICE INVESTIGATIONS

Upon the injury being reported, the Centre conducted some preliminary inquiries, including the taking of the abovementioned photographs and the compiling of staff and Nursing Service reports. On Tuesday, 25 August 1992, the Department referred the matter to police stationed at Oxley. The conclusions reached by the investigating police are contained within the report of Detective Senior Constable James Harris dated 3 February 1993 (Ex 56) which stated, inter alia:

> . . . the sole staff member responsible for the care and supervision of the clients in the unit during the shift 2300 hours to 0700 on that day, Mrs E . . . was interviewed about the injury to the client. She stated that she had not noticed any injury to [Client 1] during her shift and was not aware of any incident involving injury to any of her charges during that time. She further stated that no other persons had visited the unit during her shift and she could not account for the injury. When questioned as to whether she had bathed the client during her shift, Mrs E stated that she could not recall.
>
> Under the circumstances, whilst considerable suspicion rests upon the staff member Mrs E who appears to have been responsible for the client's welfare at the time the injury was sustained, there is no evidence as to the cause of the injury, whether it was caused by any particular person, or in fact self–inflicted. Inquiries reveal that the Client 1's hair had been washed some time after the injury was sustained but at what time and by whom has not been established.
>
> Initial investigations into this matter including the interviewing of other staff members responsible for Client 1's unit prior to the shift in question were carried out by Senior Constable Quinlan of Oxley Station. It is understood that these inquiries also met with negative results. No one is able to say when or how the injury to the client occurred.
>
> In my opinion, there is insufficient evidence to establish whether any criminal offence has been committed in this instance.

A report upon the Departmental inquiry, dated 5 January 1993 (Ex 77), was prepared by Ms K, Acting Principal Residential Officer. In her report, Ms K stated:

> The investigation revealed a number of inconsistencies and concerns. These are listed as follows:

1) It is normal and recorded house routine to wash the floors and take the laundry out on the 3 p.m.–11 p.m. shift. RCO L stated that she did so on the 21st of August, 1992. RCO L also habitually places the mop and empty bucket over the drain in the bathroom area, which she also did on the 21st August, 1992. The bucket was found to be full of dirty water at 4 p.m. 22nd August, 1992.

2) Clients [sic] personal bed linen is missing.

3) A staff person in another house had the impression that laundry was taken out to the wall on the 11 p.m. to 7 a.m. shift. For which there was no need as clients have their own linen.

4) A head wound usually results in a considerable amount of blood. Client 1's wound was approximately 5 centimetres long and deep. It would have been expected to cause considerable bleeding. Despite this Nursing Service was not contacted nor was the injury reported at the time of the incident and a search of the house by Residential Care Officer staff failed to reveal evidence of a major bleed – other than several small specks on the wall behind the bathroom door.

5) Mrs E reported that she washed Client 1's hair that morning and did not see a laceration to her head. Other staff in the house reported that it is most unusual for Mrs E to wash the clients [sic] hair.

[Nurse M], Registered Nurse advised at an interview on the 8th December, 1992 that in her opinion the injury was 2–6 hours old when she and the Residential Care Officer on shift discovered it.

The investigation has received statements and interviewed all the available staff on shift over the relevant 24 hour period. This process has not revealed any conclusive evidence on how the injury was sustained. It is therefore recommended that no further action be taken at this time.

8.4 THE ISSUES

The primary issue arising for my determination was one as to the attribution of responsibility for Client 1's injury; that is, how was the same caused, and in particular, was the injury the result of any act of official misconduct by any employee of the Centre? By necessity, any attempt at resolution of this issue also imports the ancillary consideration as to the reporting of the injury; (as expressed by Counsel for the unions in his written submissions), the question of whether the injury 'should have been discovered earlier by any other person'?

8.5 THE SUBMISSIONS OF COUNSEL FOR THE STATE OF QUEENSLAND

Within his written submissions, dealing with this bracket of evidence, Counsel for the State of Queensland submitted that there had been a 'denial of procedural fairness' by the Commission. Mr Plunkett primarily framed these submissions in language identical to that quoted at section 6.5 herein, concerning his six specific submissions, alleging a denial of procedural fairness, regarding the investigations generally. I have already dealt with those submissions, at length, at section 6.5. It is unnecessary to add to those comments, save for expressing my conclusions upon some three additional matters raised by Counsel for the State of Queensland in his written submissions about this particular incident, alleging that:

> The Commission did not issue any notices of allegation against any person involved in the injury. Nor were there any issues addressed to the conduct of any individual outlined at the beginning or conclusion of the evidence. Counsel Assisting in his opening of this bracket of evidence did not refer to any person about whom suspicion was open to be entertained.

I will deal with these three points seriatim. First, I have already referred at section 6.5, to the issue of a very generally drafted notice of allegation to Mrs E, who gave evidence concerning Client 1's injury. While I understand that this notice was prepared during this bracket of evidence, and therefore was not provided to the other parties as part of the bundle of such notices that were supplied in early January, the forwarding of the notice of allegation was made completely apparent, on the face of the record, in the following exchange between myself and all Counsel, which occurred in the presence of Mrs E when she was called before the Inquiry (T 650-651):

> The Commissioner: There is no – at the moment Mr O'Sullivan, is she, in your view as Counsel Assisting, is this person Mrs E in any jeopardy?
>
> Mr O'Sullivan: Not on the present material. I might indicate that last week she was given a notice of allegation that simply specified that after consideration of the material before the Inquiry, it may be suggested to her that she was responsible for the injury, but really that notice of allegation was given to her in an abundance of caution, so that she would be fully apprised of her position as she was not represented.
>
> The Commissioner: Well, as presently advised, in your submission Mr O'Sullivan, is there any hard evidence that this person Mrs E occasioned the injury to Client 1?
>
> Mr O'Sullivan: No.
>
> The Commissioner: That would be my view.
>
> Mr O'Sullivan: Well, that is my view.
>
> The Commissioner: I just wanted to ascertain what your submission would be, to that effect. It coincides with my view.
>
> Mr O'Sullivan: Yes.
>
> The Commissioner: Will either of you gentlemen, Mr Plunkett or Mr Herbert, be making any specific allegation or putting it to this witness that she occasioned this injury?
>
> Mr Plunkett: Not at all, your Honour.
>
> Mr Herbert: No, your Honour.
>
> The Commissioner: Indeed, unless there is something further, you would not be entitled to do that, I would have thought – would you agree with that?
>
> Mr Herbert: That is so, your Honour.
>
> Mr Plunkett: Yes, I agree.

With respect, that excerpt from the transcript speaks for itself in response to any suggestion that the alleged failure to issue any notices of allegation was somehow contributory to a denial of procedural fairness. The actual record of the proceedings demonstrates that Mr Plunkett's submission, to that effect, is also factually erroneous. It is a case where a clear error, when one has regard to the face of the record, is used as the basis for criticising the integrity of this investigation, and these proceedings.

The second and third aspects of complaint raised by Counsel for the State of Queensland are quite similar to each other. In respect of Counsel Assisting's opening address, Counsel for the State of Queensland submitted that there were no issues addressed or outlined as to the conduct of any individual at the beginning of the evidence, and that Counsel Assisting did not refer to any person about whom suspicion was open to be entertained. In the interests of fairness, I will set out Counsel Assisting's opening remarks, in relation to this bracket of evidence, in their entirety (T 283–284):

> Mr O'Sullivan: . . . Today it is intended to commence the investigation into the Client 1 matter. On Saturday 22nd August 1992 Client 1 sustained an injury to the crown of her head. The injury remains unexplained. Client 1 was a client, as I have indicated, of the Basil Stafford Centre. She was residing in a house at the Centre, designated by the name of Hibiscus.
>
> At about 8.40 a.m. on 22 August 1992 a staff member, RCO N, reports that she discovered a head injury to Client 1. The description given of the head injury by RCO N is that it was a cut to the top of the head, a clean straight line. At the time the discovery was made there was another member of staff present, a nurse by the name of Nurse M. Both RCO N and Nurse M deny causing the injury that was discovered at that occasion.
>
> However, they allege that during the course of treatment of the initial injury, a second injury occurred to the head of Client 1. During the course of a bandage being applied to the head or shortly thereafter, it appears that they allege that Client 1's head came in contact with the filing cabinet or other object at the house and re-opened the original wound.
>
> Ultimately it required suturing by a doctor who was called, a Dr Morton. As I have said, both RCO N and Nurse M deny all knowledge of the causation for the first injury. RCO N did the 7 a.m. to 3 p.m. shift on 22 August that year. The shift prior to hers was conducted by Mrs E; she was doing the 11 p.m. shift commencing on the day before, 21 August, which terminated at 7 a.m. on the Saturday morning, the 22nd. Mrs E denies all knowledge of the injury to the head of Client 1. The shift conducted before that of Mrs E was done by an RCO called RCO P. Her shift started at 3 p.m. and terminated at 11 p.m. on 21 August 1992. The injury to the head of Client 1 was relatively fresh and it was highly likely that it occurred either during that of Mrs E or RCO N. Statements have been taken by the Commission from a number of witnesses and it is intended to call these witnesses before this hearing.
>
> No person has claimed to have observed Client 1 suffer the initial injury to the head. It is the intention of the Commission to examine all the injuries suffered to Client 1 on that occasion. At this stage it is not clear who may have caused the injury or indeed whether the injury to Client 1 could have been self-inflicted in some way. No specific allegation has been made or can be made at this stage that anyone was responsible for causing the injury to Client 1.
>
> A police investigation did occur in respect of the matter; a police officer by the name of Harris will be called in due course and all one can say as a result of the earlier police investigation, is that no person has been charged in respect to this matter. The first witness to be called by the Commission will be RCO N, and I intend to call her at this stage.

Bearing in mind that the parties had been provided previously with all statements, records, reports and documents pertaining to the police, Departmental and Commission investigations, I fail to see what it is that Counsel for the State of Queensland suggests was required to be done to ensure, or what it is that Counsel Assisting and the Commission did in fact do that amounted to a denial of, procedural fairness. Mr Plunkett's submission itself does not assist in this regard, as it is silent as to the identity of the person or persons to whom procedural fairness has allegedly been denied.

Additionally, Counsel for the State of Queensland submitted that Counsel Assisting did not outline or address any issues, as to the conduct of any individual, at the *conclusion* of the evidence. I cannot countenance any possible basis for complaint in this respect. At the immediate conclusion of this bracket of evidence regarding Client 1's injury, I raised with all Counsel (see section 6.1 herein) my

desire that written submissions should eventually be prepared by the parties, in relation to each specific incident of alleged client abuse. Mr Plunkett concurred with that suggested procedure (T 766); he made no request at that time, or on any other occasion, that Counsel Assisting should outline any issues addressed to the conduct of any individuals at the conclusion of the evidence, presumably by way of some sort of closing address. In any event, I note that at the conclusion of evidence regarding all the specific incidents, Counsel Assisting prepared, and delivered, to myself and to the other parties, a comprehensive written submission concerning this bracket of evidence. That written submission referred to what Counsel Assisting perceived to be the relevant issues. As already noted, all Counsel were given the opportunity to in turn speak to their own written submissions, or those of the other parties.

Quite simply, I fail to see what benefit to the Inquiry might have eventuated had any procedure, requiring Counsel Assisting to make something in the nature of a closing address, been adopted.

I reject the submissions by Counsel for the State of Queensland alleging that there has been a denial of procedural fairness by the Commission in respect of this incident.

8.6 THE RELEVANT SHIFTS

The material gathered in the police and Departmental inquiries logically suggested that Client 1's initial injury, discovered on 22 August 1992, could only have been sustained on or around that date. Accordingly, the Inquiry focussed upon the shift during which the initial injury was first noticed, and those shifts immediately before and after. The relevant shifts, and RCOs, for Hibiscus house were:

RCO L	3 p.m. – 11 p.m. shift	21 August 1992
Mrs E	11 p.m. – 7 a.m. shift	21–22 August 1992
RCO N	7 a.m. – 3 p.m. shift	22 August 1992
RCO L	9 a.m. – 5 p.m. shift	22 August 1992
RCO P	3 p.m. – 11 p.m. shift	22 August 1992

8.7 THE AFTERNOON SHIFT – 21 AUGUST 1992

RCO P, who worked this shift, provided a statutory declaration to the Commission (Ex 65), and gave evidence. RCO P also made entries in the Hibiscus house report book for the period relating to this shift. [**Note** – During the course of evidence the Department was unable to produce the original house report book for examination – see T 419 et seq. Accordingly, witnesses were examined without reference to that document. Subsequently, the Commission located a photocopy of the relevant report book entries, and circulated the same to the parties under cover of correspondence dated 14 June 1994, requesting their advices as to whether any party would be submitting that any of the relevant witnesses should be recalled. None of the parties made submissions to that effect. The photocopy of the relevant report book entries was admitted in evidence as Ex 380.]

In her statutory declaration RCO P said:

> I remember the evening of 21 August 1992. On that day I was rostered to work from 3 p.m. to 11 p.m. in . . . Hibiscus . . . Client 1 was one of six clients I was looking after at that time. At approximately 5 p.m. to 6 p.m. we had the evening meal and I then commenced to clean the kitchen. Once I had finished that I started bathing the clients. This would have been until about 7.15 p.m. to 7.30 p.m.. This bathing includes toileting and dressing as well. I recall that Client 1 had her hair pulled up in a bun on the top of her head. This was a normal practice for her when she was sleeping. After the bathing was completed I commenced to watch television with the clients. I recall Client 1 sitting at my feet. This was so that I could keep her awake as she wakes during the night if she goes to sleep too early. Before the clients were put to bed at about 9.15 p.m. to 9.30 p.m. they were toileted again. Client 1 was one of the clients who was toileted at that time. I recall that when Client 1 went to bed there were no signs of any injuries. She was in a good mood on that night because she was dressed in a new night dress. Once the clients were in bed I did my nightly report and I then commenced to mop out the house. The only rooms that were not mopped out were the bedrooms in which the clients were sleeping. Once I had finished this job I emptied the bucket and turned it upside down over the drain. This is something I do on every shift. During that night there were no visitors to the villa, and the only time I left the villa was for about five minutes to take the linen to the laundry. My relief, Mrs E, arrived at about 10.30 p.m.. At this time I made a check of all the clients with her and noted that there were no problems or no injuries to any of the clients.

RCO P's evidence in relation to Client 1's hairstyle, her nightdress, the mopping of the house and the journey to the laundry were of particular significance in light of the evidence of other witnesses relating to Client 1's injury, and the various factors mentioned in Ms K's report of the Departmental inquiry.

RCO P's entries in the report book for 21 August 1992 are consistent with her abovementioned evidence. No injuries to any clients are noted for her shift (indeed, for the entirety of that day). RCO P wrote, in specific report upon Client 1 for the afternoon shift, the following entry:

> Client 1: very good, used toilet all shift.

Shortly after this entry it appears that RCO P made the following notation:

> All except [another client] ate heaps for tea; then I bathed and washed their hair . . . floors done.

It was also noted by RCO P that Client 1 was sometimes unsteady upon her feet, particularly upon awakening at night to use the toilet, and that Client 1 also had a habit of crawling around on the floor and running into objects. At T 542, while being cross-examined by Mr Plunkett, RCO P said:

> Mr Plunkett: Now, you said that she has the habit of crawling around on the floor on all fours?---Yes, she does.
>
> And when she does this she looks down and not ahead?---Yes.
>
> And also has a habit of running into objects?---Yes.
>
> I mean, obviously you have seen that?--- . . . when she's down on all fours she tends to look down . . . so you see her doing it quite a bit.
>
> And what sort of objects does she run into?--The wall, chairs. Sometimes she bumps into the other clients' legs, you know, if they're sitting down, things like that.
>
> And when she does run into these objects or bumps into them, as you have said, what part of her body makes contact with these objects?---It's usually her head because she's going forward like that.
>
> Alright, and to your knowledge has she ever sustained any injuries as a result of bumping into these objects with her head?---I can recall one that, where she'd have a bump on her head, yes.

8.8 THE NIGHT SHIFT – 21–22 AUGUST 1992

A) MRS E – HIBISCUS HOUSE

Mrs E, who worked this shift, provided a statutory declaration to the Commission (Ex 83) and appeared as a witness. Mrs E also provided a brief statement, presumably as part of the Departmental investigation, and had been interviewed by the police (see section 8.3). In her statutory declaration Mrs E stated:

> On 21 August 1992 I was working night shift from 11 p.m. to 7 a.m. in Hibiscus, and Client 1 had wet her bed during the night and I bathed her and washed her hair because she moves around a lot in bed and makes a mess of herself. I did not see any injury to her head when I bathed her. I have reason to believe the injury was seen at least one hour after my shift ceased. I believe that because the injury required stitches, I would have seen it. I didn't see it when I washed her hair, I can only guess that it happened after my shift. I saw the injury on my next shift.

Mrs E no longer works at the Centre, having been retired from the Department on medical grounds, subsequent to this incident and apparently against her own wishes (C Ex H). Ms K stated in her Departmental report (Ex 77):

> It is unfortunate that Mrs E cannot be interviewed as she was the Residential Officer on shift prior to the discovery of the injury and therefore may have been able to shed light on the situation.

In her oral evidence, Mrs E stated that she did not move the house mop or bucket during her shift (T 710). Mrs E also noted that Client 1 awoke at approximately 6 a.m., and was taken by her to have a bath, and that in the course of these events Client 1's bed was stripped and the bed sheets were placed in a laundry bag (T 712–713). Counsel Assisting asked Mrs E about the washing of Client 1's hair (T 715–716):

> Mr O'Sullivan: So she was in the bath. What did you do? You washed her body?---Yes.
>
> What about her hair?---I washed her hair too.
>
> Are you sure about that?---Yes.
>
> And how did you wash her hair? Was she . . . ?---No, can I take back what I said?
>
> What part do you want to take back?---Washing her hair. I don't remember whether I used shampoo or not but I do remember wetting it because it was sticking up. It always is after she has been to bed, and I did wet it and I do remember drying it. I don't remember using shampoo. I don't think I did because it is supposed to be washed with shampoo the night before, the afternoon before.
>
> Okay. Well, are you clear that you wet her hair while she was in the bath tub?---Yes.
>
> And when you wet her hair how did you do that? You put water on it, I know, but did you touch her hair in any way – touch her head in any way?---Yes.
>
> How did you, what did you do?---Put the shower part where the water comes from and rubbed her hair with my hand, and lifted it because it is long, to wet it properly . . .

> Do you recall doing that on this morning?---Yes.
>
> Did she have any injury to her head?---I didn't see any, I really didn't.

The Inquiry then adjourned. Upon reconvening, Counsel Assisting continued with his examination of Mrs E:

> Mr O'Sullivan: You told us before the break that you recall bathing Client 1, recall wetting her hair, and running your hands through her hair during the course of that process, that is right?---Can I make a correction there. I thought about it after. I don't recall putting shampoo on her hair. There were times when I needed to, I don't remember – definitely did wet her hair, but I don't remember if it is of any significance, whether I used shampoo that day or not.
>
> Yes, and you told us that you did not see any injury to her head?---No, I did not.
>
> If there had been a laceration or a cut that ran down the centre of her head towards the front hairline, do you think you would have noticed that, particularly if the cut was about an inch/inch and a half long?---I think so, yes, I would have.

Mrs E then stated that after wetting Client 1's hair on this occasion, she dried and combed the same. Counsel Assisting asked:

> And how did you comb it?---Down the sides and down the back, and if I may add, I did not put a bun in her hair. I don't know how to put a bun. I always combed her hair down the sides and down the back. (T 717).

Mrs E also said that she took the laundry bag out of the villa, at approximately 6.45 a.m., as was her normal practice on the night shift (T 718). She was quite certain as to this time (T 719).

In essence, Mrs E denied in her evidence any knowledge of Client 1's scalp injuries. Her evidence was generally consistent with the comments made by her in her handwritten Departmental report prepared on 24 August 1992 (Ex 78), two days after Client 1's wound was discovered, wherein Mrs E stated:

> On Saturday morning, 22 August 1992, I showered and combed Client 1's hair, there was no blood on her head or anywhere else.
>
> I left at 7.10 a.m., there was no blood anywhere on Client 1.

B) RCO Q – LOBELIA HOUSE

RCO Q was the RCO working the night shift in Lobelia, a house located opposite to Hibiscus, and approximately 50 metres distant (T 553). In her statutory declaration (Ex 68) RCO Q stated:

> During my shift I did not see or hear anything unusual from Hibiscus house. I know Client 1 and I know that she can be very vocal if she is upset or injured in any way. The only noise I did hear was the gate slamming at about 6 a.m. when I saw Mrs E returning from dropping off the laundry.

RCO Q's evidence regarding Mrs E's apparent journey to the laundry in fact involved an assumption:

> Mr O'Sullivan: In your statement, you say that she was returning from dropping off the laundry, is that an assumption by you simply because of the direction in which she was coming?---That's correct.

8.9 THE MORNING SHIFT – 22 AUGUST 1992

A) THE FIRST LACERATION

RCO N provided a statutory declaration (Ex 45) and gave evidence to the effect that she arrived at Hibiscus house, to work the morning shift on 22 August 1992, at about 6.50 a.m.. She changed over shifts with Mrs E. Upon arriving, RCO N (from Ex 45):

> . . . saw that my clients were up and dressed. I saw that Client 1 had been bathed and that her hair was wet from being washed . . . when Mrs E left I went about my normal morning routine.

RCO N gave evidence that at the time of her arrival Client 1 'looked generally clean, fresh and tidy', and that her hair was not tied up in a bun, but was hanging free (T 300). In an interview with an acting SRO of the Department conducted on 14 December 1992, RCO N indicated that upon her arrival the house laundry bag was still there, although the same was 'not very full' (from Ex 50, a record of that interview).

At about 8.00 a.m., Nurse M, of the Centre's Nursing Service, arrived on her morning rounds. After treating another client for an unrelated matter, Nurse M went to leave the house. RCO N described the events that followed, in her statutory declaration.

> I started to walk Nurse M out toward the gate to the house and I saw Client 1 coming towards us from the direction of the gate. I saw a glimmer of something red in her hair on top of her head. Nurse M and I looked at Client 1's head and saw that she had what appeared to be a clean straight cut with some blood on top of it on the top front of her head. We took her inside and sat her down and Nurse M cut the hair around the cut and put some Betadine on it.

RCO N described this "first" laceration as being 'about three centimetres long' with 'really no dimension in depth' (T 307), with 'a glimmer of seepage of blood fluidy stuff sitting on the actual top of the cut' (T 306).

Nurse M also appeared as a witness before me. She provided a similar account to that of RCO N, saying in her own statutory declaration (Ex 60):

> . . . we noticed the Client 1. She was standing in the sun and there appeared to be a glint in her hair as if it were wet. We investigated the matter further and found that she had a laceration to the beginning of the upper head. At this time I initiated the usual management, that is to clean down the laceration. I then used an antiseptic and covered the wound.

When asked to describe the wound, Nurse M stated, 'It probably would've been about an inch and a half long and probably about two–tenths of an inch wide' (T 455). Despite stating in her statutory declaration that this laceration 'was some hours old when I first saw it', Nurse M was not prepared to give a time frame 'regarding how recent the injury was' in her evidence before the Inquiry.

Additionally, RCO Q said in her statutory declaration:

> After I finished work that morning I was talking with another RCO N. She was the RCO who had started the 7 a.m. shift at the Hibiscus. She said to me something like, "Look at what I found this morning". At this time I saw a head wound on Client 1.

In her evidence before the Inquiry, RCO Q stated that she could have been talking to RCO N 'as late as 8.30 a.m.', and that the wound she noticed at the time was approximately three centimetres in length, consisting of 'a straight line with a little bit of residue of something just up in one corner' (T 555–557).

B) THE SECOND INJURY

In her statutory declaration, RCO N described the following events:

> . . . we took her [Client 1] and sat her down and Nurse M cut the hair around the cut and put some Betadine on it. Client 1 does not like being treated by the nurse and she got up quickly and in doing so stumbled forward and fell to the floor and at the same time bumped her head on the flat part of the door of a steel locker. She stood up and turned around toward me and I saw that there was a lot of blood streaming down onto her face from the top of her head. Nurse M and I sat her down again and I saw that the previous cut had opened up and was bleeding heavily. Nurse M applied first aid to the cut and rang the duty doctor. I arranged for RCO P to come in early, and I took Client 1 to the surgery where the duty doctor inserted two sutures to the wound.

In her evidence before the Inquiry RCO N was referred to these events, and further described Client 1's movements by saying (T 309):

> She got up so quickly, I wasn't watching exactly what she was doing, but as she sort of sprung out of the chair, she sort of, she has a habit of tripping over her feet, and she sort of got up so quickly. It was sort of stumble, stumble, and she sort of fell to the floor or dropped to the floor when she tripped over her feet, and then it was at the same time when she fell, it was sort of forward with the head at the same time.

Nurse M, in her statutory declaration, also provided a version of these events, commencing at the time after treating the initial laceration:

> I then went into the office to talk with RCO N. Client 1, whose behaviour is normally attention seeking, followed me into the office. She got her foot caught on the carpet and tripped, landing on one of the cupboards where a piece of furniture, I cannot recall exactly what the furniture was.
>
> As a result of this fall, the laceration to her head was now worse.

Nurse M was also questioned about her recollection, and the obvious discrepancy in her version compared to that of RCO N. At T 457 she stated:

> From what I remember, or assumed at the time, she [Client 1] moved in front of us, got her foot caught in the carpet, and landed on the cupboard.

Her evidence continued, and at T 464–469 she was asked several further questions by Counsel Assisting and myself [the following is an abridged version of the material parts of that evidence]:

Mr O'Sullivan: What do you say to this proposition? That when Client 1 was first in the office area with you and RCO N, that she was sat down on the chair . . .?---Well, that's probably, but she certainly wouldn't have stayed there.

And in fact, that whilst she was there, you treated her in the chair? What do you say to that proposition?---Well, I – at the time, what I can remember is that she was quite mobile, and we do try to do what treatment we can when we can.

Well, do you deny that Client 1 was placed in the chair that I have described and that you then treated her while she was still seated in the chair?---Well, as I said, it is probable . . .

But how could what I am putting to you be probable, that is, more likely than not, when it is inconsistent with the version you have just given us?---Well, all I can say is that, you know, I was directing my attention talking to RCO N at the time.

You see, I am putting to you a completely different – well, not completely different but a significantly different version; do you agree with that?---Yes.

Where instead of tripping on carpet, as you have told us, it is a version where she has come out of the chair because she is stung by the Betadine and then moves forward to the ground and hits her head on the metal locker or metal cupboard?---Well, it is probable.

The Commissioner: The two things cannot stand together, can they, the two versions?---As I said, sir, I felt that she had landed on the cupboard beneath the window.

That is what you say?---That's right.

Did she fall against the flattened part of the metal locker, or did she fall against the corner of the wooden cupboard under the window?---I felt at the time that she had fallen on the corner of the cupboard underneath the window.

Mr O'Sullivan: We are trying to work out what occurred in the office, you see. Do you have any recollection of how she suffered her injury to her head in the office in August '92?---Well, just as I said, she slipped and landed on a piece of furniture.

The version that I gave to you just a moment ago about her coming out of the chair and going into the cupboard, that is quite a probable account of what occurred, is that right?---Well, it's probable.

What, more probable than the version you gave us before, about how she tripped on the carpet?---Well, I know myself the way she was going, I felt that she had tripped on the carpet.

So, if we look at the two versions, what do you say is the, what is your view of what occurred – that she tripped on the carpet and goes into the cupboard below the window, or did she come out of the chair and go into the metal locker?---No, I feel that she tripped on the carpet and landed on the cupboard.

Do you know that the version I have just given you that is different to yours, is that of RCO N?---Well, I assumed that.

And that is a reason why you are not prepared to disagree with it?---No, sir.

Well, why do you say that RCO N's version is probable?---Well, as I said, I can – limited, or remember things limitedly. I mean to say, it's over 12 months ago now sir . . . I can only state what I saw at the time, and I wasn't sort of preoccupied with Client 1 at the time.

> The Commissioner: If you only stated what you saw at the time, and you have told us what you saw at the time, then the version that you now know is RCO N's version, the one that you assumed was RCO N's version, cannot be probable, can it?---No, sir.
>
> Why then, did you say it was probable?---Well, I can only state what I feel that I saw at the time.
>
> Yes, but why did you say that the RCO N version was probable when you know very well it was not?---Well, Client 1 may have been sitting . . .
>
> But she was not, according to you. You have told us in clear terms that she did not sit down once when she was in that room, didn't you?---Yes, sir.
>
> Well, which version is right?---Well, I feel myself that the, we treated Client 1 while she was standing up.

The obvious discrepancy between the versions of RCO N and Nurse M is, naturally, a matter of concern, and arises for my consideration. Counsel Assisting, in his written submission, drew attention to the discrepancy and suggested:

> In respect of this issue there would seem to be little reason for the two to conspire to cover up any default by them in the treatment or care of Client 1. The discrepancy in their versions is so great that it would suggest there was no such conspiracy. The evidence of Nurse M in respect to her version of the office incident and her readiness to support RCO N's version in its place is astonishing in the extreme. The only reasonable conclusion is that Nurse M, for reasons best known to herself, has no recollection of what really occurred in the office.

Counsel for the unions also referred me to the discrepancy at numerous parts of his written submission. The thrust of his submissions was to the effect:

> That such divergence is referrable to the earnest attempts on the part of each of the witnesses, particularly Nurse M, to reconstruct the events on the basis of an incomplete recollection . . . neither version indicates any attempt, on the part of such witness to dishonestly misrepresent the circumstances of those events.

Counsel for the State of Queensland, in his written submission, only referred to that aspect of the discrepancy regarding whether Client 1 struck her head on the locker or the cupboard; suggesting that both RCO N and Nurse M:

> . . . presented as creditable witnesses of the truth whose versions are essentially accepted.

With respect to that latter suggestion, the two versions as to the occurrence of the incident giving rise to the second laceration suffered by Client 1 are quite disparate; they cannot stand together.

RCO P, who had worked the afternoon shift on the previous day, gave evidence that she received a telephone call at approximately 8.15 a.m. on 22 August, requesting her to return to duty at 9 a.m.; she did so, for the purposes of caring for the clients of Hibiscus house while Client 1 was taken to receive medical treatment by RCO N. In her statutory declaration, RCO P said:

> At about 9 a.m. the following day I was told about the injury to Client 1 by another RCO N. Together with RCO N, I made an inspection of the house to see if we could locate any area where the injury may have occurred. We found nothing at this time. We also checked the linen

at the laundry to see whether there were any blood stains on anything. We were unable to find any stains.

RCO P also stated that at about 4 p.m. she found the house mop bucket full of dirty water (T 535):

> Mr O'Sullivan: Well, from when you arrived until you discovered the bucket, had you used the bucket?---No, I hadn't.
>
> Had RCO N used the bucket?---No, she hadn't.
>
> And had you remained at the villa all that time?---Yes, I did.

RCO P also said in her evidence that some days later she noticed that some of the clients' bed sheets were missing (T 535). She also said that upon her arrival at the villa on 22 August, Client 1's nightdress had been 'washed and dried' (T 537).

RCO N also gave evidence on these matters. She stated that she had located Client 1's nightdress in the washing machine that morning, and presumably the night shift RCO (Mrs E) had placed the nightdress there, as would be the usual practice (T 318). RCO N could not give an accurate estimate of the time as to when the clients' sheets went missing (T 331).

> Mr O'Sullivan: A few bottom sheets had gone missing from Client 1's set?---There was – each client, I suppose, has their so–called personal sheets that we have in the linen cupboard. Over an amount of time things do go missing, whether or not it was that particular day. We have a few clients that like to be helpful and pick up linen for us if they see it on the floor, and they will accidentally put it in the laundry bag instead of the washing machine. So, you know, things go missing.
>
> Well, had a few bottom sheets gone missing from Client 1's set of linen which matched the curtains in her room?---Yes. She had a pinky floral pair that – there was some missing from that set.
>
> Well, when did you first detect the bottom sheets had gone missing?---Can't remember sort of off–hand now. Probably if I was making a set up to match in with the quilt that she had on at the time to match the curtains, I would've noticed that, you know, where's the sheet gone, but . . .

Mr O'Sullivan asked (T 333):

> Well, can you say this: from 22 August, from 21 August 1990 through to 14 December 1992, when did Client 1's bottom sheets go missing?---I couldn't tell you whether they were missing before the incident . . . whether or not anyone noticed it beforehand or whether they were never put on the bed because another few sets were used, I suppose it was something – that wasn't, you know . . .

C) AN APPARENT ANOMALY IN THE INJURY REPORT

RDO R gave evidence that she was the Residential Duty Officer (RDO) working the 7 a.m.–3 p.m. shift on 22 August 1992. In her statutory declaration (Ex 81) RDO R stated that while her memory of events was fairly vague, she 'would have received a telephone call at the Duty Office advising of the injury to Client 1'.

It is apparent that RDO R became aware of the fact that Client 1 was injured; the photographs (attached to Ex 16), previously referred to herein at section 8.2, are noted 'taken by RDO R 22/8/92 9:30 a.m.'.

In due course, RDO R completed an official injury report, as procedure required (see section 7.13). The original of that report was admitted in evidence as Ex 16. Part one of the report is divided into a number of sections. Adjacent to one entry reading 'date and time injury occurred' the following entry, in black, hand-written ink appears:

> ? 2ND INJURY 22.8.92 8.43 a.m.

A copy of this report was also placed in Client 1's own medical file (C Ex C). That copy was a photocopy, being identical to the original except for the presence of the abovementioned entry, regarding the second injury, which appears in black hand-written ink on the copy report. One can therefore only infer that this particular entry was added after the injury report had been initially completed and photocopied. Naturally, this aspect of the report was a matter for the attention of the Inquiry.

In her statutory declaration, RDO R stated that the abovementioned entry was in her handwriting, and said:

> I am unsure as to when I entered that line. The line only clarify [sic] a time as to what was already written in the report.

The report does make reference to the two separate incidents and consequent wounds sustained by Client 1. However, at the time of the addition of the entry in question, it is apparent that the injury report had already been signed by RCO N, in a section providing for the signature of 'The RCO or Staff Member with care of the Client' under some writing stating, 'The above statements are an accurate description of the incident as reported by me'. Nurse M also signed the document.

In her evidence, RDO R conceded that the entry was added after the signatures of the above officers had been placed on the document (T 701 et seq).

D) THE USE OF THE PHRASE "HEAD-BUTTED"

The injury report also included a section entitled 'Brief Description of Events prior to Injury'. Therein, the following entry was made by RDO R:

> Noticed laceration, then Client 1 head-butted cupboard in staff room after laceration was attended to and is [sic] so doing - re-opened wound . . .

Before the Inquiry, RDO R was extensively examined upon her use of the word "head-butted". At T 687, the following was said.

> RDO R: . . . There were actually two occasions when Client 1 opened the wound; there was the original cut to the head and then when Client 1 head-butted the cabinet in the staff room . . .
>
> The Commissioner: Could you just pause there for a moment, what do you understand the term head-butting to mean?---She banged her head purposely on the cupboard.
>
> Purposely - were you told that?---I was told that.

Mr O'Sullivan: Do you remember who said that to you?---RCO N.

At T 690–691:

Mr O'Sullivan: And when you used the term "purposely" before, was that a term that was used by RCO N?---No. That's probably the impression I get.

Well, did she use the word "head–butted"?---Yes.

Mr O'Sullivan: . . . What do you understand by the word "head–butting"?---For someone to purposely butt their head against another object.

Yes. And are you aware of a general use at the Centre of the word "head–butting" to include an occasion where a person might accidentally strike their head against an object? ---No.

The Commissioner: Mr O'Sullivan, I have a clear recollection of this witness saying that RCO N said that Client 1 deliberately head–butted the cupboard; a clear recollection. It may be that I misunderstood and my recollection is imperfect, but I would like that to be found, if possible, and replayed. Were you going to say something, Mr Herbert?

Mr Herbert: Well, I was only going to say that that was precisely my recollection . . .

After some further discussion with all Counsel, the tape of the proceedings was replayed, and the following was said:

The Commissioner: . . . That to me is as clear as crystal, there is absolutely no doubt at all that this witness said that RCO N told her that there was a deliberate head-butt, and I carefully asked the question again and again. Now, I did not do it for fun, I did it because I wanted to find out, and that answer, as far as I am concerned, is quite clear – those answers are quite clear.

Mr Herbert cross-examined RDO R upon this point; the following is an abridged version of his cross–examination (T 747–750):

Mr Herbert: Did she say those words, the word "head–butted", is that the word that RCO N used, or is that a word that you put in there?---I am very certain that is a word that RCO N used.

All right, now, you did not say the word "purposely" or "deliberately" or anything else in there, do you?---My interpretation of head-butting anyway, is a purposeful – if someone said to me that another person head-butted something, my interpretation is that that person has purposely banged their head against an object. If someone was to fall and hit their head, it would be that they have sustained a head injury or they have hit their head. I wouldn't say they head-butted the ground.

But do you know what RCO N meant when she used the word "head-butted"? Did she enlarge upon that at all to you?---Only that she felt that whatever Nursing Service had put on Client 1's head had stung and that Client 1 – she felt there was something to do – I can't recall exactly.

Was it that she told you that Nurse M had put something on her head that must have stung her, and, as a result of being stung, she . . .?---Head-butted . . .

. . . did whatever action was necessary that caused her to, as she said, head-butt the cupboard, is that right?---That's what I believe is my recollection.

RDO R then gave some evidence to the effect that Client 1 had a tendency to hit parts of her own body that were sore.

> Mr Herbert: Now, putting those two personal views and experiences together, if RCO N just said she head-butted as a result of being hurt, in your mind, that would to you mean that she had done it deliberately?---Yes, and I would also not question that, knowing what I know.
>
> But even so, that is a view that you formed in your own mind, that it was deliberate, is that right?---That's right.
>
> And I would suggest to you that in fact RCO N did not say that it had been deliberate. She simply used the word "head-butted", and that your own . . . experiences of Client 1 have come into play on your own mind, so that you now believe that what she was trying to say was that it was done deliberately although she did not say so at the time – is that possible?---That is possible.

RCO N was questioned in relation to the advices she gave to RDO R (T 315–316):

> Mr O'Sullivan: Did you provide that information to RDO R as she made her notes?---I think it was myself that did that, but I am not sure. Like I said, Nurse M and I were both there helping fill out the report . . . and where it says head–butted, that is usually our – I suppose our expression of – in our reports where someone actually goes into something, it's what we call like a head–butt.
>
> The Commissioner: But a head–butt has a connotation of being deliberate, doesn't it?---Yes, it does.
>
> This was not deliberate?---Like I said, I can't quite remember who was actually giving the information, I know Nurse M and I were sitting in there filling it out. I think at the stage, I think we were so sort of worried about what's happened to Client 1, sort of words were sort of going all different directions, but . . .
>
> Well, did she head–butt that cupboard deliberately?---No, it wasn't a deliberate head–butt.

Nurse M was also questioned about her use of the word "head-butted" in respect of an entry which she admitted making on the injury report, to the following effect, under the heading "Action Taken by Medical Authorities":

> Initial Rx [treatment] area cleaned and treated. Client 1 re–opened laceration after head-butted cupboard in staff room.

Counsel Assisting asked the witness (T 472–473):

> Why did you use the word "head-butted"?---Well, she did. However, it landed, it was on her head, and she has a history of head-butting as well.
>
> And head-butting – as that a term of wilfully applying your head against a hard object?---Well, it can be used in that context, yes, sir.
>
> Well, do you use it in any other context?---Well, head-butting can be forceful or it could possibly be accidental . . . if she has the intentions of it, which I have seen her before today – head-butt areas.
>
> The Commissioner: But on this occasion?---Perhaps in this case sir, it mightn't have been the most appropriate word used.

E) DR MORTON ATTENDS

Dr Peter Morton, a registered medical practitioner of the Wolston Park Hospital, gave evidence that he attended upon Client 1 for the purposes of suturing her laceration. At T 513, Dr Morton stated it was unlikely that Client 1 would have received such an injury 'if she merely banged herself into a flat surface such as the wall . . .'. He stated the injury was consistent with hitting a corner of a cupboard (T 514).

8.10 THE AFTERNOON SHIFT – 22 AUGUST 1992

RCO P worked the afternoon shift at Hibiscus house. In her statutory declaration (Ex 71) she stated that she arrived for duty at about 2.30 p.m., and had a conversation with RCO N:

> . . . I was having a conversation with RCO N . . . she said that Client 1's hair had been wet, brushed and set up in a bun or a pony tail when she started work that morning. We both commented that this was quite unusual because Mrs E, who was working the night shift, had never previously done this, in fact we said that some of the older staff used to complain amongst themselves about Mrs E not doing Client 1's hair. We were quite concerned that Client 1 had injured herself so we decided to look around the villa to see where she might have fallen and hit herself. When we were looking we found some blood on the door architrave inside the toilets. There was just a smear that could be seen but it was quite noticeable . . . we continued to look around the villa but we found nothing more except we saw that the mop and squeeze bucket had been moved away from where it had been left the night before. This was unusual because the night shift doesn't usually use the bucket. We could not think of any reason for it to be used other than to clean up some sort of mess.
>
> There was one other thing we found unusual and that was the fact that RCO L had put the laundry bag out the night before which was normal procedure however, there was another bag placed over at the laundry pick up point on that morning. The bag contained much less laundry than would normally be the case. In the period that I have worked there I had never seen Mrs E carry laundry over before.

During her evidence, RCO P conceded that the aforementioned blood, located by her, 'could have been there for a month' (T 609).

Counsel Assisting asked RCO N about the comments attributed to her by RCO P, in respect of Client 1's hairstyle (T 419):

> Mr O'Sullivan: Did you go on to tell her it was set up in a bun or a ponytail?---No, I wouldn't have told her that because it wasn't . . . it hadn't been put up at all.

8.11 THE INQUIRIES OF MS K

Ms K, the then Acting Principal Residential Officer at the Centre, was primarily responsible for the Department's internal investigation. Ms K holds the degrees of Bachelor of Arts and Master of Social Welfare, Administration and Planning. Ms K's investigation initially seems to have consisted of issuing a request to the relevant staff members to provide written reports concerning their knowledge of the relevant incidents. Reports of that nature were received from Ms Mrs E and RCOs N and Q. Additionally, the aforementioned injury report and Nursing Service records were created.

Ms K referred Client 1's injury to local police officers, for investigation, on 25 August 1992, some three days after the injury had been discovered. Additionally, interviews with relevant staff members were

conducted upon the conclusion of the police investigation. Written summaries of such interviews as conducted with RCOs N, P and L were tendered in evidence before the Inquiry, with Mrs E unable to so be interviewed due to her departure from the Centre.

Ms K also prepared initial and final reports or summaries about the incidents. Her initial report (Ex 79) contains some implied criticisms as to the length of time taken by the police officers in their investigation of the Centre's complaint.

8.12 CONSIDERATION OF THE ISSUES RAISED

On the whole of the evidence I am satisfied that Client 1 suffered two separate head injuries on the morning of 22 August 1992, resulting in a composite wound as depicted by the photographs attached to the injury report. There has been no direct evidence as to how the first injury occurred.

There were some nuances in the evidence suggestive of an element of culpability on the part of the night shift RCO, Mrs E. Certainly, the reports of Ms K openly suggested that Mrs E may have somehow been responsible for the initial injury suffered by Client 1, or at least had failed to report the same. The matters suggestive of such misconduct on the part of Mrs E were summarised by Counsel Assisting in his written submission as:

(a) The evidence that RCO P left the mop bucket upside down and over the laundry drain where it remained at the end of her shift at 11 p.m. 21st August, 1992. It was discovered by RCO P at 4 p.m. 22nd August, 1992, full of dirty water. The inference is that it may have been used to clean up blood.

(b) The evidence that no significant amount of blood was found within the Villa area consistent with the injury to Client 1's head. The implication being that any blood [of] Client 1 had been cleaned up.

(c) The evidence that Client 1's bed linen was discovered missing. The inference being that it was destroyed or disposed of because it contained blood.

(d) The evidence that RCO Q saw Mrs E returning from the laundry drop-off point at about 6 a.m. 22nd August, 1992 when this was unnecessary on the night shift. This could be linked to (c) above as the opportunity to dispose of blood stained linen.

(e) The conduct of Mrs E washing Client 1's hair at the completion of the night shift. This was said to be unusual conduct by Mrs E. The inference is that Mrs E sought to camouflage any injury.

(f) Nurse M's initial estimate that the injury was two to six hours old. If true this meant that the injury occurred on Mrs E's shift.

Additionally, in evidence before the Commission:

(g) RCO N was alleged to have seen Client 1's hair in a bun or ponytail when RCO N arrived to take over from Mrs E at 7 a.m. – again camouflage . . .

Dealing with these issues seriatim:

(a) The evidence did not establish who had moved or used the mop bucket. No witness claimed responsibility for filling it with dirty water. On the evidence, I cannot attribute responsibility in that regard to Mrs E, or indeed to any other individual.

(b) The evidence failed to establish any precise details as to how or where, Client 1 suffered her initial injury, other than that the injury must have been sustained in the confines of the house or yard some time on the morning of 22 August 1992. The initial injury may not have resulted in much bleeding, or it could have occurred while Client 1 was outside, as opposed to inside, the actual house building. Accordingly, the absence of any evidence of bleeding cannot be probative of any allegation of culpability.

(c) and (d)

The evidence before the Inquiry established that no witness could particularise the exact time when Client 1's bed sheets went missing. It is quite possible that the bed sheets were missing on a date well prior to Client 1 sustaining these injuries. There was direct evidence from Mrs E that she took laundry to the drop–off point on the morning of 22 August 1992, as was her usual practice. Indeed, given the fact that this investigation occurred many months after relevant events, there was no opportunity to obtain evidence as to the contents of that laundry bag, although RCO P stated that she and RCO N checked the laundry and did not find any blood stained items [see section 8.9(B)]. The visit by Mrs E to the laundry drop–off point, by itself, cannot support an inference of guilt of any misconduct against her.

(e) Counsel Assisting submitted that the alleged conduct of Mrs E, in washing Client 1's hair, was too inconclusive to support any adverse finding against her. I agree with that submission. In addition, Counsel for the State of Queensland, in his written submission referred to a number of matters which he submitted also stood against the drawing of an untoward inference from this behaviour. To my mind, two of those matters so submitted by Mr Plunkett are relevant, namely:

- RCO N's evidence, as per her statutory declaration, to the effect that prior to the day in question she had not taken over a shift from Mrs E and therefore did not know her routine (for commenting upon whether any occurrence was "non–routine" in nature); and

- It would not be unexpected that Client 1's hair might get wet, even if it was not washed, during the normal morning shower (evidence of RCO P – T 618).

(f) In evidence before me Nurse M declined to make any estimate of the apparent age of Client 1's laceration at the time that she initially viewed it. Therefore, there is no reliable medical evidence suggestive of an allegation that the injury could only have been inflicted at the time when Mrs E was on shift.

(g) The evidence in relation to Client 1's hairstyle gives rise to a direct conflict between the versions of RCOs N and P, which cannot satisfactorily be resolved. There would appear to be no motive for either witness to fabricate evidence about that point.

I have also noted that Counsel for the State of Queensland did not cross–examine Mrs E at all. One might properly assume from that stance that the Department's originally held suspicions concerning Mrs E as a possible abuser of clients, had been dispelled at that stage of the evidence.

On all the evidence, I am unable to make a clear determination as to the cause of Client 1's initial head injury. Much evidence was heard about Client 1's disabilities and her various characteristics, including her rigid gait, her unsteadiness, and her propensity to bump into objects with her head, all of which were noted (and discussed above).

In evidence, RCO N confirmed that there were times during the early part of her shift when she did not have Client 1 under constant observation (T 349). Indeed, it is a matter of commonsense, given the evidence as to the duties required of RCOs, and the characteristics and behaviours of the various clients, that no person of ordinary human capabilities could attend to the tasks required of an RCO during the morning shift while keeping each and every client under continual supervision. It is simply not possible.

Accordingly, it is as probable as any other hypothesis, that Client 1 accidentally sustained the first injury, which was much less severe than the wound depicted by the aforementioned photographs, by inadvertently meeting with some misadventure during the period when she was not within the direct observation of RCO N.

There is insufficient evidence to suggest that RCO N, or for that matter, Nurse M, was involved directly, in any culpable fashion, in the causation of that initial injury. As noted, there is a significant discrepancy in the versions of those witnesses as to how Client 1 injured herself on the second occasion; however, their versions describing the nature of the original injury are corroborated to a large extent by the evidence of RCO Q, who also witnessed the injury in its original state.

I must admit that, at times, I found the evidence of Nurse M regarding the circumstances of the second injury to be quite confusing. In the witness box she readily, and at times enthusiastically, embraced a version of events in explanation of that incident quite inconsistent with her own evidence. She vacillated rapidly between stories, eventually appearing to adopt the position of support for her original version, together with an inconsistent but almost unqualified acceptance of RCO N's quite contrary explanation.

With one exception (discussed below, which was of a somewhat unrelated, and not unexpected nature, in the context of this Inquiry) RCO N's evidence was given in a forthright fashion. She had quite a good recall of the relevant events, given the lapse of time between those events and the date of the Inquiry. Conversely, Nurse M's evidence was characterised, at least to some extent, by quite a poor recollection of detail and a willingness to make assumptions about matters with respect to which her own recollection or perception was lacking. I consider that her evidence regarding the events inside the house, although surprising, is not indicative of any attempt to cover up events or exculpate either herself or RCO N from any suspicion. Apart from this discrepancy, there is no other evidence to suggest that Nurse M acted other than appropriately in her management of Client 1's injuries.

With respect to RCO N, quite a deal of time was expended in the examination of the word "head–butted" which appeared in the injury report. Counsel Assisting suggested that the use of that phrase was suspicious 'but could hardly found any argument that RCO N was responsible in some adverse way for Client 1's injuries'. Counsel for the unions suggested that it appeared from the evidence 'that the connotation of such an act [the head–butting] being deliberate, rather than accidental, was one placed upon it by RDO R, and was not the view, or opinion, expressed by either Nurse M or RCO N'.

This aspect of the evidence alone cannot stand as a basis for the drawing of any adverse inference against RCO N.

The aforementioned conclusions are also consistent with a view that there was no neglect, on the part of any staff member, in the detection, treatment and reporting of Client 1's first injury. There was no evidence capable of establishing that there was any period of significant delay between the occurrence of that first injury and the detection of the same by RCO N and Nurse M. That period is indefinite, due to the fact that the time when the initial injury was sustained could not be established reliably. Accordingly, no consequent period of delay can be established. Certainly, it would appear from the evidence that once the injury was noticed by the abovementioned staff members, prompt attention was given to Client 1, and the requisite Departmental reporting procedures were adhered to.

A number of broad considerations arise from this bracket of evidence as a whole as to the nature and adequacy of the Departmental investigation of Client 1's injuries, and for that matter, the inquiries conducted by the Queensland Police Service (of which Ms K was impliedly critical). Some relevant factors in this regard include the promptitude or otherwise of inquiries being made (and the police being advised), the adequacy of statements provided by relevant witnesses, the form of the interviews conducted with relevant staff, the inspection and preservation of possible real or physical evidence, the delay in the police investigation etc. In the context of this Inquiry, similar issues have arisen in virtually every discrete incident examined; these matters are not unique to this incident. Accordingly, I will return to these particular matters in the context of the broader discussion of the general investigative procedures concerning possible client abuse or gross neglect, which appears at Chapter 23 of this report.

8.13 CONCLUSIONS

On the evidence, I am satisfied that the second head injury was sustained accidentally by Client 1 and that there was no official misconduct on the part of any staff member involved with the incident.

It is not possible to conclude with any certainty exactly how the first stage of Client 1's injury occurred; however, there is no evidence to support any suggestion of official misconduct against any staff member of the Centre.

8.14 SOME THEMES EMERGE FROM THE EVIDENCE

During the course of evidence concerning Client 1's injuries a number of other matters of a somewhat broader nature, but still of great relevance to the Inquiry's terms of reference, were canvassed with various witnesses. This bracket of evidence consisted of the first incident of alleged client abuse or gross neglect examined by this Inquiry. Some salient points or themes emerged, which were to attract an aura of familiarity as the proceedings progressed and the evidence mounted. Some of these matters were (and the list is not in any manner exhaustive):

- The examination of RCO N upon the comment contained within her statutory declaration to the effect 'I have not heard of anyone else being harassed', leading to her eventually conceding that she did in fact have some awareness of harassment issues concerning the Centre.

- The emergence of some evidence of an institutional culture existing at the Centre, including the claims by RDO R and Ms K to the effect that they had been the victims of harassment:

> I suspected these calls [anonymous telephone calls] are being made by virtue of my position at the Centre – (RDO R at T 692).
>
> I was reprimanded a number of times by my colleagues for supporting staff and for delivering mail to staff . . . the general comments I got were that if I did too much for the RCOs they would expect the whole team to be doing it . . . the rest of the RDOs . . . they were angry at me because I did that – (RDO R at T 693–694).
>
> The telephone calls ceased when I left the Basil Stafford Centre on 25 June 1993. Only recently I have received three hang up type calls following the announcement of the CJC Inquiry into the Basil Stafford Centre. (Statutory declaration of Ms K – Ex 76)
>
> Mr O'Sullivan: What extent are you able to assess whether or not there exists a climate of fear at the Basil Stafford Centre about this sort of physical, emotional threats by unidentified

> others?---Ms K . . . I believe there was. It was very hard to be very specific about it, but the way people would approach you or not approach you, I got the impression there was fear there . . . that's a personal impression . . . I mean, there is one small example I can give you. I was speaking to a union representative about something, just an ordinary issue, and I said "Oh, by the way, I really want to get into doing some workplace health and safety, and some investigation around the Centre and I'd really like to get your co-operation", and he said, "Well, Ms K, I'd personally like to help you but you know how it is out there". (T 679)
>
> Yes, I was unpopular at the Centre. You needed to belong to certain groups and if you didn't you simply didn't fit in, and life can be made difficult for some of us. (Mrs E at T 723)

- Nurse M's admission that she once witnessed an incident of client abuse; namely an RCO mistreating a client by applying a 'gentle shoulder throw', which Nurse M did not report stating, 'Well, I didn't think it was significant at the time . . . but I felt that, if I had a word with him, that would be appropriate'. (T 478–480)

- Nurse M's evidence that she had on occasions been forced to take leave as a result of injuries inflicted upon her by clients; including being head-butted by one client, and having her right lower leg badly bitten by another.

- Dr Morton's comments, when asked if he had any concerns as to the care offered to the clients at the Centre, when he stated:

> I can only speak from someone who works as a doctor at Wolston Park Hospital, and I think that it would be useful if there were more trained nursing staff at the Basil Stafford Centre. I believe there is one registered nurse on during the shift, and some of these people are really quite disturbed in their behaviours. They do become physically unwell, and I personally believe that if there were trained registered nurses about, they might be able to assist in the care of these people . . . that would be my opinion, but it is based on perhaps a different philosophical approach to the care of these people. (T 515)

- The evidence of RCO Q, when asked as to whether she thought the staff/client ratio of 1:6 was appropriate:

> Speaking for my house specifically at the moment I am working with one client that exhibits continual disruptive behaviours, attacking staff and other clients that live with her. We have got two absconders. We also have two other clients that hit staff and clients on a regular basis. We have a client that at meal times needs to be fed because if we don't feed him he throws his meals at us and throws the other people's meals away and he also reacts in an aggressive manner and we have got two other ladies that need constant supervision while cooking, or we've got anything cooking on the stove. Otherwise they will go and take food from the stove while it's cooking. So no, the ratio isn't enough and our particular house, we have asked for extra cover and the management has told us that where possible, they cannot guarantee us a permanent double-up at present, but when there are spare staff available they will give them to us because they see the need, but the problem is not enough staff. (T 561)

- RCO Q's evidence to the effect that she left the Centre in 1987 to work in the ALS, and resumed at the Centre in 1990, and amongst the changes she noted was that:

> Clients no longer have the activities. There are just very few activities available . . . there's a swimming pool on Centre and at the present time, I think they have started up a new swimming program within the last couple of weeks. (T 564–565)

CHAPTER 9
THE INVESTIGATION OF THE ALLEGED ASSAULT ON CLIENT 7

The second discrete bracket of evidence investigated by the Inquiry concerned an allegation that an RCO unlawfully assaulted Client 7 at the Centre in or around late 1990. Public hearings in relation to this investigation commenced on 20 January 1994 (T 763) and concluded on 25 January 1994 (T 991). Two witnesses were called to give evidence. In due course, written submissions concerning this matter were received from Counsel Assisting, Counsel for the unions and Counsel for the State of Queensland. Those written submissions were in general agreement as to the suggested conclusions that I could reach upon the evidence. As a consequence, the contents of the written submissions were not further expounded upon, at any great length, during Counsels' oral submissions.

9.1 CLIENT 7

Client 7 was born in early 1980, and was therefore 10 years of age at the time of the alleged assault. He was admitted to the Centre in 1985, and has resided there since that time. His medical file (C Ex E) indicates that Client 7 has a severe degree of intellectual disability and autism. It appears that he is a very hyperactive child, with some behaviours that are difficult for his care-givers to manage; for instance, his file notes a particular attraction to electrical appliances, which apparently manifests itself in Client 7 repeatedly turning those appliances on and off.

Client 7 has some verbal skills, although it appears from his file that he would not be able to give a detailed account of an incident such as an alleged assault. His medical file also shows, unlike that of Client 1, that he has not suffered any serious or major health problems of an unexpected nature over the years, apart from matters including some minor lacerations, a broken arm, ear infections etc., which one might reasonably regard as the normal pitfalls encountered by a child while growing up.

At the time of the investigation of this incident, Client 7 was attending Ipswich Special School. His file also indicates that his family maintained a communicative and active role in his life; this unfortunately is not the situation for many other clients residing at the Centre.

At the time of the alleged assault Client 7 was described by Ms C as being 'small and skinny' (T 770); his medical file confirms that he is of slight build. At the relevant time Client 7 was residing in Pandorea House.

9.2 THE ALLEGATION OF ASSAULT

It has been alleged by Ms C, a former RCO at the Centre, that on a morning late in 1990, at Pandorea House, an RCO named RCO D assaulted Client 7 by slapping his backside with her open hand for a period of some minutes.

It was alleged by Ms C that another former RCO, Ms S, was also present at the time of this incident. The alleged assault was not reported by any person at that time. The allegation first came to light some weeks later, on 14 January 1991, when Ms C described what she said had occurred while being interviewed by police officers attached to the Juvenile Aid Bureau, who were then conducting an extensive investigation into matters at the Centre (see section 3.3). From the available material, it

would appear that the investigating officers did not fully pursue this allegation at that time. The matter was not brought to the attention of any officer of the Centre, or the Department, prior to the Criminal Justice Commission commencing its inquiries.

9.3 THE ISSUE FOR CONSIDERATION

The primary issue arising for investigation and consideration by the Inquiry was whether or not RCO D assaulted Client 7, as alleged by Ms C.

It is necessary to make some brief observations, of a jurisdictional nature, upon this issue. While it is trite to note that an assault carried out without lawful excuse is a criminal offence, Section 280 of the Queensland Criminal Code also provides:

> It is lawful for a parent or a person in the place of a parent or for a school master or master, to use, by way of correction, towards a child, pupil, or apprentice, under his care such force as is reasonable under the circumstances.

Counsel for the State of Queensland, at the commencement of this bracket of evidence, referred me to Section 69(5) of the *Childrens Services Act 1965*, which provides:

> No provision of this section [which creates a number of offences relating to the ill-treatment, neglect, abandonment and the like of children] shall be construed to prejudice the rights of a parent, guardian, teacher or other person having lawful charge of a child to administer reasonable punishment to such child.

I was informed by Counsel for the State of Queensland that, the above sections notwithstanding, the Department has specifically addressed, within its procedures, the issue of corporal punishment being administered to clients by staff. Paragraph 3.4.2 at page 28 of the Department's Procedures Manual (Ex 88) is entitled 'Corporal Punishment' and states:

> Definition – practices such as hitting, kicking, pinching, pushing are all forms of corporal punishment. Such forms of punishment amount to physical abuse and must not be used under any circumstances.

The various other enunciations of Departmental procedure referred to at section 7.13 herein emphasise that the striking of a client, in such circumstances as alleged by Ms C in the instant case, would unequivocally amount to client abuse, exposing the offender to disciplinary action, and in terms of the jurisdiction of this Commission, an investigation of official misconduct, irrespective of the application of any of the abovementioned defences under the criminal law.

9.4 THE SUBMISSIONS OF COUNSEL FOR THE STATE OF QUEENSLAND

Again, Counsel for the State of Queensland submitted that there had been a denial of procedural fairness by the Commission concerning the investigation of this incident. Counsel Assisting joined issue with Mr Plunkett's submissions alleging a denial of procedural fairness, during the course of oral submissions (T 5592–5596).

In any event, turning to those particular submissions, Counsel for the State of Queensland again put forward the six points, which I might usefully refer to as his "pro forma objections", alleging a denial of procedural fairness (as already referred to herein at sections 6.5 and 8.4). It is unnecessary to add to the

conclusions I have already expressed in relation to those submissions, those conclusions being equally apposite in the present context, other than to make two further observations. First, that such complaints were probably of even less relevance to this specific bracket of evidence, involving as it did a simple allegation of assault, than they were to any one other incident investigated by this Commission. Secondly, Counsel for the State of Queensland submitted:

> The Commission issued a notice of allegation against RCO D who is alleged to have been the assailant but no particulars were given. Nor were there any issues addressed to the conduct of any individual outlined at the beginning or conclusion of the evidence. Counsel Assisting in his opening of this bracket of evidence did not refer to any person about whom suspicion was open to be entertained.

I have perused a copy of the notice of allegation issued to RCO D. It is true that it lacks some particularity; however, it must be remembered that prior to the hearings all parties were supplied with copies of the following documents:

i) A full transcript, 10 pages in length, of the initial interview between Ms C and officers of the JAB dated 14 January 1991, wherein Ms C first advanced details of the assault allegation;

ii) A full transcript, eight pages in length, of an interview subsequently conducted between Ms C and a police officer attached to the Commission, concerning the same events and dated 24 June 1993;

iii) A three-page statutory declaration of Ms C; and

iv) A three-page statutory declaration of RCO D.

Having read that material, prior to the commencement of this bracket of evidence, I found myself in no doubt as to the nature of the allegations made against RCO D, and the primary issue arising for my determination. As stated, compared to some other matters traversed by this Inquiry, this particular allegation was of a simple character.

After Counsel Assisting briefly opened the matter no-one then appearing before me, including Counsel for the State of Queensland, sought clarification of any matter, nor was the suggestion raised that further and better particulars, or something of that nature, should be provided by Counsel Assisting. Having read the material, I considered the situation to be entirely clear, and that it would have been superfluous for Counsel Assisting to have taken up the Inquiry's time with a lengthy opening of the evidence, which was hardly voluminous in nature, or a discussion of the issues, which were of corresponding simplicity.

Furthermore, an analysis of the transcript and the parties' written submissions themselves, to my mind, nullifies any suggestion that any party had difficulty in discerning the relevant issues in respect of this bracket of evidence.

To conclude, I reject, unequivocally, and in their entirety, the submissions of Counsel for the State of Queensland to the effect that there has been a denial of procedural fairness, to any person or any entity, in respect of this investigation.

9.5 THE EVIDENCE OF MS C

A) HER JUVENILE AID BUREAU INTERVIEW

As noted, Ms C first raised the allegation of RCO D committing an unlawful assault upon Client 7 when interviewed on 14 January 1991 by Detectives Squassoni and Holland of the JAB. A transcript of that interview was obtained by the Commission and admitted in evidence (Ex 93): The following questions and answers appear, inter alia:

Squassoni:	Have you ever witnessed RCO D doing anything untoward to any of the clients?
Ms C:	Yes.
Squassoni:	What have you witnessed?
Ms C:	Client 7 getting the crap beat out of him.
Squassoni:	Client 7 . . .
Ms C:	Yes.
Squassoni:	Okay. When, can you recall when?
Ms C:	No I can't, unfortunately.
Squassoni:	When did you start working there?
Ms C:	Um, well I reckon it was the 30, the 30th August, but according to what the rosters – it wasn't until the 23rd September.
Squassoni:	Well officially you started on the 23rd September 1990?
Ms C:	Yeah. Yeah.
Squassoni:	All right. The incident you referred to with Client 7 can you tell me where it happened?
Ms C:	It happened over in Hibiscus one day.
Squassoni:	In Hibiscus?
Ms C:	Yes.
Squassoni:	Do you remember what day it was, Monday, Tuesday?
Ms C:	No.
Squassoni:	Okay, can you recall what happened?
Ms C:	Client 7 was playing up and RCO D was yelling at him and started by slapping him.
Squassoni:	Slapping, what with an open hand?
Ms C:	Yeah and very hard.

Squassoni: Where was she slapping?

Ms C: Around the backside.

Squassoni: The backside was she?

Ms C: Um.

Squassoni: And what was Client 7 doing to cop this?

Ms C: What Client 7 usually does is play with stereos and everything else, yells and screams and carries on.

At page 3 of the transcript the interview continued:

Squassoni: How long did this slapping go on for?

Ms C: About ten minutes.

Squassoni: Ten minutes. She continually slapped him for ten minutes?

Ms C: Yeah.

Squassoni: Ten minutes is a fair amount of time.

Ms C: I know.

Squassoni: Was he bruised at all?

Ms C: I don't think so, I didn't really check him.

Squassoni: Right. Now this happened at Hibiscus, and you are in Lobelia?

Ms C: We all get together on occasions.

Squassoni: You were over Hibiscus when this occurred?

Ms C: Mmm.

Squassoni: When RCO D was, prior to RCO D smacking Client 7, did she say anything, to you people?

Ms C: No.

Squassoni: Did she say anything while she was smacking him?

Ms C: No.

Squassoni: Where did it happen?

Ms C: On the patio.

B) HER STATUTORY DECLARATION

Ms C made a statutory declaration which was also admitted (Ex 90), wherein she stated:

> In late 1990, I was working at the Lobelia Unit. One of my colleagues, RCO D, was then employed as RCO at the Pandorea Unit. Another colleague, Ms S, was RCO Hibiscus Unit.
>
> I recall being present at Ms S' Unit one day late in the year with all of my clients. RCO D and her clients were also there. We were sitting out on the patio before lunch. At some stage Client 7, a seven or eight year old client of RCO D began playing up. Client 7 often played with stereos and other things and yelled and screamed and carried on. I would describe Client 7 as moderately impaired intellectually but not physically impaired. A short time later RCO D began to yell at him and then suddenly she began to slap him very hard with her open hand on his backside.
>
> RCO D slapped him for about ten minutes in my estimation. She did not let up. RCO D did not speak to us either before she began smacking Client 7 nor during the time she smacked him. Client 7 continued to quarrel with RCO D throughout. Client 7 is a very small boy. After RCO D had finished slapping him, Client 7 decided to sit down quietly. He had no option. He just sat down quietly saying "RCO D hit me! RCO D hit me!". He always says that if someone hits him. He simply says that so and so hit him. Ms S just sat and watched. There was no other staff member present.

C) HER EVIDENCE BEFORE THE INQUIRY

In her evidence, Ms C stated that Client 7 was held and slapped for a period of approximately 10 minutes (T 771):

> Counsel Assisting: Well, was it for a period of about 10 minutes that Client 7 was held by the wrist and slapped with the right hand?---Yes.

Ms C was asked about the force of the blows, and stated (T 772) that they were 'mediocre . . . it wasn't hard and it wasn't soft'.

Ms C also said (T 772) that RCO D 'didn't do it sort of continually. She just hit and then stopped and then hit again, and then stopped again'. Similar comments were made at T 807, when Ms C was being cross-examined by Counsel for the unions, who noted the apparent inconsistency between her statutory declaration, wherein it was stated, with respect to the assault, that RCO D 'did not let up', and the aforementioned testimony given to the Inquiry. At T 816 the following exchange occurred:

> Mr Herbert: . . . Have you got your statement again, if you go on to the next paragraph to the one I took you to before . . . it commences:
>
> > "RCO D slapped him for about 10 minutes in my estimation. She did not let up."
>
> Well, that is wrong, isn't it?---No.
>
> From what you said she let up five times?---Yes.
>
> For a minute or two?---Yes, but that's only a minute gap. It's just the way I speak. I can't help the way I speak. Continually is going on for 10 minutes, whether there's a gap of 30 seconds, 50 seconds, or a minute. It's still going on for 10 minutes.

I note that the versions and explanations given by Ms C in oral evidence are also somewhat inconsistent with the version she originally provided to the JAB officers [at section 9.5(A) herein].

The alleged beating does not appear to have resulted in Client 7 sustaining any visible injuries. Ms C gave evidence that Client 7 'screamed' during the beating. Counsel Assisting asking her about these matters (T 775):

> Well, did anyone attend to Client 7 to see if he had been hurt?---No.
>
> Why not?---I don't know.
>
> Well, did you think he had been hurt by the attack?--- . . . his pride would have been . . . his bottom might have been a bit sore.
>
> What about bruising, was there any bruising or anything else?---I don't know.

At T 811, Ms C agreed that Client 7 did not show any subsequent discomfort while sitting down shortly after the beating. Certainly, Client 7's medical file (C Ex E), which I have perused, contains no entries for the relevant period describing any injury in the nature of bruising, which one might have expected to have resulted from the alleged attack. The only entry which may be of some possible relevance is one made within the 'Nurses' Daily Notes' on 20 December 1990:

> Apparently his [Client 7's] behaviour has deteriorated lately. He became more aggressive towards staff and clients, he now never responds to instructions. The matter will be discussed at the module meeting and possibly later referred to nursing service.

That entry may or may not be related to the events alleged by Ms C.

Ms C did not report the alleged assault by RCO D. When questioned about her failure to report such a serious incident, Ms C stated (T 773) 'I don't like to interfere'. Ms C gave evidence suggestive of various reasons why she adopted this stance.

In her statutory declaration, and in her evidence, Ms C referred to problems that she had previously experienced at Rockhampton, in relation to the reporting of an incident of client abuse, which resulted in her being subjected to harassment, including the receipt of death threats.

At T 782–783 the following was said:

> The Commissioner: . . . does that inhibit you from giving your evidence, the fact that union people and management are here?---No, well – I don't know. What really inhibits me is I'm scared in case anything goes back.
>
> Mr O'Sullivan: By who? Who would take the information back, do you think?---Well, I don't really know who would.
>
> And if the information did go back what is your concern?---I'm scared of what would happen.
>
> What, harassment?---Yes. I've been there once and I don't want it to happen again.

At T 790, after Ms C had described some alleged incidents of client abuse occurring at the Centre, the following comments were made:

> Mr O'Sullivan: . . . In respect to the matters you have just mentioned, did you make any report to anyone?---No.
>
> Any notation in any written record?---No.
>
> The Commissioner: Why was that?---Because I don't like doing it.
>
> Mr O'Sullivan: Why not?---Because then it would lead to other things.
>
> Such as?---Such as reports having to be made, and then they would be made, and then nothing else would happen. It wouldn't go on any further from there. You'd put your report in and that would be where it would stop, so there's no sense in reporting people if nothing is going to happen.

Ms C also expressed a fear of RCO D, referring to the fact that she had heard RCO D described, by other staff, as "a hit merchant". The following is an abbreviation of Ms C's examination (T 775–777):

> Mr O'Sullivan: In your statement you say that you have seen RCO D hit other clients. Is that true?---Yes.
>
> Was that before this incident?---No.
>
> Do you remember when, can you give us some incidents?---No, I can't remember, and I can't really give you the incidents any more.
>
> Do you remember what type of assaults they were?---They were just hitting. The same as that.
>
> The same as you have just described about Client 7?---Yes, yes.
>
> The Commissioner: Did you ever say anything to her on those occasions?---No.
>
> You did never tell her to stop?---No.
>
> Were you frightened of her?---Yes.
>
> Mr O'Sullivan: Why was that?---Because I know RCO D has got heavies.
>
> What do you mean by that?---People that do things to people.
>
> The Commissioner: Would you go on and tell us about this incident?---Oh, there was another incident out there where it had come to court, and the witnesses were getting harassed by heavies.
>
> What do you mean by heavies?---Well, I don't actually know who they are or anything else, but they were getting phone calls and what not, from them.

The court case referred to by Ms C relates to the assault charges unsuccessfully preferred against a former RCO (see section 1.9).

Ms C was unable to accurately recall the date of the alleged assault, stating that it was on a date in November or December 1990, on an occasion when she went, in the company of her clients, to Hibiscus house. When questioned as to the purpose of this visit, Ms C stated (T 769) 'It would have been for lunch'. At that time, Ms C worked at Lobelia house, and RCO D and Ms S worked at Pandorea and Hibiscus houses respectively. The relevant records, namely the various house report books which were admitted in evidence, are really inconclusive as to whether any

such gathering of the RCOs occurred during the period nominated by Ms C. The report books do indicate that various meetings of the three houses did occur during the nominated period, although the clients and RCOs may not have in fact met for lunch in the specific circumstances as put forward by Ms C.

9.6 THE EVIDENCE OF RCO D

RCO D gave evidence before the Inquiry. At the time of giving evidence RCO D was absent from her work at the Centre as a result of a workers' compensation matter. She also provided a statutory declaration (Ex 95), wherein she stated:

> I know Client 7. He was a client of mine for approximately one year to 18 months in Pandorea villa. I consider that I have a good relationship with Client 7. I can state that at no time have I ever assaulted Client 7 in any way. I believe the best way to treat Client 7 is to be firm with him and to deny him something that he really likes until he behaves himself . . .
>
> I have had dealings with Client 7 on other occasions when I have done overtime in other villas, or when I have seen him around the Centre. When he sees me he always says hello to me.
>
> There have been occasions where, for the safety of Client 7 and the other clients, I have had to take hold of him and remove him from the situation, but with no force.

In her oral evidence, RCO D repeatedly denied that she had ever assaulted Client 7 in the manner alleged by Ms C, or at all.

When asked by Counsel Assisting as to whether there was ever an occasion when the RCOs and their clients from Hibiscus, Lobelia and Pandorea houses met, RCO D said the following (T 849):

> Mr O'Sullivan: Do you recall an occasion . . . that you brought your group of clients over from Pandorea unit, and Ms C brought her group from Lobelia, and you all gathered at Hibiscus unit? Do you remember an occasion like that?---No, because when I first met Ms C, I didn't take to her and so I have never ever had cups of tea, or coffee, or anything with her. Ms S, yes, I've gone to Hibiscus and took my group. But I would never go where three groups were, because you've got 18 clients and you cannot watch 18 clients. It's bad enough if you get two lots together and you've got 12, that's bad enough . . .

In due course, the relevant Departmental documents were shown to RCO D, who conceded that such meetings had occurred (T 884):

> Mr O'Sullivan: Now, having gone through the documentary material, do you concede that there was an occasion in October or November when you had lunch at Hibiscus with Ms S, her group, Ms C her group, and Lobelia group as well?---Well, Lobelia is Ms C's group.
>
> I am sorry, Pandorea – your group?---Yes.
>
> You would concede that?---Well, yes, it's in the documents, so it happened, yes.
>
> And what do you say to the proposition that it was on that occasion when you had lunch that you assaulted Client 7 in the manner I referred to . . .?---I have never assaulted Client 7.

RCO D was examined, at length, about a number of collateral matters. After some extensive questioning she conceded that she had been convicted of a criminal offence, under her former married name, in April 1987. Her evidence on this particular point (T 951–961) left me with the impression that

the witness had deliberately attempted to frame her evidence in a fashion that originally made no mention of, and subsequently downplayed, her involvement in the relevant criminal conduct. It appears that this conviction was imposed around the time that RCO D took up employment as an RCO at the Centre. RCO D was also questioned about some Departmental inquiries resulting from her allegedly receiving an unauthorised male visitor one evening, while working a night shift. RCO D explained this matter by admitting that she had in fact received a visitor on the night in question, but claiming that the visitor was in fact a neighbour who was expressing concern for her welfare as a result of a domestic disagreement, to which RCO D had been a party, the previous night. Counsel for the State of Queensland submitted that RCO D's explanation in this respect was unconvincing. I agree.

RCO D was also questioned about her associates, including her husband, by way of an exploration of the suggestion that she 'had some heavies behind her'. RCO D described her husband as a large tattooed man, who had some friends that she personally found undesirable. She also stated that whilst her husband 'might look menacing' he was not 'a heavy' (T 912).

At T 891–896 RCO D was questioned about an incident relating to the alleged intimidation of a witness involved in the assault charges preferred against a former RCO (see section 1.9). RCO D admitted that she had said to this witness the words 'people who live in glass houses shouldn't throw stones' (T 892), and claimed that she had once, on a prior occasion, witnessed the RCO in question assaulting a client. Counsel Assisting pressed RCO D on this point (T 895–896):

> Mr O'Sullivan: You were trying to intimidate her, weren't you?---No, I don't intimidate people. I just – that was all I'd spoken. I'm not a person to intimidate.
>
> What was the purpose of saying that to her when you knew that she was going to give evidence in the trial . . . ?---Well – to me intimidation is someone that just constantly harasses you. If you say one thing to a person and then you say nothing else and you don't have anything to do with them, how could that be called intimidation?
>
> Well, you were trying to warn her that if she made . . .
>
> ---No, I wasn't warning anybody.
>
> Would you just wait please; you were trying to warn her that if she went ahead with her allegations against [the former RCO] then the past could be brought up?---No.
>
> That is what you were telling her, in essence, wasn't it?---No, I don't do those – I don't do that, no.
>
> What did you mean then?---I was not – when I said that to her there was no – I was not intimidating, or threatening, or anything like that whatsoever. It was just what I'd said, I said it and then that was it. I never spoke to her after that, so . . .
>
> What does the phrase "people in glass houses shouldn't throw stones" mean to you?---It means that if she's pushed somebody she shouldn't turn around and say that someone else has done it. That's – to me, that's how I perceive it.
>
> Were you trying to, were you happy for her to withdraw her complaint against [the former RCO]?---Oh no, no, I wasn't asking her to do anything.
>
> Well, what?---No, there wasn't any mention of anything. As I said, all I said was that to her and then that was it, I said no more. And I – I don't think I've spoke again to her since that time.
>
> You were not encouraging her to give evidence against [the former RCO], were you?---I wasn't encouraging anybody and I wasn't trying to threaten. I do not threaten and I do not intimidate.

> Come now RCO D, you were trying to discourage her from giving evidence . . . weren't you?---No, I was not. There was no motive whatsoever behind that. It was just how I felt and I just expressed how I felt. There was no motive, no nothing.
>
> Were you spoken to by any senior member of staff about what you said to [the witness]?---Yes, my senior, SRO T had – she said that she was frightened of me he said, so he removed me over to Banksia area. This was when I was on the double–up.

That bracket of evidence is disturbing. It clearly leaves open the interpretation that RCO D was attempting to intimidate her fellow RCO, who intended to give evidence in court against another RCO accused of assaulting the intellectually disabled. At the least, it would appear that RCO D was expressing her displeasure with this course of events. Either way, her abovementioned evidence does not, to my mind, reflect the appropriate level of concern that an RCO should hold for the welfare of the intellectually disabled persons residing at the Centre.

Counsel Assisting submitted that RCO D was an unconvincing witness. Counsel for the State of Queensland made an identical submission, noting that her 'attitude and demeanour was less than desirable'.

I note that RCO D also gave evidence regarding the fourth incident investigated by the Inquiry, namely the matters pertaining to Client 4 (see Chapter 10). Reviewing her evidence, in its totality, I can only conclude that she was completely discredited during her appearances before these hearings. Her evidence, particularly in relation to the many collateral issues which arose during the bracket of evidence about the alleged assault of Client 7, was disingenuous and inexact, and characterised by suspicious understatement. I found that her evidence about the alleged assault was far from satisfactory.

9.7 A COUNTER ALLEGATION ARISES

In her statutory declaration, RCO D made a counter allegation against Ms C:

> I recall that on one occasion I did see a staff member by the name of Ms C push [a client] to the ground. I told her that that behaviour was not appropriate. She then swore at me and I just walked away from her. I have not spoken to her since then.

Ms C denied any such incident (T 795–796). Given the paucity of information available, and the lack of any report of the alleged assault, this allegation could not fruitfully be pursued by the Commission, and was of little assistance in resolving the present issue.

9.8 THE THIRD RCO PRESENT

I have already referred to the fact that the third RCO present at the relevant time, Ms S, did not report any assault by RCO D upon Client 7. One might have expected that, in the circumstances as alleged by Ms C, Ms S could hardly have avoided being a witness to the assault if it had occurred.

Ms S was not called as a witness before the Inquiry. Subsequent to this bracket of evidence, she was located by Commission staff and a transcript of an interview, conducted with her on 3 February 1994, was tendered in evidence (Ex 425). In essence, Ms S, who had been dismissed from her employment with the Department some years previously, stated that she had put all matters relating to the Centre behind her, and could not assist with the recall of any relevant information.

I do not find the fact that Ms S did not report an assault, of the nature alleged by Ms C, at all probative, one way or the other, in determining whether that assault in fact occurred. Upon the whole of the evidence presented before the Inquiry I have no difficulty in finding that, during the period covered by the terms of reference, it was unfortunately not uncommon for incidents of client abuse not to be reported to the proper authorities, by members of staff who witnessed such conduct. I have already, at section 8.14, adverted to this situation as being thematic in nature throughout the Inquiry's evidence. Indeed, Ms C did not see fit to report this particular assault immediately. Similarly, she did not report, to the appropriate persons, other incidents of client abuse that she described in her evidence before the Inquiry. Nor did RCO D report to management the incident whereby Ms C allegedly assaulted a client. There are many other such instances in the evidence, exemplifying the gap that existed between the standards expected of staff and prescribed in the various policy and procedural documents of the Department, and the standards in fact observed by many of those staff in their day to day dealings with the intellectually disabled.

Therefore, I do not regard any failure to report by Ms S as being conclusive, or even particularly probative, evidence that the alleged assault did not in fact occur. The non-report by Ms S is merely one factor to be taken into account.

9.9 CONSIDERATION OF THE ISSUES RAISED

I have already noted that I considered RCO D to be completely discredited as a witness in relation to this particular incident. Be that as it may, it must be noted that there is no independent evidence, in the nature of records or other witness accounts, that is capable of corroborating the version of events put forward by Ms C.

There appeared to be a great deal of hostility between the two witnesses. RCO D stated that she disliked Ms C 'in a lot of ways' (T 873). She created an unsavoury nickname for her (T 945). Similarly, in giving her own evidence, Ms C appeared to harbour an attitude of ill-will towards RCO D, which manifested itself in an enthusiasm to accuse RCO D, usually only on the basis of the most spurious hearsay accounts, of all sorts of unsatisfactory and nefarious conduct. Accordingly, I cannot completely discount the possible operation of such ill-will as founding a motive for the making of the complaint under investigation.

In addition, there were many inconsistencies in the versions of the alleged assault provided by Ms C over time. These were collectively noted by all Counsel in their written submissions; I do not intend to list each such inconsistency within this report, as it suffices to say that I have noted them and agree that those inconsistencies undoubtedly should be borne in mind in assessing the reliability of Ms C's evidence.

9.10 CONCLUSIONS

Having regard to the serious nature of the allegation made, the lack of corroborative evidence and the apparent unreliability of significant aspects of Ms C's version of events, I find that the complaint of assault against RCO D, as made by Ms C, cannot be substantiated by the available evidence.

CHAPTER 10
THE INVESTIGATION OF THE COMPLAINTS RELATING TO CLIENT 4

[Note: These matters comprise the fourth specific bracket of evidence investigated during the hearings. The third (and the sixth) brackets of evidence have given rise to the making of the recommendations already referred to in section 1.12.]

Public hearings in relation to the investigation of various complaints concerning Client 4 commenced on 8 February 1994 (T 1495). The bulk of the evidence about these matters was heard between that date and 23 February 1994 (T 2477). Some further evidence was heard in April. In all, 16 witnesses were called. Written submissions were received from Counsel Assisting, Counsel for the unions and Counsel for the State of Queensland. Those submissions exhibited quite a divergence of opinion as to what my findings should be, and accordingly, this bracket of evidence was discussed at some length during the period devoted to oral submissions in July.

10.1 CLIENT 4

Client 4 was born in May 1979. His medical file was admitted as C Ex J. It reveals that Client 4 has a severe level of intellectual disability, and associated autistic behavioural problems. His communicative skills are limited.

Client 4 was first admitted to the Centre as a respite care patient in 1985, and was subsequently admitted, on a more permanent basis, in February 1987. His mother ("Mrs B") subsequently withdrew Client 4 from the Centre's care in December 1991. While residing at the Centre Client 4 lived in a number of different units, including villa houses and ward-style accommodation, and attended Eight Mile Plains Special School.

It is unnecessary, at this point, to further detail Client 4's medical history, as the same was extensively examined during the course of evidence relating to these matters.

10.2 THE COMPLAINTS OF MRS B

A nine-page statutory declaration of Mrs B (who also gave evidence) was admitted into evidence (Ex 140). At the outset of Mrs B's evidence, Counsel Assisting advised the hearings of some amendments that had been made to that declaration, which consisted of the deletion of certain sections of evidence, which themselves were of a speculative nature. Counsel for the State of Queensland also made a detailed submission requesting that two parts of Mrs B's declaration be made the subjects of a non-publication order. I made the non-publication orders that were requested.

Mrs B stated that she was separated, and was presently caring for her son Client 4, and her other two children. It is timely that I note some observations that I made about Mrs B's evidence. This bracket of evidence as a whole highlighted Mrs B's obvious love and dedication towards Client 4, her son. The evidence, in its entirety, portrayed a thoroughly honest concern by Mrs B for Client 4, and demonstrated how Mrs B frequently acted upon that concern by her dogged advocacy, on Client 4's behalf, concerning all matters pertaining to his welfare; this was particularly so in relation to any aspects of his care which Mrs B perceived to be anything less than of a satisfactory standard. To put matters simply, Mrs B

struck me as being quite unselfish, persistent and fearless in her pursuit of issues relating to the standard of care afforded to Client 4 by the Centre and the staff. My impressions in these respects were borne out, and completely supported, by Mrs B's own appearance before the Inquiry. She was indeed a strong and intelligent witness; to my mind, one could not be otherwise than impressed by her sincerity.

Mrs B's complaints concerning the Centre fell into three distinct areas:

A) UNEXPLAINED BRUISING

In her statutory declaration, Mrs B stated:

> On Friday, 2 November 1990, I picked Client 4 up from the school between 1.30 and 2.00 o'clock in the afternoon. Normally Client 4 would run to me and cuddle me, but on this day he was very withdrawn and had to be prompted. He was then about 11 years of age. I had a conversation with his teacher . . . as a result of which I observed some bruises on my son's face. These bruises were quite large and went from just below his temple to just above his jaw bone. I took Client 4 straight home.
>
> When I arrived home I took his shirt off and noticed that he had lost a lot of weight. He had several bruises on his chest and back. I took his pants off and noticed two bruises on his bottom. One bruise was very dark, the other one faded. I then looked at his legs. He had several bruises up and down his legs and one very big one on his shin. The shin was quite swollen. He had two unusual symmetrical marks on each thigh which were white in the centre and very red on the outside. He also had several bruises on both arms and on one arm he had a large bruise between his elbow and his wrist. He also had a bruise under his arm which was small but dark. The bruise on his leg appeared to cause him pain. He walked with a limp.

Within her statutory declaration Mrs B also expressed concern regarding the level of care given to Client 4 by one RCO. Mrs B named that RCO – RCO D. She stated:

> . . . I did not trust RCO D in particular. Almost from the time she started working in the villa where Client 4 was accommodated, he started coming home with bruising, mysterious type bruising . . . I would ring almost every night when Client 4 was there at the Centre and some nights I would ring and the phone would just ring out time and time again. This would go on. I would try to ring for an hour and there would be no answer. Finally, someone would answer or would ring another Villa and they would sort of whip around looking for the RCO in charge of Client 4's Villa. I would then be given some excuse as to why the RCO was not in the Villa on duty. I hated knowing that my child was asleep without a supervisor on duty. As a result of these nightly telephone calls, I became quite friendly with [two other RCOs] . . . [they] would tell me things, particularly about RCO D. They were both concerned for their safety saying that RCO D would have them "bashed" by her "bikie friends" if she knew they were talking to me about RCO D.
>
> At that time Client 4 started coming home with three bruises or so each week. Bruises all over him. Top to bottom, back, chest, arms, legs and neck. Bruises everywhere. I couldn't believe it. I was just that devastated. I tried to find out more . . . [one of the RCOs] told me that she had gone in Client 4's unit one day when RCO D was on duty and had seen RCO D's young son there attacking my Client 4 with a stick. I don't know whether it is true or not. All I know is that my son suddenly had bruises all over his body, almost every week, on his return home. RCO D's son at that stage was aged about 9 or 10. He is a normal boy, and old enough to know better.

B) POSSIBLE GROSS NEGLECT

Mrs B raised a number of other issues relating to the care of her son. One principal area of concern involved Client 4's extensive history of bowel problems while residing at the Centre. In her statutory declaration Mrs B stated:

> Almost from the first time Client 4 went to Basil Stafford, he contracted severe diarrhoea and bleeding from the bowel. He continually suffered from diarrhoea and was not treated at the Centre. In my opinion he never received proper medical treatment for it. At one stage some of the children developed shigella, and, instead of separating those children from the others, all the other kids were moved in with the ones suffering from shigella. Eventually a lot of children came down with the disease. One girl . . . in particular was sick, to my knowledge, for about six months with it. She was given absolutely no treatment. I told the Centre that if Client 4 was moved to the Banksia Unit, I would bring him home. Banksia was the unit where children had been placed who had shigella. I brought him home when they decided to move him to Banksia. This was in May 1988. For some reason the management moved the children out of the villa houses and put them all into a big ward area. The conditions were horrific. There were at least 12 kids all herded together into this ward area; a lot of these kids were autistic. They have very difficult behaviour problems. Shigella is a very severe bowel infection. It is a germ in the bowel. It is very contagious. We were not even told that some of the kids had shigella down there until someone leaked the information to us.
>
> That is when I said Client 4 is not going down there and brought him home. I found out that the RCOs were being told by the Nursing Service to tell parents who contacted the Centre that no medication was being given because "the best way to treat the disease is to let it run its course".
>
> I had Client 4 home treating him with yoghurt, acidophilus, and all the rest of it. It did not work. In the end I took him to my doctor, who prescribed a drug which cleared the disease within three weeks. The drug was crypto speridium, to the best of my recollection. The drug is not usually given to children but under the circumstances (the children having had shigella for so long) the doctor decided he should prescribe it for Client 4. Anyway, within three weeks Client 4 was clear. He was then free to go back to school . . . I spoke to RCO [sic] U about my concern for [another client]. I told SRO U of the success I had had in clearing up Client 4's complaint with the drug. SRO U said that she herself was using the same drug as she had caught the disease from one of the children as well. I asked her why [the other child] was not being treated with the drug. She said she did not know . . .
>
> . . . I was about 5 months pregnant and was worried about what Client 4 had, and whether it could be contagious, and I was concerned for the baby's safety. For this reason, Client 4 was left at the Centre for them to take care of him medically. It is this reason that Client 4 had amoebic dysentery for so long.
>
> The actual day I was discharged from hospital . . . I went up to the Centre and brought Client 4 home. I arranged for him to be tested and this confirmed that in fact he did have amoebic dysentery. I know that the Centre had tested him on many occasions but had not come up with anything however I was told by [RCO V] that the samples that Nursing Service took were not being collected and sent to pathology while they were fresh . . .
>
> On another occasion Client 4 was at the Centre sick with diarrhoea. I was sick myself. I remember ringing each day to find out how he was. I asked what he had had for breakfast. I was told that he had some vegemite and some toast and a drink of water. The next day I asked the same questions and was told he had vegemite and water. After about a week it suddenly dawned on me that all my child had had to eat for a week (if the telephone reports were correct) was vegemite and water. I think it was RCO V who confirmed that all the children ever got to eat when they had diarrhoea was vegemite and water, they were not given a proper diet. A

couple of days is acceptable but not for a week at a time. You must get medical help. I could not get a satisfactory response from the RCO. I then took a bag of groceries up for the other children to make sure they had sufficient food, apples, trim type soups and the like, and took Client 4 home. After this, SRO T rang me and said he was shocked at what had happened, and said that he would make sure that it did not happen again . . .

There is a Nursing Service based at the Centre . . . the nurses will come down at request and look at the child, take temperatures and determine whether or not the child needs to see a doctor. There is a doctor on call at Basil Stafford. I believe she is still on 24 hour call. Client 4 saw the doctor at the Centre on a few occasions mainly because I had rung up and complained like hell. He would, however, get nothing from the doctor. If I bought him straight home and took him up to my doctor Client 4 would be given medication straight away. I asked why the Centre doctor did not believe in giving medication. The response I got was that the child "should fight it off" him or herself. This is good to a certain degree if the child can fight off the infection. It is better than giving medication. After a few weeks however, if it is obvious that a child is not going to fight it off him or herself, then help is needed. All the time Client 4 had amoebic dysentery at the Centre, I was told they could not find anything. They said his tests have come back clear, but I now believe that the reason they came back clear was because, as RCO V mentioned, the samples were not getting to pathology quick enough. They kept telling me, "It must be just a bowel infection". I asked if they would give him some medicine just in case. I rang every day pleading for them to give him Flagyl. They refused to do it.

C) DAMAGED TEETH

Mrs B's third area of concern involved an incident whereby Client 4 suffered damage to his front teeth, together with a general apprehension as to the standard of dental care given to Client 4 by the Centre.

On 22 November 1991, Mrs B collected Client 4 from the Eight Mile Plains Special School. Prior to that date, Client 4 had been residing at the Centre, for a period. When Mrs B saw her son she observed that he had suffered noticeable damage to his two bottom teeth. In her statutory declaration she said:

Client 4 cannot brush his own teeth. He has no control over anything like that. His RCO was supposed to brush Client 4's teeth every morning and every night. The RCO is meant to do this with all the children and other clients who cannot brush their own teeth. On one occasion, I complained that Client 4's teeth did not look like they had been brushed for days. About three days later, both his bottom teeth were smashed. This is in a child who does not fall over. He had very strong, healthy, beautiful teeth, and here, within three days of my complaining that his teeth had not been cleaned, his teeth had been broken . . . Client 4 was left with jagged teeth cutting his gums until I went to the school to pick him up . . . If Client 4's teeth had have been brushed every morning at the villa like they were supposed to have been, surely someone would have noticed his damaged teeth . . .

It was obvious that somebody at Basil Stafford just did not want to acknowledge the fact that there was something wrong with Client 4's teeth for as long as they could get away with it. In my opinion that would make it difficult to investigate.

10.3 THE ISSUES ARISING

Each of Mrs B's three primary aspects of complaint raised a query as to whether Client 4 was the subject of gross neglect by staff at the Centre. To fall within the Commission's jurisdiction, the relevant level of negligence must be capable of constituting "official misconduct" under the Act (see section 4.5). These

jurisdictional matters are discussed at further length below at section 10.4(C), in the context of some specific submissions that were made by Counsel for the State of Queensland.

Additionally, Mrs B's statutory declaration unequivocally raises the possibility that Client 4's bruising injuries, and the damage to his teeth, may have arisen as a result of unlawful assaults committed upon him by staff members of the Centre. Therefore, it was necessary for the Commission to consider, in relation to each of those issues, the possible causes of Client 4's injuries (the existence of which was not disputed), and the care and treatment afforded to him, at the relevant times, by the Centre staff entrusted with his welfare. Also, of necessity, this involved an examination by the Commission of the inquiries that had previously been conducted by the Department itself.

10.4 THE SUBMISSIONS OF COUNSEL FOR THE STATE OF QUEENSLAND

In his written submissions (Volume 2 – Part II of the individual cases) Counsel for the State of Queensland made a number of submissions concerning this bracket of evidence, some of which were of a critical nature, with such criticisms being levelled expressly at the Commission, and by obvious implication, at Mrs B herself.

A) ALLEGED UNFAIRNESS BY THE COMMISSION

Counsel for the State of Queensland submitted that the Commission had been 'unfair', in two respects:

i) that procedural fairness had been denied; and

ii) in relation to the Commission's standard of investigation, particularly its statement taking.

These submissions contain allegations of a most serious nature, directed towards the integrity of the Inquiry, and it is therefore necessary, in the public interest, that they be discussed in this report.

First, in relation to the alleged denial of procedural fairness, Counsel for the State of Queensland reiterated his six pro forma objections (see sections 6.5, 8.5 and 9.4). Accordingly, I also reiterate my earlier remarks upon those complaints, as my remarks are of equal application to this bracket of evidence. However, it should be noted that in this case Counsel for the State of Queensland added the following rider to his six specific points alleging a denial of procedural fairness:

> However as far as the investigation into the individual case into the injuries to Client 4 is concerned a copy of the submissions of Counsel Assisting was provided which was of considerable assistance in discerning the direction taken by him and urged on the Commission. This saved considerable time and expenditure by not having to inquire into the plethora of allegations made at various times in this bracket of the investigative hearings.

That submission speaks for itself in terms of undermining Mr Plunkett's preceding submissions to the effect that procedural fairness had been denied. Having read Mr Plunkett's written submissions about this section of the evidence, it is readily apparent that he followed the course,

in framing his submissions, of specifically considering and responding to the particular matters raised by Counsel Assisting. In those circumstances, it is not legitimate to simultaneously plead ignorance, or lack of consultation, as to the issues perceived to be of relevance by Counsel Assisting.

As was the case with other brackets of evidence, Counsel for the State of Queensland also submitted:

> The Commission did not issue any notices of allegation against any Residential Care Officer or other person holding an appointment at the Centre alleging that they had assaulted Client 4 or otherwise neglected him nor were any particulars were given [sic] nor were there any issues addressed to the conduct of any individual outlined at the beginning or conclusion of the evidence. Counsel Assisting in his opening of this bracket of evidence did not refer to any person about whom suspicion was open to be entertained.

Again, this was a matter where it was impossible to precisely allege that any individual RCO, or RCOs, had committed particular acts of official misconduct in terms either of responsibility for Client 4's various injuries, or gross neglect regarding his care; these issues of course, were the very raison d'être for the Inquiry investigating these matters. However, in her statutory declaration, Mrs B clearly aired her suspicions about a particular staff member, namely RCO D. It is also relevant to note that all parties were provided, well in advance of the evidence being led, with comprehensive briefs of evidence containing all statements, transcripts, records and the like that had been gathered by the Commission in its investigation, or supplied by the Department (in some cases through its legal representatives), or other bodies.

This bracket of evidence followed upon that dealing with the injuries sustained by Client 6, during which there had been some considerable discussion before me, involving all Counsel, about the timely provision of relevant material and the approach that should be adopted by all parties to ensure that the hearings proceeded as smoothly as possible with all persons receiving adequate notice of any relevant material (see the transcript of 1 February 1994). Accordingly, at the opening of the evidence concerning Client 4, Counsel Assisting stated (T 1495):

> The first witness this morning is proposed to be Mrs B, to investigate the injuries that were suffered by her son . . . whilst he was under the responsibility of the Basil Stafford Centre. Can I indicate that, since last Tuesday, there have been a number of conferences between the parties that are represented here at the bar table. As has already been indicated in the past, there is a great deal of material that needs to be read and worked on prior to any witnesses being called in the proceedings with a view to ensuring that all the material that is relevant is discovered to the mutual advantage of each of the parties.
>
> The conferences were extremely successful. At each of the conferences, material was passed between the parties that was indicated by them to have been relevant.

Again, at that time, no party submitted that further amplification of the relevant issues, by Counsel Assisting, was required. As to Mr Plunkett's suggestion that procedural fairness was somehow denied in that Counsel Assisting did not, at the conclusion of the evidence, address any issues as to the conduct of any individual, I have already referred to the fact that Counsel Assisting's written submission was provided prior to the finalisation of the written submissions of Counsel for the State of Queensland. Counsel Assisting's written submission, which I note was 60 pages in length and of a very detailed nature, dealt with these issues in a most extensive fashion.

Counsel for the State of Queensland also submitted that the standard of the Commission's investigation, particularly in relation to its statement taking, amounted to 'unfairness'. His

submissions to that effect were restricted to one particular statement (which was in fact a statutory declaration), that of Mrs B herself, which Mr Plunkett submitted was 'a combination of hearsay and personal speculation' that had been 'pieced together from a record of interview conducted by a Commission investigator which was transcribed'.

A full transcript of Mrs B's interview with staff of the Commission was tendered in evidence (Ex 154). I note here that a comparison between that transcript and her statutory declaration indicates that the declaration is properly couched in Mrs B's own language. It accurately reflects her expressed concerns. It is not, by any stretch of the imagination, at odds with the version of events that Mrs B provided in her interview.

Mr Plunkett complained in his submission that the declaration contained hearsay material:

> These two exhibits [namely, the declaration and the transcript] are good illustrations why the rules of evidence should never be entirely abandoned.

I have already referred, at section 4.7, to Section 92(1)(b) of the Act which provides that the Commission, in discharging its functions and responsibilities, is not bound by the rules or practice about evidence. That being so, a hearing of the Commission is not, to my mind the appropriate place to debate the merits or otherwise of a particular example of legislative intention.

Additionally, I have within this report (see section 4.8) referred to the distinction between an inquisitorial hearing such as the present, and a trial before the courts. The hearsay material contained within Mrs B's statutory declaration, as complained of by Counsel for the State of Queensland was, where possible, sourced to individuals who themselves were in due course called as witnesses and made available for full cross-examination about the accuracy of Mrs B's expressed views. Mr Plunkett submitted that some of Mrs B's statutory declaration was based upon the evidence of another witness who he suggested was in turn 'thoroughly discredited . . . upon cross-examination'. Even if that were to be my ultimate assessment, regarding that particular witness, I am at a loss to fathom exactly how the Commission might have determined the particular witness to have been 'thoroughly discredited', prior to calling her to give evidence. Indeed, I am satisfied that it was essential, in the interests of according procedural fairness to all parties, that this particular witness be called. In those circumstances, this particular submission by Counsel for the State of Queensland really only serves to underline the necessity of such evidence being properly tested and the value of the Commission conducting investigative hearings to facilitate that procedure.

Furthermore, I have already within this Chapter referred to Counsel for the State of Queensland's submission, at the commencement of this bracket of evidence, to the effect that two portions of Mrs B's statutory declaration should be made the subject of non-publication orders, and the fact that I acceded to that request. The making of such orders occurred frequently during the Inquiry, upon applications by those appearing before me. That situation was entirely appropriate given the nature of the proceedings and some of the evidence, and the Inquiry's particular terms of reference. At all times, Counsel for the State of Queensland was possessed of the opportunity, which he frequently exercised, to submit to me that certain material should not be admitted into evidence, or if so admitted, should be the subject of a non-publication order. It is relevant to again note that at the outset of this particular bracket of evidence, Mr Plunkett's submissions requesting non-publication were restricted to two, and only two, comparatively small parts of Mrs B's statutory declaration.

I therefore reject the submissions of Counsel for the State of Queensland that the Commission has somehow acted unfairly in relation to the investigation of matters regarding Client 4.

B) ALLEGED DAMAGE TO THE PUBLIC INTEREST

Counsel for the State of Queensland also submitted that material contained within Mrs B's statutory declaration caused considerable damage to the public interest. He submitted at some length that his criticisms were of 'what flowed from the statement', not of Mrs B herself; yet he also submitted that parts of her evidence were 'absurd allegations', 'pejorative material which appears to have been written with an eye to the tabloid sensationalist press reporting', and 'baseless allegations' (see section 10.2).

Mr Plunkett also submitted:

> Much time and public funds were wasted in this task of testing the more extravagant portions of the "statements" . . . it is of even greater regret that as a result of the adverse publicity generated by these baseless allegations, the reputation of the Centre suffered many grave defamations the result of which could only have been the undermining of the confidence that the parents and relatives of clients and the public generally in the Centre as well as the staff of the Centre in themselves [sic]. This can only have been to the gross disadvantage of the welfare of the clients at the Centre and elsewhere in the care of the Department.

Counsel Assisting, in the course of making his oral submissions, strongly opposed such submissions. He referred to the inherent validity of many of Mrs B's claims. I agree; many of Mrs B's claims were valid, and I found her evidence to be highly enlightening as to my general considerations and understanding of the Centre's operations.

Counsel Assisting also referred to the availability of non-publication orders, which Counsel for the State of Queensland could have readily sought, pursuant to the Act. Indeed, I again note that Section 88 of the Act expressly provides that the Commission may prohibit the publication of evidence given before it 'if it considers that publication of the matter would be unfair to a person or *contrary to the public interest* . . . '. [my emphasis]

As to the suggestion that the airing of Mrs B's evidence somehow damaged "the public interest", I note that Counsel for the State of Queensland did not specifically define the concept of "public interest" beyond suggesting that the confidence of parents, relatives and the general public had been undermined concerning the Centre, which would be to the 'gross disadvantage of the welfare of the clients . . . '

I have already herein referred to the significant public interest factor attached to this Inquiry (see section 5.4). I must again stress that I am firmly of the view that the concept of public confidence, in respect of the Centre as an institution, is of absolutely no utility if the public is in fact ignorant as to the true picture of life at the Centre. I would not expect that observation to be in any way controversial.

In her statutory declaration, Mrs B made the following comments:

> There is just no pride for the most part in the work of the RCOs. There is not enough care, in my opinion, amongst them. They don't run out and say "I work with intellectually handicapped children" and feel "proud of it". They have no pride in their work at all. They don't try. They just get through their shift and go home. They don't see children like Client 4 as people or human beings. They just do their job, do it and get out of the place.

That observation, made as it was by an intelligent and honest mother of a young child who had actually resided at the Centre for a number of years, must give rise to a sense of grave disquiet in all persons who are concerned or connected with the interests of the intellectually disabled. Surely the public interest demands no other approach than that of an independent and vigorous testing of the truth of such views; as I stated, during the course of the oral submissions of Counsel (T 5606–5607):

> I would have thought that rather than this evidence having the effect of undermining the confidence that the parents and relatives of clients and the public generally have in the Centre, as well as the staff of the Centre themselves, it would have in fact comforted the public, the parents and relatives and the decent staff at the Centre, because they would have been comforted in that there was an independent body looking at these allegations.
>
> If there was a wall of silence drawn around this sort of thing, if there was not a fearless investigation, then the public's confidence may well have been undermined, and the . . . parents and relatives, and the staff themselves, may have had their confidence undermined.
>
> My reaction to Mr Plunkett's submission there, is that he has got the bull by the horns, the result of which could only have been that what he has said is wrong, and that the result could only have been a bolstering rather than an undermining of the confidence of the public, parents, relatives and staff themselves, for the reasons that I have outlined.

C) JURISDICTIONAL OBJECTIONS

Counsel for the State of Queensland also suggested, in his written submissions, that many of the issues canvassed within this bracket of evidence were outside the Commission's jurisdiction. These objections seemed to be, to a significant extent, predicated upon the semantic significance of the use of the word "treatment" in paragraph three of the Inquiry's terms of reference. He expressed this view in the following terms in his written submission.

> Paragraph 2 [sic] of the terms of reference purport to confer jurisdiction on the Commission to consider generally and make recommendations concerning any statutory provisions, policy, practice or procedure relevant to the *treatment* of clients of the Centre or reporting of treatment of such clients, and any related matters. This can only be within jurisdiction insofar as it relates to *mistreatment* such as to amount to official misconduct. The *treatment* of clients generally as purported to be encompassed by the terms of reference is outside the scope of the Act unless restricted to matters related to the criminal justice system of the apprehension or prevention of criminal conduct or official misconduct.

I did not find this suggested point of distinction to be helpful; the New Shorter Oxford English Dictionary (1993 ed.) defines "mistreat" as 'to treat badly or wrongly'. Mistreatment, I would suggest, is merely one form or component of the primary concept of treatment.

Counsel Assisting submitted that the matters in respect of which Counsel for the State of Queensland objected, that is, questions of neglect of duty and the like, could be within the Commission's jurisdiction 'if they go to wilful neglect or dereliction of duty'. In his written submissions Mr Plunkett accepted that position. As previously noted, the Inquiry was not a wide–ranging Royal Commission charged with investigating every aspect of the care of the intellectually disabled: rather, the Inquiry's jurisdiction centred upon the concept of official misconduct. Mr Plunkett submitted that the Commission had no jurisdiction to inquire into, or report upon, evidence pertaining to issues such as staff washing their hands in the kitchen sink after handling clients' faeces and before preparing food, and the Centre's approach to treating

diarrhoea amongst the clients. On the evidence, I am not satisfied that the conduct of any particular officer or officers of the Department, in regard to those issues, has in fact amounted to official misconduct. However, I am of the view that such conduct *could*, in an appropriate scenario, amount to official misconduct on the grounds that if proven to the requisite degree, it could be:

- a breach of trust – Section 32(1)(b)(ii) of the Act; and
- either, at the highest, a criminal offence (see the neglect provisions within the Criminal Code, particularly sections 285, 290 and 324) or more probably, a disciplinary breach providing reasonable grounds for termination of the person's service within the unit of public administration (see Section 29(1) of the *Public Service Management and Employment Act 1988* and the Code of Conduct for officers of the Queensland Public Service) – Section 32(1)(d) of the Act.

10.5 THE UNEXPLAINED BRUISING

A) THE DEPARTMENTAL AND POLICE INVESTIGATIONS

On the afternoon of 2 November 1990, upon discovering Client 4's various bruises, Mrs B contacted SRO T, who was then working as a Senior Residential Officer (SRO) at the Centre. At that time, Client 4 resided in Pandorea house, which was one of the eight houses over which SRO T exercised responsibility as SRO.

SRO T appeared before the Inquiry. Within his statutory declaration (Ex 166) he stated:

> [Mrs B] said that she was concerned that Client 4 had such a large number of bruises. She said that they may have been inflicted by staff members or by another client because of a lack of proper supervision.
>
> I arranged to attend at Mrs B's house later that afternoon so that I could see for myself the extent of her son's bruising.
>
> I arrived at Mrs B's home at about 5.00 p.m. and eventually saw Client 4 upon his return home from the Doctor. Mrs B showed me the bruises on his body. There were numerous small, hardly visible bruises on his body, both anterior and posterior. There were other bruises on his arms, legs and buttocks. These bruises were clearly fresh (ie two to three days old); one was on the boy's right upper arm, one on his left buttock and one on his right shin. I took two polaroid photographs of the bruises on Client 4's right upper arm and his left buttock but the quality of the photographs was so poor that I did not consider it worth taking any further photographs.

SRO T also stated that Mrs B referred a number of Client 4's other bruises to his attention. The photographs referred to by SRO T were not produced in evidence before the Inquiry. It appears that they were, in December 1990, forwarded to officers of the JAB who by that time had also received a complaint from Mrs B. A receipt was issued for some photographs by then Senior Constable Angel (see Ex 409); however, these photographs were apparently not within the material which was in turn provided by the Queensland Police Service to the Commission. In any event, it would appear that no disadvantage to the Inquiry has flowed from the inability to locate the photographs, given SRO T's comment about their poor quality.

The preliminary task of investigating Mrs B's complaints, and reporting upon the same, fell upon SRO T as the relevant SRO. SRO T said in evidence that he was a former police officer.

In addition to a preliminary Departmental report dated 7 November 1990 (Ex 169) SRO T submitted a further report to the Centre Manager, Mr Rohan, dated 30 November 1990 (Ex 171). That report indicates that SRO T's inquiries appear to have consisted of obtaining and evaluating reports from the relevant RCOs. There is an entry in the relevant house report book (Pandorea – Ex 101) by SRO T calling for reports from RCOs. I will return to discuss some of SRO T's findings within a later section of this Chapter; however, for present purposes, it is noted that SRO T concluded in his latter report that there appeared to be nothing untoward regarding Client 4 sustaining the various bruises.

Perhaps the most telling observations about the Department's investigation were made by Counsel for the unions, who in fact appeared on behalf of SRO T. During his oral submissions, Mr Herbert stated (T 5707):

> . . . the Inquiry was decided by the Criminal Justice Commission itself to have been held many years after the trail had gone completely cold in relation to these issues, many years after what appears to be a fairly inadequate investigation was undertaken, and I do not criticise, for example, SRO T and some of the people who did these investigations – they simply were not equipped to do the investigations in a thorough and professional way. As a result of which the trail went absolutely cold . . . [SRO T] was, however, notwithstanding his training as a uniform police officer, out of the police force for some time, and he was not given the back up and other facilities that a serving police officer would have to assist him in inquiries of that nature. He was basically cast out on his own.
>
> He did a very professional job of the inquiries within the limits of the back up and the support that he had, and I make not a word of criticism about him. But the submission I make in relation to this is that he had very severe constraints on his time, etc as to how he could do that. He had to continue his ordinary functions as a Senior Residential Officer whilst undertaking these sorts of investigations. Upon undertaking inquiries, as he said on one occasion, he handed the provisional results of his inquiries on and, like the secret society, it disappeared into the mist and he never heard back as to what had been the result of that. He was never able to follow up on matters. He was simply never told.

In his statutory declaration, SRO T stated:

> The investigation was subsequently handled by the Centre Manager, Mr Rohan. Given the way the organisation operated at the time, very much like a secret society, I got no feedback at all about the progress of the investigation. I do not therefore know what happened. Some of the bruises on the list which I have described were, in my opinion, probably inflicted accidentally by another youngster who lived with Client 4 in the house . . . the other bruises could have been caused by other clients or they could have been caused by staff members. The list of bruises is certainly extensive and quite unacceptable. Whatever the true situation, the bruises were not reported by the relevant RCO as they should have been. Reporting procedures, "follow-ups" and so forth within the organisation have been changed considerably since then. It is quite a different situation altogether now.

As a result of Mrs B's complaints these matters were also brought to the attention of the Queensland Police Service which in turn instituted the JAB Task Force investigation of matters pertaining to the Centre (see Chapter 3). The matters were also referred to a SCAN (Suspected Child Abuse and Neglect) Team, which was comprised of representatives of the JAB, the Department and the Royal Children's Hospital. One member of that team was Dr Karen Shepherd, who subsequently appeared as a witness before the Inquiry.

The SCAN team file was tendered in evidence (C Ex Q). Minutes of a team meeting held on 27 November 1990 indicate that the team held concerns about:

- Child's [Client 4's] non-accidental injuries
- Repetitive nature of injuries
- Consequence of situation at Basil Stafford for other children.

The SCAN team undertook a number of inquiries regarding Client 4's circumstances, generally through the auspices of the JAB. These inquiries included discussions with a Co-ordinating Committee on Child Abuse. The report of Senior Constable Angel of the JAB (Ex 406, and see section 3.4), indicates that despite undertaking extensive investigations the police officers were unable to identify any offender responsible for Client 4's injuries.

B) DR DRIVER'S EXAMINATION

Upon discovering Client 4's bruising injuries Mrs B arranged for Client 4 to be examined by her general practitioner, Dr Gregory Driver. Dr Driver was called to give evidence. He had previously prepared a statement for the JAB investigators in 1990, which together with his clinical notes, became Ex 161.

Dr Driver, in his statement, noted the following injuries during his examination on 2 November 1990:

- a 10cm x 2cm bruise on the left buttock
- a similar but faded bruise on the right buttock
- approximately three old 2cm x 2cm circular bruises on the back
- a 5cm linear bruise on the right arm
- approximately four small bruises on the front of the chest and abdomen
- a 3cm x 3cm bruise on the left cheek
- two 2cm x 2cm bruises on the right cheek
- three large 6cm x 6cm bruises on both legs.

The doctor described the bruises as being of varying ages (T 1786), the more recent probably occurring within a period of two weeks preceding the date of his examination (but not within a period of 12 hours prior to that examination), with the older bruises being of up to four weeks in age.

Dr Driver conducted a full medical examination of Client 4, including tests directed towards excluding haematological causes for the bruising. The results of those tests were normal. Dr Driver concluded, by way of summary:

> Client 4 . . . had multiple bruises which appeared to be of varying ages, but in my opinion, which would have been incurred within approximately one month. In my opinion, the buttock bruising in particular would be consistent with non-accidental injury.

In his evidence, Dr Driver stated (T 1787):

> The shape of the bruising and the fact that it was linear, and the fact that there were bruises of different ages on each buttock, or one on each buttock, to me seemed to be unlikely to have been incurred accidentally.

When cross-examined by Counsel for the State of Queensland, Dr Driver said that the bruising 'seemed to be consistent with trauma' (T 1789). When questioned by Counsel Assisting (T 1787–1788) the doctor agreed that the more recent of Client 4's injuries could be consistent

with him being assaulted, and that the linear bruising would be unlikely to have arisen from a fall. The doctor also noted that Client 4 exhibited bruising in areas 'where you wouldn't normally see bruising, such as over the chest and the stomach and the face'.

C) DR KAREN SHEPHERD AND THE SCAN TEAM

As noted, Dr Shepherd, a paediatrician and visiting medical officer at the Royal Children's Hospital, was a member of the SCAN team that considered Client 4's situation and injuries in late 1990. In an undated letter to a Dr O'Hara, of the Division of Child Health (Ex 190) Dr Shepherd stated:

> Client 4 had multiple bruising which was examined . . . by myself on 8 November 1990 when the bruises were resolving. The bruises were of a non-accidental nature.

Dr Shepherd was called to give evidence. She was asked about the possible causes of Client 4's injuries, and her expression of the opinion that the same were 'non-consistent with normal activity'. Dr Shepherd stated (T 2100):

> . . . I see a lot of children with disabilities and it's not uncommon to have injuries or bruises on a shin, so I would exclude the shin bruising from that. But the site of the bruising that I both saw and some of the other bruising that was reported, is in areas of the body that children wouldn't normally injure unless some sort of specific accident had occurred, and the bruise on the left buttock was still sort of fairly extensive . . . bruises on the chest and the abdomen are very unusual in kids, unless they're playing rugby, and they were circular and certainly consistent with . . . finger grab marks, finger marks, thumb marks that we see . . . in cases of assault.
>
> . . . and certainly considering the description of the bruises that Dr Driver told me of, I felt that clinically they didn't fit a pattern of accidental, or certainly of normal, activity.

Counsel Assisting asked Dr Shepherd a question to the effect of what cause the injuries would be consistent with, and elicited the following answer from the doctor (T 2100):

> The bruises on the abdomen and chest were consistent with finger marks or some marks, and the bruise that went across the right buttock was of a rectangular pattern. It was fairly long and relatively narrow, consistent with a child being hit with an object.

D) NURSE W'S EVIDENCE

Evidence was also received from Nurse W, a registered nurse of many years experience who, at the relevant times, was employed by the Department of Education working as the school nurse at Eight Mile Plains Special School.

In her statutory declaration (Ex 182) Nurse W stated that it was part of her duties to keep records of injuries, in the form of notes, involving the school's students. She produced Client 4's school nursing file, which was admitted into evidence (C Ex N).

In her evidence, Nurse W recalled, from the notes, that she examined Client 4 on 31 October and 1 November 1990, at which times she noted a number of marks on his body. Her account of Client 4's bruises differs somewhat to the versions provided by Dr Driver, SRO T and Mrs B, resulting from their examinations of Client 4 on 2 November 1990.

Nurse W also recorded, in her notes, that Client 4 had sustained a number of bruises in February and March 1992; that is, at a time after he had been withdrawn from the Centre's care.

E) RCO D AND THE BUSHWALK

All of the above evidence raised two obvious matters meriting consideration; first, whether Client 4's bruises (or any of them) were the result either of assaults committed on him (and if so by whom) or gross negligence on the part of his care-givers, and secondly, whether the injuries should have been recorded and reported by the relevant RCOs, as the Departmental procedures dictated.

RCO D was called to give evidence about these matters. Counsel Assisting submitted that she was an important witness in two respects; because of the fears expressed by Mrs B and because RCO D recorded an apparent misadventure involving Client 4 on 30 October 1990, which may have resulted in him sustaining some of the bruises in question.

In her statutory declaration (Ex 95) RCO D stated that Client 4 had been a client of hers at Pandorea house. She stated that she became aware that there was an inquiry, over one Christmas period, into allegations concerning the abuse of Client 4. At this time her SRO, SRO T, placed her on "double-up" shifts, which she described as:

> A "double-up" means that I am not allowed to work with clients on my own, and another staff member has to be present on all occasions.

RCO D also stated:

> . . . I have never seen Client 4 with any injuries other than minor bruises and cuts from general every day living.
>
> At no time have I ever seen any of my family assault any clients in any way at the Basil Stafford Centre.

The report book for Pandorea villa, covering the period of relevance to Client 4's bruises, was admitted (Ex 101) before the Commission. It contained the following entries of interest, made by RCO D:

> **Tuesday 30 October 1990**
>
> | | |
> |---|---|
> | RCO D (3-11) | All home usual times, Rx given hygiene attended to A/T [afternoon tea] on patio all had large tea, chores done, lunches made. We all went for a long walk after tea except [a client] who stayed in Bauhinia with [another client]. We went through the bush up near Tristania down to prison and back up frozen food factory way all were tired by the time we got back.

Took one hour Client 4 fell over. |
> | Visitors | RDO visited. N/S [Nursing Service] Nurse M. |
> | Phone calls | Mrs B re Client 4's health. She would like Client 4 to have his tonic at night instead of the morning and see if that will make him eat his |

tea. While walking Client 4 rolled down an embankment and scratched his bum and legs. RCO D.

Wednesday 31 October 1990

RCO D
(3 p.m.–3 a.m.) All home from school usual times A/T, ate good tea, Rx given, hygiene attended to, went for another walk tonight. Because of Client 4's fall last night, we went on flat ground tonight, down to W/P [Wolston Park] and back. Client 7 trying to pinch Client 4 again but he didn't succeed.

RCO D was examined about these matters. The following is a summary of her relevant evidence about Client 4's fall during the bush walk (T 1669–1670):

Mr O'Sullivan: . . . whilst walking Client 4 rolled down an embankment and scratched his bum and legs?---Yes. Well, there was a – like a dead stump, a burnt out stump with the roots that are exposed, on the top of the ground.

Yes?---And he tripped on that and went down a sort of a slight embankment.

. . . and Client 7 was playing up at the time and throwing himself on the ground, so I walked back to pick Client 7 up, then I saw Client 4. It was like a stump just so high off the ground, and there were roots all around the other trees, and one of the roots was sort of up a little bit and he went over and sort of rolled down a little bit.

The Commissioner: Did he trip on the root?---Yes. Yes. So I picked him up and he had a little bit of a graze on his knee and sort of up on the bottom part. So when we got back to the villa, the Nursing Service had pulled up in the car, so . . .

Yes, just pause there for a minute. I am simply asking you how he came to fall?---Well, I didn't see him actually tripping, but I saw the root there.

He tripped on the root, you said. Is that true or not?---Well, I didn't see him trip . . .

Why did you say that he tripped on the root?---Well, he went forward, so I assumed that it was the root that tripped him up at the same time I was picking Client 7 up off the ground. So I just assumed that that's what had happened, because the root, you know, was sort of raised and that's the only thing that could have tripped him over. The ground was just dirt, so there was nothing there, no rocks or anything, so I just assumed that that was what actually tripped him over, was the root.

Mr O'Sullivan: What was he actually doing at the time?---Just walking.

Now, walking through what type of terrain?---Pretty rocky, like sort of, it was a dirt track, but it was sort of up and down, so through the bush. We went up the hill. It was a track that was made for us to, the clients always walk through.

Yes, did he have to negotiate any obstacles?---No, the only obstacle was when we got off the track and we just raised the wire on the fence so they could go through to come up on the footpath.

But that has got nothing to do with the incident where he fell over, is that correct?---No, no, that's right. Yes.

Shortly thereafter, the following exchange occurred (T 1673):

> Mr O'Sullivan: Are you sure about the version that you have given, that is that he appears to have tripped over an exposed root that was on the ground?---Well, there was nothing else on the ground. There was no rocks or things, and it was not an embankment that had sort of broken away, it was just like a slope that he rolled down.
>
> Yes, there was no other incident about this time, was there, otherwise you would have reported it in the report book?---Yes.

The witness was then shown a one-page document described as a "daily summary" for the period from 6 a.m. on 31 October 1990 to 6 a.m. on 1 November 1990 (Ex 156). The document itself contained an instruction to the following effect:

> This form when completed should include a summary of all information in the Report Book and relevant information in the Communication Book.

The daily summary record refers to Pandorea house, and contains a signature acknowledging that it was prepared by RCO D. RCO D acknowledged that the document was in her handwriting (T 1675), and that it contained the following entry:

> Client 4 fell over last night and scratched his bum and lower back on bush. We were bush walking and he put his foot in hole and lost his footing.

RCO D's attention was then drawn to a statement she prepared for SRO T. That statement (Ex 155) is undated; however, it had obviously been in SRO T's possession when he prepared his final report for submission to Mr Rohan, that final report bearing the date 30 November 1990 (Ex 171). In evidence, RCO D said her report would have been written 'within a few days' of Client 4's fall (T 1677). Her report stated, inter alia:

> **Regarding Client 4's Bruises**
>
> Ms S and myself took Pandorea and Hibiscus clients for a walk on 30/10, Tuesday night, up through the bush and down the back of Casuarina towards the back of Prison Road. Client 7 had his usual T/T [temper tantrum] and while he was jumping around he knocked Client 4 off balance as the ground is uneven Client 4 fell over and rolled into a clump of dead bush, burnt out by the recent fire. As it was only couple of scratches and not broken skin we kept walking. The marks were on the buttocks while he was climbing through the fence. They all had trouble getting between the wire. I don't know if the wire scratched him or not. He did crawl through while the wire was being held for him. By this time it was getting dark and we had the torch to walk back the road way. On several occasions I had to speak to Client 7 about pinching him on the face. I can only say that the marks on his bottom was caused by the tree branches by next day they would have been out in bruises. It generally takes a day or two for bruises to appear. Regarding the marks on his face, I have been writing in both Client 4's and Client 7's school book for the last week about Client 7 pinching Client 4's cheeks. He was even doing it while you were here the other day talking to me and other staff . . . have seen him . . . I explained to Mrs B that Client 7 is trying to pull Client 4 around with him . . .

At T 1682–1683, I asked the following questions of the witness, while referring her to Ex 155:

> You went on to write "and while he was jumping round, he knocked Client 4 off balance". Is that true?---That's true for down further, but not true where Client 4 fell over and got the graze; the graze on the knee and that was caused by the dirt track where he tripped over, when I was picking Client 7 up.

You went on to write – I will take you back a bit: you wrote "while he was jumping around" that is to say Client 7?---Yes.

"He knocked Client 4 off balance as the ground is uneven, and Client 4 fell over and rolled into a clump of dead bush" . . . that, I suggest, is your description of the fall that Client 4 had. Would you agree?---No, because the dead bush was just stick, like you have high weeds, and we'd had a fire through there, so it was all just sticks sticking up and we had to crawl up – like – lift the wire up for them to get through the fence, but up near the fall, where he actually fell, was a bit of a stump, so it is totally different to a bush.

Did he fall once or twice?---He had a proper fall, and he – like he tripped over there and hurt himself with a graze on his knee, but when we went down to the wire and Client 7 was jumping because he didn't want to get through the fence, and he knocked him over then, but it was grass and sticks and things, so it didn't leave any scratches or marks, just a couple of little . . . but nothing, sort of, that needed taking care of, so we just continued walking home.

I shall take you back again. You have written in this document . . . the following:

> "Client 7 had his usual T/T and while he was jumping around, he knock Client 4 off balance. As the ground is uneven, Client 4 fell over and rolled into a clump of dead bush, burnt out by the recent fire."

Is that true?---That's true, yes.

Is it true that Client 4 tripped on a root?---Yes, it is true. Well, I'm not saying he tripped on the root, but that was all that was there that he could have tripped on.

Well, was there one fall or more than one fall?---There was one fall, and one just sort of losing balance and going into the grass.

One just sort of losing balance and going into the grass?---Well, you wouldn't call it an actual fall . . .

Well, what was it?---Just – he was tripped, sort of, like, pushed, and he lost his balance, but . . .

Where was that?---Down, coming down the slope to go underneath the wire to get out on the road.

Is that where you say Client 7 pushed him?---Yes. . . . no, Client 7 wasn't anywhere near him up further where he fell over. Client 7 was sitting in the middle of the track, just sitting there screaming, because he didn't want to walk.

RCO D stated that when the group returned from their walk upon which Client 4 suffered his fall, or falls, he was examined by a nurse. RCO D stated that this nurse was either Nurse M or Nurse X of the Centre Nursing Service (T 1693). RCO D was asked about Client 4's injuries:

Mr O'Sullivan: Now, what sort of grazes do you say he had?---Like a gravel rash, because he came down on the dirt track.

And where was the gravel rash?---On the knee and up on the thigh.

And which knee?---Oh I don't know, generally I will put an R or a left on anything that is hurt, but I didn't do it here, so I don't know.

Well, was it on both knees or one knee?---Just one that I can remember.

> And how would you describe it, can you be more particular – was it a gravel rash?---Just a graze.

At T 1696 I asked the witness the following questions:

> The Commissioner: Was it in the fall when he tripped over an exposed root, or put his foot in a hole, or one of the other things you have mentioned, that he sustained the grazes that you described?---Yes, he had a couple of scratches from down near the fence, but the actual knee and that was when he fell.
>
> . . . you have said there was blood on his knee?---Yes. Just how when you have a graze and the blood starts to come through in little spots and stuff.
>
> Yes. The skin was broken?---Yes.
>
> No doubt about that?---Yes.
>
> No doubt about that?---No doubt about that.
>
> I wonder why you said in this report to SRO T the following: "It was only a couple of scratches and not broken skin"?---Oh, I don't know why I put that because it was . . . there was blood coming through. Like a gravel rash when you graze and you've got little specks of blood.
>
> Are you just saying the first thing that comes into your head?---No, Sir. I am not. He did have – it was more of a gravel rash because he fell on the gravel, on the dirt.

RCO D gave evidence to the effect that she bathed Client 4, on 30 October 1990, after they returned from the walk (T 1706). She did not notice any extensive bruising over his buttocks or back (T 1707):

> No. I would have reported it straight away. I would have written it up in the report and got Nursing Service down to go over him and give him a proper examination.

She had no explanation as to why Client 4 suffered the extensive bruising noted by the medical personnel (T 1713):

> Mr O'Sullivan: Well, if we assume for the moment that he did suffer extensive bruising to his buttocks and back, have you any information that might throw some light as to how that was caused?---Well, he couldn't have done that when he fell because he sort of landed down on his knees and that, so there is no way his back could have been hurt, or his buttocks and that. Then when he went under the fence, well, it was just scratched. It wasn't like a hard fall or enough to cause a bruise, I know.

The allegation that RCO D's son had assaulted Client 4 by hitting him with a stick (as alleged by RCO V) was denied by the witness (T 1705).

At Chapter 9, I referred to RCO D's evidence about the alleged assault of Client 7, remarking that such evidence 'was disingenuous and inexact, and characterised by suspicious understatement'. I am satisfied that those remarks are of equal application to her evidence concerning the bruising sustained by Client 4.

When confronted with the marked inconsistencies between her various versions concerning Client 4's alleged fall of the evening of 30 October 1990, RCO D volunteered a bewildering

torrent of answers, commentary and observations which, to my mind, were of a most confusing and implausible nature. In conclusion, her evidence was unconvincing, unreliable and unsatisfactory.

F) NURSE M'S EXAMINATIONS

Nurse M was also called to give evidence. She was referred to various entries in the nursing notes within Client 4's medical file (C Ex J). Nurse M indicated that Nurse X of the Centre's Nursing Service was the author of an entry dated 2 November 1990, which stated:

> Apparently he [Client 4] . . . sustained extensive bruising to buttock and back during bush walking . . . it was not reported to Nursing Service. Mother very upset . . .

Nurse M was also referred to some other entries, dated 31 October 1990, which she identified as her own handwriting, referring to the discovery of 'bite marks' on Client 4's legs.

The nursing notes contain no entry to the effect that either Nurse M or Nurse X attended upon Client 4 and treated any grazing injuries on the evening of 30 October 1990, as claimed by RCO D. Notwithstanding the absence of any records, Nurse M testified that she had a recollection of attending Client 4 at that time, in terms of having a 'quick look' at him and suggesting some treatment for his injuries, which were 'negligible' (T 2157).

During her examinations of 30 and 31 October 1990, Nurse M did not notice the presence of the large bruises observed by Dr Driver at the time of his examination on 2 November 1990. Nurse M stated she would have 'made a note' of any bruises that she noticed (T 2155).

G) RCO Y

RCO Y worked the night shifts, beginning at 11 p.m., on 29 and 30 October 1990, at Pandorea house. She was called as a witness. At the time of giving her evidence, RCO Y said she was on special leave. She refreshed her memory about these matters from the Pandorea house Report Book.

In her shift report for the period from 11 p.m. 30 October – 7 a.m. 31 October 1990, RCO Y wrote (within Ex 101):

> Client 4 has 2 marks on his legs
>
> One on (L) and one on (R). Looks like bites . . .

In a report prepared for her SRO, SRO T, and dated 7 November 1990 (Ex 170), RCO Y again referred to these marks and additionally stated:

> With regard to the bruises on Client 4's face, these would of [sic] been caused by Client 7 who has been on many occasions grabbing and pinching him on the face around the cheek area.

Neither of these documents, prepared by RCO Y, make any mention of the various other bruises that Client 4 had around that time. In her statutory declaration (Ex 197) RCO Y stated:

> I no longer have a clear recollection of the events of that 11 p.m. to 7 a.m. shift [commencing 30 October 1990] but I believe that some time after I commenced that shift, RCO D told me that something had happened to Client 4. I think that she said that Client 4 had fallen over or something like that. I believe that I would have just accepted what RCO D told me. I do not think that I would have examined Client 4 at the start of that shift because I started at 11 p.m. and Client 4 and the other clients would have been asleep.

In his report to management dated 30 November 1990 (Ex 171) SRO T said:

> I have re-examined the report by RCO D and RCO Y. I believe that the information contained within these reports is corroborative . . .

SRO T did not, in his conclusions, refer to the inconsistent versions given by RCO D in either the House Report Book or the Daily Summary document.

RCO Y gave evidence that she bathed Client 4 on the morning of 31 October 1990 (T 2230), before he went to school. She said she did not see any other marks on him (apart from the abovementioned bite marks), at that time (T 2231). RCO Y also stated that she worked a number of shifts with Client 4 in the days preceding the discovery of his bruising injuries on 2 November 1990 (T 2238–2242). It was her normal practice to note any injuries she saw, and report the same to Nursing Service (T 2258).

Counsel Assisting suggested to RCO Y that she must have been aware of Client 4's bruising, but had failed to report this. The following exchange occurred (T 2258–2259):

> Mr O'Sullivan: Well, is there any truth in the proposition that you must have been aware that Client 4 had bruising to his body in the period that I have just described for you, that is about a week prior to 2 November 1990?---That is before the bites, is it?
>
> Yes – what do you say to that?---I don't recall any bruises, no.
>
> You do not recall?---No, I don't recall any bruises, no.
>
> Well, is your evidence wavering a bit in respect to that issue?---No, I don't know what you mean.
>
> Well, are you confident that in fact Client 4 had no bruising in that week leading up to 2 November 1990?---I just don't remember that period of time.
>
> Well, what do you mean by that, you do not have any recollection at all – three years ago?---Yes – not really, no. Just bits and pieces, that's all.
>
> Well, you have heard what I said about the other evidence about the bruises. Do you make a concession that he did have bruises in that period?---What do you mean by concession?
>
> . . . do you agree that he did have bruises in that period leading up to 2 November 1990?---Well, I can't remember now or say that he had bruises back there.

H) RCO Z

RCO Z was called as a witness. She worked the afternoon shifts (3 p.m.–11 p.m.) on 31 October and 1 November 1990. In her statement (Ex 157) she said:

I remember the time when it was discovered that Client 4 had some substantial bruising to his body. I do recall that on one particular shift I was working 3 p.m. to 11 p.m. and I was bathing Client 4 and I noticed some bruising to Client 4's legs and lower back. I did look at the report book to see if there was any record of what had happened to indicate how Client 4's bruising had been suffered. The report book had an entry saying that RCO D had taken the clients for a walk and the bruising was then reported to Nursing Service. I can remember that when I saw RCO D after this she explained to me what had happened to Client 4 and I accept what RCO D says about Client 4 falling down on a walk.

I do remember receiving a telephone call from Mrs B and she asked me about RCO D and then she complained about the bruises and also the doctor's opinion about the bruising. Mrs B did ask me how I felt about RCO D and I said that I had nothing against her. I have never seen RCO D be inappropriate with clients and she always left the villa clean and tidy and the clients were well looked after. Further RCO D and I get on quite well and we might even do extra chores for each other if we are having a change over of shifts from one to the other. I did feel that Mrs B . . . wanted to use me against RCO D.

I know that Client 4 was not confident on his feet when walking on uneven ground. I have seen Client 4 fall over on uneven ground . . . Client 4 does have skin that I have noticed bruises easily. I have noticed him bruised before. I should also say that Client 7 often hit and pinched clients and Client 4 was a favourite target.

In her evidence (T 1756), RCO Z was asked about her practices in respect of the recording of client injuries:

Mr O'Sullivan: If one of the clients had extensive bruising on the body, would you make a note of that?---No. Yes. During . . .

No, what is the answer please, RCO Z? Would you make a note of that?---Could you repeat the question please?

If a client had extensive bruising on the body, would you make a note of that in the report book?---Nowadays, yes.

No, I am talking about 1990?---1990. At that time when I . . . at this day I didn't record anything at all.

No, I am asking you about the process. Isn't it the case that in 1990, that if you found a client with extensive bruising on the body that you would make a note of that in the report book?---I would have.

You would have?---I would.

Is that what you are saying?---I would have if it wasn't reported.

Counsel Assisting then took RCO Z to the relevant entries in the report book. RCO Z agreed that during her shift of 1 November 1990, she would have showered Client 4, and that in so doing she would have had the opportunity to notice any injuries on his body at that time (T 1757). Counsel Assisting then asked the witness:

Mr O'Sullivan: What do you say to this proposition – that Client 4 at that time, at the time that you washed him, had bruises on his buttocks and back. What do you say to that?---Yes.

Is it a fact, he did have bruises on his buttocks and back?---As far as I can remember I noticed those things, but – lower back and legs.

What about his buttocks, did he have bruises on his buttocks?---I think it must be there. I forget now which, but I noticed sort of bruising around that part.

Why is it then RCO Z, that you did not make some note in your report for 1 November 1990 that he had those marks on his body?---I sort of look over on the other pages at the time and see what has gone wrong, and when I saw Nurse M's comments are recording, so I sort of thought she must have informed them of such.

At T 1761 the witness was asked about her reasons for failing to record the bruising injuries she observed:

Counsel Assisting: Well, why is it you did not make a note about that on 1 November 1990?---I don't know. I could be busy then and forget it.

Sorry?---I could, I don't, it was long ago now, but you see, what I could recall was going over the reports and when I saw that report by RCO D about Client 4 falling, I presume it was because of that.

At T 1764–1765 I asked RCO Z the following:

The Commissioner: Now, earlier you said when you were asked would you report, should you report that sort of thing, that is to say, bruising, you said, "Now we would". Do you remember saying that earlier this morning?---Yes.

What does that mean?---Nowadays sort of, how can I say it, because – sort of, nowadays, sort of, there is sort of problem having – having to – I mean we're always asked what happened and something like that, so every time I see a bruise or any scratches, I always, now I always sort of look, – look at the report book. If it wasn't there then I write something about it, to cover myself.

Mr O'Sullivan asked you would you have reported this, should you have reported this bruising back in 1990, I think you said "Yes", is that correct?---Then, yes, but . . .

But what?---I presume RCO D did that.

But you know she did not, you saw the report?---No, I mean with the conversation with the Nursing Service on the phone.

You presume that she did?---Yes.

Now, back in 1990, was there sort of an understanding amongst the staff that you would look after each other?---No.

No?---No, I was – we . . .

Sort of stick together, so that the management would not find out what was really happening, no?---There wasn't any . . .

Nothing like that?---No, I couldn't . . .

Nothing like that at all? Well, what do you mean then that these days you report things that perhaps you would not have reported back then?---It's just that nowadays they always say, or some staff were saying, "Oh, how did it happen?" and things like that, and even Nursing Service sort of wanting you to explain how it happened, what happened, so sort of covering for myself with something, if I find something like that just, to save, I mean sort of cover myself that it, or it happened on my shift or I find it before my shift was, or something like that.

I) RCO V

RCO V was also called as a witness. She had worked the afternoon shifts at Pandorea house on 27 and 28 October 1990.

In her statutory declaration (Ex 198) she described an incident, which she allegedly witnessed, whereupon Client 4 was beaten by one of RCO D's children [see section 10.2(A)]. She stated:

> RCO D and I checked Client 4 for injuries but did not see any marks on him at that time. Whilst Client 4 had been hit fairly hard by RCO D's son, Client 4 was dressed in clothes and had a thick nappy on as well. Quite some hours later that evening when I bathed Client 4 I again inspected him for injuries but he did not have any swelling or bruising evident.

RCO V was clearly of the opinion that the alleged assault would not have resulted in the types of bruising injuries subsequently discovered on Client 4's body on 2 November 1990 by Mrs B, SRO T, and the medical practitioners.

RCO V did not report the alleged assault, nor did she report the fact that RCO D's child had been at the Centre. Counsel for the State of Queensland cross-examined the witness about these matters (CT 2403–2405):

> Mr Plunkett: Well, I think you have agreed that this was a pretty serious offence, wasn't it?---Yes.
>
> And it happened on your shift. Why didn't you report this matter? Why didn't you write this in the book?---The actual hitting and all the rest of it happened on RCO D's shift and it should've been her to inform the RDOs that her child was on Centre and also that that had happened.
>
> Well, you obviously, on hand-over, had an opportunity to read the villa book and there was no record by RCO D of that event happening?---No.
>
> Did you not see it your responsibility in the absence of a record made by her that you should have entered it into the villa book since it occurred whilst you were present and just prior to your hand-over?---Yes.
>
> Well, why didn't you put that in the book then?---Because I was frightened of RCO D.
>
> . . . at this time you were so scared of RCO D you would not enter this event into the book? What happened? What were the bases upon which you had a fear of RCO D?---As I said, the way she used to stand over me. She would not give me my personal space or anything, that went on for quite a while.
>
> . . . you have given an explanation why you did not want to record in the villa book the incident involving RCO D's son, but you had the opportunity to raise that with a RDO, didn't you?---Yes.
>
> What I am saying – you had the opportunity to raise that with either a Senior Residential Officer or the Residential Duty Officer?---Yes.
>
> I mean, there were people you could've gone to and said, "Look, this is not in the book. I am scared of this woman, but I want you to know this had happened". You had the opportunity to do that, didn't you?---Yes.
>
> But you did not avail yourself of that opportunity?---I didn't actually think about it.

> Do you see that as dereliction, on your part, of your duty?---Now I do, yes.

J) COUNSELS' SUBMISSIONS ABOUT THE BRUISING

As noted, there was quite some divergence of opinion amongst Counsel in their written submissions about Client 4's injuries.

i) Counsel Assisting

Counsel Assisting submitted that Mrs B had good reason to be concerned about the welfare of her son, in light of the evidence about the extensive and non-accidental nature of his bruising injuries.

In relation to the evidence of RCO D, Counsel Assisting submitted:

> Her evidence would lead one to conclude that she is a consummate liar distinguished by her inability to recall each tale and when caught with a conflicting account unable to reasonably explain her position.

In essence, I would agree with this submission, making only one point of distinction, in itself of a semantic nature. The word "consummate" connotes a level of skill or accomplishment. The attempts by RCO D to explain away her patently inconsistent versions were neither accomplished nor skilled; rather, such attempts were, to my mind, clumsy, transparent and incredible.

Counsel Assisting submitted that Client 4 had been unlawfully assaulted:

> This is not to say that all bruising discovered on him was the result of an assault. However, in respect of the linear bruising on his buttocks common sense dictates and medical opinion confirms the wilful application of force . . .

However, Counsel Assisting submitted that it was impossible to identify the culprit concerning any such assault due to; first, the failure of RCOs to record injuries or marks evident on Client 4, and secondly, a lack of investigation at the relevant time by the various medical nurses, who, in essence, only ever carried out partial assessments of Client 4's physical state in accordance with the matters that had been brought to their attention at that time. That is quite understandable; I make no criticisms either of the Centre's nurses or Nurse W regarding these matters.

Counsel Assisting also submitted that RCO Z had failed to report the bruises she observed and that her purported explanation, namely, that she "forgot", was disingenuous. He suggested that this matter should be reported to the Principal Officer of the Department, presumably pursuant to Section 38(4) of the Act, which provides that the Commission's Complaints Section:

> . . . may refer to the Principal Officer of a unit of public administration any complaint, information or matter that, in the opinion of the Chief Officer of the section, involves, or may involve, cause for taking disciplinary action (other than for official misconduct) by the Principal Officer against a person holding an appointment in a unit of public administration.

ii) Counsel for the Unions

Mr Herbert, in his written submissions, expressed the view that the Commission's investigation of Client 4's bruising injuries 'was predicated on one fundamental and completely erroneous piece of evidence', namely, that Client 4's bruising was necessarily caused while he was at the Basil Stafford Centre. I accept, as I have discussed below, that the circumstances of Client 4's life indicate that he may have sustained at least some of his injuries while not directly under the care of the Centre's staff. As Mr Herbert submitted:

> It emerged from the evidence that while Client 4 was living at the Basil Stafford Centre, he travelled to the Eight Mile Plains Special School on a bus, five days each week, in the company of a number of other children. Many of these children had behavioural problems and were accompanied only by a driver who was unable to control any episodes of bad behaviour within the bus.
>
> In addition, Client 4 spent each of the five days at the Eight Mile Plains Special School in the company of more than thirty other students at that school, many of whom exhibited boisterous behavioural propensities. At the end of each day, Client 4 returned to the Basil Stafford Centre on the bus . . .

However, while that may be the case, it does not automatically or reliably exclude the probability that at least some of Client 4's bruises were sustained while he was at the Centre, and that at least some of the bruises may have arisen directly as a result of acts of official misconduct by a Centre staff member.

The cause of the bruising was one of the primary issues that arose for the Commission's investigation. There was no assumption or assertion that the bruises occurred while Client 4 was at the Centre.

Mr Herbert submitted that the evidence of his client RCO D, concerning the alleged fall on the bush walk, should not be characterised as 'an attempt to cover up a beating that may have been inflicted by RCO D on Client 4'. He also submitted that:

> . . . there is no basis for finding that any particular person was either directly, or indirectly, responsible for the bruising found on the body of Client 4 on 2 November 1990 . . . it is quite unlikely that an RCO would have deliberately inflicted such an injury, due to the likelihood that a serious bruise inflicted by a RCO is most likely to be detected by another officer and to be reported.

That submission was not supported by the evidence, which I am satisfied indicates that an extensive series of bruises to a client was *not* likely to be reported by the RCOs in question.

Mr Herbert continued:

> Due to the conflict of evidence between various witnesses as to the nature and scope of the bruising which was in existence in the few days prior to 2 November 1990, it is not possible to find that any member of the staff was derelict in their duty in failing to report the existence of such bruising.

Mr Herbert elaborated upon this latter aspect of his submissions, in specific response to Counsel Assisting's suggestions of disciplinary action against RCO Z, during the course of oral submissions.

iii) Counsel for the State of Queensland

Similarly, Mr Plunkett submitted that there were a number of equally probable explanations, as to the cause of Client 4's bruising, other than the proposition that he was criminally assaulted. He suggested that Client 4's injuries could have been self-inflicted, or perhaps have resulted from the actions of another client, or could have been sustained in circumstances completely unrelated to the Centre and its operations.

Counsel for the State of Queensland suggested that the evidence did not leave open the possibility of my making any adverse findings against any person holding an appointment at the Centre. Indeed, he went so far as to submit that Counsel Assisting's suggested reporting of RCO Z, in terms of facing possible disciplinary action, was:

> . . . an attempt by Counsel Assisting to rescue something from this time-wasting bracket of evidence that was wholly misconceived based as it was on a hypothesis supported by nothing but suspicion alone. This is even more unfair when she was given no opportunity to address the consequences of this alleged failure together with a disciplinary reference.

Dealing first with Mr Plunkett's second point, RCO Z's alleged failure to report was squarely put to her in evidence, and her Counsel, Mr Herbert, addressed the issue generally in his written submission, and specifically, at great length, during the course of oral submissions. Those matters may have escaped Mr Plunkett's attention. I therefore reject any suggestion of unfairness to RCO Z in that respect.

Returning to Mr Plunkett's first point, that this matter was a waste of time, 'supported by suspicion alone', I unequivocally reject Mr Plunkett's submissions as unreasonable and contrary to the weight of evidence. In my position charged as I am with the duty of considering and reporting upon these particular issues, I did not at the time and do not now consider this bracket of evidence to be in any way a waste of time. The 'hypothesis' of possible assault was not, as is evident from all of the above discussion, based upon 'suspicion alone', but was predicated upon a significant body of medical and documentary evidence. Furthermore, even if one considered that Client 4 was not assaulted in any fashion at all, the situation still remained that a young child, residing at the Centre, suffered serious bruises which went either unnoticed or unreported by his RCOs.

These investigations were not a waste of time, they were a necessary part of my inquiries: not to investigate these matters fully would have been a dereliction of duty on behalf of the Commission worthy of justifiable criticism.

K) CONSIDERATION OF THE ISSUES RAISED

It is clear that in some period that is indeterminate, but was likely to be of about four weeks duration (according to Dr Driver) prior to 2 November 1990, Client 4 suffered an extensive series of injuries. SRO T categorised Client 4's injuries as quite unacceptable. I entirely agree.

The evidence, and commonsense, suggest that there are a number of possibilities arising concerning the causes of these injuries. It is apparent that persons with disabilities such as Client 4 are susceptible to sustaining bumps and bruises during their daily activities. One must also have regard to Client 4's physical environment, involving, as it did, a very close association with a number of intellectually disabled children, at least one of whom appeared to have

behavioural disturbances which manifested themselves, in part, in activities capable of causing bruises to Client 4.

I have also noted the evidence that Client 4 spent a proportion of his time either at, or travelling to and from, the Eight Mile Plains Special School, and the evidence to the effect that Client 4 continued to suffer at least some bruises in 1992, at a time after his withdrawal from the Centre's care.

However, the evidence of Doctors Driver and Shepherd supports the view that at least some of Client 4's injuries arose other than accidentally, that is, that they arose as a result of an assault. Unfortunately, the evidence arising from the investigation is insufficient to enable me to find, to the required standard, that any identifiable person or persons was responsible for the infliction of those injuries. While some suspicion falls upon RCO D, whose evidence about these matters I find to be unsatisfactory, there is no corroborative evidence capable of sustaining a criminal charge, nor one of official misconduct, against RCO D alleging culpability for some or all of Client 4's bruises. I accept Counsel Assisting's submission that to a certain extent 'the waters have been muddied' by the failure of the RCOs to accurately record the bruises which must have been present upon Client 4 at the time when he was in their care. Similarly, Nurses M and W when examining Client 4 prior to 2 November 1990, did not conduct full physical examinations; while I am not in any way being critical of those witnesses, I simply note that fact in order to emphasise the difficulties which arose, some three and a half years after the event, in attempting to piece together specific times and details about a variety of bruises.

Be the above as it may, it is a matter of the most serious concern that a small child, with a severe intellectual disability, should present for physical examination and be found to have the vast array of bruises noted by Dr Driver on 2 November 1990. One can only empathise with Mrs B's distress. Those bruises, which may have arisen while Client 4 was at the Centre, or elsewhere, should have been noted by the various RCOs charged with Client 4's care, in terms of being fully documented immediately upon being observed, and reported to the relevant medical authorities. It is obvious that such a practice was not followed in this case.

The question therefore arises as to whether the evidence is capable of establishing that there has been a breach of duty on the part of RCO Z which would warrant the taking of disciplinary action against her by the Principal Officer of the Department.

At first glance, such a referral appears to be warranted on the facts; however, I do not consider that RCO Z's inaction is such as could amount to official misconduct under the Act. In addition, to cite a phrase used by Counsel for the State of Queensland, this Inquiry has unfortunately heard a "veritable blizzard" of matters of a similar nature; that is, RCOs failing to report client injuries or suspected misconduct by their colleagues. In this bracket of evidence alone, one can point to RCO V's failure to report the assault allegedly carried out upon Client 4 by RCO D's son (and the corresponding failure to report the presence of an unauthorised person upon the Centre), and the failure by all RCOs involved with Client 4, in the days immediately preceding 2 November 1990, to in some cases observe, and in all cases adequately document, the full extent of Client 4's bruises. Similarly, one might justifiably question the judgment of SRO T, and those officers who were his superiors, in failing to take the RCOs to task about these matters at the relevant time.

In the instant case, these matters do not to my mind amount to official misconduct; that is not to say that in all such circumstances the result would be the same, one could easily envisage a situation whereby an RCO who was in some way culpably involved in an incident of client injury, subsequently failing to report the same. Indeed, the evidence in relation to one incident

investigated by the Commission during the course of this Inquiry has enabled me to conclude that consideration should be given to a Misconduct Tribunal exercising jurisdiction in respect of one RCO. However, in the case of Client 4's injuries, the evidence does not enable me to be satisfied of the identity of any persons who may have assaulted Client 4 or who may have been involved in his suffering these injuries. Accordingly, one cannot import any personal element of "self-protection" or the like into a finding that the RCOs failed to adequately record and report client injuries as required by the relevant Departmental procedures.

I would hope that the Principal Officer of the Department will, in due course, have regard to all of the evidence adduced by this Inquiry, and the entire contents of this report. As noted, the evidence reveals a plethora of instances whereby Departmental procedures have not been adhered to by Departmental staff. Some such cases, as was the situation with RCO Z, were comprehensively investigated and were the subject of submissions. Others, not being of such central significance to matters then under inquiry, did not receive the same exposure. Nevertheless, that does not diminish the significance of such behaviour occurring.

To my mind, the evidence by RCO Z, that she would report such matters "nowadays", is of particular relevance. I sincerely hope that this Inquiry has served to indelibly emphasise, in the minds of all staff of the Department, the critical importance of accurate and timely reporting, recording and investigation of matters relating to client injuries and possible misconduct by staff. Putting aside legislative requirements, the Department has issued numerous procedural documents and memoranda stressing such matters; however, it is simply not enough that those procedures exist, they must be strictly observed in the day to day operations of the Centre.

Within this report I have recommended that the Centre should be closed, at the earliest possible opportunity, in order to decrease or prevent the occurrence, at the expense of severely and profoundly intellectually disabled persons, of further acts of official misconduct and other improprieties. Consequently, pending that recommendation being acted upon by the appropriate bodies, there should be no staff member of the Centre who should be in any doubt that appropriate prosecution or disciplinary action will ensue against them should they fail to adhere to the reporting and recording requirements imposed upon them.

That is not to say that the Principal Officer of the Department, should she so decide, should refrain from taking action, or making further inquiries with a view to taking action, against RCO Z or any other relevant office holder. That decision rests with the Principal Officer, not with myself, given our respective jurisdictions.

L) CONCLUSIONS

I conclude that Client 4 suffered an extensive and totally unacceptable series of injuries in the period of some four weeks prior to 2 November 1990. While the bruises he sustained may have arisen from a variety of causes, I am satisfied that at least some of them arose as a result of an assault committed upon Client 4 by a person or persons unknown.

On the evidence, I cannot say whether such person or persons were office holders at the Centre. I am satisfied that my task in attempting to identify any perpetrator was hampered by the failure of the relevant Centre staff members to accurately observe and record, and consequently investigate, the aforementioned bruises at the relevant times.

10.6 POSSIBLE GROSS NEGLECT

Client 4's medical records reveal, for the period during which he resided at the Centre, a startling history of gastrointestinal diseases. Counsel for the State of Queensland tendered in evidence a schedule (Ex 142) of medical information relating to this time. It contained the following entries, inter alia:

30 March 1987	Intermittent diarrhoea – no pathogens isolated – Flagyl given.
June 1987	Inquiry from family general practitioner concerning Giardia and complaints from school . . .
February – April 1988	Intermittent diarrhoea.
17 June 1988	Diagnosed with Shigella while at home for 5 weeks.
4 July 1988	Returned to Basil Stafford Centre.
11 July 1988	Shigella infection. Home . . . that night.
29 July 1988	Returned to Basil Stafford Centre – sent to Banksia – 8 August has had "no Shigella clearance".
8 August 1988	Home to mum.
19 August 1988	Returned to Centre (Banksia) loose bowel motion within 1/2 hour of admission.
May 1989	Diarrhoea.
June – August 1989	Some vomiting and diarrhoea.
November 1989	Very loose offensive diarrhoea.
January 1990	General practitioner thought he had Giardia.
18 January 1990	Taken by mum to gastroenterologist diagnosed Giardia.
March 1990	Colitis (Colonoscopy and biopsy) diarrhoea with blood.
March 1990	Admitted to Mater Children's Hospital (Dr Cleghorn)
16 March 1990	Colitis – at home indefinitely.
22 May 1990	Amoebic dysentery – Flagyl given for 3 months.
5 July 1990	Diarrhoea.
July – October 1990	More diarrhoea.

Blacks Medical Dictionary (CWH Harvard Ed., 36th ed.) provides the following definitions:

> COLITIS – means inflammation of the colon, the first part of the large intestine.

> DYSENTERY – also called bloody flux, is an infectious disease with a local lesion in the form of inflammation and ulceration of the lower portion of the bowels. It occurs in two main forms: bacillary dysentery and amoebic dysentery.
>
> GIARDIASIS – is a condition caused by a parasitic organism . . . which is found in the duodenum and the upper part of the small intestine. This organism is usually harmless, but is sometimes responsible for causing diarrhoea.
>
> SHIGELLA – is the name given to a group of . . . bacteria that are the cause of bacillary dysentery.

I have already, at section 10.2(B) referred to Mrs B's evidence and thoughts about this matter. Certainly, it would appear that Client 4 experienced periods of considerable difficulty with his health, while residing at the Centre.

A number of witnesses were called to give evidence about this issue.

A) DR REID – THE CENTRE'S GENERAL PRACTITIONER

Dr Annis Reid, the Centre's part-time general practitioner (see section 7.10) was called to give evidence. A report prepared by the doctor and dated 5 February 1991 was admitted (Ex 174) setting out a reasonably detailed history of Client 4's gastrointestinal illnesses. That report is an expansion of the details contained within Mr Plunkett's aforementioned schedule. The report also indicates that at times Dr Cleghorn provided specialist treatment to Client 4, and consulted with Dr Reid about Client 4's management. Additionally, Dr Reid stated:

> I suspect that he may have developed his Amoebiasis in May or November, 1989 when he was suspected of having Giardiasis. The treatment in November was adequate for Giardia but not for Amoebiasis. The condition then probably became chronic as it is wont to do and diagnosis then becomes difficult and often only possible in a very fresh faeces specimen still at body temperature. Often biopsy is the only other means of diagnosis.
>
> I don't think at any stage Client 4's condition was treated lightly but I do think our methods of investigating infectious bowel problems are inadequate at this Centre. Specimens are refrigerated at the Centre until they can be transported to Wolston Park for testing. This is far from ideal. Private pathology is a possibility but it is costly for the parents if the client is not on a pension or not covered by private health insurance.

It should be noted that Dr Reid did not commence working at the Centre until September 1989 (from her statutory declaration – Ex 111). Her evidence as to Client 4's treatment prior to that date relies upon his medical records.

Dr Reid was questioned about the management of Client 4's illnesses, and the handling of pathology specimens by the Centre (T 1933–T1934):

> Mr O'Sullivan: Now, in 1990, what plan was in place to assist Client 4 with his bowel condition?---He had regular faeces tests to determine if there was an organism, or what organism was causing it; whether it was a shigella infection or whether it was a protozoan infection . . . which causes amoebic dysentery, or if it was in fact giardia. Very few of the specimens, in fact I don't think any, I think there was only one specimen that actually showed shigella at any time.
>
> Yes?---I made comments in my report that the conditions for the collection of the faeces and getting them as quickly as possible to the pathology laboratory were inadequate. The laboratories in fact themselves were asking to refrigerate specimens. This is – I am sure this is why we didn't sometimes show certain organisms.

> Was Client 4 isolated from any other persons who may have infected him?---When there's an outbreak of diarrhoea, if there are several people with diarrhoea, we make an effort to isolate those children, and it's usually the children, from the rest of the Centre. When there's one case in a house, the child is kept home from school, and the others are allowed to continue on with their normal daily activities, but that child remains in the house. There was a practice at one stage where if someone was kept home ill, that they went to one of the houses – other houses, to be looked after. I discouraged that practice. I think that if a child is ill, they should be kept in their own house and looked after by regular staff.
>
> Well, is there any explanation by you as to why his condition of, in respect to his bowel, continued for so long?---Well, with all of these conditions, you can reach what we call a chronic or a carrier state, and the condition can just flare up from time to time, and it's when the condition flares up that it's the best time to get the specimen and send it to pathology. Now . . . they're not always evident on testing.

B) DR CLEGHORN'S EVIDENCE

Dr Geoffrey Cleghorn was also called to give evidence. He stated that he is a senior lecturer in the Department of Child Health at the University of Queensland, a paediatric gastroenterologist in private practice, and also the Director of Gastroenterology at the Mater Children's Hospital since 1985. He brought with him some excerpts from a textbook entitled *The Paediatric Gastrointestinal Disease*, which he described in evidence, at T 2055, as 'the bible of paediatric gastroenterology', which were admitted as Ex 187.

Dr Cleghorn was shown Exs 142 and 174, namely Mr Plunkett's schedule and Dr Reid's report. He stated (T 2057):

> I think the trend is, or the inference from the report is accurate. I think that, certainly from my understanding of reading this document and my recollections of my conversations with Dr Reid, is that they were very vigilant in their attempts at trying to track down things, but I understand from looking at this they do have some problems with the adequacy of the pathology specimen collection at the hospital.

Dr Cleghorn gave some general evidence about the diseases experienced by Client 4, and their causes (T 2058–2060):

> – Giardia is very common. It's very common in the community, in some day care centre facilities, in the normal community some facilities have an asymptomatic carrier rate of up to 30%.
>
> And its cause?---. . . Giardia is a parasite and it is infected . . . from intimate contact, as many of the other infections which we all talk about, and its from . . . patient to patient spread.
>
> – Shigella is a bacteria. It . . . causes one of the forms of bacterial dysentery. It is one of the more prevalent ones . . . one of the important things about shigella is that it takes a very small inolucum to cause an infection. Many sort of bacteria, or many viruses, you need a large dose of the organism to get infected. With Shigella however, it . . . can be as little as ten bacteria – can cause a significant infection.

Counsel Assisting asked Dr Cleghorn some questions about Client 4's eating habits, in the context of his gastrointestinal problems (T 2064):

Mr O'Sullivan: Client 4 . . . engages, it seems, in abnormal eating behaviour, eating, you know, perhaps grass and things like that. Would that be a source of infection for him?---I would have thought that would be a potential source of infection, yes. That particular habit is referred to as pica.

Yes?---And it is a not uncommon habit in people with Client 4's problem and the like. And I have seen a number of patients with that particular condition, and they cause themselves all sorts of mischief and cause we, as practitioners, all sorts of grief in trying to sort of overcome their mischief. But if he is eating grass and stones and other related things from the ground, that is a potential source of infection. And I think really, then if the people caring for him are aware of those, and aware of his potential problems with gastrointestinal disease, that they should be taking steps within reason to try and limit that. Now short, you know, sort of hog tying him to a bed, I suppose, that would be an impossibility because these children do become particularly inventive in their way of satisfying their pica, but you can limit it.

Later, in cross-examination, Counsel for the State of Queensland asked some further questions about the spread of gastrointestinal diseases within institutions such as the Centre (T 2075–2076):

Mr Plunkett: So, is the reason for that high likelihood of occurrence [of gastrointestinal disease], in accordance with what you have said, as a result of the intimate transference of people who are not necessarily toilet trained, such as children?---That is the inference yes.

Yes?---Because you have to take one of two reasons. Unless the particular . . . residents of these type facilities all have predilections to immunological disease which is making them more susceptible to infection, you have to look at why they are different from the normal community. And the only thing that is different about them is that they are all in close contact with their peers.

Yes, so, in addition to not being toilet trained, they also may have a propensity to ingest unhygienic things such as dirt, if they have got pica?---Yes. But . . . whilst I said pica does occur in individuals like Client 4, it is not a universal thing. They don't all have pica.

. . . What I am suggesting to you is, to completely eliminate the potentiality of these conditions arising in these circumstances, is very, very difficult?---I would agree with that statement, yes.

Yes, you could not image a more difficult setting, could you, than people with intellectual disability who are not toilet trained and who might have a propensity to ingest faecal material and dirt and so forth?---Look, I could only but agree.

. . . Well, you do not have to have the conditions of Changi Prison or the Gulag Archipelago for the outbreak of these sorts of conditions?---Oh, absolutely, and this is a world-wide phenomena.

Dr Cleghorn was also asked about the Centre's method of handling pathology specimens (T 2064–2065):

Mr O'Sullivan: You had read Dr Reid's report about her concern about the specimens. What do you say would be the best way of dealing with the specimens if you wanted to get an accurate assessment of what was wrong with Client 4?---Well, the commonest reason for a specimen not revealing any infection when it is in fact there, is that they are handled incorrectly. But specimens themselves, the infections themselves are generally readily available if that specimen is well handled . . . the fresher the better, and . . . the sooner it gets to the laboratory the better. But certainly overnight refrigeration would kill the infections, or kill the organisms in the main. There would be some that may survive, but the majority would be killed. Leaving it on a bench for a couple of days in the full sun would just make it meaningless. The mode of collection too, is also important.

Dr Cleghorn was also shown Ex 178, namely the Centre's documentary guidelines for preventing the spread of infectious diseases. Those guidelines include a section entitled "Fluid and Dietary Recommendations for Diarrhoea". Essentially, those guidelines contain the following recommendations for clients suffering from diarrhoea:

Day 1 – Fluid therapy (clear fluids encouraged)

Day 2 – Restoration of nutrient intake (gradual reintroduction of a light, bland diet)

Day 3 – Gradual re-interaction of normal diet.

The guidelines also contain recommendations that the reintroduction of food to a client's diet should be given with 24 hours 'even if diarrhoea has not settled as further starvation may delay recovery'. The Nursing Service is also to be advised if the illness persists for a period in excess of 24 hours. Counsel Assisting asked Dr Cleghorn (T 2062–2063):

> Mr O'Sullivan: Doctor, do you agree with the contents of the guidelines?---No, I don't, and I think that, I don't know the age of this particular document in use at the Centre, but the day one therapy with the fluid therapy is really something which belongs in the rubbish bin. This is not a reflection on Basil Stafford in any way. This is a more general comment . . . I don't think this is probably peculiar to Basil Stafford, this is peculiar to many areas, that the fluids that are described in this particular document really can potentially potentiate and cause significant disease in people with significant diarrhoea.
>
> So, what would you suggest for day one?---Well, day one – we talk about clear fluids. There are oral rehydration solutions available both within the Hospital systems and commercially available, which are tailor made for people who have got intestinal disease causing diarrhoea . . . Glucolyte is mentioned there and that is an acceptable one, although there are better ones now in the market. However, the use of lemonade and the other sort of wives' tale type clear fluids really do potentially cause problems. There have been three coronial inquiries in this country for deaths in gastroenteritis in the last few years. All of those have been related to the inappropriate use of things like flat lemonade and the like.

Dr Cleghorn agreed that Dr Reid's treatment of Client 4's gastrointestinal diseases was appropriate, provided that what Dr Reid had ordered or recommended was in fact carried out by the care-givers and nursing staff responsible for Client 4 (T 2071).

In this context, in response to a comment that I made about RCO training, Dr Cleghorn stated (T 2077):

> I think that . . . would be a laudable aspiration . . . that you would endeavour to get the best possible people looking after them [the intellectually disabled] with the best possible training.

C) THE EVIDENCE OF SRO U

SRO U, now a Principal Residential Officer, also gave evidence about these matters. Around 1988/1989, SRO U was an SRO working in Banksia Ward with a number of client children who had contracted the disease Shigella. SRO U gave evidence that she herself contracted Shigella, and was off work for a period of five weeks. She received treatment from her general practitioner (T 2173) who prescribed a drug for her that cleared up the disease (T 2170). At T 2174–2175 I asked her the following questions:

The Commissioner: Were the children at Banksia given drugs in relation to the Shigella?---Not to my knowledge, your Honour.

What is your view, even though you are not a medico, as to whether they should have been given drugs or not?---In my opinion?

Mmm?---My opinion, I not being a medical person, I would've thought that, given the circumstances of a number of children living in a large environment, however, in confined spaces and children being children that are very tactile, hands and tongue everywhere, that some stronger, more aggressive treatment should have been given.

Would it be fair to say that it went on far too long before proper treatment was invoked?---In my opinion?

Yes?---In my opinion, yes, your Honour.

Some more definite and more positive step should have been taken earlier. Is that what you are saying?---In my opinion, yes.

SRO U had no knowledge of any occasion when any child was kept on a fluid and toast diet for a period of up to one week.

D) CONSIDERATION OF THE ISSUES RAISED

It is necessary for me to consider whether there was any gross neglect, pertaining to the treatment of Client 4 during the period of his gastrointestinal illnesses.

While there was a significant body of evidence calling into question the medical treatment of Client 4, such as when drugs were prescribed etc, I note that Dr Cleghorn gave evidence to the effect that Dr Reid's management of Client 4's condition was appropriate, provided that the doctor's instructions were carried out by Client 4's care-givers, that is, the RCOs and the Nursing Service. I found Dr Cleghorn, who is clearly a leading expert in the field of paediatric gastroenterology, to be a most impressive and knowledgeable witness. I accept, in those circumstances, Dr Cleghorn's endorsement of Dr Reid's actions.

However, that is not to say that Mrs B's concerns about her son's welfare were unfounded or misplaced. By any measure, Client 4 experienced a significant and lengthy period of gastrointestinal disease. I have no doubt that this would have been considerably distressing for Client 4, his mother, and those members of the staff who either cared for Client 4 or attempted to treat his various problems. Certainly, on the evidence, there appeared to be a cyclic effect in action, leading to Client 4 being reinfected with various gastrointestinal diseases whenever he resided at the Centre. In making that comment, I am mindful of Dr Cleghorn's evidence as to the extraordinary difficulties that are presented, in terms of medical care and control of highly infectious diseases, by an outbreak of illnesses such as Shigella amongst severely and profoundly intellectually disabled children. One could hardly envisage a more difficult situation.

Mrs B also complained that her son had received an inadequate diet, namely a vegemite toast and water regime, for an extended period of some days during the course of one of his gastrointestinal illnesses. Clearly, this is contrary to the Department's specific guidelines for the treatment of diarrhoea. If in fact Client 4 was kept on such a diet, which is one inference open on the evidence, then such a situation could only have arisen in clear contravention of the Centre's guidelines and the instructions of the medical personnel such as Dr Reid. Even if this

situation occurred, the evidence adduced to the Inquiry has not identified the particular RCO or RCOs responsible, and accordingly, no further finding, against any individual, is possible.

E) CONCLUSIONS

As noted above, I conclude that Mrs B's concerns for her son's welfare, in relation to his repeated contraction of gastrointestinal infections, were entirely natural and well-founded in all the circumstances. However, I conclude, in terms of the Commission's jurisdiction, that there has been no gross neglect by any staff member concerning Client 4's medical condition.

I note that Dr Cleghorn, who I have already described as a leading expert in the field of paediatric gastrointestinal diseases, was critical of some of the Department's written procedures concerning dietary and fluid recommendations for the treatment of clients with diarrhoea. In his evidence, Dr Cleghorn adverted to the possible serious consequences of inappropriate treatment of gastrointestinal disease, referring as he did to three coronial inquiries in recent times. With those serious consequences in mind, I therefore recommend that the Department should review its written procedures relating to the treatment of clients with diarrhoea, in terms of updating the same and heeding the advices of Dr Cleghorn.

Similarly, Dr Cleghorn underlined the critical importance of the instructions and advices of the qualified medical personnel being noted and appropriately acted upon by the care-givers, that is, the RCOs and nursing staff. I would recommend that any revised guidelines, as mentioned above, stress the critical importance of close liaison between such care-givers and the Centre's doctor, and strict adherence to the doctor's instructions.

10.7 THE DAMAGED TEETH

The third aspect of Mrs B's complaints related to Client 4 sustaining damage to his teeth in November 1991.

A) MRS B'S CONCERNS

Mrs B first noted damage to Client 4's two front bottom teeth on 22 November 1991, after collecting him from school [see section 10.2(C)]. Shortly prior to that time, Mrs B said that she had expressed concern about whether the RCOs were satisfactorily cleaning Client 4's teeth (within her statutory declaration – Ex 140). The report book for Pandorea House, where Client 4 was residing at this time (Ex 186) contains entries by various RCOs to the effect that Mrs B had in fact telephoned to discuss "Client 4's welfare/wellbeing" during the afternoon shifts on 12, 18 and 19 November 1991.

At that time, a communication book existed for the purposes of facilitating communication between staff members of the Eight Mile Plains Special School, staff members of the Centre and Mrs B. The relevant communication book for this period, consisting of an exercise book containing handwritten entries, was admitted in evidence (Ex 145). The communication book contained an entry dated 4 November 1991 indicative of Mrs B's concerns:

> Client 4's mum is a bit worried about his teeth and has asked me to ring her if he comes to school without them being cleaned . . . Lyndel .

This entry was responded to by RCO Y in the following terms:

> Teeth – cleaning, we've had relief staff on most mornings at 7 a.m. so there obviously has been some problems or misunderstandings about what duties still have to be done. Regards RCO Y.
>
> I've sent dental form to Nursing Service . . .

Further entries about Client 4's teeth appear, on 14 November 1991:

> Dear RCO Y,
>
> Client 4 has been fine today . . .
>
> Lyndel
>
> PS Client 4 visited the school dentist this afternoon. He wants to know if Client 4 ever shows any discomfort with his front two bottom teeth. Client 4 was quite upset, so may be cranky tonight.
>
> Dear Lyndel,
>
> Client 4 good this evening enjoyed playing outside 'till tea-time.
>
> I have not noticed Client 4 in any sort of discomfort regarding his teeth, but will keep an eye on him and ask other staff what they think . . . regards RCO AA.

There appeared to be no further entries, of possible relevance, concerning Client 4's teeth.

B) THE SCHOOL DENTIST – MR HELLEN

The "school dentist" who saw Client 4 in November 1991 was Mr Con Hellen, of the School Dental Service, Department of Health. Mr Hellen was called as a witness. He undertook a search of his dental records, and as a result, was able to say that he saw Client 4 on 14 November 1991. In his statutory declaration (Ex 317) Mr Hellen stated:

> I have made a notation concerning medium severity fractures to two of Client 4's lower front teeth. Furthermore, I made a notation to the effect "it would be impossible to restore these teeth without a general anaesthetic". I am unable to estimate a time of the injury to Client 4's teeth. Client 4 is a very difficult child to handle as he would never sit still. I only performed a clean and a fluoride application. As a certain amount of co-operation is required from Client 4, I didn't think that the teeth could be restored by myself. I next saw Client 4 on the 3rd of November 1992 and I noted that these teeth had been restored.

In his evidence before the Inquiry, Mr Hellen suggested that the most likely cause of such dental fractures would be trauma, particular something in the nature of a fall or a playground incident (T 3930). At T 3931, Mr Hellen agreed that the injuries could have been caused by someone punching Client 4 in the mouth. Mr Hellen did not note any soft tissue damage within Client 4's mouth. He also stated that as a result of this fracture Client 4 'probably wouldn't have had much pain' although 'he may have felt pain' (T 3932). Additionally, Mr Hellen stated in his statutory declaration:

> This type of fracture is categorised as a class two fracture. Furthermore, a fracture involving the dentinal area would be in the vicinity of 2 to 2.5 millimetres in depth. A fracture of this

nature would, in my opinion, be noticeable to a care officer who frequently assisted Client 4 in brushing his teeth.

Counsel for the State of Queensland cross-examined Mr Hellen about this particular comment within his statutory declaration (T 3938–3940):

Mr Plunkett: Well, when you express that opinion, you do so on the basis of – without any expertise?---Yes, yes.

You are saying that just an ordinary person, you are not drawing upon your qualifications and experience as a dentist when you say that, are you?---No, no.

Alright?---I would say that anybody who was putting a toothbrush in his mouth would see that there was something wrong.

If they were looking?---Well, I mean, why would they be putting a tooth brush mouth in his mouth if they weren't looking.

Now, if he's squirming and being difficult about it, it is quite possible that you could be properly being meticulous and careful as a Residential Care Officer in cleaning his teeth and not actually seeing this incisor edge fracture?---Yes. Yes, I find that hard to believe.

Why, is it a . . .?---Because it's very noticeable.

And if Client 4 is dribbling, and if there's foam caused from the toothpaste . . .?---Yes. But initially, when you – you see, we are dealing with these children all the time and I get these kids referred to me all the time by health care officers who pick these things up.

C) THE EVIDENCE OF MR NICHOLLS

Mr Gregory Nicholls, a qualified dentist, was also called to give evidence.

In his statement (Ex 159) Mr Nicholls said:

I recall in late November 1991 I examined a patient [Client 4] . . . Client 4 was brought to my surgery by his mother for treatment to two damaged teeth. I recall that about 2–3 millimetres were broken off the incisoral edge of both of the two front, lower teeth. On that first examination date I acid etched the two damaged teeth and bonded two white caps over the damaged teeth. This was a temporary measure and further treatment was required at later dates. I recall that Client 4 was autistic and difficult to examine. From checking my records I am able to state that I first saw Client 4 on 22 November 1991.

I later treated Client 4 at St Andrews Hospital. Under general anaesthetic, I prepared Client 4's damaged teeth for permanent crowns . . .

I am unable to state what caused the damage to Client 4's teeth but from my experience I am able to say that a fairly severe blow would be required to cause that type of damage.

I recall that Client 4 did not have any noticeable facial injuries. There was a redness inside the lower lip but I believe that this would have been caused by the contact of the sharp broken edges of the damaged teeth against the inside of the lip . . .

Because the two damaged teeth were at the front of the mouth, they would have been noticeable to others at times when Client 4 did not have his lips closed together.

In evidence, Mr Nicholls elaborated upon the type of "severe blow" that could have resulted in the occurrence of such damage (T 1768):

> Mr O'Sullivan: If we moved to the breakages of the teeth that you say, what would that be consistent with, you say a fairly severe blow?---A severe blow. It can be consistent with falling down . . . consistent with hitting the side of the swimming pool, these are the general types of trauma that happen. Being hit by a cricket ball, falling off a push bike or being hit by a yo yo.
>
> If someone was assaulted by a blow say, from the fist, would it be consistent with that?---It would have to be a severe blow, as in the fist, for it to break, yes.

I questioned Mr Nicholls about whether the fractures were noticeable (T 1770):

> The Commissioner: And it was perfectly plain for anyone to see that he had broken teeth?---Definitely.
>
> You would have to be pretty unobservant not to see it, is that fair enough?---That's correct.
>
> If people had the task of cleaning his teeth as part of the care for this child, they could hardly miss it, would that be right?---If they clean his teeth properly, yes.

D) INQUIRIES BY THE CENTRE

A report by Mr Gerry Rohan, dated 10 December 1991, was admitted as Ex 173. That report stated, inter alia:

> On 26 November, SRO T advised that Mrs B was seeking financial assistance from Basil Stafford Centre for dental repair to her son Client 4's teeth. I discussed this with PRO AB, and advised that we could not assist in this way . . .
>
> PRO AB advises that Mrs B was angry that we did not agree to assist her financially . . . [Mrs B had apparently stated that she intended to sue the Centre in relation to what she regarded as a failure to provide proper care for Client 4].
>
> **Issues Arising**
>
> I believe that the following issues arise and need to be followed up:
>
> i. Reported damage to Client 4's teeth was not followed up by staff of his house nor by Nursing Service later on.
>
> ii. It seems that quite serious damage to Client 4's teeth was not noticed during teeth cleaning by staff . . .

Prior to the date of that memorandum, SRO T had forwarded a memorandum to various RCOs, requesting reports about:

- Whether they were aware of any incident or accident that could have led to the damage;
- Whether they observed any damage to Client 4's teeth while assisting him to clean the same [I note that in fact the evidence was to the effect that Client 4 was unable to clean his teeth himself, and accordingly, it is not correct for SRO T to refer to RCOs "assisting" Client 4 to clean his teeth];

- Whether they read the entry in Client 4's communication book [as referred to above], and if so, why they did not notify Nursing Service or their SRO about the entry; and
- Whether the RCOs had any conversations with Mrs B regarding Client 4's teeth.

E) RCOs Y AND AA

Two RCOs were called to give evidence about this matter, namely RCO Y and RCO AA.

RCO Y agreed that she worked a number of shifts in the period after Mr Hellen first noted the damage to Client 4's teeth, and prior to Mrs B becoming aware of the damage. RCO Y stated (T 2282) that it was 'more than likely' that she would have cleaned or attempted to clean Client 4's teeth during those shifts. RCO Y gave evidence about Client 4's propensity for teeth clenching, and how he did not co-operate when RCOs attempted to clean his teeth (T 2265). Her position, regarding the damage to Client 4's teeth, was perhaps characterised best by her evidence at T 2285:

> Mr O'Sullivan: But it is unlikely that throughout the period I have already described that you would not have had to clean his teeth on at least four or five occasions – don't you think?---No, I'd say that would be right, yes, but I don't – I can't remember. Yes, that probably sounds right.
>
> . . . it sounds right?---Well, it could be, yes.
>
> And you still maintain that you never noticed any problem with his teeth?---I don't remember anything wrong with Client 4's teeth.

RCO AA was also questioned about these matters by Counsel Assisting (T 2046):

> You did the PM shift on 14 November 1991, is that right?---Yes, that is right.
>
> What shift is that?---3 p.m. 'till 11 p.m.
>
> And you would have had to have cleaned Client 4's teeth during the course of that shift?---Yes, I would have.
>
> So, you would have had an opportunity to see, at least, his two bottom teeth?---Yes. Oh, he's – he was – used to be a bit difficult to clean his teeth. He used to keep his mouth sort of shut really hard and I used to have to sort of coax him to open his mouth, but I never noticed any broken teeth.
>
> On 14 November, when you cleaned his teeth, you say you did not notice any damage to his teeth?---No.

RCO AA acknowledged that she had read the note in the communication book (see section 10.7(A) herein). At T 2049 I asked RCO AA:

> Do you tell us, specifically, that he did not have damage to his teeth when you examined him?---I tell you specifically that I did not notice any damage to his teeth. He wasn't acting as if he had a sore mouth. He wasn't jumping, like when I cleaned his teeth; nothing.
>
> Can you state definitely that there was no damage?---I can state definitely that there was no damage on the 14th [November 1991].

Counsel Assisting asked the witness (T 2053):

> Is there any truth in the proposition that you were failing to clean his teeth?---No. I cleaned his teeth every shift I was on.
>
> Is there any truth in this proposition – that you in fact did know that he had damage to his teeth, but you neglected to follow it up?---Definitely no.

F) CONSIDERATION OF THE ISSUES RAISED

From Mr Hellen's evidence, it is clear that the damage to Client 4's two front lower teeth was apparent at the time of his examination on 14 November 1991. Both Mr Hellen and Mr Nicholls indicated that the probable cause of the damage was trauma; however, neither dentist was able to assist in a determination of whether that damage arose as a result of a deliberate or accidental event. There is no evidence that the damage to Client 4's teeth was occasioned by anything in the nature of an assault.

However, an issue remains concerning the standard of care afforded to Client 4 during the period from the date when his teeth were damaged, until when that damage was noticed by his mother, on 22 November 1991.

Whilst RCOs Y and AA provided evidence about Client 4's teeth clenching propensities, and his failure to co-operate with persons attempting to clean his teeth, the evidence of the dentists establishes that the fractures should have been obvious to any person attempting to properly clean Client 4's teeth.

Counsel Assisting, in his written submissions, stated:

> The clear inference is that RCO AA knew of the condition and failed to report it to her seniors or to Nursing Service. Appropriate action might have been taken sooner if she had been diligent in her duties.
>
> In respect to RCO Y the only appropriate conclusions are that she either knew of the damage and failed to report it or alternatively that she failed to clean Client 4's teeth and in consequence was oblivious to the fractures.
>
> It is submitted that both officers should be reported to the Principal Officer [of the Department] for disciplinary action in respect to their failures.

I accept, on the evidence, that a diligent RCO should have noticed the fractures whilst cleaning Client 4's teeth. There is a considerable degree of merit in Counsel Assisting's submissions.

However, in terms of any recommendation that disciplinary action now be taken against the two RCOs, I am mindful of the matters that I have already referred to at section 10.5(K). These events occurred some four years ago and were the subject of inquiries and consideration by SRO T and his senior officers, who at the time did not see fit to institute any disciplinary proceedings against either RCO. In those circumstances, undoubtedly RCOs Y and AA have proceeded with their employment on the basis that the Centre management had fully considered these issues and determined that they were without fault in respect of the same.

G) CONCLUSIONS

On the evidence, I am satisfied that the fractures to Client 4's two front lower teeth were sustained as a result of some unknown traumatic incident. There is no evidence to support any suggestion that Client 4 was assaulted, by a member of staff, or by any other person.

While it is not possible to particularise the exact date upon which Client 4's teeth were damaged, that damage was evident at the time of the examination by Mr Hellen, the school dentist, on 14 November 1991. RCOs Y and AA were charged with the duty of caring for Client 4 around that date. The duty included the proper cleaning of Client 4's teeth. I am satisfied that both RCOs either noticed the damage to the teeth and failed to report it, or failed in the proper performance of their duties, to the standard expected of them, namely, to properly clean Client 4's teeth: in the latter case, that is to say, if they had cleaned Client 4's teeth properly, I am satisfied that they would have become aware of the obvious damage to his teeth. In either case these two RCOs failed in the proper performance of their duties. However, I do not recommend, for the reasons expressed at sections 10.5(K) and 10.7(F) herein, that disciplinary action should now be taken against either officer.

CHAPTER 11
THE INVESTIGATION OF THE DEATH OF CLIENT 8

The fifth discrete bracket of evidence investigated by the Inquiry concerned the circumstances surrounding the death of Client 8 at the Centre on 3 April 1991. Public hearings relating to this investigation commenced on 23 February (T 2480) and concluded on 25 March 1994 (T 3085). Five witnesses were called to give evidence. In due course, written submissions concerning this matter were received from Counsel Assisting, Counsel for the unions and Counsel for the State of Queensland. Those submissions were the subject of discussion during the period of oral submissions in July.

11.1 CLIENT 8

Client 8 was born in early 1980, and was therefore 11 years of age at the time of his death in 1991. He had a severe level of intellectual disability, and was a very hyperactive child. RCO AC described Client 8 as (T 2491–2493):

> . . . Very active, hard to keep quiet . . . quite a happy, healthy little client.
>
> He wasn't verbal; he had one or two little words . . . he had quite a bit of sign language that was unique to Client 8. He also had some behavioural factors that were basically telling you how he felt . . . he was a very exuberant child who expressed his feelings very, very clearly.

A number of the persons involved with the care of Client 8 appear to have regarded him with great affection, as evidenced by some of the entries in the "Record of Progress" section of his Departmental ITEP file (No. 2) (C Ex S), including:

> 31 October 1988 – still a tornado on legs. Very active little fellow. Really enjoyed watching Play School and it was the only half hour he was still. Ate a huge tea. Went to bed at 8.30 p.m.. I love the way he gives you a kiss at night. He is so cute – but a real horror !
>
> 1 November 1988 – Awake at 4.45 a.m.. Up smacking other child in room (asleep), had to do a little subtle bluffing. Really looking forward to going to school. Was on his best behaviour and waited for the bus.– indicating each time a vehicle went by. Active but good. Ate well. Has a real sense of humour.
>
> 29 November 1988 – a good boy. Very affectionate. Enjoyed playing the "house clown" again before collapsing asleep at 7.30.

Client 8's father, in a letter dated March 1991 (Ex 247, and see below) described his son as:

> . . . extremely hyperactive, and possesses no sense of fear . . .

Client 8's ITEP files (C Ex S) indicate that he had various periods of respite admission at the Sandgate Centre (another institution providing residential facilities for the intellectually disabled) prior to his more permanent admission to the Basil Stafford Centre in October 1989. It is apparent that Client 8's family maintained a very active and caring role in Client 8's life, at all times.

At the time of his death Client 8 was residing in Poinciana House.

11.2 A TRAGIC DEATH IN POINCIANA HOUSE

Client 8 died in the kitchen at Poinciana House on the morning of 3 April 1991. Death was pronounced at approximately 11.50 a.m., following repeated resuscitation attempts by various staff members and medical personnel. A Death Certificate (see Ex 219) was duly completed by Dr Reid of the Department, certifying that the cause of Client 8's death was cardiac arrest, due to the aspiration of food, which was in turn due to epilepsy, with all of these factors being compounded by Client 8's 'mental retardation'.

On the morning in question, the staff were moving the majority of the Poinciana clients to another house or ward. Shortly prior to his death Client 8, apparently unsupervised at that immediate time, had gained access to an unlocked refrigerator in the kitchen of Poinciana house and had thereafter gorged himself with meat loaf, which caused his death.

11.3 A WELL-DOCUMENTED HISTORY OF EATING PROBLEMS

Client 8's major eating problem, namely a propensity to gorge food in the fashion that caused his death, was well-known to Centre staff, and was well-documented. Client 8's ITEP files (C Ex S) disclosed a number of entries relating to his inability to safely feed himself while unsupervised.

For example, Client 8's second ITEP file contains a document entitled "Resident Characteristics", dated 30 May 1988, which contains a notation that Client 8:

> Needs close attention while eating – will not swallow properly and therefore tends to overfill mouth.

That same file also contains a document entitled "Admission Interview". That record contains a prominent entry, written in red ink, instructing persons to 'cut food finely as can choke on it'. Underneath that entry it is noted that Client 8 'eats any food but doesn't care much for meat, problems chewing'.

Client 8's third ITEP file contains a record of a Poinciana workshop meeting dated 26 April 1990. That document records him as having a noted characteristic of '[eating] quickly'. The records of the workshop also indicate that the subject of "eating" was to be further discussed, presumably at some later time. That ITEP file also contains a report of a Poinciana module meeting held on 11 July 1990. That report includes a notation, concerning Client 8, to the following effect:

> Eating problems – have improved a lot. [an RCO] says "little bits" (of food) "chew and swallow first" before taking another bite.

Prior to the incident resulting in his death on 3 April 1991, Client 8 had been involved in other choking incidents directly attributable to his eating problems. The first such recorded incident took place on 22 May 1988, and is documented in a Summary of Admission form prepared by the Royal Children's Hospital, which appears within Client 8's medical file (C Ex T). The Summary of Admission record notes that Client 8 was brought in to the Royal Children's Hospital:

> Following a cyanotic episode at home, secondary to aspiration. He had been eating a burger when he choked and some bread got caught in his airway . . . apparently he had been deeply cyanosed at home for several minutes and became incontinent of urine and fell to the floor . . . he was admitted . . . and observed overnight without any further difficulties. The following day he was discharged.

[Note: "Cyanosis" is a bluish appearance of the skin and mucous membranes, caused by imperfect oxygenation of the blood. It indicates circulatory failure – *Bailliére's Nurses' Dictionary*, Kasner & Tindall, 20th ed.]

A similar incident occurred while Client 8 was on a day trip to Toowoomba, with Centre staff, on 19 January 1991. His medical file contains the following entries:

> [In the Nurse's Daily Notes – 19 January 1991] – On the bus trip this morning? Choked during picnic lunch, became deeply unconscious. Resuscitated by RCOs while waiting for the ambulance. Taken to Toowoomba Hospital . . .
>
> [Progress notes – 21 January 1991] – cardiac and respiratory arrest on Saturday while on outing – was eating at the time but not choking as RCO cleared airway immediately – gave CPR for five mins and he then breathed on his own . . . admitted to Toowoomba base hospital overnight.

The incident at Toowoomba was written up in the relevant Poinciana Report Book (Ex 206) by Client 8's RCOs (T 2503–2504). Those RCOs also prepared a report, addressed to the Acting Residential Services Co-ordinator, about this incident (T 2504–2506). That report was admitted as Ex 207.

On 16 January 1991 a workshop meeting had been held, attended by relevant Poinciana and managerial staff. The minutes of that meeting were admitted as Ex 205. The first topic on the workshop's agenda was 'Client 8's Behaviour/Response to Other Clients'. Therein, a number of matters were noted, including:

> e. Kitchen – requires strategy for access
>
> f. Times at highest risk
>
> • Meal preparation . . .

RCO AC gave evidence (T 2557) that there was a note, written in red and affixed to the door of the medicine chest in the Poinciana office, stating:

> Client 8 needs to be supervised whilst eating. Remind him to chew and swallow.

I am satisfied that anyone who read Client 8's medical and ITEP files, or the Poinciana report book, should have been aware of his propensity to gorge food, and the consequent need for his close supervision while eating.

11.4 A FATHER'S PLEA FOR ASSISTANCE

Shortly prior to Client 8's death, his father, Mr AD, had written directly to the Minister, Ms Warner, expressing his serious concerns about Client 8's welfare. Mr AD's letter bears the date of 4 March 1991 and was admitted as Ex 247. I have already herein referred to the strong involvement in Client 8's life that his family maintained during the period of his residence at the Centre. In that letter, Mr AD stated, inter alia:

> The reason that I am asking for your help is that Client 8 needs one-on-one supervision, all his house parents agree. He resides in Poinciana wing, and the house parents are really marvellous, but it is extremely UNDER STAFFED; at most times there are normally three to four children under their care, they have to prepare meals, bathe the children, take them to the toilet, dress them, supervise the children playing etc.

> They have to be super people. My wife and I cannot handle Client 8 at home, how on earth can one person look after four of these children on their own.
>
> Client 8 has suffered many traumatic injuries at the home – broken finger . . . severe concussion – covered in bites and scratches, which I have photographed, numerous cranial subtusions requiring stitching, comatosed through choking, and literally hundreds of eggs on head, another today, the sister rang me before.
>
> Not only is the institution understaffed, but I feel the quarters are substandard for the year of 1991.
>
> Please don't think that I am just a whinger, most staff agree but are afraid of speaking out to the administration. I would only be too happy to accompany you on a tour . . .
>
> Could you please urgently look into the staffing level of Basil Stafford for everyone's sake – the staff and the children, and let me know what can be done for children like Client 8 who urgently need one-to-one supervision before a fatal accident does occur.

At the time of Client 8's death, the Department had issued a short formal acknowledgment of Mr AD's letter (Ex 248). The Department was in the process of preparing a more detailed Ministerial response.

Shortly after Client 8's death Mr AD wrote another letter to the Minister. The Department was unable to produce that letter, or a copy of it, to the Inquiry. A reply by the Minister, to Mr AD's letters, was forwarded and dated 19 April 1991 (Ex 253).

11.5 THE ISSUES ARISING, AND THE COMMISSION'S JURISDICTION

After Client 8's death, the Department conducted some internal inquiries about the matter. Statements from relevant staff members were gathered and reports were prepared. On the day of Client 8's death, police officers from the Oxley Station attended and completed a report for forwarding to the Coroner (Ex 218). It would appear that the Coroner discussed matters with Dr Reid and determined that it was unnecessary to hold an inquest or coronial hearing into the circumstances surrounding his death. A post mortem was not performed upon his body.

The primary material gathered by the Commission in its investigation contained a number of references and details which raised points that had not been addressed by the aforementioned inquiries. For instance, one RCO inferred, through her statement, that she had been asked by persons connected with the Centre's management to change her version about the exact circumstances of Client 8's death. Another RCO telephoned the Commission indicating that there had been something in the nature of a "cover-up" by the Centre about Client 8's death (although that particular RCO had no direct knowledge capable of supporting that assertion), because Client 8's death had somehow resulted from the inflexible application of an instruction regarding the clients' access to their living surrounds. Similarly, it was asserted that at no time had Client 8 suffered from epilepsy, and that the reference to that condition as a contributing factor, to his death, was clearly inappropriate (and by implication, possibly intended to be deceptive). There were also suggestions that various staff members panicked, when confronted with the emergency situation of Client 8's distress, and were unable to apply, or assist with the application of, necessary first aid procedures. The abovementioned police report (Ex 218) contained an entry stating Client 8 'has had two previous heart attacks in January'. There was no mention of any such occurrences in Client 8's medical file, other than the abovementioned cyanotic episode at Toowoomba.

Counsel Assisting submitted to me that the material obtained by the Commission's investigation, prior to its examination of witnesses, raised three areas of concern (which Counsel Assisting in fact opened at T 2481):

i) The apparent inadequacies of staff training concerning the operation of the oxygen cylinder used in the attempted resuscitation of Client 8 (and in general, the adequacy, or otherwise, of the response by staff to Client 8's emergency);

ii) The fact that Client 8 was able to access the refrigerator in the kitchen area in Poinciana villa, given his known eating problems;

iii) Whether the supervision of Client 8, at the date of his death, was adequate in light of his care needs.

In due course, Counsel Assisting suggested that upon closer inspection of the material, and as a result of the calling of evidence as occurred during the Inquiry's hearings, a number of further issues arose, namely:

iv) Was the information recorded by Dr Reid as to the causes of Client 8's death, on the official Death Certificate (Ex 219) accurate in all respects?

v) Should a post mortem examination of Client 8's body have been carried out?

vi) The treatment of RCO AC, who was one of Client 8's primary care-givers, after the incident of the death, including considerations of:

a) Whether RCO AC was improperly approached by any staff member of the Centre to change her report or version as to the circumstances of Client 8's death; and

b) Whether RCO AC was 'harassed or intimidated' or otherwise unfairly dealt with by having to undertake a disciplinary interview concerning her alleged use of a derogatory term towards another staff member, after Client 8's death.

In his written submission, Counsel Assisting dealt with, at length, the Commission's jurisdiction to inquire into each of these issues. I am satisfied, given the nature of the material gathered by the Commission's investigation, that each of the aforementioned issues properly fell within the Commission's jurisdiction, and the terms of reference of the Inquiry. I do not intend to set out Counsel Assisting's submissions in full, as I generally accept them. I do however wish to discuss two issues (being the first and second issues set out above) which were asserted by Counsel for the State of Queensland to be outside the Commission's jurisdiction. In his written submissions, Mr Plunkett stated:

> Counsel Assisting in his opening of this bracket of evidence made reference to "the inadequacies of staff training in respect to operating the oxygen cylinder" and a so-called "open door policy" dealing with access to kitchen areas. (T 2481)
>
> Both of these issues are not directed to the issue of official misconduct of any person holding an appointment at the Centre. They are not concerned with misconduct or the criminal justice system. They do not come within the terms of ss. 21, 23, 31 and 33 of the Act. Accordingly they are out side the jurisdiction of the Commission investigation. In any event an analysis of the evidence shows that neither of these matters had a bearing on the death.

Counsel Assisting submitted that both issues raised the possibility that official misconduct may have been committed, and that investigation by the Commission was therefore warranted. In relation to the first matter, he suggested that the adequacy of staff first aid training was inextricably linked with the issue of the adequacy of the response and the abilities of the staff, regarding the crisis situation that

arose that morning. Counsel Assisting submitted that Client 8, given his disabilities, was totally dependent upon his immediate care-givers, and that his family had entrusted to the Department, and its officers, Client 8's welfare. Mr O'Sullivan also submitted, that being the case, that if the Department, through its officers, failed to maintain an adequate standard of care of Client 8 by exposing him to danger, that could constitute (on the part of the relevant officers) a breach of trust pursuant to Section 32(1)(b)(ii) of the Act, namely the trust placed in the Department (or, rather, its officers) by Client 8's family and the community in general. Whether the relevant conduct so amounted to a breach of trust would of course be dependent upon the magnitude of any breach of the required standard of care.

Mr O'Sullivan also submitted that the adequacy of staff training, and the abilities of the staff, raised questions as to whether any officers of the Department were negligent. He noted the provisions of the Criminal Code dealing with negligence-based criminal offences, namely Sections 285, 290 and 324, and cited the cases of *R v MacDonald and MacDonald* [1904] St R Qd 151 and *R v Smith and Smith* [1908] QWN 13 in support of a submission that in respect of the offence of failing to provide the necessaries of life to a person, medical attention and remedies could constitute "necessaries of life".

Alternatively, Counsel Assisting noted that such conduct, if negligence could be proven, could constitute, within the language of Section 32(1)(d) of the Act 'a disciplinary breach that provides reasonable grounds for termination of the person's services in a unit of public administration', and referred to Section 29(1) of the *Public Service Management and Employment Act 1988* , and the Code of Conduct for officers of the Queensland Public Service (Ex 29 and see section 7.13 herein).

I accept Counsel Assisting's submissions about those matters. The issues raised by the material, concerning the adequacy of staff training and the response and abilities of the staff, could to my mind, have involved official misconduct by a staff member.

Similarly, the issue of whether an "open door" policy was employed by the Department or its officers (which is inextricably linked with the fact that Client 8 obtained unsupervised access to the Poinciana kitchen refrigerator shortly prior to his death), was submitted by Counsel Assisting to be conduct that could amount to a breach of trust which also constituted negligence/carelessness or incompetence/inefficiency within the terms of Section 29(1) of the *Public Service Management and Employment Act 1988*. Again, I agree with that submission; while I have not found that the evidence is capable of supporting a recommendation that consideration be given to bringing a charge of official misconduct (or a criminal charge) against any officer as a result of the Commission's investigation, I am satisfied that this issue fell within the Commission's jurisdiction, given the state of the evidence prior to the undertaking by the Commission of public hearings.

11.6 THE SUBMISSIONS OF COUNSEL FOR THE STATE OF QUEENSLAND

I have already dealt with some submissions made by Counsel for the State of Queensland about jurisdictional issues. In addition to those submissions, Mr Plunkett again submitted that there had been a 'denial of procedural fairness'. In support of that submission, he again listed his six "pro forma" objections, previously discussed herein (see sections 6.5, 8.5, 9.4 and 10.4). Mr Plunkett also made similar submissions about notices of allegations, the outlining of issues and Counsel Assisting's opening of the evidence, to those he had raised in each of the preceding brackets of evidence [see, for example, section 10.4(A)].

The remarks that I have previously made, in the abovementioned sections, in response to Mr Plunkett's submissions, are of equal application to this bracket of evidence. I do not propose to repeat my observations, in terms of analysing each specific ground of complaint raised by Counsel for the State of

Queensland, as it suffices to say, for the reasons previously expressed at various sections throughout this report, I reject his submissions to the effect that there has been a denial of procedural fairness, by the Commission, in respect of this bracket of the evidence.

11.7 THE STAFF AT POINCIANA HOUSE

As noted, on the morning of Client 8's death, the usual routine at Poinciana house was disrupted. Some of the Poinciana clients were moving to another ward (Melaleuca 2) and a new group of clients were moving into Poinciana. This necessitated the transfer of furniture, and the clients' personal effects. A number of workmen were on hand to facilitate this task.

Normally there were two RCOs present at any one time in Poinciana, presumably due to the particular demands of caring for the client children residing there. On the morning of Client 8's death, three RCOs were rostered to work in the Poinciana area. They were RCO AC, RCO I, and RCO AE. However, RCO AE was not present at the time of these events as he was accompanying the new group of incoming Poinciana clients on activities away from the Centre. RCO AC had worked in Poinciana for some time, and was completely familiar with Client 8 and his disabilities. RCO I gave evidence that 3 April 1991 was his first day working in Poinciana house (T 2881). At the time, RCO I was working "double-up" shifts; that is, it was intended that RCO I would only work in the company of another staff member.

By reason of the situation in Poinciana that morning other staff members were also present, from time to time, including Acting Senior Residential Officer Ms AF and Acting Senior Residential Officer Ms AG.

In her statutory declaration (Ex 233) Ms AF stated:

> In 1991 I was employed at the Basil Stafford Centre [as an] Acting Senior Residential Officer. I am a Recreation Officer and hold an Associate Diploma, Community Recreation. I have not completed a Residential Care Officers' Certificate Course.

Ms AF gave evidence that her prior work experience involved employment with World Expo 1988 as a Co-ordinator of the amphitheatre venue, a five-month stint with a finance company and her employment with the Department as a Residential Program Officer, dating from August 1989 (T 2952). At T 2996 I asked Ms AF the following question:

> The Commissioner: . . . What experience did you have about anything to do with this job that you had? You have said on a number of occasions today that you had not had the experience, this was not your area of expertise or whatever. Just what experience did you have, to have this job?---In hindsight, none . . .

> Mr O'Sullivan: Could you tell us who actually appointed you as the Acting Senior?---I was approached – I don't believe I even wrote a letter for the job. I was approached. They were requiring someone immediately. SRO U, who was Senior Residential Officer, she approached me. Who appointed, I am not sure. I had three different line managers over that six month period at Basil Stafford Centre . . .

Later, Counsel Assisting asked Ms AF some further questions about her appointment to the position of Acting SRO (T 3014–3015):

> Well, I will ask you just a further thing about SRO U. She approached you about the job, the acting position?---Correct.

Had you known her before that day?---No.

Ever met her?---I had met her to nod, say hello, in the hallway.

Did she have anything to do with you getting the acting job, do you know?---She approached me. I was working, as I said, in the ALS, I had just returned from Christmas/New Year break. I said to her, "SRO U, I have never worked on Centre, I don't know the staff, I don't know the clients, I have only had one weeks experience" and that was in the unit I was attached to there . . . I said, "How did you get my name?" because I did not know SRO U.

Yes?---And she said that my name had been given to her and they needed someone up there quick smart, and something else. And it was often – well until recently, it has always been that they, if Senior Residential Officers are requiring replacement, they would select Residential Program Officers for two reasons; one, they often had an Associate Diploma, which is a degree that you need to do that job, and secondly, when we were taken off line they didn't replace us, and thirdly, Residential Care Officers, it cost the Department to replace them, so they often did not consider Residential Care Officers for the Senior Residential Officer place.

I then asked the witness (T 3016):

The Commissioner: What you are really saying in relation to this approach by SRO U, as I understand it, is that you were questioning whether you were really qualified to get the promotion, weren't you?---What I was saying is that it takes, by saying I didn't know the clients, I didn't know the staff, that I'd never worked at Basil Stafford Centre, what I'm saying there is that my experience in the ALS told me that it takes a long time to get to know the clients that you are supporting, to build up a relationship, to understand their communication, for staff to know who you are, what your attitudes are, so you can sit and discuss problems or hear what they're saying. And Basil Stafford also had lots of systems there. I didn't realise how many, because they're – they did not have them in the ALS . . . it was a very different experience . . .

And then you went on to say earlier that, as I understand it, the Department do not care to promote RCOs because it costs them. They would rather have someone like you because they would have to train another RCO. Is that what you are saying?---What I'm saying, in essence sir, is that to take me off line – this is my understanding . . . to take me off line – I don't do shift work as a Residential Program Officer, so programming services – that would mean that if I wasn't there, then people wouldn't get programs that I was involved in. But to take a Residential Care Officer off line, they would have to replace that shift, and they work on a . . . 24 hour a day support basis. RCOs work seven days a week on any shift; weekends, they get penalty rates. One, the RCO would get less money, because they'd – no, that's not right. The RCOs would, they'd have to find money from another budget. I don't understand . . . the Principal could give you the background into the economics of it all.

Did she tell you this, that it costs less to promote somebody like you who seemingly was not really fitted for the job than it would be to promote somebody who is?---In my opinion, it has been happening until the last couple of – maybe in the last 12 months that it's continued to happen that program officers take the position of Acting Senior Residential Officer, so the Residential . . .

To the disadvantage of RCOs?---Correct.

Who had the on line, hands-on experience?---And also they don't possess, a lot of them, not all of them, a lot are doing study, when they can get the time or have been granted SARAS leave [Study Assistance and Research Scheme] they haven't got the Associate Diploma . . .

. . . But I just find it curious that your name, as it were, was just given to SRO U, out of the blue. Do you find it curious?---I was surprised when my name got mentioned, especially to work at Basil Stafford Centre, because there were other Residential, at the time, if I can just share with you some background; at the time when I was working the focus had changed, our work focus had changed, and that's another story; but the people who, the program officers also came from Basil Stafford to work in the ALS, so

there were other people who could have been nominated for that position, or – why – I don't have that information, because there was one or two program officers who had previously done Acting Senior Residential Officer stints, and perhaps, I don't know why, they weren't selected or spoken to.

Ms AG was also an Acting SRO as of the morning of 3 April 1991. In her statutory declaration (Ex 242) Ms AG stated:

> . . . I am currently employed by the Department of Lands . . . I currently hold a Bachelor of Arts degree majoring in psychology and education.
>
> I have been previously employed by the Department of Family Services and Aboriginal and Islander Affairs and I have worked at the Basil Stafford Centre. I was first employed by the Department in October 1985. I was employed as a Resource Assistant in the Training and Development section at the Centre. My duties were mainly clerical support.
>
> In 1990 I was appointed Acting Staff Training Officer in the Intellectual Disability Service, Brisbane South Region. Part of my duties involved the monitoring of training of Residential Care Officers at TAFE.
>
> On about 2 April 1991, I took up the position of Acting Senior Residential Officer for a period of four days in a unit near Poinciana where Client 8 was living.

In evidence, Ms AG stated that she obtained a St Johns Ambulance first aid certificate in 'about 1987' (T 3063). She stated that she was appointed to the Acting SRO position by the Centre's Principal Residential Officer (T 3064). At T 3073–3074 I asked Ms AG some further questions about her appointment to the position of Acting SRO:

> You were acting as a Senior RCO?---Senior, yes.
>
> You had never had any experience at all as an RCO?---No.
>
> And up until that date you had never had any hands-on experience of handling clients, had you?---I had worked – no. I had worked in an activities centre, helping out with some activities in an activities centre that provided various activities for clients.
>
> At Basil Stafford?---At Basil Stafford.
>
> What is an activities centre?---It's a place where some of the clients went to, and to develop a number of skills, whether it's craft or whether it was going out into the community, whether it was learning to cook, or whatever. And I was involved in a drama group.
>
> A drama group? What about the physical care of the clients, such as toileting them and all that sort of thing? Were you ever involved in that?---No.
>
> Preparing meals for them and helping them eat, that sort of thing?---Yes, at times, and if we were sitting down having lunch, but not a great deal.
>
> Would it be fair to say that your exposure to the clients themselves was fairly minimal?---Yes.
>
> Why do you think that you were asked to act as a Senior RCO?---My impression was that at the time there was no one else to, that they could release to, to cover that period.
>
> And you were, so to speak, thrown in at the deep end?---Yes.
>
> Do you consider that to have been fair to you?---In hindsight, no.

By any account, conditions in Poinciana house that morning were far from ordinary. The moving of the clients and their possessions between houses created a considerable amount of disruption. RCO AC stated (T 2579):

> It was very chaotic in the house [Poinciana] that morning.

Ms AF stated, in response to a question of mine (T 2989):

> In hindsight, yes, there should have been more co-ordination. On the day, it was my first move, I had never organised, arranged a move prior to this. Arena, RCO AC and Client 8 [see below] coming back at the same time, the general hands being there, it was rather overwhelming. It was people going everywhere.

11.8 CLIENT 8 ATTENDS A DENTAL APPOINTMENT

On the morning of 3 April 1991, Client 8 had an appointment at the dental hospital, scheduled for 9 a.m.. Prior to attending that appointment, he was given a sedative (Largactil - described in MIMS Directory as a "major tranquilliser") at 6 a.m.. At 8.25 a.m., Client 8 was given another sedative, Valium, after which he vomited (medical file – C Ex T – Doctor's notes), possibly due to excitement. There was no evidence suggestive that the administration of these medications to Client 8 was in any way causally connected with Client 8's death. The medication was administered in order to sedate Client 8 for his dental examination that morning (T 2566). Client 8 was accompanied to his dental appointment by RCO AC and Ms Arena Karatzis, a Departmental psychologist.

11.9 THE EVENTS IN THE KITCHEN AT POINCIANA

RCO AC, Ms Karatzis and Client 8 returned to the Centre shortly after 11 a.m.. Ms Karatzis then departed, and thereafter RCOs AC and I, together with Ms AF, engaged in a discussion about luncheon arrangements for the clients. RCO AC, in her statutory declaration (Ex 203) said that she then went to Melaleuca house to make inquiries about the clients' lunch, thereafter returning to Poinciana to further talk with Ms AF. At that time RCO AC realised that she had left her handbag at Melaleuca and returned to that house to retrieve it.

In her evidence, RCO AC discussed what happened upon her return from Melaleuca house (T 2516):

> Mr O'Sullivan: And then you came back with your bag?---Mm.
>
> And what is the next thing that happened?---When I was returning, then she [Ms AF] was running out screaming to the door. She was screaming, "RCO AC come quick, one of the kids is choking, one of the kids is choking" and I said, "Which child, which child?" and she said, "Client 8", so I threw my bag across the front room floor and I ran through the connecting doors from the front room out to the patio and through into the kitchen.
>
> Yes, and what did you see there?---It was the easiest access.
>
> What did you see there?---I saw Client 8 lying on the floor. I saw RCO I bending over him. He was clearing out his mouth.

RCO I gave evidence that he had been working in Poinciana that morning. It would appear from the evidence that about 10.15 a.m. RCO I rang the Residential Duty office to report that he had been left on

his own in Poinciana house. At that time, he was required to work only "double-up" shifts. The RDO Communication Book for 3 April 1991 (Ex 229) contains an entry by an RDO in the following terms:

> At 10.15 call from RCO I, Poinciana, confusion with the move between Poinciana and Melaleuca. Ms AF had gone to Banksia. RCO AE on bus trip with three RPOs. RCO I left on his own with four clients. Ms AF notified Banksia and went straight back to Poinciana.

Mr O'Sullivan asked RCO I some questions about this matter (T 2886):

> Mr O'Sullivan: Why was it necessary for you to ring an RDO at that stage, RCO I?---Basically I was concerned over the fact that I was there on my own whereby in a relatively new situation where the clients were not that well-known to me, so therefore I had concerns about being left there.
>
> And did Ms AF, to your recollection, come back from Banksia?---She did.
>
> Well . . . had she been with you before you contacted the RDO at 10.15?---Yes.
>
> And when she left was she aware that you were going to be left by yourself with the clients?---As far as I know, yes.
>
> And did you raise any concerns with her at that point in time?---No, but then I didn't think there would be that much to concern myself, but, you know, with the swiftness of the clients, their ability to get into – basically they are a lot more dependent than the clients I was used to looking after previously, where they were a lot more independent and what not, and I just felt that my coping mechanism probably wasn't the best.

RCO I gave evidence that he later participated in a conversation with RCO AC about luncheon arrangements, which terminated with RCO AC going off 'one way' and RCO I heading off to perform another task (T 2889). He could not recall exactly what he then went to do. RCO I described the following events in his statutory declaration (Ex 228):

> With lunch in mind, I went towards the kitchen and immediately noticed the kitchen door open, which should not have been. This was the door closest to the laundry. The large framed aluminium door was also open which was not unusual, because it gave access to the yard, laundry and kitchen.
>
> Upon reaching the large sliding door, I realised the fridge was open and within another step noticed Client 8 on the floor in a semi-sitting position, head lolling back around the corner at which he was sitting. I called for Ms AF, stating Client 8's name and "EMERGENCY" in no uncertain terms. As I was calling out I also noticed no chest rises, dark puffy extremities and an amount of discolouration in the face. I also saw copious amounts of food on the floor surrounding the open fridge and around Client 8, what looked like savoury meat loaf.
>
> I went to the floor beside Client 8 and felt for a pulse in his neck (right side) and found no pulse. I noted his neck was large and hard, and his cheeks distended. Assuming the meat loaf as an obstruction, I opened his mouth, removed food from the larger cavity using two fingers and working back to the tonsils with one finger.
>
> I noted still that his throat was still hard and put him over my knee to try to dislodge the remainder of the food with a slap on the back and higher. More food came out and I cleared his mouth again. I placed him back onto the floor away from the corner, felt for a pulse again and found none. I started CPR [cardio-pulmonary resuscitation] 5:1 raising the head at the base of the neck, pinching nostrils and blowing one good breath into Client 8's mouth.
>
> All of this took a matter of seconds. Ms AF arrived, saw the state of Client 8 and appeared shocked and bewildered. I asked her harshly to get help and she went for RCO AC, who was on her way back. I then

> checked for other vital signs (pupils were fixed and dilated, no gag reflex on clearing his throat, still no pulse). I was probably on about the third lot of compressions when RCO AC arrived. I took the head, she the chest. Ms AF must have let Ms AG in at some stage, because I told Ms AG to remember 11.18 a.m. for future reference. Both Ms AG and Ms AF stood in the doorway; I threw one of them my keys, told them to make themselves useful and get oxygen, Nursing Service and an ambulance and to open the sliding door to the kitchen area. Beyond 11.18 a.m. I have no recollection of time passing.
>
> Oxygen appeared on the scene but neither Ms AF nor Ms AG knew how to turn it on. Shortly after, Nursing Service arrive and oxygen was administered by face mask. When the chest was not rising, suction was used to clear the airway more and a Guedal airway inserted to help possible breathing. The face mask was replaced. Dr Reid arrived at some stage prior to 11.30 a.m., checked vital signs and with Nursing Service, took care of CPR compressions 'till the ambulance arrived.
>
> When the ambulance arrived they put monitors on, found no signs of life and he was declared dead at 11.50 a.m..

The discolouring of Client 8's extremities, referred to by RCO I as Client 8's hands, feet and earlobes (T 2891), may indicate that Client 8 had been in distress for some period prior to being discovered by RCO I. However, I note that there was no specific medical evidence on that point.

RCO I later prepared a handwritten report about the events of the morning of 3 April 1991 (T 2905). He did not keep a copy of it. A copy was unable to be produced, from the Departmental holdings, to the Inquiry. A further typed report of RCO I dated 18 April 1991 was admitted into evidence (Ex 230). RCO I stated (T 2906–2908) that he did not prepare the typed report, rather, someone else prepared it for him and he merely signed it when it was presented to him. RCO I said that the typed report was similar to his original handwritten version, except in two respects, namely:

i) the first report contained more details, provided by RCO I, about possible solutions to inadequacies regarding staff training and first aid response; and

ii) the presence of a sentence, in the typed report, to the following effect:

> At the same time as I noticed him [Client 8] on the floor in this position, he fell back almost flat on the floor.

I asked RCO I about this second point, the inclusion of the sentence about Client 8 'falling backwards' (T 2912–2913):

> The Commissioner: Why did you say that?---I have no idea.
>
> Did you say it or did somebody say it for you?---The statement since then does not include that.
>
> I know that. In fact, the statement that you have made quite clearly and unequivocally today, indeed, just a moment ago, precludes the possibility of him falling back because he was lodged in the corner?---That's right.
>
> That is right? Why then did you sign a document which was not true in that it says: "At the same time as I noticed him on the floor in this position, he fell backwards almost flat on the floor". Why?---I'm afraid I have no idea.
>
> It is not true, is it?---No, it is not true.

RCO I could not identify the person who inserted the sentence in his typewritten report, and accordingly, one can only speculate as to why that sentence was inserted, bearing in mind that it clearly did not reflect the recollections of RCO I, who was quite clear about the matter.

RCO I claimed that the Acting SROs, Ms AF and Ms AG, were in a state of panic (T 2895). I asked RCO I some questions about this (T 2895–2896):

> The Commissioner: How did they exhibit this panic?---Basically going from foot to foot saying, "Oh my God, he's dead, he's dead. What are we going to do?". Basically, panic type words, but – going from foot to foot but not doing anything effective, and I know that different people panic in different ways, and at the same time as Ms AF was, and Ms AG, were basically not doing anything what I would consider to be constructive given such a situation, that was the way that they panicked and different people panic in different situations.
>
> And what were you saying to them?---Do you want me to say it?
>
> Yes?---Basically, I think words to the effect, "Ms AF get your fucking arse into gear. Do something constructive. Go and call the ambulance – get the oxygen", whatever.
>
> And this is while you were performing the resuscitation?---This is while I am doing compression.
> Yes?---Not of course, not while I am trying to blow air into his mouth.
>
> No. How long did you keep that up for?---How long did you keep admonishing them and calling to them?---It was not all that much because it was relatively pointless because they were not going to come out of the panic that they were in. It was basically a matter of keeping on keeping on, while I could, and just trying to get through to them; "Hey, do something constructive". And it probably would've been no more than a few minutes that I was doing that before RCO AC arrived.
>
> How long did they stay in a panicked state?---Until RCO AC turned up on the scene.
>
> And how long was that again?---It was maybe five minutes.

As was noted in his statutory declaration, RCO I recalled that neither Ms AF nor Ms AG were able to use the oxygen cylinder. It would appear that in due course one of the persons who attended the scene managed to get the oxygen mask working, although the identity of the officer who was so responsible was never conclusively established by the evidence (T 2899).

RCO AC also gave evidence about these matters. She also claimed that Ms AF and Ms AG did not know how to operate the oxygen equipment (T 2518 and T 2679). RCO AC gave evidence that she was not aware of any particular difficulty relating to the operation of the oxygen equipment.

In her Departmental report about Client 8's death (Ex 210) RCO AC wrote:

> Upon being informed by RCO I that there was no pulse present I immediately commenced to apply CPR. Presently Nursing Service arrived and oxygen and suction were applied. I continued with CPR and when Dr Ann Reid arrived she continued with CPR. This continued for a period of time with both myself and Dr Reid taking turns applying CPR.

Ms AF admitted that she did not know how to work the oxygen cylinder (T 3001). She provided a version of events to the effect that her fellow Acting SRO, Ms AG, performed some CPR work (T 3000) and that she and RCO AC were both unsuccessful in attempting to get the oxygen equipment working (T 3003). Counsel Assisting asked Ms AF (T 3003–3004):

> Mr O'Sullivan: Were you clear-headed during these events?---Reasonably.
>
> Were you calm and collected?---I made phone calls.
>
> Were you calm? Were you collected?---I felt I managed the situation and – reasonably calm.

Ms AF disagreed with RCO I's suggestion that she had panicked; the following evidence was given (T 3005):

> Mr O'Sullivan: Well, you see the gravamen of his evidence is that you lost control, you were basically panic stricken by the event, would you agree with those propositions?---At the initial moment, panic might have taken over but I certainly, then, followed directions that he gave me.
>
> About calling the ambulance?---That's correct.
>
> To contact . . . ?---Calling Nursing Service.
>
> Obtaining the oxygen?---Yes.
>
> Given your state at the time, would you accept that it is probable that RCO AC was, in fact, doing the cardiac massage and not Ms AG?---At some time –
>
> What did Nursing Service do when they got there?---They got the oxygen going. But some time during this situation, Ms AG did leave the kitchen, so it is probable that RCO AC did take over the cardiac massage or the nurse, because Ms AG did leave to make a phone call or flag down the ambulance.
>
> Alright . . . RCO AC has said that whilst she was working on the chest of Client 8, whilst RCO I was working on blowing air into his mouth, you and Ms AG basically, stood in the doorway, what do you say to that?---I had gone to make another phone call to request the ambulance.
>
> And did she throw some keys to either you or Ms AG and say, "Get the oxygen"?---No. I'd already got the oxygen by the time RCO AC was there. We left the kitchen because it was very overcrowded.
>
> Yes?---There was nothing more people could do.

Ms AG also gave evidence about the events that occurred in the Poinciana kitchen. She stated that she undertook some of the CPR work (T 3068). She said she was "collected and calm" (T 3068). She conceded that she did not know how to operate the oxygen equipment, and accordingly, she changed places with RCO AC, with RCO AC going to the oxygen equipment and Ms AG assisting RCO I with CPR work (T 3068–3069).

Shortly after Client 8 was discovered in the Poinciana kitchen, and as a result of the telephone call placed to the Centre's Nursing Service, Nurses M and AH arrived at the house. Both nurses prepared reports about Client 8's death, dated 9 and 11 April 1991 respectively (Exs 244 and 255). Both nurses noted that they arrived on the scene at approximately 11.23 a.m., and immediately became involved in the resuscitation attempts, using suction equipment in an attempt to clear Client 8's airway, and inserting a device known as a Guedal airway. Nurse AH stated in her report:

> At no time during the whole incident was there any visible or audible response from Client 8.
>
> Dr Reid arrived on the scene at approximately 11.25 a.m. . . .

In her own report, dated 19 April 1991 (Ex 216), Dr Reid put her time of arrival at approximately 11.26 a.m.. Dr Reid reported:

> Client 8 was lying on the floor in the kitchen unconscious, pale and cyanosed. Suction was underway and there was an airway in place. External cardiac massage was continuing and oxygen was being administered via a mask and air viva.
>
> I assessed Client 8. His pupils were dilated and fixed and did not respond to light. There was no heart beat. In my opinion, Client 8 was dead at this time. Staff requested we continue the resuscitation until

> the ambulance arrived at 11.46 a.m.. An electro cardiogram showed no cardiac activity and resuscitation was ceased at 11.50 a.m..
>
> . . . at no time while being attended by the Nursing Sisters and by me did Client 8 show any response to the resuscitation procedures.
>
> In the light of Client 8's history of two similar episodes and also his recent investigations and visits to a neurologist, I had no hesitation in issuing a Death Certificate. The cause of death was Cardiac Arrest due to food inhalation and Epilepsy.

After resuscitation attempts were ceased at 11.50 a.m., Client 8's body was removed to a bedroom. His family were notified.

11.10 THE ADEQUACY OF THE RESPONSE BY STAFF

During the course of evidence about these various events, I remarked (T 2652–2653):

> . . . So far as I am concerned there does not appear to be any evidence of gross negligence or the like in relation to the way the staff of the Centre dealt with this situation in its handling, after the situation was brought to the attention somehow or another of RCO I, other than the apparent inability of staff to administer oxygen because of their ignorance of how to do it. Now, it seems to me that the evidence so far reveals that RCO I and RCO AC and the Nursing Service were there doing their level best under difficult circumstances to revive this child, and there is no evidence that they were lacking in will to do it, there is no evidence that they were lacking in skill to do it other than that oxygen situation, and that may be because it was an old-fashioned cylinder or something, but there is some explanation to be done there, I think. Dr Reid indicated that when she arrived the oxygen was being administered. By that time the Nursing staff had arrived and remedied the situation that had obtained before that time.
>
> The staff were insisting, pleading, as it were, to continue the resuscitation efforts even though at that stage Dr Reid was of a fairly firm view that Client 8 was dead; and I think that is very commendable that they wanted to keep trying, and it was commendable of Dr Reid and the others to keep trying. Sometimes, as we know, even though it appears that the patient is dead, there has been an almost miraculous recovery.
>
> . . . they wanted this to happen; it did not, but that was not for the want of trying. I think that was all very commendable.
>
> The only problem I have with that particular part of the series of events is the inability, so it would seem, of the staff, or a couple of members of the staff anyway, to make the oxygen cylinder work.

Leaving aside the issue of the operation of the first aid oxygen equipment, I am satisfied that the staff members who responded to Client 8's emergency acted promptly and diligently. In particular, the first person on the scene, RCO I, immediately followed all appropriate first aid procedures, in terms of commencing resuscitation attempts and directing other staff, or at least alerting them, as to how they could assist him, and of the need to notify the necessary medical personnel. He acted calmly and promptly; after hearing all of the evidence produced during this investigation I can only remark that there was no more that RCO I could have done, in his attempts to revive Client 8.

In his written submission, Counsel Assisting drew my attention to a conflict in the evidence, which was apparent at the time of the hearings; namely, the discrepancy between the versions of the RCOs, and the evidence of Ms AF and Ms AG, as to who in fact performed CPR work on Client 8, and who attempted to operate the oxygen cylinder. It is necessary to consider this conflict in the evidence, in terms of

attempting to resolve the same, due to the relevance of the evidence about the operation of the oxygen cylinder to the issues of the adequacy of the staff response and the adequacy of their first aid training.

RCOs I and AC gave evidence to the effect that neither Ms AF nor Ms AG knew how to operate the oxygen tank, and that the only CPR performed, prior to the arrival of the medical personnel, was that undertaken by themselves, the RCOs. In comparison, both Ms AF and Ms AG, while admitting that they did not know how to operate the oxygen cylinder, claimed that Ms AG had performed some CPR. Additionally, Ms AF gave evidence to the effect that RCO AC also could not operate the oxygen equipment.

There was a considerable body of evidence concerning the nature of the oxygen equipment, and the method of its operation. Counsel for the State of Queensland drew my attention to the evidence of Dr Reid, RCO AC and Ms AF about these matters; and submitted:

> It [the oxygen equipment] is not a highly complex piece of equipment. The oxygen cylinder is operated by means of a tap which turns the oxygen on or off with a device to show when it is operating . . . no great training is required to know how to operate the oxygen cylinder.

During Mr Plunkett's cross-examination, RCO I gave the following evidence (T 2930–2931):

> Mr Plunkett: . . . could I suggest to you that there is no great difficulty or training required to use the oxygen cylinder; we are not talking about operating a nuclear reactor, we are just talking about, to use Dr Reid's expression, "you just have to turn the tap on", would you agree with that?---That's correct.
>
> Well, what training is it that is glaringly inadequate if that is the case?---The glaring inadequacy probably goes hand in hand with the capacity of the senior staff members to, basically, not to panic, and because of that panic situation, which, as I have said before, a panic situation doesn't happen universally across everybody. Different people react in different ways to a panic situation, and in their case the fact that they were not cohesive enough to understand to go and get the – cohesive is probably the wrong word but . . .
>
> Yes?---Just basically the fact that they did not go to get the oxygen in the first place because of their panic, but then when the oxygen was on the scene, it is not a prerequisite of their job to be able to use the oxygen and yet, I am sorry, to my way of thinking, everybody that is involved in any remote way with the clients could have the likelihood of coming across such a situation, so therefore should be versed, somewhat, in the use of at least how to turn the tap on on the top of an oxygen cylinder, which they did not know.
>
> Well, you do not have to acquire much knowledge and training in turning a tap on, would you agree with that proposition?---That's right.

I am satisfied that there is an ample body of evidence capable of corroborating the evidence of RCOs I and AC about the identity of the officers who performed CPR, and who attempted to operate the oxygen cylinders.

Nurse AH, in her report (Ex 244), stated:

> On arrival at approximately 11.23 a.m. Client 8 was lying between the outer and inner doorways of the kitchen . . . RCO I was giving Client 8 oxygen via mask and RCO AC was performing chest compression . . .
>
> Nurses AH and M inserted an oral airway and with the two RCOs named continued CPR . . .
>
> Dr Reid arrived on the scene at approximately 11.25 a.m. and examined Client 8 frequently for a pulse or unassisted respirations, she took over chest compressions and alternated with Nurse M.

Nurse M, in her report (Ex 245), provided a similar description of the events that greeted her upon her arrival at Poinciana. Additionally, she stated:

> On Nursing Service arrival two seniors (who were moving clients re area transfer) were helping by doing messages etc.

In her evidence, Dr Reid stated, when asked what she observed upon her arrival (T 2594):

> It is very much as in my report, that Client 8 was lying on the floor in the kitchen. Nurse AH and RCO I were working on Client 8 giving him CPR and administering, using an air viva.

Counsel Assisting submitted, in relation to the conflict in the evidence, that the versions of RCOs I and AC should be preferred to the evidence of Ms AF and Ms AG, on the basis of the apparent credibility of the RCOs, and their ability to recall the relevant events, and the support for their evidence contained within the aforementioned observations of the medical staff. Additionally, Counsel Assisting referred to some other aspects of the evidence. It was noted that Ms AF conceded that there was a possibility that her evidence, about the respective actions of RCO AC and Ms AG with respect to CPR and the oxygen cylinder, was incorrect. At T 3002–3003 the following exchange occurred:

> Mr O'Sullivan: You see, we have heard evidence in this Inquiry from RCO I and from RCO AC and they both say that they were working doing the CPR and that Ms AG did not do it. Would you be in a position to disagree with their evidence on that point?---I'm sure I recall Ms AG doing it, this cardiac. I am sure.
>
> So, your recollection is so clear . . .?---No, it's not so clear, it's that I'm sure Ms AG was . . .
>
> The Commissioner: When you are searching your memory and you are saying "Oh I am sure this was the position", really knowing, not being able to properly recall at all?---I can't give 100% that Ms AG was doing cardiac.
>
> So when you say you are sure, what you really mean, may I suggest, is that you think that was what was happening?---I think Ms AG was doing it.
>
> Okay. Would that be – if I put it to you that RCO AC actually was doing the cardiac arrest and it was Ms AG who assisted you to try and operate the oxygen equipment, what would you say to that?---There's always that possibility, but . . .
>
> Is it the position that you and Ms AG unsuccessfully attempted to get the oxygen going? Is that the truth of it?---I was unsuccessful in getting the oxygen equipment working, and up until this date I would say that RCO AC was unsuccessful in getting the oxygen equipment working.
>
> And, as I understand it, you would concede that it is possible that it was Ms AG who was . . .?---It is possible, but my recollection is that Ms AG and RCO I were already in the kitchen and RCO AC came in and was standing there . . .

The evidence of Ms AG before the Inquiry left open the probability that her recollection of the relevant sequence of events was less than reliable (T 3069):

> The Commissioner: You make it sound, I must say Ms AG, as though what was occurring there was very orderly, everyone was cool, calm and collected, and it was all going very smoothly, as if there were no problems other than the fact that you could not get the oxygen cylinder to work. Was it really like that?---I'm trying to give – it probably wasn't, but, in my recollection, you know, I'm just – I can only recall what I could remember and I don't remember quite a bit. A lot of things could have been happening, but what I'm giving is what I can remember.

That is really the situation, isn't it, that things were happening very quickly?---Yes.

It was a crisis situation?---Yes

This young client was apparently dead, wasn't he?---Well, he was blue and we couldn't get a response, yes.

And that was the first time, was it, that you had been involved in any incident like this?---Yes.

So it was not all serene calmness, was it?---No.

And is that really the state of affairs? That is to say, because of the situation that obtained, you cannot remember things in perfect detail?---Yes.

You have said that you had forgotten quite a lot?---Mm.

Is that right?---Yes.

The evidence did not establish the identity of the staff member who was eventually responsible for making the oxygen cylinder work. Certainly, the evidence indicates that the oxygen cylinder was operating at the time of the arrival of Nursing Service, that is, at 11.23 a.m..

On the evidence, I am satisfied that the only CPR work performed on Client 8 was undertaken by RCOs I and AC, prior to the arrival of the qualified medical personnel. Be that as it may, leaving aside the conceded inability of Ms AF and Ms AG to operate the oxygen equipment, there is no evidence to suggest that there was any negligence on the part of those officers in their response to the emergency situation presented by Client 8's distress. As noted, RCO I promptly applied appropriate first aid procedures, and there appears to have been no unreasonable delay in enlisting the assistance of qualified medical personnel, with Nursing Service, the Centre doctor and the Ambulance Brigade all arriving promptly at Poinciana. RCOs I and AC carried out appropriate resuscitation attempts, and given the evidence about the physical layout of the kitchen it would appear that there was insufficient room for a third person to simultaneously assist them with resuscitation work. It would appear that the necessary CPR could be, and was in fact, adequately carried out by two persons only.

Returning to the question of the operation of the oxygen equipment, Counsel Assisting submitted that the conceded inability of Ms AF and Ms AG to operate the oxygen cylinder had to be considered in terms of whether that inability stemmed from those witnesses' own particular capacities in response to the situation which confronted them, or rather, from some systemic deficiency in the training provided by the Department to its officers in relation to first aid procedures generally.

11.11 FIRST AID TRAINING

As noted, both Ms AF and Ms AG conceded that they did not know how to operate the oxygen equipment that was present in Poinciana house. Counsel Assisting asked Ms AF about the oxygen equipment, and her training in respect of the use of the same (T 3001):

Mr O'Sullivan: You got the oxygen and you say you didn't know how to work it?---That's correct.

In hindsight now, do you know how it worked?---No.

Do you remember whether or not there was a tap to turn the oxygen on?---I think there was a black and a red tap, one there and one there. I looked at the machine, had no idea which one to turn on or whatever. No idea.

> Was there, in your mind, clearly two taps that you could've moved to . . . ?---I think that's correct. I just – looking at it, here was this piece of equipment, child on the ground, holy hell, how does it work, someone else in the room know how to work this.
>
> You had never been trained to use such a piece of equipment?---When I first joined the service I, and along with two or three other, or however many other people were on the induction course, we went down, it was at Banksia. They brought it out. They showed us, and that was how much we were shown, not training.
>
> But you were shown how to turn it on – is that right or wrong?---Back then, yes. Never tested on that piece of equipment.

Ms AG was also asked about her training, and gave evidence that she had undertaken a St John's Ambulance First Aid training course in or about 1987, but had not undertaken any refresher course after that date (T 3063).

On all of the evidence, I am satisfied that the train of events surrounding the operation of the oxygen cylinder did not have any causal role in relation to Client 8's death. At no time, from the time that Client 8's state of extreme distress was first observed by RCO I, up until the cessation of resuscitation attempts at 11.50 a.m., did Client 8 exhibit any signs of response to the strenuous and repeated administration of resuscitation techniques. In his written submission, Counsel for the unions noted:

> As appears from the evidence of RCO AC . . . Client 8 suffered an almost identical type of reaction whilst in the personal care of RCO AC, and others, at Toowoomba some months before the incident in question. In that case, notwithstanding that Client 8 was in the presence of a caring and attentive Residential Care Officer and was being physically observed by that staff member, and was not actually being fed any food, he managed to get hold of some food and cause himself to choke and suffer respiratory and cardiac arrest. As was conceded by RCO AC, who was present at both incidents, the difference between the Toowoomba incident and the incident to which he subsequently succumbed, was a matter of timing and the nature of the substance being consumed. In the Toowoomba incident, he was physically observed ingesting the food and, although he suffered an almost instantaneous respiratory and cardiac arrest, the matter was able to be retrieved by the immediate application of appropriate first aid and resuscitation techniques. In the incident which occurred at the villa, that instant attention was not available, because it may have been as much as 30 seconds or one minute before he was actually discovered in that state.
>
> Further, it appears that the difference between an almost intact hamburger on the one hand, and the crumbling nature of the meat loaf, which lodged in the bronchii was such that in the villa incident, the choking material was not able to be properly physically cleared from his airways.
>
> Accordingly, it does not appear that, despite the best efforts of the staff concerned, the nature of the material lodged in his airways was such that the resuscitation techniques adopted may not have been able to be successful, because the airways were not physically able to be cleared by the external methods being used.
>
> In these circumstances, on the balance of probabilities, it would appear that there was no realistic possibility that Client 8 was able to be resuscitated once he had ingested the food that he had taken, presumably in a very quick time. As a result, it appears that as soon as he had ingested the food, the matter might well have been beyond the recovery which was possible in the Toowoomba incident. Accordingly, any delay in the detection and treatment of Client 8 as was occasioned, for example, by the confusion about the operation of the oxygen equipment does not appear to have contributed, in any realistic way, to the happening of the death.

No party submitted that any delay which arose as a consequence of the inability of the Acting SROs to operate the oxygen equipment was circumstantially related to the cause of Client 8's death. Given the

entirety of evidence about these events, I accept Mr Herbert's aforementioned submissions, to the extent that I am satisfied that the conceded inability of Ms AF and Ms AG to operate the oxygen cylinder did not directly or circumstantially contribute to the fact of Client 8's death.

It is, however, a matter of concern that senior officers of the Department were unable to operate what appeared to be, from the evidence, a fairly simple piece of first aid equipment. Ms AF's first aid training, at least in respect of the operation of the oxygen cylinder, appears to have been quite rudimentary. Similarly, Ms AG, while having undertaken a first aid course, did not possess the knowledge to operate the oxygen equipment in an emergency situation. Counsel Assisting noted in his written submissions:

> In these circumstances, it is difficult to discern whether the inability to operate the oxygen cylinder, as demonstrated by Ms AF and Ms AG, was as a result of their own individual incapacities in the crisis situation, or as a result of their lack of training. It is somewhat axiomatic to suggest that if both individuals had been given fuller and continuing training they may have had the confidence and knowledge to react more appropriately in an emergency situation, by remaining calm and undertaking appropriate and useful first aid procedures. Alternatively, it cannot be excluded that their personal reactions to the situation were such as to negate the usefulness of any adequate first aid instruction that either may have received.

Human nature being as it is, there is a considerable amount of merit in those observations of Counsel Assisting. Counsel for the State of Queensland stressed the point that the particular equipment in question was not complex in nature, and submitted that 'the Department had trained them [the staff] properly and provided them with proper equipment'. In the course of his oral submissions, Counsel for the State of Queensland drew my attention to Ex 27, that is, a volume of training material provided to Centre staff, noting that such material contained a document, dated December 1992, setting out, in quite explicit terms, instructions about the purpose and use of the oxygen equipment. Mr Plunkett connected the preparation of that material with the aftermath of the Department's examination of Client 8's tragic death (T 5625). I also note from Mr Rohan's report upon Client 8's death (Ex 246) that arrangements were made, at the time, for all Residential Care staff to be given an update in resuscitation procedures including the use of oxygen equipment. Mr Rohan also noted:

> We are also through Nursing Service providing training for other staff such as resource staff and Senior Residential officers.

I accept that the Department has taken some steps to improve the first aid training and knowledge of its staff. The Department deserves credit for doing this; it cannot be over-emphasised that it is critically important that all persons working at the Centre must have the capacity to respond promptly and effectively to emergency first aid situations. As Counsel Assisting observed in his written submission:

> It is submitted that any institution entrusted with the welfare of persons with profound or severe intellectual disabilities and accompanying physical disabilities, such as the Centre, is an environment in which one might reasonably expect to encounter crises of this nature during its normal operations. In those circumstances, it follows that all officers having day to day involvement with the clients, or perhaps all staff employed at the Centre in any capacity whatsoever, should possess relevant first aid qualifications and abilities in order to deal with any emergency situation which could foreseeably arise, such as the incident in question here.

In this case, I note that RCOs I and AC were able to promptly and appropriately administer first aid procedures; any confusion or inefficiency appears to have been limited to the Acting SROs in attendance. I am satisfied that their inadequate training in the administration of oxygen in emergency situations contributed to their inability to respond in an appropriate way. Counsel for the unions submitted:

> It does appear as if there was a lack of training accorded to the staff and that this contributed to a significant amount of confusion on the part of some of them. For that reason, it should be determined that the level of training in relation to the oxygen equipment was inadequate, particularly for staff who were not permanently assigned to hands-on care duties.

Counsel Assisting, in his submissions, suggested that the Department should be urged to review its first aid training regime, as currently provided, in order to ensure that all officers working with the intellectually disabled are aware of, and could effectively undertake, basic first aid procedures which might be reasonably necessary in the event of a situation such as Client 8's emergency.

In light of all of the evidence provided to the Inquiry, it is crystal clear that all members of the Centre staff, whether they be RCOs, managerial officers, or officers involved with residential programs or activities, could be placed in an emergency situation requiring the immediate application of first aid techniques. As was noted in Section 7.1, persons with profound intellectual disabilities often:

> . . . have severe physical deformities as well as neurological damage and cannot get around on their own. There is a very high mortality rate during childhood. (Robinson and Robinson).

Given their intellectual and physical disabilities, the Centre's clients are more susceptible, in comparison to other persons, to accidents and misadventures which may place them in life threatening situations. Those situations might foreseeably occur at any time, and at any location where intellectually disabled clients are present. Given what, to my mind, is the reasonably foreseeable likelihood of such situations occurring from time to time, it follows that a breach of duty or negligence on the part of a staff member, when faced with such a situation, could conceivably expose that officer to an official misconduct investigation.

In all of those circumstances, I recommend that the Department review its present first aid training procedures, with a view to ensuring that *all* officers on site, whether working directly with the intellectually disabled or not, including those holding managerial positions, receive instruction in the application of appropriate first aid techniques, bearing in mind the disabilities of the clients residing at the Centre, and the daily routines of the clients' lives. As part of this review, the Department should ensure that all officers working with the intellectually disabled receive continuing first aid training, on a regular basis, including refresher courses, in order to safeguard against those officers losing skills which they may previously have possessed as a result of earlier first aid training, whether provided by the Department or otherwise.

11.12 ACCESS TO THE KITCHEN

Client 8 died as a direct result of being able to gain access the kitchen at Poinciana, and thereby the refrigerator, at a time when he was unsupervised.

In her statutory declaration (Ex 203) RCO AC said:

> At the time of this incident with Client 8 I blamed Ms AF for what had happened to Client 8, as she was the one who had enforced the new open door policy, and I believed that this policy had contributed to Client 8's death.

In his written submissions, Counsel for the State of Queensland referred to the concept of any "open door policy" as being a fallacy, submitting 'this became a great red herring for the Commission investigation into this death'. Irrespective of the question of whether any official or unofficial "open door policy" existed at the date of Client 8's death, it is an inescapable fact that Client 8's death occurred

as a direct consequence of the fact that he was able to obtain access to the kitchen. It was therefore necessary for the Commission to thoroughly investigate these matters, and to consider whether any party was culpable, in terms of the Commission's jurisdiction, in the sense of performing any act or omission relevant to Client 8's death. It was necessary to ascertain whether there was any evidence to justify the aforementioned opinion of RCO AC. I note that Counsel for the State of Queensland appeared to recognise the necessity for inquiry into these matters, by submitting that the relevant issue could perhaps be more correctly defined as "the open door problem".

The evidence referred to in section 11.3 clearly indicates that all staff associated with Poinciana house were aware of Client 8's history of eating problems. I exclude Acting SRO Ms AG from this category; at the relevant time Ms AG was employed in another unit and had not had any particular personal experience with Client 8 and therefore, to my mind, could not reasonably be expected to be aware of his particular eating problem. RCO AC gave the following evidence (T 2494):

> Mr O'Sullivan: Now, did other staff at Poinciana know of his difficulty?---Yes. All the regular staff were aware of it fully, and all staff who came in on relief were told to observe Client 8 with his eating and assist him with the chewing and swallowing program.
>
> Now, the staff that knew about his eating problems – did Ms AG know about that?---I'm not sure if she did.
>
> Ms AF?---Ms AF was aware of it.
>
> How do you know that?---Because we told her.
>
> When did you tell her?---We made her aware of it when she first came into the house. I think it was around December 1990 that she came in as an Acting Senior.
>
> How did you make her aware of it, do you remember?---Well, I made her aware of it because she questioned my behaviour one day in relation to closing the kitchen door, having it locked. I explained that we had to keep the kitchen door locked whilst we could be in because Client 8 needed to be constantly supervised in relation to the fridge and food, as long, as well as electrical appliances and such. So she asked me to further explain, and I did. We had a workshop in January that dealt with those issues.

I have already referred to the January workshop, which was attended by Ms AF, at section 11.3. RCO AC's evidence is corroborated by RCO I, who gave the following evidence (T 2887–2888):

> Mr O'Sullivan: Were you aware on this morning that Client 8 had had a previous incident where he had apparently choked on food?---No, none at all.
>
> Were you aware that he had a particular difficulty in coping with food?---I was told something very quickly at the changeover that morning, and also by RCO AC herself, to the effect that Client 8 is to be watched around food; yes, and that Client 8 also needs his food cut up for him, basically little tid bits of information that help get past things like meal times and things like that reasonably successfully.
>
> Was that information given to you before you found him on the floor of the kitchen?---Yes.
>
> The Commissioner: What I am trying to ascertain, you see, is what you were told on the change over about Client 8; whether you were to watch him, or whatever, and then later, what RCO AC may have told you about Client 8 and any problem that he may have had with food?---Fine. Basically, at changeover I would've been told . . . it was a lot more general in what I would've been told then, in the respect that certain doors were to remain closed, the fact that, basically speaking in general terms, as to, you know, watch such and such a client, or – and in this case it would've been Client 8's name that was mentioned, because he was a particular live wire within the confines of the ward, and then later on it would've been discussed between RCO AC and myself as to the fact that Client 8 did need his food cut

> up for him. The fact that he needed . . . to be watched with respect to food, that he didn't like, you could cut up the food for him, but in putting say, a plate full of food in front of him, he would then, as was his wont, seemingly, to gorge that food. Whereas if you stood with him and basically supervised the eating of it, basically either a spoon or fork full at a time, then that was safer way to go.

Ms AF was interviewed by police officers attached to the Criminal Justice Commission on 23 June 1993. The next day she forwarded a letter to one of those officers, which in due course became Ex 235 before the Inquiry. That letter stated, inter alia:

> Since my interview on Wednesday, 23 June 1993, I have thought further about some of the questions which I was asked. I feel I failed to answer some adequately and now wish to add the following:
>
> LOCKED DOORS
>
> I failed to mention that it is the Department of Family Services' policy for all doors to be accessible at all times.
>
> To lock a door requires written authorisation from the Program Services Co-ordinator.
>
> I am unaware that any such authorisation existed at that time in Poinciana.
>
> I was aware doors were being locked in Client 8's house but I was attempting through verbal discussions for doors to remain open. There was strong resistance from some staff working in Poinciana for doors to be left open.

In her evidence before me, Ms AF stated that she may have been incorrect in describing this intention as an 'actual policy', although she did state it was, 'the common thrust from the organisation' (T 2953–2954). Evidence was also given by RCO AC about this matter (T 2583–2584):

> Mr Plunkett: You see, it is not really possible, is it, to reach a view about the closing or opening of doors, because it depends on the nature of the clients in the villa?---That is correct.
>
> And it might be good for some clients to have open access to the kitchen, but other clients within the same villa it might not be good for them?---That is right, they could be at risk.
>
> Yes, and the composition of the clients in the villa is changeable?---They can make that very difficult, and I believe that it would be up to the staff on duty with the groups of clients to decide as to whether the kitchen door should be open at that time.
>
> I have described this as an issue that is a debate between staff members, about what is the right and the wrong thing, and proceeding with good faith on both sides?---That is right.
>
> But it is true, is it not, that there never has been a document, or a directive from management referring to an open door policy?---No, I never heard of it.
>
> Yes, and you've never seen any memorandum, or directive circulated?---I've never seen any term like that, no.
>
> You've never heard Mr Ross, Mr Rohan or SRO T or anyone in authority over you, saying there exists a policy called open door policy?---Open door policy, no.
>
> And the phrase only came from one person mentioned to you on 4 April, so it would be quite wrong for anyone to leave today after hearing your evidence believing that the service had issued some directive known as an open door policy which was a contributing factor to the death of Client 8?---I have never been informed by any senior staff that there was an open door policy. However, many staff mentioned

afterwards that they had heard her, Ms AF, talk to people in relation to this open door policy after the death.

Well, you have said . . . ?---And that is why I refer to it in my document.

Yes, yes, but you have only said one person?---That is the person who told me.

Of open door policy?---That's correct.

You never heard anyone else use that expression?---No, I've heard people say that they have heard of it after the death, but no one seemed to know where they actually heard it, but they did not hear it from management.

The former Centre Manager, Mr Gerry Rohan, said the following in this statutory declaration (Ex 346):

In relation to the issue of doors being locked in Poinciana ward, I say that there was no such policy as an "open door policy". I believe this was a term used by the staff at the time to describe changes that the SRO was bringing into the area. The Acting SRO, Ms AF, had been attempting to apply the principle of least restrictive environment to the area where Client 8 was living. When Ms AF came into that situation she found that locks were applied to basically all areas that could be locked. My understanding was that there had been a meeting with the staff in the area at which Ms AF had pointed out that many areas were locked, and sought assistance as to what could be done. I recall that in particular the kitchen door was an area of concern. I understand that there had been expressed to Ms AF an account of an incident where a child, upon arriving home from school, had scooped water from a toilet bowl when in need of a drink, because of lack of access to the kitchen tap.

I understand that the step was taken to remove the lock from the kitchen door. That meant that Client 8, given his propensities with food, would have needed to be watched. In my view the SRO was taking proper steps to implement the principle of least restrictive environment.

A further practice put in place at this time by Centre management was to refer requests for locks to be placed on doors, to the Centre Management for consideration, in an attempt to ensure that such requests were in fact necessary. This would not have prevented urgent action to install a lock where the situation demanded it.

Dr Reid was also examined about access to the kitchen (T 2620-2622):

Mr O'Sullivan: . . . did you have any part to play in mapping out, sort of a program for Client 8?---Do you mean behavioural programs or . . .

I am particularly concerned about his eating concerns?---Not directly, no.

The open door policy, did you have anything to do with that? Do you understand what I mean by an open door policy?---I know what you mean by open door policy. I personally do not agree with it in cases where you have children who are likely to raid a refrigerator or whatever, or who have difficulties with food.

Well, Client 8, did he fall in that category?---I would consider all of the children of that house, not necessarily from the point of view of them choking, but just from that, kitchens are dangerous areas for kids.

With Client 8 it would seem, on the material that is before this hearing, that he was at risk in the kitchen if he was able to get to food?---Yes I would say he was, yes. But I don't have anything to do with setting that sort of policy. I can make statements to say that I don't agree with this.

Yes?---But when the policy is that these areas will be open.

The Commissioner: Have you made statements to the effect that you disagree with it?---I've spoken to seniors at various times when this has been a problem, you know, when we've had – well, in the case of burns and other things like this, that it is unwise for them to have ready access to this particular area.

Mr O'Sullivan: After the 19 January 1991 incident in Toowoomba with Client 8, did you have any role to play in respect to the open door policy that was invoked at Poinciana?

Counsel for the State of Queensland then objected to the use of the phrase "open door policy", leading to a rephrasing of the question by Counsel Assisting:

Mr O'Sullivan: The fact is that Client 8 was able to gain access to the kitchen on the day that he died. That is clear?---Yes.

The Commissioner: Doctor, you have mentioned that you know what the open door policy is, what do you understand it to be?---This is where the clients in the house have access to all areas of the house.

Whose policy do you understand that to be?---I understand that to be a Departmental policy.

And how have you come to that understanding?---In that at various times when we've asked that some barrier be used to prevent access to an area like the kitchen, that this is not – it hasn't been received favourably.

By whom?---By the management of the Centre.

In particular, who?---Well, I understand it was, you know, from the Centre Manager or the Residential Services Co-ordinator, I think they are called now.

Have you spoken to either of those persons about this?---I've spoken to various people at different times about this.

Could you list some of them for us?---I've spoken with seniors in the different areas at times.

What have the seniors told you, have they told you that it is their policy or Departmental policy or a policy of the Centre, or . . .?---I understand that it was a policy of the Centre that this not occur.

A policy of the Centre, but you said earlier Departmental policy – you understand that to be the case, do you?---Well, I understand it to be part of the philosophy of the Department that this be so.

The philosophy . . . ?---It's not always practical to have a situation like this.

The philosophy, as I understand it, is to make living conditions as much like an ordinary home as possible, which seems to me to be quite laudable, and this is a discussion I had yesterday with Mr Plunkett, quite unreal if it is inflexible. Would you agree with that?---Yes.

And circumstances alter cases. That is what you are saying, isn't it?---Yes.

And where there are children or other clients who would be in an unsafe situation if they went into the kitchen, then that policy, if there be a policy of open doors, should not prevail. Is that your view?---That's my view.

There is an obvious tension between the views or philosophies concerning the care that was to be afforded to Client 8 and the other children with severe and profound intellectual disabilities then residing in Poinciana; on the one hand, there were the aims inherent within the principles of "social role valorisation" and "least restrictive alternative" (see section 7.4) and on the other hand, the duty imposed upon staff to ensure the physical safety of the clients, as far as they are able, particularly in

circumstances where those clients cannot, by reason of their age or disabilities, fully appreciate the danger that certain situations may present for them.

RCO AC gave evidence that Ms AF had asked for the doors in Poinciana house to be left open, both on the morning of Client 8's death (T 2508–2509), and on a number of other occasions since the January workshop, including the day preceding Client 8's death (T 2574). RCO I gave evidence that, on the morning of Client 8's death, he discussed the closure of the office door with Ms AF, who apparently indicated an understanding that the office door in Poinciana should necessarily remain closed (T 2901–2902).

Naturally, Ms AF was also asked about these matters. She admitted that she discussed with RCO AC whether the doors in the kitchen should be closed or open (T 2977) I asked Ms AF the following questions (T 2977–2978):

> Is the fact that you and RCO AC argued about whether the doors in the kitchen should be closed or open?---Argued or a discussion take place?
>
> Alright, perhaps argue is too strong a term, but discussed the question?---Yes, we would have.
>
> She wanted the doors to be kept closed, and you wanted them to be kept open; that is right, isn't it?---I suggested – I talked about doors being open, yes.
>
> You wanted them to be open, didn't you, because that was your training, that was your experience in the outside service, things should be as close to normal as possible, that is right, isn't it?---And that applied at Basil Stafford Centre as well.
>
> Right, you would like them to be open, but she said, "No, look, that's not appropriate. It's silly, it's not commonsense", or words to this effect?---Sure.
>
> They should be closed?---Sure.

Similarly, Ms AF was examined about her awareness, or otherwise, of Client 8's eating difficulties (T 2965–2974):

> Mr O'Sullivan: . . . did you understand that he had a difficulty with gorging food?---No, I do not recall that.
>
> Did you understand that he required the food to be cut very finely for him so that he would be then supervised in eating the food?---No, sir. I was not around when Client 8 had his meal times. That was done prior and after my day of work.
>
> Yes, but you do not have to operate in a vacuum, you take on board things that are said to you by the staff about the conduct of the clients?---Sir, their main focus was his behaviour. When it came to eating . . . I recall that he would upturn a table, he would grab at other people's food, spill their drinks, that he was disruptive at the dinner table. That is what I recall with regards to his eating.
>
> Well, I am just simply asking you did you, before his death, learn that he had choked on food in Toowoomba?---I don't recall that sir, no.
>
> Does that mean that you deny knowing about the incident?---I don't recall knowing about that incident. I may have been told about it, but I did not digest it as something to take on board as such. The main focus with Client 8, was his behaviour problem.
>
> Don't you have a role though, in developing programs for a client such as Client 8 – is that true or not?---At the time sir, that is part of the duty statement of a senior, but may I add that prior to this I had not been shown the duty statement of a senior residential officer.

The witness was then shown Ex 205, the minutes of the Poinciana workshop of 16 January 1991. Her attention was drawn to the entry entitled 'Kitchen requires strategy for access':

> Mr O'Sullivan: "Kitchen requires strategy for access" . . . was there a practice where Client 8 was denied access to the kitchen?---Client 8 and the other children residing at Poinciana – well – did not have access to the kitchen.
>
> Why, if we can just focus on Client 8 for a moment, why did Client 8 not have access to the kitchen?---The kitchen in Poinciana module was very – it was not a module that was easy for staff to observe the kitchen when at play, when at – when watching TV, if they had to leave to answer a phone. If the kitchen was open, then they could not safely leave the kitchen open because they couldn't observe the children. If they were in the office they couldn't see into the kitchen.
>
> What was the danger in the kitchen for Client 8?---I don't know the specific answer to that, sir.
>
> Well, did you understand as a result, at least of the workshop, that there was a danger for him in being in the kitchen unsupervised?---I do not recall the dangers of the kitchen specific to Client 8.
>
> . . . and from your statement so far it is clear, you are saying you did not appreciate that he could get to the fridge, gorge food and perhaps choke, is that what you are saying?---That's correct.
>
> The Commissioner: You were saying, as I understand it, that it was not his eating habits that concerned you, that was not what you were talking about . . . was that correct?---It wasn't his . . .
>
> His eating habits that you were concerned with, or that RCOs talked to you about, it was his behaviour generally?---That's correct.
>
> His disruptive behaviour?---That's correct.

I then referred Ms AF to her record of interview, as conducted with Detectives Furlong and Smart of the Criminal Justice Commission on 23 June 1993 (Ex 234). I drew the witness' attention to the following questions and answers:

> Detective Inspector Furlong: Can I just go on, can I go back before. You've said earlier that you weren't aware – I'll correct that, you didn't actually say that. You probably intimated that you weren't aware that he had a gorging problem, however, you went further to say that you were aware that he had it. Could you just clarify that? Like on that particular day, let's cast our minds back to this particular day. Were you aware that Client 8 had a problem with eating food? That he used to gorge himself and that it was very dangerous to himself, because, were you aware of that?
>
> Ms AF: I didn't know it was dangerous to himself.
>
> Detective Inspector Furlong: But you were aware that he used to gorge, is that right?
>
> Ms AF: Stuff food in his face?
>
> Detective Inspector Furlong: Yes.
>
> Ms AF: The few times I saw him eating, he did it.
>
> Detective Inspector Furlong: So you were aware of it, is that right? But you're saying, you're aware of it, is that right?
>
> Ms AF: I suppose you would have to say that I saw him do it. Whether it sunk in or not is a different thing.

> Detective Inspector Furlong: Okay. So, however, what you are saying is you weren't aware the result of doing that could've been hazardous to his health?
>
> Ms AF: No.

I then asked the witness some further questions:

> The Commissioner: You see, I want to suggest to you, you tell me if I'm wrong about this, but it seems to me that you were aware that Client 8 had a problem about stuffing food into his face. What do you say about that?---I say sir, that the main focus was that his behaviour came before stuffing food in his face.
>
> But surely Ms AF, stuffing food in one's own face is a behavioural problem?---Sir, then a referral I would've made to the specialist team to get occupational therapy involvement would have also been, I would have also expected that it had been picked up by Nursing Service. If I missed it, then there were other avenues for it to be picked up by.
>
> But I'm suggesting you did not miss it. What do you say about that?---I disagree with you sir.
>
> And you are trying to tell me and make me believe that you did, for some reason or another – what do you say about that?---Sir, his eating was not a major focus. That – his behaviour was a major focus; that's the area that I was trying to get involvement in.

As of the date of Client 8's death, Ms AF had been acting in the SRO position for some months. She noted that she had not been shown a duty statement for the SRO position. Nevertheless, the evidence suggests, conclusively to my mind, that it is inherent in that position that the SRO should have a significant involvement in the welfare of the clients in their units. That is certainly now recognised in the current SRO duty statement (see section 7.9). Ms AF herself acknowledged that an SRO had a role in developing client programs (T 2965). Counsel Assisting, in his written submission, drew my attention to the evidence of SRO AI, a witness who had worked as an SRO for a number of years, and who impressed me as a thoughtful and articulate officer. In his statutory declaration (Ex 360) SRO AI said:

> Whilst working as an SRO I was responsible for . . . 36 clients. In respect of those clients, I felt that their lifestyle and life development was basically in my hands.

As noted above, Ms AF admitted that she was unaware of Client 8's prior cyanotic episode at Toowoomba in January 1991, which occurred while she was acting in the position of SRO. She admitted that she not read Client 8's ITEP file (T 2986); presumably she also did not read the report book entry, or the report prepared by the RCOs, about the Toowoomba episode.

Ms AF did not dogmatically advocate any completely "unrestricted access" regime for Poinciana; rather, I accept that she was endeavouring to explain to the relevant staff, such as RCO AC, that there were "two sides to the story". That is, although it may be necessary for some areas to be restricted one should have regard to the Department's goals and philosophies, and not adopt a blanket approach of restriction.

However, I am satisfied that there was an admitted, and marked, difference between the views of Ms AF and RCO AC about the issue. I can now only speculate, in light of Ms AF's evidence, what her position would have been had she been more fully aware of the contents of Client 8's medical and ITEP files. Ms AF's admitted lack of hands-on experience with the intellectually disabled (see section 11.7 regarding her appointment to the SRO position) is not irrelevant in this context. While I found her evidence about her ignorance of the possible consequences of Client 8's eating propensities to be unconvincing, I am satisfied that there was no conduct on the part of Ms AF, concerning these events,

that constituted any act of official misconduct. In reaching that conclusion, I am mindful of the fact that her views reflected those held by her superiors, and were based on her experiences and training.

Given the fact that all relevant officers were, or should have been, on notice as to Client 8's eating difficulties, and the dangers that the Poinciana kitchen presented for him, it was necessary for the Inquiry to investigate whether it was possible to establish the identity of the officer who in fact left the kitchen door open, thereby allowing Client 8 access to the refrigerator, on the morning of 3 April 1991. All Counsel appearing before me submitted that there was insufficient evidence, bearing in mind the required standard of proof, to establish the identity of the person who had left the door open.

In her record of interview with Commission investigators, RCO AC alleged that RCO I informed her that he had been ordered, by Ms AF, to leave the kitchen door open on the morning of Client 8's death. In the transcript of her interview with Commission investigators (C Ex R) RCO AC stated:

> . . . and I took one look at him [Client 8] and he did appear to be . . . having no life in him at that time, and all that I said to RCO I was, "How did he get in here?" as I was getting down because RCO I said there was no pulse and he said, "She ordered the door opened" and I said, "Who's she?" and he said, "Ms AF", he was angry too . . .

Ms AF specifically denied giving any such instruction to RCO I. RCO I denied receiving such an instruction from Ms AF, and further denied having told RCO AC that he in fact did receive such a direction (T 2913–2914).

No person admitted to having left the door open. Given the evidence of RCO I, I am unable to be satisfied that the kitchen door was left open other than as a result of inadvertence, rather than because of some deliberate instruction by Ms AF. There was some evidence, eventually inconclusive in nature, as to the possibility of the door being unlocked and left open by one of the staff members then in possession of the necessary key. RCO I stated that he was unsure if Ms AF had her own set of keys (T 2903). Ms AF in turn stated that she did not possess a set of keys 'for the internal doors' (T 2963). RCO AC stated that one of the sets of keys could have been kept in the house, with another set remaining with RCO I (T 2856–2857). That evidence leaves open the question whether another staff member, or perhaps even one of the workers acting as a removalist on that day, accessed a set of keys and in turn left the kitchen door unlocked. Ms AF gave evidence that there could have been items in the kitchen that were required to be moved, as part of the transfer of the Poinciana clients and their possessions (T 3036).

Indeed, the situation can perhaps best be summarised by the evidence of Ms AF (T 2964):

> Mr O'Sullivan: Could you have been responsible for leaving the door open?---Any one of us could have been responsible, sir.
>
> So you do not exclude yourself as being one of the candidates for leaving the door open. Is that the position?---That's correct.

In his written submissions, Mr Herbert stated:

> Contributing factors to this inadvertence may have been the excessive workload placed on RCO I and Ms AF, by the circumstances of the time, and the lack of direct, hands-on care experience by Ms AF, due to her occupational background. In neither case does this reflect on their personal performance, but rather the nature of the circumstances with which they were confronted, largely beyond their control.

On the evidence, I am satisfied that the door to the kitchen in Poinciana was inadvertently left open, by some person unknown, enabling Client 8 to enter the kitchen, and in turn to access the refrigerator on

the morning of his death. Had Client 8 been under the direct observation of a staff member at that time, it is unlikely that his tragic death would have ensued, as one might reasonably have expected any such staff member to intervene to preserve Client 8's safety. In those circumstances, it was necessary for the Commission to investigate the third issue referred to as arising for its consideration, by Counsel Assisting; namely, the supervision of Client 8, on the morning of his death, in light of his care needs. Prior to considering that issue, I would wish to briefly return to my consideration of Ms AF's stated practice relating to the opening of the doors in Poinciana. To my mind, there is considerable merit in the views expressed by Dr Reid, which, in my opinion, reflect a thoughtful and practical approach to the welfare of the clients. Counsel Assisting submitted to me:

> . . . that commonsense requires that there not be unlimited access by intellectually disabled clients who have behavioural disorders or problems such as Client 8's eating difficulty (or even physical disabilities), to areas that may, on any reasonable perception, present a danger (possibly of a fatal nature) to those clients. The kitchen at Poinciana was one such area. Whilst evidence has been heard about the philosophies of "normalisation" and "least restrictive" alternative or environment, in relation to the lives of intellectually disabled clients vis a vis institutions, it is submitted that such philosophies must be tempered by a commonsense application so that clients who possess known disorders are not unnecessarily, or negligently exposed to danger.

I accept that submission. As I have already noted in section 1.14, the entirety of the evidence before this Inquiry emphasises that one cannot apply strict or inflexible rules or principles to the care of the intellectually disabled. The individual clients residing at the Centre have many varied and complex disabilities and consequent needs; indeed, this bracket of evidence relating to the tragic death of Client 8 emphasises the absolute and critical importance, for the welfare of the intellectually disabled clients, of the Department employing competent, trained staff who have the appropriate background, qualifications and capacities to understand the individual needs of their many clients, to work towards the resolution of a client's problems (where possible), and to ensure that a client's life is as safe and rewarding as possible.

11.13 THE SUPERVISION OF CLIENT 8 IN LIGHT OF HIS CARE NEEDS

It is necessary for me to briefly touch upon the issue of Client 8's supervision on the morning of his death. Had Client 8 been under the direct supervision of a staff member at the time that he entered the Poinciana kitchen and gained access to the refrigerator therein, these tragic events probably would not have occurred. Additionally, as Counsel Assisting noted in his written submissions, the Department was on notice that Client 8 may have been an epileptic, and the Minister was in receipt of a letter from Client 8's father calling for one-to-one supervision for his son.

All of the evidence indicates that the resources and the facilities available at the Centre precluded the provision of one-to-one supervision to clients in all but what might be termed extraordinary circumstances; for instance, the Inquiry heard evidence about Client 1 receiving one-to-one RCO care during the period of her pregnancy, and Client 8, and no doubt other clients, received one-to-one supervision while attending medical and dental appointments away from the Centre. Mr Rohan discussed this point in a memorandum to Mr Ross dated 21 March 1991 (Ex 250), containing briefing notes in response to Mr AD's letter to the Minister. Mr Rohan stated, inter alia:

> [Mr AD] is saying that all the staff agree that Client 8 needs one-to-one staffing. I totally reject that this would be in Client 8's best interests, even though it would make lives easier for Poinciana staff in the short-term. Client 8 would become extremely dependent on this level of support, and would find it very difficult ever to learn how to function in a group or to achieve maximum independence.

> . . . it has been demonstrated very clearly that consistent management can bring about positive changes in Client 8's behaviour, and that he is able to exercise some control over his impulses in such circumstances. This was demonstrated last year when Client 8 learned to exercise control over his behaviour to the point at which his education program was able to be moved from a Centre-based one last year to a School-based one this year. This result was obtained through consistent management co-ordinated by a teacher working with Client 8 as a member of a group. Client 8 demonstrates a great deal of potential to develop as an individual, to become a great deal more independent than he would ever have the chance to do if he was on one-to-one staffing as it is suggested he needs.
>
> On the other hand, there is no doubt that additional staffing assistance is required for the tasks mentioned above. With present staffing levels, additional assistance usually results directly in overtime.
>
> Client 8 certainly is difficult to manage within a group. This is well-recognised, and staff of Poinciana have been given extra assistance because of this.
>
> Client 8 needs a great deal of consistent management in order to be able to develop his considerable potential for independence. Client 8's present staff would seem to prefer the easier road of one-to-one staffing for Client 8. There is considerable work to be done with staff in this regard.
>
> As a part of the establishment of a new module group for Client 8, he will have some new staff and I believe that this is called for anyway. I point out that these new staff will be resulting from staff changes rather than an increase in staff which would greatly assist us in this and other modules where clients have needs for higher levels of support than we are able to provide.
>
> There is no question but that we will need to provide extra staff support for the new module, although this will be directed towards helping Client 8, and other clients as well, to become less dependent on staff than would be the case with one-to-one staff. Whilst this additional support will result in overtime, it will be urgently needed in order that this group does become established as quickly as possible.

This memorandum was prepared by Mr Rohan approximately two weeks prior to Client 8's death. It is fair to observe that Mr Rohan's comments reflect an obvious awareness and concern about the financial and personnel resources available at the Centre.

Simply put, the Centre did not have the resources to enable one-to-one supervision to be consistently provided to either Client 8 or any other client. As noted by Mr Rohan, in any event, the provision of such supervision, outside extraordinary situations as mentioned above, would appear to be contrary to the Department's goals and philosophies regarding the provision of services to the intellectually disabled (see Chapter 1).

I turn now to the level of supervision afforded to Client 8 at the time of his entering the Poinciana kitchen on 3 April 1991. At that time, RCOs I and AC and Ms AF were all within the immediate vicinity of the house. I am satisfied that Client 8 was unsupervised at the time that he gained access to the refrigerator; however, on the evidence it would appear that this period, during which Client 8 was left unsupervised, was quite brief, probably no more than a few minutes at most. Counsel for the unions noted, in his written submission:

> Those who were not specifically watching him, were apparently entitled to believe that the villa kitchen had been secured in the manner that all parties agreed it should have been. The position might be otherwise if it was established that the staff knew, or should have known, that the kitchen was not locked at that time.

I am satisfied that the kitchen door was inadvertently left open that morning. All staff present in Poinciana had a duty to continually monitor the house and ensure that dangerous or potentially life threatening situations were not presented for the clients. I am also mindful of what was taking place

that morning at Poinciana. A move was underway, various workmen were present moving in and out of the house, one of the RCOs (RCO I) was performing his first day of work in Poinciana, and Client 8 had had his normal daily routine disrupted by his attendance at the dental appointment. As noted herein, the circumstances then obtaining at Poinciana were quite confused, almost to the point of chaos.

In all of those circumstances, I cannot suggest that there was any misconduct, or other grounds for taking disciplinary action, on the part of any staff officer by virtue of the fact that Client 8 went unsupervised for a brief period that morning. Although that lack of supervision resulted in the most tragic consequences, I am mindful of the fact that there were a number of clients present that morning, and in those circumstances, staffing levels were not sufficient for every single client to be kept under direct observation at all times.

Given the great advantage afforded by hindsight, it would appear that the events surrounding the moving of the various clients between Melaleuca and Poinciana houses could have been better planned or organised. As noted, the situation at Poinciana house was described by the witnesses as confused and chaotic. I have already referred to RCO I's evidence about his call for assistance to the Residential Duty office, in light of the fact that he was unable to cope, by himself, with the demands that the clients in Poinciana were placing upon him. I also note that RCO AE, who was rostered to the area, was away on a bus trip, with three Residential Program Officers, and the incoming Poinciana clients. In retrospect, it would have been preferable had the Poinciana clients also been removed from their environment, and Client 8 had not had to attend his dental appointment (thereby tying up the resources of one RCO, and a Centre psychologist, with one client) on that date. Alternatively, it may also have been of assistance had further care providers, such as RCOs, been present at Poinciana throughout the morning.

RCO AC gave some insight into these matters, during her cross-examination by Counsel for the State of Queensland (T 2573):

> Mr Plunkett: Yes, so you would have to make sure the clients, because of their curiosity, do not get under their [the workmen] feet or in the way of heavy furniture?---Really, I believe the clients should not have been there at all. I believe they should have been taken out somewhere for the day, or something.
>
> Did – well, you must have been aware that the move was going to take place that day?---Yes, we were informed about it.
>
> Did you express any view to anyone that, "Really, we shouldn't have the clients here while we are doing this"?---I expressed it to Ms AF the day before the move, that I was concerned about tomorrow, all this excitement, and was also concerned about the group Client 8 was going to live with, and she told me, virtually to mind my own business. She said, "It's not your problem now RCO AC. You're not in here after tomorrow so forget it".

As noted in section 11.7, Ms AF conceded that in hindsight there could have been more co-ordination about the move, which was the first such exercise she had organised.

Given that the Centre, understandably, did not have a bottomless pit of resources to deploy at Poinciana that morning, Ms AF's admitted lack of experience for her position, and the planning of events such as the house moves, I cannot suggest that Ms AF's actions were sufficiently misconceived or improper as to warrant censure. Rather, the observations contained herein are made, by way of an examination of all the circumstances surrounding this tragedy, in the hope that regard might be paid to the same by the relevant Departmental staff, in order to prevent any future occurrences of a similar nature.

11.14 THE DEATH CERTIFICATE

On 3 April 1991, Dr Reid completed a Death Certificate. The evidence reveals that Dr Reid certified that the disease or condition directly leading to Client 8's death was cardiac arrest, due to, or as a consequence of the aspiration of food, due to, or as a consequence of, epilepsy. Dr Reid also certified that 'mental retardation' contributed to Client 8's death, but was not related to the disease or condition causing it (Ex 219).

Prior to the undertaking of the Commission's public investigative hearings, the evidence obtained by the Commission staff gave rise to some disquiet, in that it suggested that Client 8 may not have suffered from epilepsy, or ever exhibited any symptoms of being epileptic. In those circumstances, suspicion attached to the abovementioned reference to Client 8's epilepsy on the Death Certificate, and it was necessary to examine the evidentiary basis for the inclusion of that condition as a contributing factor to his death.

RCO AC, whom I found to be a most impressive witness (and a most impressive, intelligent and conscientious person), was quite familiar with Client 8 and his particular characteristics. At times during her evidence, she became visibly distressed at having to recall the events relating to Client 8's death; it was clear that she regarded Client 8 with great affection. At T 2557, RCO AC gave evidence that she was experienced in dealing with clients who were epileptics, and stated, 'I deal with epileptics on a daily basis'. She also stated that she had not noticed any symptoms or epileptic reactions in respect of Client 8, and that to her knowledge he was not taking medication that was generally given to epileptics (T 2558). RCO AC also gave evidence (T 2713) about an entry which appeared in an RCO Communication Book, stating 'Client 8 is not an epileptic'.

Dr Reid gave evidence that she had diagnosed Client 8 as being an epileptic. She described this diagnosis as 'provisional' (T 2604). Dr Reid referred Client 8 for examination by Dr Burke, a neurologist of the Royal Children's Hospital.

Dr Reid was asked about a number of entries in Client 8's medical file, suggestive of the possibility that Client 8 may have been an epileptic. These matters provided the basis for the doctor's diagnosis, which she stressed was of a provisional nature. In those circumstances, I accept that there was a genuine belief on the part of Dr Reid, and a factual basis for that belief, to the effect that Client 8 may have been suffering from epilepsy in the months preceding his death.

However, I do not consider that there was any probative evidence placed before me to demonstrate that epilepsy was a contributing factor to Client 8's death. Dr Reid was asked about these matters by Counsel Assisting (T 2607–2608):

> Mr O'Sullivan: Well Doctor . . . you said before that it was your provisional diagnosis that he had epilepsy?---Yes.
>
> And did it ever become more solid than that?---No. Client 8 at this stage was continuing to have these, what I call absences or petit mal seizures, which are very brief, and unless people are aware of them they can miss them.
>
> Okay?---They literally last two or three seconds. It can . . .
>
> Do you think in those circumstances where you formed the opinion that he provisionally had epilepsy that it was appropriate to put down, as a factor in his death, epilepsy?---Probably not, but I still believe that he had epilepsy.

And why do you agree – well, why do you say probably not?---Well, in the light of this hearing and the questions I am being asked, it would appear that it was probably unwise of me to have written that.

It would seem fairly clear from your evidence to date that really the surest cause of death was in fact the aspiration of food?---Yes.

I also asked Dr Reid some questions about these matters (T 2611–2613):

The Commissioner: Do you know RCO AC?---Yes, I do.

We have heard some evidence from her, and she will be called back again, and she has told us that she had quite a lot to do with Client 8, but she had not noticed any absences or petit mal or anything of that nature that would indicate to her that there was epilepsy present. We know that she is not a medical practitioner, and not trained medically, but she has told us also that she has had quite a lot to do with people with epilepsy in her job as an RCO. Does that have any effect on your . . . ?---No, because RCO AC is only one of about four RCOs that would be looking after Client 8, and I don't know who the RCO was that came on that particular day.

Did an RCO actually say that he or she had noticed that Client 8 had absences or petit mal?---There were observations from a lot of people at that time that this happened with Client 8. There was the observation from his teacher. I believe one of the RCOs had also observed it, but I can't tell you at this time who it was. I don't make any entry of who the RCOs are that accompany a client to see me for a medical appointment.

But say . . . ?---And also I . . .

I'm sorry?---I observed him a couple of times in the surgery with the flickering eye lids and the eye rolling.

Just pausing there again, it is the case, isn't it, that no one had ever observed a grand mal?---That's true.

The most that anyone had observed, including yourself, was an absence?---Yes.

Now, harking back to the propositions that I postulated, why would the presence of epilepsy, as it manifested itself, have anything to do with the aspiration of food?---If this coincided at the time that Client 8 put the food into his mouth and there is sometimes an involuntary gasp, not always but sometimes, or if he had the food in his mouth and he had the absence that could have contributed to it.

But it may be that he did not have any such episode at all?---It is possible.

Well, it is no more likely that he had it than it is likely that he did not have it, is it?---Probably not.

I beg your pardon?---No.

No. It may be that he just stuffed his mouth full of food and his throat got full of food and he could not breathe?---Yes, as I said . . .

Forgetting about epilepsy altogether?---As I said before, the epilepsy probably should not have been put in that, the third section of that part of the Death Certificate.

Right. It may or may not have been due to epilepsy, that is right, isn't it?---That's right.

That is to say the inhalation of the food?---That's correct.

The evidence referred to at section 11.3, concerning Client 8's gorging propensities, demonstrates that he could very quickly, and rather easily, find himself in difficulties caused by the rapid ingestion of

food. His two previous cyanotic episodes took place in the presence of his family, and experienced RCOs. Problems arose in a matter of seconds.

In all of those circumstances, I am not satisfied that epilepsy had any real role, as a contributing factor, in Client 8's death. However, I accept Dr Reid's evidence as to the factual basis of her diagnosis of epilepsy, with that diagnosis being expressed, at all times, as being only of a provisional nature. I am satisfied that the inclusion of epilepsy as a contributing factor on Client 8's Death Certificate, while perhaps inappropriate in that it was not supported by the evidence, was not made with any intent to deceive or conceal any of the facts relevant to Client 8's death.

11.15 THE DECISION NOT TO UNDERTAKE A POST MORTEM EXAMINATION

No post mortem examination of Client 8's body was ever carried out. Under the Queensland *Coroner's Act 1958* there was no legal requirement dictating that a post mortem examination should have been carried out, given the circumstances of Client 8's death. Dr Reid gave evidence that there would have been a post mortem, had she not been prepared to issue a Death Certificate (T 2614). Counsel Assisting asked Dr Reid about the issue of the Death Certificate (T 2615):

> Mr O'Sullivan: Why is it that you had no hesitation in issuing this Death Certificate?---Because I was present on the Centre at the time. There had been a history: once when Client 8 was at home that he had had a similar episode, and also that he had had an episode a couple of months beforehand when he had choked on some food on an outing in Toowoomba, and I think my main reason was, I was thinking of the parents. It is very distressing for families to have to go through a post mortem. I didn't feel there were any suspicious circumstances as regards Client 8's death. It was an accidental death.

A Coronial Inquest into the circumstances of Client 8's death was not held. Pursuant to Section 7(1) of the *Coroner's Act* the Coroner is required to inquire into the cause and circumstances of the person's death, in certain circumstances. Those circumstances include a sudden death where the cause is unknown, death in suspicious circumstances, and death where no certificate of a medical practitioner has been given as to the cause of death. In some circumstances involving sudden death, the Coroner may decide not to hold an Inquest if he is of the opinion that it is unnecessary to do so.

At T 2645 Dr Reid stated:

> . . . I spoke with the Coroner the next morning and advised him about the Death Certificate. This was done as a result of conversation with Dr Busch at Wolston Park hospital, who was concerned because Client 8's body was taken to the mortuary at Wolston Park that afternoon.

Counsel Assisting also took up this point (T 2662–2663):

> Mr O'Sullivan: Well, do you remember who the Coroner was?---No, I don't.
>
> Did you speak to a Magistrate in Brisbane, do you recall?---Yes, it would've been in Brisbane. I really can't remember, and I must admit I didn't make a notation in the file.
>
> A Graham Hillmer – H I L L M E R?---Sounds familiar, but this is three years ago.
>
> That is alright. How was it that you came to speak to him on the telephone?---Dr Busch as medical officer at Wolston Park spoke with me. First of all, there had been concern expressed by Dr Woods who is the superintendent of the Wolston Park hospital to Dr Busch who contacted me. It was with regard to

> Client 8's body being taken to Wolston Park and concern that – about, you know, whether there was going to be a post mortem or not. I spoke with Dr Busch and he advised me to contact the Coroner. He – I think he felt that possibly I should have referred Client 8 for a post mortem.
>
> So he – ?---I think he was of the opinion that because it was a case of sudden accidental death that it should have been a post mortem.
>
> Who held that view?---Dr Busch.
>
> Yes?---And so I rang and he advised me to ring the Coroner. So I rang the Coroner and I spoke with him. I gave him all the details about the death and what I had put on the Death Certificate, and he agreed that – he said that it was fine, that we could go ahead with the burial as it was to be arranged.
>
> Well, did the Coroner have any concerns about the cause of death?---No. He just asked for details about it, and I gave him those details over the phone.
>
> Did you speak to . . . Robin Shepherd?---Yes, I think I did speak with her at the time, and I advised her that I had spoken with the Coroner.

Pursuant to Dr Reid's conversation with Ms Shepherd, the then Divisional Head, the issue as to whether or not a post mortem should be carried out was the subject of some consideration by Ms Shepherd and the Department's Director-General, Ms Matchett. A note of the Director-General dated 4 April 1991 was admitted in evidence (Ex 220), in which the Director-General inquired of the Divisional Head:

> Perhaps there should be a post mortem. What are your views?

Ms Shepherd replied:

> I discussed this further with Dr Reid and then Ms Matchett. The body had gone to the funeral directors for the funeral to occur on Saturday morning, 6/4/91, and Dr Reid was adamant that a post mortem was not required which I accepted on her medical authority.

I accept that the holding of a post mortem examination involves gross intrusions upon the body of a deceased person, with consequent trauma for associated family and friends, however, I also accept the observations of Counsel Assisting, made in his written submissions, that:

> Whilst the doctor is no doubt relying upon her experience in forming her opinion that post mortem examinations result in stress to the family involved, it would seem likely that a post mortem examination, which removed any doubts as to the exact cause of death, would be of some benefit and comfort, in its findings, to that family.

Again, I asked Dr Reid about her views, as at the date of her giving evidence, and with the benefit of hindsight, about whether the conduct of a post mortem examination would have been beneficial (T 2644):

> Wouldn't it have been better to have a post mortem examination to see precisely what it was that he had ingested and how much of it and what effect it had further down into the gullet, and other areas?---In hindsight that would've been the wisest thing to have done. At the time, my concern was what had happened to Client 8 and Client 8's parents. A post mortem helps determine sometimes the exact cause of death. It adds to the trauma and the guilt that parents feel when a child dies.

As a result of the Commission's exhaustive investigation of Client 8's death, and the conducting of these public hearings, I am satisfied that Client 8's death arose not as a result of some foul play or behaviour so culpable as to be recognised by the law as forming the basis for a charge of official misconduct (or a criminal charge), but rather as a result of a tragic interrelation of circumstances, causing accidental

death. Given the evidence, I cannot be critical of Dr Reid's decision to issue a Death Certificate, and the subsequent decision of the Coroner, Mr Hillmer, to the effect that the circumstances did not warrant the holding of a Coronial Inquest.

However, I am mindful that this case was one of sudden, and apparently accidental, death of a young child with severe intellectual disabilities and behavioural problems, in a Government-funded and administered institution. As Counsel Assisting noted in his submissions:

> Further, that child's death came about as a direct result of his behavioural problems in relation to the consumption of food; with such problems being well-known to staff, and the subject of documentation.
>
> It is unlikely that Client 8 was unique in possessing such a problem, or in relation to the fact that he was an epileptic. In those circumstances, the conduct of a . . . full Coronial Inquest, might have been a useful procedure to undertake with a view to preventing future occurrences of similar incidents. Certainly, a Coronial Inquest would have presented an opportunity to scrutinise the care provided to Client 8 by the Basil Stafford Centre and its officers. In this case, that opportunity was lost.

In the instant case, a full Coronial Inquiry may have shed further light upon the causes of Client 8's death, and may have removed some of the evidentiary doubts and ambiguities that confronted this Commission prior to the undertaking of these public hearings. That being the case, I cannot help but remark that the holding of an inquest would have been a valuable exercise for all parties, in terms of providing an excellent opportunity for the Department to analyse its systems and procedures, by providing a forum for the relevant staff members, such as RCO AC, to express and air their concerns in an appropriate fashion before an independent entity, and for clarifying the lingering doubts and concerns that may have remained in the minds of those persons intimately connected with Client 8's welfare, such as his family members.

Mr Plunkett raised these matters with me in the course of his oral submissions, at T 5628 et seq. He stated (T 5628):

> . . . This would be an area, in my submission, which would be within your jurisdiction to look at prevention and detection of misconduct, because a post mortem examination will provide a lot of evidence to support or otherwise discount misconduct.

I foreshadowed to Mr Plunkett my views at that time, which were to the effect that I was inclined to suggest that where there was a death, under adverse circumstances, it should be the norm for a post mortem examination to be carried out, and in stating that position I was not being critical about the instant case, in light of the evidence of Dr Reid's decision concerning Client 8. My attention was drawn to the review of the *Coroner's Act* presently being carried out in Queensland, and Mr Plunkett informed me that the Department's stance, in relation to that review, was to the effect that there should be a post mortem examination, in such circumstances.

Upon revisiting these matters, I endorse my earlier views to the effect that it would be appropriate for a post mortem examination to be carried out in any case of the sudden death of an intellectually disabled person, in a residential institution or facility operated and administered by the State.

Additionally, in those circumstances, I recommend that the coronial legislation be widened to provide that the Coroner be required to hold an Inquest into any case of the sudden death of an intellectually disabled person, where that person has died in any residential institution or facility operated and administered by the State. In making these recommendations, it should be noted that my observations are also apposite to privately operated facilities, but my recommendations are only so limited to accord with the jurisdiction of this Commission.

It could be expected that such Inquests might provide valuable evidence of official misconduct if the same has occurred; alternatively, and equally as important, the Inquest may conclusively discount any suggestion that a death involved any official misconduct or other impropriety.

In so recommending, I note that I have read the Department of Justice and Attorney-General's discussion paper entitled 'Review of the *Coroner's Act Queensland*' dated 1993, and I can only endorse the comments of Mr Justice Muirhead, made while sitting as a Royal Commissioner, quoted at page 22 of that paper:

> The anguish of many relatives of those who die in custody, ie in the "care" of Government agencies, and the fear and suspicions which follow are not generally comprehended. The situation demands the most thorough investigation of facts and circumstances by skilled investigators who hopefully may be regarded as impartial, autopsies performed by expert forensic pathologists followed by thorough Coronial Inquiries conducted by legally trained Coroners under modern legislation which enables such Coroners to make remedial recommendations. In all these processes there must be sensitivity to the situation of the families of the deceased.

11.16 ISSUES RELATING TO RCO AC

A) HER REPORTS

I have already noted that one of the issues arising for my consideration was the question of whether RCO AC was improperly approached by any staff member of the Centre, in an endeavour to have her change her report or version about the circumstances of Client 8's death. In her interview with Commission investigators on 8 July 1993 (the transcript being admitted as C Ex R), RCO AC said, in respect of two reports that she and other Poinciana staff members submitted after Client 8's death (Ex 208):

> . . . the reference where Ms AF said he was choking they asked me to take that sentence out, that that is not relevant they said.

She was asked about these matters in evidence (T 2526):

> Mr O'Sullivan: Could I just ask you just to give us an idea of where this occurred, where did it happen?---I went up to the administration block with my report, and I think it was in the office used by Mr Gerry Rohan.
>
> Yes?---Mr Rohan and Mr Ross were both present. They had invited me to discuss any issues I was concerned about in relation to Client 8's death, and I took them up on the invitation, and I brought the report along with my concerns for the safety and security, and we discussed them briefly, and he told me that the letter I had given him accompanying the report, that is the letter of concern re the safety, that that was an accusatory letter, that I was accusing somebody there of having been responsible totally for Client 8's death, and I said, "It wasn't". It was – I was asking for some consideration to be given to safety measures for the children, for all of the clients, so that there wouldn't be a repeat of that tragedy, and it was then that he told me that I had no – I must not consider myself qualified to discuss this with anybody, and I mustn't talk about it.
>
> Who said that to you?---Mr Ross.

RCO AC was then shown her report about Client 8's death (Ex 210), and Counsel Assisting asked her (T 2528):

Mr O'Sullivan: What part were you asked to delete?---I was asked to delete that whole sentence in relation to Ms AF's statement about him choking.

And who asked you to do that?---I was told by Gerry Rohan.

Who was present when that was said to you?---Mr Ross.

Did he, Mr Ross, say anything to you?---He agreed with Mr Rohan that that wasn't appropriate to have that in the letter.

Well, can I ask you to try to, I know it is going back a bit of time, but could you just try to remember what was said to you, and then we can form our own impressions?---Yes. Well, when he asked me to delete that, he said, "RCO AC, I don't think that sentence has any place in this report, it's irrelevant". I asked him . . .

The Commissioner: Who said that?---Mr Rohan.

Right, yes, go on?---I asked him why it was irrelevant since I believe he choked, and he said, "What you believe doesn't matter; you don't have the qualifications to say what happened" and Mr Ross agreed with him and said, "I agree with him, RCO AC, that sentence doesn't need to be on that report".

The report itself indicates that RCO AC did not in fact remove the sentence. She was cross-examined about these matters by Counsel for the State of Queensland (T 2672–2673):

Mr Plunkett: . . . Are you suggesting that they were asking you to be less than candid about the events that you knew had happened, is that what you are suggesting?---I believe that they were asking me not to talk about it at all, and if I must talk about it, I must say what they said.

Okay, now, is one to understand that belief in the context that Mr Ross and Mr Rohan would be concerned about your continuing, I am not being critical of it, emotive reaction to these events; or are you putting it in the category of them, in a sinister fashion, trying to promote some sort of a cover up?---I can't make a judgment on that really. I did not believe or did not believe at the time they were being sinister.

. . . I was just trying to get some sort of clinical assessment of it, and no disrespect to you at all, I understand that you are upset and naturally so, because you obviously loved the lad, but you are not suggesting, are you, any attempt by management to cover up the true circumstances of the death?---I never suggested that they covered up.

Thank you?---I was merely asked not to speak about it, or if I must, I must say what they said; that's all I can say.

Now, in them saying to you, "You must not speak about it", that could well be in the context that, obviously, it is something that upsets you a great deal and that – do you see that as being some sort of constructive advice, being able to cope yourself with the grief, or do you see it in some other category?---I see it in a different category, because in the months following I wasn't shown any particular concern by management. So, if they were concerned about my emotional condition, I imagined they would have perhaps tried to look into that and help me. So, I do not see that as out of concern for me.

Well, in what sort of category do you hold this belief – you say it is not sinister, it is not cover up, what is it?---I believe that they did not want me to stir up trouble, or rock the boat, or that sort of thing.

> Okay, well, I can understand why a manager would like whatever systems are in place, are to proceed smoothly, but in you believing they did not want you to stir up trouble or rock the boat, are you suggesting some impropriety by Mr Rohan and Mr Ross?---I'm suggesting that they were aware of the fact that I believed the doors shouldn't have been opened. They were aware of the fact that the door was open with prior knowledge of the officer in charge, of the particular behaviours of this particular child, and that it shouldn't have been the case, and in order to keep feelings down on the Centre which were quite – a lot of people were expressing a lot of angry feelings, I believe I was being asked then not to keep bringing it up.
>
> I understand . . . it was not directed towards trying to ensure that people were not informed about the true circumstances of the death, it was directed towards assisting in harmony . . . ?---Peace and harmony.
>
> . . . amongst staff members?---That's correct.

I am satisfied that the abovementioned evidence negates any contention that either Mr Ross or Mr Rohan improperly or inappropriately attempted to influence RCO AC as to the contents of her report about Client 8's death.

B) THE DISCIPLINARY COMPLAINT

A number of documents were admitted before the Inquiry (C Ex U) which related to a disciplinary matter arising from a complaint made by Ms AF, against RCO AC, approximately two months after Client 8's death. The complaint related to RCO AC's admitted use of a rather tasteless term towards Ms AF. A disciplinary interview was held by senior officers with RCO AC, and no further action was taken about the matter.

During the course of oral submissions, I indicated to Counsel for the State of Queensland that I was not minded to say, in this Report, that the evidence about this incident could support any finding of official misconduct.

The remark was made by RCO AC shortly after her attendance at a grief counselling session, convened some time after Client 8's death. I have no doubt that the remark was made at a time when RCO AC was still suffering an extreme degree of grief and stress about Client 8's death. At the abovementioned disciplinary interview RCO AC accepted that her remark was inappropriate.

Similarly, I have no doubt that the making of the remark would have been particularly upsetting to Ms AF, given the fact that she no doubt also suffered a considerable amount of grief and stress over these events.

As I propose to make no adverse findings, or recommendations, about this particular aspect of the evidence, I consider that it serves little purpose to set out, in Chapter and verse, all of the relevant circumstances and occurrences. To do so would be no more than an unnecessary reopening, in a most public fashion, of what are essentially personal matters.

My only comment about the entire incident would be to express a desire that it should be viewed in context; that is, the matter should not be resurrected at any future time and used against RCO AC's interests. I have already remarked that I found RCO AC to be a most impressive witness. Her evidence was given in an articulate and intelligent fashion, and her answers frequently demonstrated thoughtful insights and appreciations regarding the care of intellectually disabled clients such as Client 8. I formed the view that she is a thoroughly decent and caring person.

I have already herein, at length, set out the evidence of Ms AF and Ms AG regarding their respective appointments as Acting SROs. In short, both witnesses readily conceded their lack of experience for such an appointment, and their dearth of hands-on experience. In relation to the issue of promotions, and the recruitment or appointment of persons to SRO positions, it is perhaps trite for me to make any recommendation at all; it is simply a situation whereby the Department *must* ensure that persons appointed to such positions hold appropriate qualifications, and possess adequate experience, in reference to their anticipated employment duties. The SRO selection criteria appearing in the SRO desktop manual (dated October 1993) (part of Ex 42) are to my mind adequate; it would seem that the Department, having drafted those selection criteria, understands the critical importance, both in terms of following established public service procedures, and ultimately in the best interests of intellectually disabled clients, of recruiting and appointing SROs in accordance with those criteria.

To my mind, there is no reason why RCOs should be excluded from appointment to the position of SRO. I heard evidence from Mr AJ, who was so appointed as an SRO after "coming through the ranks". As a result of his evidence, I concluded that Mr AJ was well-suited to such a position, and that it would be in the best interests of the Centre, and the clients, if he continued to perform his duties (see Chapter 15). Similarly, I would see no reason why a person such as RCO AC, given all of her demonstrable qualities and her educational qualifications, would not be well-qualified for appointment to an SRO's position. As I note in Chapter 19, dealing with the selection and recruitment of RCOs, it is absolutely essential that the Department attempts to attract the best possible applicants for appointment to available RCO positions. The Department needs to attract caring and motivated people to perform these duties; it will not do so if applicants and appointed RCOs quickly realise that they have little opportunity for promotion beyond the position of RCO, irrespective of their capacities and qualifications, due to the imposition of some "glass ceiling".

If promotion was in fact undertaken, as Ms AF suggested, with a view to minimising financial expenditure, then I can only remark that such a situation would be disgraceful. Apart from leaving the Department entirely susceptible to a variety of forms of action, including appointment reviews, any such approach would appear to be antithetical to both the best interests of the intellectually disabled, and those capable staff who care for them.

11.17 SOME MISCELLANEOUS ISSUES

My various evidentiary considerations, conclusions, findings and recommendations appear within the above sections dealing with each of the issues arising from this bracket of evidence. I do not propose to repeat them in any separate section of this Chapter; however, there are three further matters that should briefly be touched upon, in terms of conclusions and recommendations, before leaving this part of the evidence. Strictly speaking, it may be arguable as to whether these issues have a sufficient connection with the concept of official misconduct to fall within the purview of this report. Nevertheless, I wish to touch upon these issues, in terms of making what might best be termed "remedial recommendations". Two of these are of some relevance to the possible prevention of further tragedies such as Client 8's death. To let these issues pass without comment would be a waste of an opportunity for the Department to consider its systems and procedures, and to improve the same for the benefit of its staff and clients.

A) GRIEF COUNSELLING

It was apparent, from observing the demeanour of the witnesses before the Inquiry, that those persons closely connected with the circumstances pertaining to Client 8's death, were profoundly upset by the entire series of events. The grief and distress associated with his death was still very evident amongst these witnesses, even though some three years had elapsed since the relevant events occurred.

In those circumstances, I consider that it is essential that adequate support mechanisms, such as counselling arrangements, be in place for the immediate assistance of relevant staff. During this bracket of evidence, a number of witnesses referred to "grief counselling" that was organised for them by the Department, some four weeks after Client 8's death. RCO AC said of this session that it was 'too late, too short, and I was told beforehand . . . not to discuss Client 8 in any way shape or form' (T 2728). She described the session as 'useless'.

In his statutory declaration, RCO I stated:

> I also consider that the grief counselling in relation to this matter, which was done a month to the day later, was too late.

Ms AF was also critical of the lack of support provided to her (T 3027–3028).

> Mr O'Sullivan: Yes?---This – this whole incident of Client 8, as I – as I've said, the only debriefing we had was a couple of weeks later by a Catholic priest. Now, the man – the man – you know – he tried to do a good job, I'll give him that, but, I mean, it didn't work. That name – what we were just talking about – that happened immediately after that debriefing session. After that event that day, people went and just did their job like nothing had happened. It was – looking back, it's obscene that staff just go in, this happens, oh, okay, let's go back to work the next day and pretend nothing has happened. I'd just like to make that point; that – and then 2½ years later you get a call, 'Can you come in and explain this?' No one talked about this incident after that day and I find that a problem. I've got a problem with that.
>
> Well, you said there had been counselling very soon after the event?---Yes, and with that counselling I personally didn't want to do. I don't handle . . .
>
> That is all right, you can keep talking?---Oh, sorry. I personally – we all react in a different way and [the Principal Residential Officer] did her best. I applaud her, but at that time no one – it was all in together situation, there was no looking at individuals on how to cope with grief.
>
> The Commissioner: Can I just ask you this: if you had wanted counselling, felt in desperate need of it, would you have known who to ask for counselling?---No.
>
> Who – who would you think you would ask?---Possibly somebody from staff development because they are a neutral party. They are not my manager.
>
> Is there a counselling department or service that you know of within the department?---Now there is, back then I was not aware of it.
>
> But there is one now?---There is one now, EAS, Employment Assistance Scheme. It's confidential and you can refer yourself to it.
>
> Well, that is a step in the right direction?---That is a step in the right direction.

In a similar vein, another RCO called as a witness in the Inquiry gave evidence about his involvement in the situation of another client's death at the Centre. This RCO was also critical

of what he perceived to be a lack of counselling, and in fact, personally wrote a submission about the availability of counselling services for staff involved in such incidents (T 1142–1143).

From Ms AF's evidence, it is apparent that the Department now has in place a counselling system for the support of its staff who are involved in disturbing incidents. Given the clients who are within the Department's care, it is a fact of life that incidents, such as Client 8's death, unfortunately will occur from time to time, as I have already noted herein. In those circumstances, I can only urge that the Department takes all steps to ensure that staff involved in any such incidents have prompt and untrammelled access to adequate counselling services; the Department must take every step to ensure that its employees receive adequate support when such events occur.

B) THE DOCTOR'S KNOWLEDGE OF THE LOCATION OF POINCIANA HOUSE

In her evidence, Dr Reid stated that she received notification of the emergency situation involving Client 8 on 3 April 1991, by way of a telephone call from an RDO. Counsel Assisting asked the doctor (T 2593–2594):

> Mr O'Sullivan: So what did you do then after you received that call?---I had to check where he was living and which area it was in and get to my car and get down there.
>
> So you had not been told on the phone exactly that he was at Poinciana?---It was mentioned Poinciana, and at that time I wasn't quite aware which one was Poinciana. I tended to get – I don't tend to remember the actual names of the houses and where people live. To me that is information that I expect other people to give me.
>
> Yes?---And it is the same if someone calls, you know, you need an accurate address and street name and number and where you go.
>
> Okay. So you drove down?---I checked with the RDO which area it was.

One could not reasonably expect that a person in Dr Reid's position could accurately remember where each individual client resided within the Centre. However, I am concerned that a person in a position such as Dr Reid might not know the location of various houses or wards. One can readily imagine circumstances arising whereby such a lack of knowledge on the part of the doctor, or other medical personnel, could easily cause delays of time, which of themselves may be small, but which may be critical in terms of such staff being able to respond to an emergency situation in time.

I am satisfied that in the instant case Dr Reid responded to the phone call advising of Client 8's distress in a timely fashion, and that there was no undue delay that would have, in any way, altered the tragic outcome of these matters.

However, I feel that the problem should be highlighted, for future benefit, and I recommend that all medical officers associated with the Centre should, as part of their training, be required to intimately familiarise themselves with the physical layout of the Centre, and all of its various buildings and structures, so that they might be able to respond immediately to any emergency calls.

C) CONTACTING THE AMBULANCE SERVICE

Dr Reid also gave evidence to the effect that the RCOs, in the various Centre houses, could not ring directly for an ambulance, due to the absence of 'outside lines'. The doctor stated (T 2635):

> They have phones. The phone is through to the – they phone through to the RDOs who phone out for the ambulance . . .

Again, this is a situation that could lead to some delay in obtaining emergency medical assistance. On the entirety of the evidence presented before the Inquiry, it would appear that a situation could arise whereby urgent medical assistance is required for a client, at a time when the Centre's medical practitioner is not present at the Centre, and when the Nursing Service staff are not easily contactable; for instance, if they happened to be visiting houses on their rounds. The Residential Duty Officer, removed from the immediacy of any such emergency situation, could only act as a conduit for the information supplied by the relevant RCO, or other staff member, about the need for an ambulance to attend the Centre, or for other help to be made available. In those circumstances, it can readily be foreseen that valuable response time could be wasted by the inability of the RCO to personally and directly summon emergency medical or other assistance.

No reasons were advanced (and none is readily apparent), as to why RCOs should not be able to directly telephone the ambulance or other services. Accordingly, I wish to bring this issue to the Department's attention, in order that consideration be given to these matters in terms of the need to take all possible steps to avert any future problems that could arise in this respect.

PART C
PARAGRAPH 2(C) OF THE TERMS OF REFERENCE – THE HARASSMENT OR INTIMIDATION OF COMPLAINANTS

CHAPTER 12
HARASSMENT AT THE CENTRE – AN ATMOSPHERE OF FEAR?

On 20 January 1994, Ms C gave evidence before the Inquiry. In the course of her examination by Counsel Assisting, she said the following (T 782–783):

> Mr O'Sullivan: Now, in respect to the thump therapy, have you seen other staff members hitting clients?---Yes, but if you're going to ask me who they are and when it happened, I would not have a clue.
>
> Or is it the fact that you have not got a clue, or you just do not want to tell us?---I haven't got a clue.
>
> Are you sure about that?---Except for one incident, yes.
>
> Well, you see, have you got some concerns about telling us the identities of these staff members?---Yes, in case it goes back to them.
>
> What leads you to think that that might happen?---Anything can happen.
>
> Well, who do you think is in this court room now?---I wouldn't have a clue, except for union people and management, and I don't know who else is in here.
>
> The Commissioner: Just pausing there – does that inhibit you from giving your evidence, the fact that union people and management are here?---No – well, I don't know. What really inhibits me is I'm scared in case anything goes back.
>
> Mr O'Sullivan: By who – who would take the information back, do you think?---Well, I don't really know who would.
>
> And if the information did go back what is your concern?---I'm scared of what would happen.
>
> What fear do you have?---Me.
>
> What – harassment?---Yes. I've been there once and I don't want it to happen again.

Some discussion then took place with Counsel as to how to deal with the evidence of this witness. Thereafter, I remarked (T 783–784):

> The Commissioner: Yes, it is a difficult situation, but I must say that, having read now a considerable amount of information by way of statement, by way of background material, and having heard a considerable amount of evidence about harassment from not only junior staff but senior staff, it is clear that there is an atmosphere of fear surrounding this Inquiry, which is a situation that is to be abhorred, and I will not have a bar of it.
>
> Let people be warned if there is the slightest evidence of any interference with the due process of this Inquiry, I will take such action as is necessary to stamp it out; yesterday afternoon it was clear to me that the witness Ms K was under some strain and stress because of that fear and harassment and so have others been, and it is clear to me that this witness is frightened, and she should not be. If necessary, I will hear evidence in private. There is provision in the Act for that. I understand what Counsel has put to me. There must, as I said earlier, be fair play, but we cannot tolerate a situation where people are frightened to give evidence.

The New Shorter Oxford English Dictionary (1993 ed.) defines "harass" as:

> Trouble by repeated attacks; now frequently used in the following sense – subject to constant molesting or persecution. From the French "harasier", a pejorative derivative of the word "harer" meaning "to set a dog on".

Additionally, Mr Clutterbuck, Counsel for Mrs A, drew my attention to the case of *O'Sullivan v Lunnon* (1986) 67 ALR 423, a decision of the High Court regarding a statutory offence provision of which the term "harassment" was an element. Mr Clutterbuck submitted:

> The term "harass" seems to be synonymous with annoy, interfere with, designed to impact upon the person's comfort . . . the Court considered that there must be an intention to manifest certain conduct itself becoming ultimate harassment.

In the present context, I accept that it is clearly necessary for there to be an element of intention associated with the behaviour which is of an annoying or interfering nature to some person, for harassment to have taken place.

Throughout the public hearings I heard what ultimately amounted to a great deal of evidence about the subject of harassment. I heard direct accounts from witnesses as to their personal experiences of harassment, I heard from witnesses who were aware, or who certainly suspected, that some persons associated with the Centre had experienced harassment and I read many documents, including transcripts of court proceedings, statutory declarations and reports, prepared both by officers of the Department and external entities, alluding to an harassment problem existing at the Centre. Most disturbingly, I saw a not insignificant number of witnesses, who were called before the Inquiry, and who were clearly apprehensive or upset about either recalling their personal experiences of harassment, or giving evidence which they perceived would expose them to the risk of harassment. Additionally, I heard evidence from a number of witnesses who, I am satisfied, consciously attempted to understate their knowledge of these matters.

There was evidence that harassing or intimidating conduct towards staff members took many forms, including:

- threatening or disturbing telephone calls;
- direct personal abuse;
- interference with and damage to personal property such as motor vehicles;
- the receipt of abusive mail or other material;
- the illegal entering of a person's office, and interference with the contents of that office;
- the placing of dead animals and other unsavoury items, such as human excreta and soiled underwear, in locations seemingly intended to intimidate or upset the finders of such things;
- the creation of an untenable or undesirable employment environment; including a resignation induced by harassment, a lack of support for staff complaining of such harassment, the failure of colleagues to provide assistance to others in crisis situations and undesirable or unwanted employment transfers.

The evidence about such forms of harassment was received from a number of witnesses, who really represented the spectrum of persons associated with the Centre; including past and present RCOs, and representatives from all levels of the Centre's management structure.

At various times, Counsel Assisting, Counsel for the State of Queensland and Counsel for the Unions all submitted to me that there was, or at least there had been, a serious problem concerning the harassment of certain staff of the Centre. In his opening remarks, Counsel Assisting stated (T 23-24):

> Information obtained during the course of these investigations suggests that client abuse has occurred over a substantial period at the Centre.
>
> Criminal prosecutions have been rare in these matters, and, unfortunately, convictions rarer. The victims of the abuse have been intellectually impaired persons. Consequently, they have been unable to provide evidence of abuse themselves, such is the level of their impairment. In consequence, the prosecutions have depended upon the evidence of other staff members employed at the Centre, and in large measure, circumstantial evidence.
>
> During the course of the police investigations, it has been established that the most difficult problem facing any investigation is what is referred to as institutional culture. The police found, during the course of their investigations, that the institutional setting lent itself to information being withheld by persons who were motivated to conceal abuse. The hierarchy of old staff were persistent in resisting changes and there was a strong union presence at the Centre, which the police believed combined to curtail any effective reporting of abuse.
>
> A number of staff interviewed by the police and by the Commission have expressed concerns over the intimidation of staff at the Centre. In consequence, there has been a degree of reluctance on the part of staff to come forward and report incidences of abuse, physical or mental and gross neglect. Unfortunately, it would seem that the police investigations have been compromised by the fact that many – or some innocent, or honest, persons have failed to discharge their duties by reason of their fear of harassment and intimidation by their co-workers. This has created a climate of the most overpowering insalubrity at the Centre.

Counsel Assisting's opening remarks aptly foreshadowed an association between two issues of major importance to this Inquiry; namely, the problem of staff harassment and its relevance to the existence of an "institutional culture" at the Centre. To my mind, the evidence has revealed that those two matters are inseparably linked, as Counsel Assisting also later noted in his written submissions:

> It is submitted that harassment of staff at the Basil Stafford Centre has occurred on a regular basis. The Inquiry has heard evidence that it has continued through to early this year. There is no doubt that harassment could well have an adverse effect on the reporting of incidents of abuse of clients at the Centre. Although it is true that the perpetrators of harassment have not been identified there would seem to be a connection between harassment and the culture – that of resisting change and not dobbing on one's work associates. Harassment has affected more than just the individual recipient but generally attacked and lowered the standard of care provided by the Centre. There is a concern that many Residential Care Officers are too afraid to speak out about work practices and abuse for fear of retribution. In this sense harassment has had a crippling effect on the Centre. Management has been unable to counter the harassment. It has been unable to devise strategies to protect recipients of it. In a true sense management has been deeply frustrated by its covert operation.

At an early stage of the Inquiry I had the following exchange with Counsel for the State of Queensland (T 1438):

> Mr Plunkett: . . . Possibly the only opportunity, the only institution in the State specifically set up under the statutory scheme which can really deal with this matter of harassment is this Commission.
>
> The Commissioner: Yes.

> Mr Plunkett: Now, if this Commission is not successful, then it will be very, very bad for the future of the Division. So, the Division of the Department is earnest in its endeavours that this Commission fully do its job on harassment and fully do its job on any other matters such as an abuse, because we are . . .
>
> The Commissioner: There is no doubt, is there, that there has been harassment?
>
> Mr Plunkett: No doubt at all your Honour, and that has been from the lowest of the ranks all the way up to senior management and if this Commission does not break it, then it may never be broken and that would be a serious matter for the operation of the Basil Stafford Centre. So, if the Department and the State is as earnest as is the Commission, is clearly earnest, in getting to the bottom of it and smashing it, it can be done.

Those remarks by Counsel for the State of Queensland draw attention to the fact, later established by the evidence, that the spectre of harassment or intimidation of staff has been quite debilitating in regard to the Centre's operations; at least insofar as those operations involved the prevention, detection and investigation of client abuse.

In his written submissions, Counsel for the unions stated:

> It is clear from the evidence before the Inquiry that certain persons associated with the Basil Stafford Centre have been subjected to extraordinary incidents at the behest of other persons which can be described as harassment, intimidation or, at best, simply annoying or disturbing behaviour.

Paragraph 2 of the Inquiry's terms of reference state, inter alia, that the Commission has resolved:

> (2) to conduct an investigation into cases of alleged or suspected official misconduct by persons holding appointments at the Basil Stafford Centre concerning:
>
> (c) the harassment or intimidation of those persons who have complained of or would be likely to complain of the abuse or gross neglect of clients.

during the relevant period.

Given all of the above, the evidence before the Inquiry clearly indicates that certain past and present officers of the Department were subjected to harassing or intimidatory behaviour, by either past or present members of staff. It is my task, within this report, to analyse that evidence in an attempt to establish whether or not there exists any causal connection between such behaviour and the reporting of incidents of client abuse or gross neglect, at all times bearing in mind the Commission's jurisdiction.

In its letter of 26 July 1994 to the parties, over the hand of Mr Le Grand (see section 6.7), the Commission provided a list of suggested issues of relevance in respect of the parties' further written submissions, including:

- Whether or not there has been harassment or intimidation of persons associated with the Basil Stafford Centre, including:

  (a) the type of harassment or intimidation,

  (b) the reason for such harassment or intimidation, including whether or not the same has occurred to persons who have complained of, or would be likely to complain of, the abuse or gross neglect of clients, and

  (c) the person or persons responsible for such harassment or intimidation, and whether official misconduct has been committed by any person who can be so identified.

- Whether or not an institutional culture exists at the Basil Stafford Centre, and if so:

  (a) the features of the same,

  (b) the relevance of that culture in the context of the occurrence and reporting of instances of client abuse or gross neglect, and

  (c) the impact of any such culture in terms of the statutory provisions, policies, practices or procedures relevant to the treatment of clients.

- Whether any of the unions, whose membership includes persons employed at the Basil Stafford Centre, and whether any person associated with those unions, including Mr F, have had any adverse or undue influence upon the reporting and investigation of alleged incidents of client abuse or gross neglect.

- Specifically, concerning the witness Mrs A, any issues relating to her reporting of alleged client abuse/gross neglect and her treatment by the Division of Intellectual Disability Services/Department of Family Services and Aboriginal and Islander Affairs.

To my mind, all of those abovementioned issues are, on the evidence, of specific relevance to my tasks of determining whether or not a causal relationship exists between the harassing or intimidatory conduct which has existed at the Centre, and the abuse or gross neglect of clients. Therefore, in this part of the report, I propose to deal with what might broadly be termed "the harassment bracket of evidence" by an analysis of the evidence:

(a) Of particular relevance to the persons Mrs A and Mr F;

(b) Concerning the harassment experienced by senior or managerial staff of the Centre; and

(c) Concerning the question of whether or not an institutional culture exists at the Centre; and if so, the features of the same and its relevance to the occurrence and reporting of instances of client abuse or gross neglect.

Consequently, the following Chapters reflect that approach.

CHAPTER 13
THE MATTERS RELATING TO MRS A

13.1 BACKGROUND

I have already referred, at section 3.1, to the complaints made by Mrs A to the Criminal Justice Commission, and other persons and entities, in late 1990. In essence, Mrs A alleged that she had reported to her superior officers, during her period of employment as an RCO, a number of instances of alleged client abuse and gross neglect occurring at the Centre; that the Department did not act on her complaints (or if they did take action, such action was not to her satisfaction); and that as a result of coming forward and making those complaints she experienced various severe forms of harassment and intimidating behaviour from her fellow staff, all of these matters culminating in her resigning from the Department in late 1990. Mrs A's allegations have, at diverse times, excited the interest of the media and others. I believe it is fair to state that her allegations seemed to have achieved a degree of notoriety in the minds of many of the witnesses associated with the Centre, who appeared before me.

13.2 APPEARANCES BEFORE THE INQUIRY

Mrs A appeared as a witness before the Inquiry over several days during April and July 1994. Originally, it had been envisaged that she would appear to give her evidence at a much earlier time; indeed, as the Inquiry's second witness (see T 131–134). On 10 January 1994, Mrs A made a statutory declaration, with a number of annexures, prepared for her by officers of the Criminal Justice Commission. This declaration was subsequently admitted as Ex 332. However, due to her involvement in an accident and a consequent injury, Mrs A was unable to be called at that time and the Inquiry therefore proceeded with its investigation of the six specific allegations of client abuse or gross neglect (see Chapters 8–11). I note that at the time when Mrs A's appearance was originally anticipated Counsel for the unions submitted to me that he had experienced some difficulty in obtaining full instructions from the relevant persons he represented, given the time available between the provision of material relating to Mrs A, and her intended appearance as a witness, and in light of the breadth of Mrs A's allegations. The delay in calling Mrs A allowed all parties the necessary time to fully consider these matters.

Mrs A thereafter appeared as the first individual witness of relevance to the harassment bracket of evidence, which commenced on 15 April 1994. On that date, a further statutory declaration of Mrs A, comprising 53 pages plus annexures, was admitted as Ex 330 (references hereinafter to Mrs A's "statutory declaration" are made in respect of this latter statement, unless otherwise expressly noted). Mrs A gave some evidence on that day and the next, but was thereafter unable to appear again until July due to her medical condition, and adjournments of the hearings for various reasons.

13.3 LEGAL REPRESENTATION

On 9 February 1994, Mr Clutterbuck of Counsel appeared before the Inquiry to seek leave to appear on behalf of Mrs A. Mr Clutterbuck was instructed by Messrs MacFie Poole, Solicitors. Leave to appear was granted.

It was noted at the time that Counsel for the unions did not have instructions to act on behalf of Mrs A. Mr Herbert informed me (T 1687):

> . . . the question of conflict rose fairly and squarely in her [Mrs A's] case between her and other persons from whom I did have instructions, and although she did approach my instructing solicitor in relation to the matter, my instructing solicitor expressly declined to take instructions for those reasons. Unfortunately, it was a matter we could not accommodate.

Mrs A was critical of the failure of her trade union, the State Public Service Federation, to provide her with representation at the Inquiry. In her statutory declaration Mrs A said:

> Unions should be made aware that they are also responsible for the support of their members who are "whistleblowers" and not just members who have been accused by "whistleblowers". I have been denied a basic right or representation from the union of which I am a member, namely the State Public Service Federation, Queensland (Union of Employees) simply because I gave evidence against other members.
>
> What requirement exists to enable an industrial body to choose between one member and another in respect of representation?

Clearly, there was a significant conflict existing between the interests of Mrs A, and the interests of various other union members, represented by Mr Herbert, against whom Mrs A made allegations. That such conflicts should arise was to be expected, given the nature of the proceedings and the evidence. Indeed, at the commencement of the Inquiry, Mr Herbert sought to clarify the identity of the particular unions and other persons, whom he would be representing (T 35–36):

> I should announce also for the record in advance that there will be certain members of the unions for whom I appear who I will not be able to appear for, and for whom I will not be appearing, and that reflects a matter that was raised by your Honour on the last occasion, and I should briefly comment on that for the record. There are circumstances which will arise in the course of these proceedings where certain members of the unions for whom I appear will be making allegations, presumably, against certain other members of those unions.
>
> That is, of course, from a practical point of view, impossible for myself and my instructing solicitor to take instructions from both of those persons, and accordingly, the instructions will be taken on a basis which is to be determined by the unions and by the legal representatives of the unions, from particular individuals and instructions will not be taken from other individuals in cases where it is perceived that to do so would raise a serious conflict. What is proposed at present is that those other individuals, if they are members of the unions concerned, will be directed to arrange alternative legal representation so that their interest can be looked to, but obviously, from a practical point of view, myself and my instructing solicitor will not be able to look after both sides of the particular allegations that are made.
>
> But I raise the matter at this juncture, given the attendance of the press and other members of the public, to indicate that the fact that I might not represent particular individuals should not be taken as giving rise to any inference about the conduct of those individuals – quite the contrary. It ought to be taken simply as a reflection of the fact that those individuals may well have a legal – a conflict in the legal sense, with other persons from whom I might already have taken instructions and in respect of whom I cannot disavow those instructions, and so as to avoid conflicts arising between those particular persons and other persons, I am unfortunately going to have to be selective about the parties for whom I appear.

As is apparent from the remarks contained within Mrs A's statutory declaration, she was unable to obtain any "alternative" legal representation through her union. In due course, the Chairman of the Criminal Justice Commission was advised, by a letter over the hand of the Director-General of the Department, that the Government had decided to fund Mrs A's legal representation, within certain limits.

13.4 MRS A'S STATUTORY DECLARATION

A) THE TREATMENT OF HER COMPLAINTS

It should be noted, at this point, that Mrs A has, at various times, made a considerable number of allegations against several of her former RCO colleagues. It is necessary to stress that these various allegations were not exhaustively pursued by the Inquiry during its public sittings. As Counsel Assisting noted, in his opening of Mrs A's evidence (T 4142):

> It was during the course of her employment at the Centre as a Residential Care Officer . . . that she alleges certain abuse of clients at the Centre by a number of staff members at the Centre.
>
> Some of the allegations that she has made have been further investigated, and, in fact, have been found to be proven by either a court or a Misconduct Tribunal when dealing with the relevant officer. The Commission has obtained, not completely, but at this stage some affidavits or statutory declarations from a number of the officers concerned to respond to the allegations that Mrs A makes in the statutory declaration that I propose to tender. But, importantly, as a result of the allegations made by Mrs A whilst she was an employee at the Basil Stafford Centre, that she claims that she was harassed in a significant way by other staff members, and it is my proposal to focus on the question of harassment in respect to Mrs A's evidence.
>
> In respect to the allegations that I have already addressed, that is the ones she makes of specific instances of assault and the like, it is not proposed to deal with that in a way that this Commission, at this stage, will attempt to resolve whether or not in fact the assaults she alleges have occurred. The Commission has already, during the course of public hearings, investigated some six complaints – six allegations, and your Honour is, of course, seized with the fact that it has taken from 10 January this year through to the present time [Mr O'Sullivan opened this evidence on 18 April 1994] to hear just the evidence in respect to those matters.

All events the subject of allegations made by Mrs A pre-dated her retirement, and some dated back to events which allegedly occurred in 1986. Some matters were not reported by Mrs A to her superior officers at the time that they occurred. Some also related to clients and staff of various ALS houses, rather than the Centre itself.

I understand that all of the incidents raised by Mrs A have been comprehensively considered by the Criminal Justice Commission prior to the undertaking of public hearings, and that appropriate action had been taken where there was sufficient evidence upon which the Criminal Justice Commission could proceed; for example, the charge of official misconduct successfully brought against a former RCO, as referred to at section 1.7.

To fully reinvestigate each of Mrs A's specific allegations of client abuse or gross neglect, through the mechanism of public hearings, would have served little purpose. Rather, it was necessary that those matters be raised somewhat peripherally, as was in fact done, only in the context of Mrs A's claims that her reporting of instances of client mistreatment consequently led to her being subjected to harassment and intimidating behaviour. To my mind, such an approach as outlined by Counsel Assisting, was logical and had merit; I now reiterate these matters in order to respond to a suggestion inherent in a submission made by Counsel for the State of Queensland, that the fact that all or some of Mrs A's allegations of client abuse/gross neglect were not proven before the Inquiry should somehow impact upon my assessment of her credibility as a witness. In his written submissions, Mr Plunkett suggested that Mrs A's allegations of client abuse and gross neglect could be reduced to ten in number:

> The first observation to be made in this bracket of evidence is that none of the ten allegations were [sic] proven to the requisite standard. The Commission chose not to examine any of these particular allegations in its bracket of individual cases . . . some of those accused gave evidence, denied the allegation and were cross-examined. Some of the allegations were inherently improbable.

Within those written submissions, Counsel for the State of Queensland included a chart of Mrs A's ten allegations. That chart included the allegation of the assault perpetrated upon a client by a former RCO, who was in turn dealt with by a Misconduct Tribunal in 1993, as noted above, with the charge of official misconduct being proved after a hearing, and the RCO dismissed from his position of employment with the Department. It is therefore incorrect to assert that 'none of the ten allegations were [sic] proven to the requisite standard'.

Also, Counsel for the State of Queensland, in his aforementioned written submission, specifically drew attention to another of Mrs A's complaints; namely, that of an alleged assault upon Client 1 by an RCO in late 1986. That incident is relevant, as Mrs A alleges that her experiences of harassment dated from the time that she formally reported the RCO in question for this assault (Ex 330 – statutory declaration p. 10). Mrs A's complaint of an alleged assault upon Client 1 was investigated by the Department at the time, which resulted in the Department finding that her complaint could not be substantiated. While the RCO who was the subject of that allegation is justifiably entitled not to have any adverse inferences drawn against him as a result of such a finding, it does not follow that Mrs A, or for that matter, any other person who makes or has made a complaint of a similar nature, should have their credibility called into question, or be reproached, merely because an investigation of their complaints results in a conclusion that the same cannot be substantiated. I have already referred, on several occasions (see particularly section 1.13) to the factors inhibiting the successful investigation, in terms of identifying and prosecuting culprits, of complaints about client abuse and gross neglect occurring in an institutional setting with the particular features of the Centre. Additionally, as discussed in Chapter 23, I am firmly of the view that the Department's methods of internal investigation, while no doubt carried out with the best of intentions and to the best of the ability of the responsible staff members, undoubtedly lacked the resources and skills necessary to get to the bottom of such complaints. I am not satisfied that there is any "inherent improbability" attaching to Mrs A's complaint concerning the alleged assault of Client 1 in late 1986.

In all the circumstances, I would emphasise the fact that although the majority of Mrs A's complaints have resulted in findings that they could not be substantiated, at the conclusion of either Departmental, police or Criminal Justice Commission investigations, this does not in itself lend support to any suggestion that Mrs A's complaints were inherently improbable or without foundation. Her evidence cannot so conveniently be discounted; it is necessary to consider matters in far greater detail.

B) ALLEGATIONS OF CLIENT ABUSE OR GROSS NEGLECT

In light of the Commission's sensible stance of not reinvestigating each of Mrs A's specific complaints to resolution, through the means of public hearings, I do not propose herein to extensively relate Mrs A's specific allegations of instances of client mistreatment. Rather, those allegations can be distilled to the following categories:

- Instances where it was alleged that particular RCOs had, on various occasions, physically assaulted clients by, for example, punching, slapping or kicking them.

- Instances where it was alleged that particular clients had been neglected, for example, the elapsing of time which was perceived by Mrs A to be unreasonable, in obtaining medical treatment for clients.

- The use of "behaviour modification sticks" by staff in their dealings with clients (statutory declaration p. 5):

> I learnt, quite quickly, that a seriously disruptive incident involving a violent and aggressive client was frequently quelled by the use of 'behaviour modification sticks'. A lot of staff kept behaviour modification sticks which were in fact golf clubs, baseball bats and cricket bats in villas/wards/ALS houses. These were frequently used on the clients and I observed many occasions when the RCOs would kick and assault clients with their hands and use these "behaviour modification sticks".

- That client advocacy was good in theory, but did not apply in practice at the Centre (T 4155–4156):

> Mr O'Sullivan: In paragraph 8 [statutory declaration] you say that client advocacy was good in theory but did not apply in practice at the Centre. Is that right?---That's correct.
>
> Can you expand on that? Why didn't it apply in practice?---Because a lot of the staff didn't believe that clients did have the same rights as everyone else in the community.
>
> Yes?---And they were treated differently and negatively by staff.
>
> Yes, and how were they treated differently or negatively?---They were assaulted. They were not respected; just treated poorly, abused, verbally abused.
>
> What names did you hear the clients referred to?---Retard is a term that I have heard staff use. Vegies. I used to work with a group of female clients and they were referred to as "blue bags" because they were in a module known as blue module, and a few other swear words.
>
> The Commissioner: Well, use the swear words . . . do not be shy?---Arseholes, bastards. I can't repeat the others.

- The condoning by management at the Centre of the use of violence, by RCOs, in order to control violent or disruptive clients (statutory declaration pp. 11–12):

> [A former male RCO] was a very big fellow. He was the man who was called upon when there was a problem with a physically violent client . . . management called upon him to use his violence to quell clients . . . management knew of the problem and condoned the use of violence towards violent patients.

C) ALLEGED DISINTEREST BY THE DEPARTMENT

As noted, Mrs A reported the alleged assault upon Client 1 at or around the time she said that it occurred. That matter was investigated by the Department. In her evidence, Mrs A was unable to recall precise details of exactly all the instances of client abuse that she had witnessed, and which she in turn reported to her senior officers (statutory declaration p. 22):

> I believe that I may have reported other instances of assault to my senior officers. I recall I reported a lot of instances of assault and abuse of clients and it is now difficult to recall the exact details of each incident I reported. I would not, generally, go out of line to report these incidents, other than to my immediate superiors, the SROs; however, I would occasionally speak with Geoff Dunn [a Principal Residential Officer] about these matters. I recollect that I once attended a meeting with him and another officer whose name was Geoff Ross, the Regional Manager. However, as previously asserted, I felt it was generally not accepted practice to go beyond your immediate superior when making a complaint.

Generally, Mrs A was sceptical of the Department's efforts in investigating reports of client abuse or gross neglect (statutory declaration p. 7):

> . . . in view of later incidents reported by me to [an SRO], even if I had done so, I believe that nothing would have been done.

When describing a meeting that she attended with two senior officers of the Department in November 1990, Mrs A said (statutory declaration p. 42):

> I was advised that my failure to provide written reports of my findings "amounted to negligence" on my part and I could be charged with neglect. I became very upset at this and felt that they were trying to protect themselves and victimise me in the process. I asked why they were so interested in hearing my complaints about abuse of clients now when they obviously did not want to know about my complaints of abuse or harassment previously.

D) HARASSMENT

In her statutory declaration, Mrs A maintained that the harassment of her, by other staff members, commenced on the same day that the investigation of the alleged assault of Client 1, which she reported, began in January 1987. She alleged that the harassment took many forms, including:

- The continual receipt of obscene or unsettling telephone calls, some of which were received in the early hours of the morning, and others which were received as internal calls by Mrs A at the Centre, in which the caller told Mrs A such things as 'I'm going to get you', and 'Keep your mouth shut or you're dead'.
- The spreading around the Centre of unsavoury sexual rumours about Mrs A, for example, that she was sleeping with a senior staff member, and that she had only reported a male RCO, for an incident of alleged client abuse, because that RCO had shunned her sexual advances.
- A refusal by RDOs to provide her with assistance during violent and threatening behavioural episodes, and other seriously disruptive incidents, involving clients within her care.
- A refusal by RDOs to transfer outside telephone calls to her.
- Direct personal abuse by her working colleagues, including being called a "bitch" and being told 'Why don't you keep your mouth shut' by other RCOs.
- Exclusion from staff activities, and general ostracism by her colleagues.

- The receipt of obscene and threatening letters and other messages, which were often left attached to her motor vehicle. A photocopy of one such message, apparently produced from the assembling of various words and letters cut out from publications and attached to the back of a Centre staff roster preference form, was admitted as Annexure "G" to Mrs A's statutory declaration. It read:

  > Get fucked cunt or wait for more phone calls from us or die.

- Damage to her motor cycle, including incidents where someone smashed her motor cycle fairing, and drained the engine of oil.

- Being followed by a motor vehicle containing two to three masked occupants while leaving the Centre at the conclusion of a 2–10 p.m. shift one night, which Mrs A thought was in the first half of 1987. She described this incident, in her statutory declaration, as 'particularly disturbing'; she felt compelled to seek refuge in a police station for a period of some hours.

- Suggestions being made to her by a colleague that other staff members were going to attempt to "set her up" by alleging that she had assaulted, or attempting to provoke her to assault, another RCO.

- A lack of co-operation and consistency from her RCO colleagues in her attempted implementation of programs, and in the keeping of records, designed by Mrs A for the clients in her care.

- The writing of various obscenities on her daily sign-on cards, leading to disciplinary action being threatened against her by a senior officer.

- Repeated inconvenience caused by frequent shift roster alterations, which were made without consultation with her.

- Persistent work-related arguments and difficulties with another RCO, Mrs AK, who at some of the relevant times worked with Mrs A in Allamanda House.

In her statutory declaration, Mrs A stated that she suffered as a result of the harassment and stress to which she was subjected:

> Aside from feelings of anxiety and depression, I suffered from migraines, bouts of vomiting and nightmares. At one stage I ended up in hospital after taking an overdose of pills. I spoke to a psychiatrist about this and he indicated that there was nothing wrong with me apart from stress. He said I was not at all psychologically abnormal, but I was having difficulty coping with things as I had problems with a personal relationship as well and coupling this with the escalating problems of harassment at work it all became too much for me . . .
>
> The harassment made me physically sick. There were times when I had to take sick leave because of the continued harassment and my continued desire not to go to work. The reason for my not wanting to go to work was the continual harassment. I felt, consequently, that I could no longer work at the Basil Stafford Centre. The matters that I had referred to previously, as specific items of harassment, are not all the harassment that has gone on, but only some specific examples. Harassment took many other forms that became a day to day routine for me. In mid-1987 as a result of my own application I commenced work at the Annerley ALS House. However, the types of harassment I indicated before still continued.

[Note: It would appear from the evidence that Mrs A did not actually commence work with the ALS until 1988.]

E) HER RESIGNATION

Mrs A claimed that harassment of her continued after she left the Centre, and when she was working in various ALS houses. She told the Inquiry that this continual harassment eventually forced her resignation. In her statutory declaration, she said:

> By late 1990 I felt that I could no longer deal with the situation. By that stage I had been married and the continued stress and concern about my working situation had an effect upon my relationship with my husband. I experienced feelings of guilt over the treatment of clients in that the incidents of abuse and neglect were not acted upon. I felt powerless to intervene in the way clients were treated. I felt that the administration and the management of the Centre were not concerned about investigating instances of alleged abuse of clients nor were they interested in attempting to prevent such occurrences.
>
> Around this time someone tampered with my car brakes. I was informed by a mechanic that they found kerosene in the brake drum of my car. My husband, naturally, became very concerned about my physical safety.
>
> I had had enough. I forwarded my resignation to the Department of Family Services and Aboriginal and Islander Affairs giving two months notice. I indicated that my effective date of resignation was the 30th of November 1990. I felt that this was the only way out of the situation. My letter of resignation was dated 19 September, 1990. Despite having forwarded my letter of resignation I received another threatening letter . . .

Upon tendering her resignation, Mrs A forwarded correspondence to, and spoke with, a number of persons about her complaints. She attended a meeting with Ms Robin Shepherd, the then Divisional Head. At this meeting Mrs A forwarded to Ms Shepherd a one-page statement, dealing with matters of client abuse, harassment and management issues (Ex 32 – section 3.1). Thereafter, Mrs A was removed from her position as a Residential Care Officer, due to the harassment difficulties she was allegedly experiencing, and placed in an administrative position at the Department's regional office at Mt Gravatt, until such time as her resignation was to take effect. Mrs A at that time had had no training for administrative duties, and no office work experience. She stated (statutory declaration):

> I tried my best but was unable to adequately perform my duties and complaints were made about my competence. This was understandable because of lack of skill.

On 15 October 1990, Mrs A wrote to the Minister, again referring to issues of client abuse and harassment (Ex 34). About this time Mrs A also wrote to a number of other persons and entities, including the Ombudsman, and various politicians. She also forwarded a further letter to the Department (Ex 20) expressing her concerns.

On 21 November 1990 she attended a meeting with Mr Geoff Ross and Mr Gerry Rohan to discuss her allegations of client abuse and harassment.

After meeting with the Divisional Head, Mrs A attempted to withdraw her resignation. She forwarded a letter dated 27 September 1990 (Annexure "L") stating, inter alia:

> I would like to withdraw my notice of resignation as I have recently been advised that I should not feel that I am forced into resigning, due to unacceptable working conditions.

Mrs A also attempted to arrange a transfer, within the Department, to a position of employment involving administrative duties. Within a letter dated 10 October 1990 (Annexure "M") to the Department's Personnel Manager, Mrs A sought such a transfer, noting the reasons for her resignation and indicating her willingness to undertake further training to improve her suitability for administrative duties. Those attempts were unsuccessful.

Mrs A's attempted withdrawal of her resignation was not accepted by the Department. The reasons for the Department adopting such a stance were perhaps best expressed in a letter dated 30 July 1991 from the Minister to the Honourable K Vaughan, MLA, one of the politicians to whom Mrs A had written (Annexure "N"):

> Having submitted her resignation to take effect at the end of November last year, Mrs A made a number of allegations to senior officers of the Divisional of Intellectual Disability Services and to myself with respect to behaviour of some other staff members toward clients.
>
> While these allegations were not always specific and some dated back a considerable time, every effort was made to investigate them and to take any indicated action, either internally or by referral to the Police Service.
>
> In her relations with her fellow officers, Mrs A has alleged that she was subjected to harassment, which she attributed to her criticism of some other staff. When her concern about a particular such incident was brought to the attention of the Divisional Head, she was immediately offered a transfer to a different work role within the regional office until her resignation date, which she accepted.
>
> It was not possible to accede to Mrs A's subsequent request to withdraw her resignation since senior staff of the region had certain concerns about aspects of her performance as a Residential Care Officer.
>
> Similarly, she could not be employed, on a permanent basis, as she requested, in a keyboard position at the regional office because she lacked the necessary skills to fulfil this position.
>
> However, an alternative offer was made to her to work in a client related role, consistent with her training and skills but away from the residential service in which she allegedly felt harassed. She ultimately refused this and her resignation came into effect.

Mrs A stated that she did not work for some time after resigning from the Department:

> I became quite ill due to stress . . . a claim was made to the Workers' Compensation Board. My claim was based on the stress-related illnesses arising out of my work as a Residential Care Officer at the Basil Stafford Centre and ALS houses. I . . . was successful in my claim . . . I was provided with a settlement.
>
> Had it not been for the abuse of clients and the harassment that I encountered at the Basil Stafford Centre, I would have remained in my position as a Residential Care Officer due to the fact that I enjoyed the work with disabled people. I found it painful to leave simply because of the stress, anxiety and abuse that I was leaving behind well knowing that the system had forced me out . . . I have suffered financial loss and medical problems as a result of my resignation, periods of unemployment and employment at a salary less than that of a Residential Care Officer. My marriage has suffered. My health has suffered considerably . . . I have incurred legal costs in respect of a Worker's Compensation Board application for assessment and I have also incurred retraining costs, and other medical expenses. I am endeavouring to rebuild my career . . . from time to time I wrote to the Department requesting reinstatement and favourable consideration of my applications for employment in the clerical area. Unsurprisingly, my representations have been unsuccessful.

Mrs A's primary allegation, namely that she was harassed by staff members as a direct consequence of her reporting incidents of client abuse and gross neglect, was one that is extremely serious and disturbing in nature. Therefore, it was obviously necessary for the Inquiry to closely examine Mrs A's allegations, about harassment and the attitudes of her senior officers, in order to ascertain whether they could be substantiated.

As noted, Mrs A's own evidence extended across a number of days. In addition, a number of other witnesses were either called to give evidence, or provided statutory declarations, about matters of relevance to Mrs A's claims.

13.5 SOME ASPECTS OF THE EVIDENCE DURING THE PUBLIC HEARINGS

A) HARASSMENT

In her evidence before the Inquiry, Mrs A maintained that all of her experiences of harassment postdated her reporting of a male RCO for allegedly assaulting two clients, one of whom was Client 1.

A statement of Mrs A, in support of her complaints about those matters, was obtained during the subsequent Departmental investigation, and admitted as Ex 34. That statement indicates that the first alleged incident of abuse occurred on 27 December 1986, and that Mrs A originally made her formal complaint, in writing, to a superior officer at the Centre on 12 January 1987.

At T 4192, Mrs A was questioned by Counsel Assisting about one incident of alleged harassment, which she said she experienced at the Centre and which she alleged was carried out by members of the Centre staff:

> Mr O'Sullivan: If I go back then to an incident in 1987 . . . where you were followed home by a large white car occupied by persons wearing balaclavas, is that right?---That's correct.
>
> Can you relate it to any specific complaint by you about any person?---All these things happened after I reported [the male RCO] for assaulting . . . Client 1, but I don't know how long after this particular incident was.

Mrs A's attention was then drawn by Counsel Assisting to two entries in an RDO Log Book covering the period of October 1986 (Ex 344). The transcript (T 4193) indicates that the log book had just then been given to Counsel Assisting, and the Commission, presumably by the Department's representatives. In any event, the two entries were dated 5 and 11 October 1986, and respectively state:

> Last night, Saturday, on the way home an old model Holden followed her home from just past Melaleuca. She drove to the Police Station and the car took off. She did not get the number but claims the occupants had balaclavas on. I have told her if this happens again to try and get the number, drive up to this office. It may be worth having a drive down about 10 p.m. to see if a light coloured Holden about.
>
> Mrs A, Banksia, has requested that no information regarding her shifts be given out over the phone. She has just been followed home by a couple of yobbos with masks on, spent a couple of hours in a police station and she is very frightened.

When asked about the entries, Mrs A said 'That probably could have been it then, yes I would say so' (T 4193).

Counsel for the unions took up this matter during his cross-examination of the witness. At T 4270, Mrs A described her employment, prior to the date of her reporting the male RCO for allegedly assaulting Client 1, as being 'ordinary' in nature:

> Mr Herbert: And during the period up until, from August 1986 until mid-January 1987 when you reported [the RCO] you simply had a very ordinary employment there. You were not reporting any staff abuses and nobody was particularly concerned about your conduct. Is that right?---I reported things verbally to senior officers, but not written. I didn't make written complaints earlier.
>
> . . . an important thing is, though, that there was no comeback, I mean, the things you mentioned to the senior officers so far as you were concerned went away with the breeze and nobody ever responded to you about them?---That's correct.
>
> None of the staff that you made these verbal complaints about came back to you and complained about it, there was no harassment?---Not that I can remember, no.
>
> . . . you did not detect any form of harassment until you, I think you said, really, you date it from the date that you made the complaint about [the RCO], is that right? Now, I think you have really narrowed it down to the point of the day, was it the day you made your verbal complaint or the day you made your written complaint or the day they started interviewing?---I think it was the day they started doing the interviews.

Mrs A agreed that she believed staff at the Centre were responsible for this incident of harassment, as a result of her reporting client abuse (T 4275). Mr Herbert also drew Mrs A's attention to the abovementioned RDO records, leading to the following exchange (T 4287–4288):

> Mr Herbert: Can I suggest to you that the balaclava incident had nothing whatsoever to do with your employment at Basil Stafford?---You can suggest that.
>
> Have you any reason, now that you have had those dates drawn to your attention, can you now say that it had anything at all to do with your employment at Basil Stafford?---Oh, no, I can't.
>
> . . . you have no reason for believing that at the time, did you?---I can't remember what I believed at the time. That was a long time ago.
>
> Well, you say that after the event, you put it in to harassment. Can I suggest that many years after the event, you just put it in the pot with things that had happened to you on the Centre?---Because when I made the report in 1990 to – when I first approached the Criminal Justice Commission, I remembered it as being part of the harassment.
>
> Yes, you did remember it, in fact, it was not part of the harassment was it?---Well, obviously it wasn't, but I felt at the time that it was.
>
> All right, well, you see, your memory about these events is not particularly good, is it?---No, it's not.

Mr Herbert's point was that the incident when Mrs A was allegedly followed home by persons wearing balaclavas, could not be associated with harassment of Mrs A by people at the Centre because it happened before the making of a formal complaint by her concerning the alleged

assault of Client 1, and that the incident happened within two months of Mrs A commencing employment at the Centre, and prior to the existence of any known attitude against her (T 4291).

It also emerged in evidence that Mrs A, around this time, was experiencing substantial difficulties in her personal life; specifically including harassment from a former boyfriend. This person was unable to be located by Commission investigators, and therefore did not give evidence. However, Mrs A conceded, when shown Ex 343 (the RDO/SRO Communication Book for 26.12.86 – 4.5.87) that:

- On 8 January 1987, she had requested that STD telephone calls not be put through to her, as her ex-boyfriend was making harassing telephone calls to her home.

- On 17 January 1987, she had again requested that no calls be put through to her, the relevant entry reading:

> No calls to be put through to Mrs A or even let the caller know what shift she is working, etc. Ex-fiancé has already threatened to kill her once and is following her wherever she goes and police unable to do anything until he touches her.

- On 18 January 1987, Mrs A's former boyfriend had arrived at the Centre, after apparently ingesting large amounts of medication, in what may have been a suicide attempt.

As a result of her former boyfriend's unwanted attentions, Mrs A sought the assistance of the RDO staff in screening her telephone calls, and she also provided staff with a description of this man (T 4294).

It would appear that the former boyfriend's conduct was such that it resulted in Mrs A seeking a restraining order pursuant to the *Peace and Good Behaviour Act 1982*. A complaint pursuant to that legislation was filed in the Magistrates Court at Holland Park, Brisbane, on 13 March 1987. A copy of the court file was obtained and admitted as Ex 387. Mrs A listed as her grounds of complaint:

> Continual harassment, destroying my private property, detains me against my will, harasses me while I am on duty at work. Won't leave alone while spending time in QEII Hospital. Confronted me at my church last Sunday and prevented me from leaving. Damaged my car and was physically restrained by church members while I drove away – reported to Moorooka Police. Removed from hospital – Woodridge Police have statements from me concerning the matter.

The court file contains two supporting statements, including one from SRO T, an SRO at the Centre, concerning the abovementioned incident of 18 January 1987 when Mrs A's former boyfriend attended at the Centre while under the influence of some drug. Of that incident, SRO T stated:

> I asked [the former boyfriend] to leave the premises but he refused to do so. He was in a very distressed state and was crying. I told him that if he did not leave the premises I would call the police but he still refused to leave. I called the Oxley Police Station and two constables arrived . . . at about 4.15 p.m.. The two constables spoke to [the former boyfriend] and Mrs A and then took [the former boyfriend] from the Centre to the Barrett Psychiatric Centre where he was admitted. Mrs A was very upset by the incident and left work at 6 o'clock, four hours before the end of her shift.

The matter proceeded to hearing on 29 April 1987, at which time the presiding Magistrate found, on the balance of probabilities, that Mrs A's complaint had been proved. The respondent was then restrained by order of the Magistrate, from having any contact with Mrs A. In her evidence before the Inquiry, Mrs A stated that her former boyfriend broke the restraining order 'a couple of times' (T 4298).

However, Mrs A also claimed that her former boyfriend, when harassing her, always identified himself in respect of such actions (T 4295):

> . . . all the harassment that he was giving me at the time, he always let me know that it was him doing it.

B) MRS AK

Mrs AK, a former RCO at the Centre, provided a statutory declaration (Ex 395) and appeared as a witness before the Inquiry.

In her statutory declaration, Mrs AK related a history of what can only be described as her bitter and difficult working relationship with Mrs A at the Centre during 1986 and 1987. Mrs AK alleged that:

- Mrs A did not properly perform her duties, in that she failed to perform necessary tasks, expected of RCOs, during her shifts;
- She recalled the incident involving Mrs A's former boyfriend attending at the Centre (as mentioned above), and how she and Mrs A had had something in the nature of a falling out over the incident due to Mrs A's perception that Mrs AK had told other staff all about the matter;
- Mrs A had drawn a childish and hurtful caricature of her in a house report book;
- Mrs A went out of her way to be annoying to her;
- Mrs A had abused and assaulted Client 1, on several occasions. Mrs AK alleged that she had prepared written reports about these matters and forwarded them to her SRO, who she claimed was not supportive of her. I was informed that the Department was apparently unable to locate, or confirm the existence of, any such reports (T 5326–5328);
- She had received a number of letters, of threatening content, which she suspected emanated from Mrs A. Copies of two such letters were admitted as Ex 336. Mrs AK brought this situation to the attention of the local police, who conducted an investigation, which included questioning of Mrs A. Apparently that investigation did not result in any culprit being identified;
- She received harassing and threatening phone calls, sometimes from a male caller;
- On one occasion she found the remains of a dead animal in a wardrobe at Allamanda House, where she worked with Mrs A. Mrs AK suspected that Mrs A was responsible for this incident;

- She was interviewed by Mr Geoff Dunn about the writing of obscenities on Mrs A's sign-on cards; and

- All of these matters caused her considerable stress.

In turn, in her evidence, Mrs A adhered to the belief that Mrs AK was in fact harassing her, and included the incident of her being interviewed by police concerning the handwritten threats, and the persistent difficulties between the two regarding the performance of various tasks in Allamanda House, as aspects of that harassment. Before the Inquiry Mrs A either denied any involvement in the instances of harassment complained of by Mrs AK, or stated that she had no knowledge of those matters (T 4199–4209). In particular, Mrs A denied that she was the author of the handwritten threatening letters (Ex 336) allegedly received by Mrs AK (T 4205). When pressed as to whether she had a view about who may have been responsible in this respect, Mrs A nominated a former RCO, who was employed at the Centre, who at that time was friendly with her (CT 4340):

> Mr Herbert: Why is it, what gives you the feeling that it was him?---The reason I have that feeling is he was very protective of me at Basil Stafford when I worked there. He was supportive of me throughout the harassing times that I had out there. He was in my training group when I started there . . . and we developed a friendship from there . . . and he knew the situation, my situation at Basil Stafford with regard to the reason that I was in hospital, the difficulties I was experiencing with Mrs AK and the circumstances that I was in at Basil Stafford.

The former RCO nominated by Mrs A, when called as a witness, denied any knowledge or involvement in the forwarding of threatening documents to Mrs AK (T 5534–5536).

The majority of the complaints made by Mrs AK against Mrs A, and for that matter, those made by Mrs A against Mrs AK, are matters in respect of which no independent verification exists, in terms of assessing each party's alleged culpability. It is quite obvious that there was a significant conflict between the two women stemming from their working relationship; however, apart from Mrs A's evidence, there is no other evidence in existence which suggests that Mrs AK's alleged harassment of Mrs A occurred as a result of Mrs A's activist stance in relation to the reporting of instances of client abuse or gross neglect.

Certainly, the matters complained of by Mrs AK, while of relevance to Mrs A's credibility and her evidence about harassment, do not appear, in themselves, to be at all causally related to issues of client abuse or gross neglect, with the exception of the allegations concerning Mrs A's mistreatment of Client 1.

Upon all of the evidence, I am satisfied that Mrs AK's allegations in that respect, namely that on various occasions Mrs A either physically assaulted or verbally abused Client 1, cannot be substantiated. No corroborative evidence was placed before the Inquiry to support those allegations. While Mrs AK claimed to have prepared written reports about the incidents, the Department, employing its best endeavours, could not locate any record of such complaints being made at the time. Additionally, I have noted the matters raised by Mrs A's Counsel, Mr Clutterbuck, in his written submissions, particularly his observations that his client was not a person given to using foul language, and that Mrs A, as an RCO, historically had a close and compassionate relationship with Client 1.

Given the serious nature of Mrs AK's complaints concerning Mrs A's alleged mistreatment of Client 1, I cannot find, on the evidence, that those allegations have been proved to the requisite standard.

13.6 COUNSELS' SUBMISSIONS

Before setting out my considerations and findings in respect of this bracket of the evidence, it is useful to briefly note the primary submissions made by the various Counsel appearing at the Inquiry.

A) COUNSEL ASSISTING

Counsel Assisting submitted that two factors should be borne in mind when dealing with Mrs A's evidence:

i) The elapsing of a period of some seven years between the date of the incidents alleged by Mrs A and her appearance at the Inquiry; and

ii) The fact that Mrs A was under a great deal of stress, in both her work and social environments, while employed at the Centre.

Counsel Assisting submitted that Mrs A was not a reliable witness in respect of all of her evidence, and that although she may have been an honest witness, she was certainly confused in respect of some of her specific allegations; leading to any assessment of her evidence being 'fraught with difficulty'.

Further specific submissions made by Counsel Assisting were:

- It was possible that Mrs A's harassment was caused by her former boyfriend;
- The matters involving Mrs A and Mrs AK 'had all the hallmarks of a personality clash with a bicker over trivial issues';
- The evidence established that Mrs A considered herself to be the subject of harassment, when in fact no such harassment existed; for example, Mrs A's claims that she was harassed by the police and staff of the Criminal Justice Commission;
- There was no evidence to suggest that a number of the instances of harassment complained of by Mrs A were connected with staff at the Centre;
- Management at the Centre did not have any effective strategy to deal with informants, such as Mrs A, who faced harassment, and in the circumstances, the Department was opportunistic in refusing to allow Mrs A to withdraw her resignation;
- Mrs A's evidence should only be accepted after careful scrutiny.

B) COUNSEL FOR THE STATE OF QUEENSLAND

At section 13.4(A) above I have already remarked upon some of the submissions made by Counsel for the State of Queensland.

Additionally, Mr Plunkett also submitted that:

- Mrs A's claim that "behaviour modification sticks" were used at the Centre was fallacious and belated, given the history of her complaints;

- Mrs A's evidence about the Centre was exaggerated, and lacked both specific details (in terms of individual complaints of abuse and the like) and objectivity;

- There was no evidence to support the allegation that the Department condoned abuse at the Centre;

- Some of the harassment allegedly experienced by Mrs A was unconnected with the Centre, some of her other allegations were too speculative to establish any such connection, and still further, other harassment-based allegations arose from false perceptions on the part of Mrs A.

In conclusion, Counsel for the State of Queensland submitted that Mrs A's evidence was 'dangerously unreliable' and that little regard should be paid to her evidence as it was 'largely worthless':

> Her demonstrated bias against the Department was such that the only difficulty facing the assessor of fact is whether she deliberately lied, actuated as she was by ill-will and malice towards the Department, or was merely suffering from delusional recollections . . . it is not possible on her evidence to conclude either that she ever witnessed abuse or gross neglect of clients at the Centre or suffered any harassment and intimidation at all . . . there is no evidence that there was any connection between reporting of abuse and harassment.

C) COUNSEL FOR THE UNIONS

Counsel for the unions submitted that Mrs A:

> . . . had grossly exaggerated the level of harassment to which she had been subjected and, in many cases, was plainly untruthful. Further, her definition of harassment seems to exceed any possible reasonable description of that term . . .

Mr Herbert noted several aspects of the evidence relating to Mrs A, and submitted that the evidence of Mrs A was such that where conflicts in the evidence existed, the evidence of other witnesses should be preferred. It was also submitted:

> . . . that the evidence of Mrs A was found to be wholly and completely unreliable and cannot form the basis of any adverse finding of this Inquiry, except against Mrs A herself.

Most surprisingly, Mr Herbert also submitted to me that the Inquiry itself may not have been undertaken had Mrs A's allegations been subjected 'to a more rigorous inquiry' before the public hearings were commenced.

D) COUNSEL FOR MRS A

Mr Clutterbuck prepared lengthy written submissions, traversing many points and making many observations upon the evidence, of which some of the more salient were:

- Mrs A's approaches to investigative agencies such as the Commission, politicians, and the media were made as a result of her frustration and desperation arising from the

Department's failure to adequately address or rectify problems of client abuse and staff harassment;

- Mrs A was a person of high moral courage;
- Mrs A was discriminated against by union personnel associated with the Centre, due to her stance regarding the reporting of alleged incidents of client abuse and gross neglect.
- There is no doubt that Mrs A became a very unpopular person with staff at the Centre, and that she was of some concern to management due to her client advocacy, which 'disturbed the culture that had existed there for some time'.
- That I could be satisfied that Mrs A did experience harassment, and that some of that harassment emanated from staff at the Centre. The Department's methods concerning the reporting of instances of alleged client abuse and gross neglect were "antique" and:

  > It was a probable consequence of this reporting that Mrs A was more likely than not to suffer after making the complaints. The Department was ill-prepared to cope with a person who is prepared to report incidents of abuse, and at the same time deal with the harassment consequences.

- The Department breached its duty of care owed to Mrs A as an employee.
- . . . the system must change and change dramatically . . . Mrs A has given a special insight into an institutionalised culture that has now been revealed and brought to the attention of the public . . . if Mrs A has done one thing, she has brought out into the open the need for change to the State-run system of care for the intellectually handicapped.

13.7 CONSIDERATION OF THE ISSUES

A) MRS A'S REPORTING OF CLIENT ABUSE AND NEGLECT

Mrs A commenced her position at the Centre in August 1986. At that time, she had some nursing experience, and had undertaken some previous work with the intellectually disabled. Her motivation, in becoming an RCO, was (statutory declaration p. 2):

> At that time I greatly enjoyed working with disabled people, at a "hands-on" level of care. I found it stimulating and rewarding to be able to assist disabled people and work with them in programs that had been designed to greatly enhance their abilities and nurture characteristics in them that may assist them to assimilate back into the community.

In her statutory declaration, Mrs A also related the training provided to her by the Department, and particularly how such training included instruction on the topic of "client advocacy" (statutory declaration p. 3):

> . . . it was a requirement of our job that we take on the protective role in respect of these people, given that they could not look after and/or protect themselves. We were to support them in "sticking up for their rights" and the care that would be required by a parent to look after a child and to protect the child's interests, rights and maintenance.

Mrs A's Departmental personnel file was admitted as C Ex A. It shows that in accordance with general Public Service practice, Mrs A was originally appointed to her RCO position for a probationary period. Her six months probation report, completed by an SRO, was quite favourable; noting that Mrs A's work was acceptable and industrious, and that she:

> Meets all Centre requirements and initiates extra activities . . . carries out expected programs well, has commitment and good rapport with clients . . . can be relied on to carry out tasks with minimum follow up.

One section of the report dealt with Mrs A's communication skills, wherein her reviewing SRO stated:

> Needs to be assertive when dealing with others, perceived as being aggressive or high-handed, and gain confidence. This will increase effectiveness as a team member.

A 12-month probation report was completed in November 1987 by SRO T, then an Acting SRO. That report was very favourable towards Mrs A, describing her work output as 'outstanding'. SRO T commented that Mrs A:

> Works very well with clients in a pleasant, friendly way. Shows concern but doesn't "mother" clients. Has demonstrated firm belief in fair and equitable treatment of clients. Is co-operative and friendly.

As a result of that report it was necessary for the Department to consider whether Mrs A should be appointed on a permanent basis. Her personnel file indicates that the Department held some concerns about Mrs A's attendance record, which apparently had been affected by illnesses and other matters. The file bears a note under the hand of the then Divisional Head, Ms Shepherd, dated 14 January 1988, which indicates that Mrs A's work performance was 'of a very high standard' with the exception of her attendance record.

In due course, Mrs A's permanent appointment was confirmed by the Department.

Mrs A's next appraisal report was completed by RPO H in December 1989. Again, that report was very favourable, with RPO H noting:

> Mrs A works competently and autonomously and addresses needs of clients and implements programs and activities . . . Mrs A is sensitive to client needs and advocates on their behalf . . . Mrs A gets on well with her peers. She communicates effectively and is improving her assertion skills.

RPO H's report was the final appraisal report prepared for Mrs A, prior to her submitting her resignation, and then attempting to withdraw that resignation in 1990. Her personnel file also contains correspondence about those events, including advices from Ms Shepherd to the effect that the Department proposed to offer Mrs A temporary employment (which would be reviewed with consideration of permanent employment) as a community health aide with a Preventative Action Caring Team, following on from her resignation in 1990. That offer was not accepted by Mrs A.

RPO H and SRO AI both worked as Mrs A's SRO at different periods of her service with the Department. In her statutory declaration (Ex 365) RPO H stated:

> My opinion of Mrs A's competency as an RCO varied from time to time. I believe that she was very committed to client development. At times Mrs A could be, in my opinion, fairly authoritarian in her approach; although this may have been an effective management strategy

> which she had to adopt at times in the ALS house, due to behavioural problems of clients residing there.
>
> I believe that Mrs A had some difficulties in relating to other people and getting them on side. I felt that she had a need to be the leader in any group, and to make the decisions. If other people allowed her that role she functioned very well.
>
> I believe that Mrs A had some other complicating factors in her life which influenced her work.

SRO AI made not dissimilar observations in his statement (Ex 360).

I am satisfied that at the time Mrs A commenced duties at the Centre she was very strongly motivated by appropriate concerns towards the welfare of the intellectually disabled, which were laudable and entirely in keeping with the Department's aims and goals (as referred to in Chapter 1). Equally, I am satisfied that at that time, as indeed was the case at the time of the public hearings, there were RCOs employed at the Centre who were not motivated by such concerns, but who instead held attitudes of ignorance, indifference and in some cases an unwillingness to act decently towards the intellectually disabled persons placed in their supposed care.

Looking at the issues in their totality, and on the entirety of the evidence, I am satisfied that, during the period of reference of this Inquiry, instances of client abuse and gross neglect occurred at the Centre on a frequent basis. Some instances, such as the rape of Client 1, came to light (albeit extremely belatedly) because of the obvious physical consequences of the particular act of abuse that was perpetrated, which could not be ignored. Some such matters have been dealt with by the courts. Other matters have only been exposed as instances of client mistreatment during this Inquiry, leading to my findings herein that certain individual clients were assaulted or grossly neglected by persons purportedly charged with their care. Many witnesses, including Mrs A, have recounted numerous incidents of alleged client abuse and gross neglect; of which some could be substantiated, while others could not.

Accordingly, on all of the evidence, I am satisfied that the various instances of client abuse and gross neglect that have been brought to my attention are not isolated occurrences; they are not, by any stretch of the imagination, the totality (or even a substantial percentage) of the actual cases of abuse or neglect that have occurred at the Centre. Many factors, when combined, can only rationally lead to a conclusion that the incidents referred to in the body of evidence before the Inquiry were the ones that "slipped through" the system, the system in question being one where acts of client abuse or gross neglect would, more probably than not, remain undetected or unreported. Some of the relevant factors which have led me to this conclusion include the pervasive institutional culture (of which the non-reporting of one's RCO colleagues for alleged misconduct was a major facet), the consistent failure by staff to adhere to prescribed client injury and event reporting procedures, the admitted inadequacies of the Departmental investigative procedures and the fact that such incidents of client abuse or gross neglect are, by the very nature of things, and sometimes by design, most likely to occur in the absence of any witnesses able to give an accurate version of the events that transpired.

These matters were frequently touched upon by QAI, in its various written submissions to me. They were perhaps most succinctly and accurately expressed by QAI's Counsel, Mr Keim, during his oral submissions (T 5956–5968):

> Firstly, I counsel against the "few rotten apples" inference or explanation of what facts your Honour ultimately finds to have been proved, and I say that Mr Plunkett's submissions come very close to the "it's just a few rotten apples" analysis of the situation.

> The other point I make, too, in terms of what inferences your Honour will ultimately draw and particularly in terms of questions of causation, is that one would expect an Inquiry like this, no matter how much one tries, ultimately not to get the full picture, not to be able to prove to a criminal standard each and every piece of mistreatment that has occurred over the period under which the Inquiry has been examining, and it is also reinforced by the fact that, as I understand it, in any event the Inquiry made a selection of what it considered to be representative incidents to examine in detail.
>
> But it is also the case that what the evidence reveals, or the allegations that your Honour has to consider, is that people were encouraged not to dob; investigations failed to be sustained because people did not want to assist. And despite the fact that most of the parties seem to agree that various forms of harassment did occur – and my submission is that it is unrealistic to say that the only misconduct that existed at the institution, because of all of these facts, is that which has been proved to a criminal standard. And it would be wrong to make inferences with regard to causation on that narrow analysis.
>
> But I make the point that this is an area where investigations after the fact are going to find it very difficult to uncover all of what has been going on because the very things that one is investigating are about things which tended to have as their objective, hiding from the authorities examples of misconduct. And it is also in the context where the people affected, the residents, do have various forms of communication difficulties and, as arises from Mr Whalan's evidence, they are excluded geographically and in a number of other ways, from the community. So there is not a lot of people to notice things going wrong.
>
> And I use this analogy, and this is the last thing I want to say with regard to this particular point, is that the Inquiry is a bit like that of a palaeontologist. That is, a whole lot of factors have to come together for the Inquiry to hear about it. And in the case of the palaeontologist, the animal has to die close enough to a stream so that it is likely to be washed in and buried by silt before the body decays. And then that rock has to survive through various earth movements and finally be uncovered and come to the notice of someone who happens to recognise it for what it is. And so those same sorts of difficulties in that a whole lot of factors have to come together for this Inquiry to know about it are present here. And they are factors that one should keep in mind at all stages in drawing inferences and conclusions, particularly with regard to matters of causation.

Returning specifically to Mrs A, the incident of the assault of Client 2, which eventually led to the successful preferring of a charge of official misconduct and the dismissal of the culpable RCO from the Department, would never have come to light were it not for Mrs A raising the matter with her superiors. The proceedings before the Misconduct Tribunal clearly indicate that another RCO, an eyewitness to the serious assault of a severely intellectually disabled client which resulted in that client sustaining a fractured jaw, did not come forward until after Mrs A had raised the matter with management, which in turn provoked a police investigation. Had it not been for Mrs A coming forward with her information about this matter, it might be reasonably assumed that the status quo would have continued; that is, that matters would have been left on the basis of the Centre's management accepting that Client 2 sustained such a serious injury in circumstances unrelated to any act of client abuse or RCO misconduct. It can reasonably be concluded that other such instances of abuse, gross neglect and misconduct have remained undisclosed, and thus undetected by management at the Centre over the years, despite the best efforts of investigators, the many caring staff members of the Centre and concerned relatives, such as Mrs B.

Having regard to all of the relevant evidence, and in particular, Mrs A's documented history of reporting alleged incidents of client abuse or gross neglect, I am satisfied that Mrs A, while employed as an RCO at the Centre, witnessed or otherwise became aware of a number of instances of client abuse or gross neglect by her RCO colleagues. One can readily imagine the

distress that Mrs A, and those staff members who also fall within what I might describe as the caring majority of staff at the Centre, would have experienced upon witnessing, or otherwise becoming aware, of such conduct by their colleagues. Such conduct offended against all the training and instruction provided by the Department, and the sensibilities and values of those caring staff members. Analogously, it is not difficult to picture the disappointment and frustration experienced by persons such as Mrs A, who had sufficient courage to break ranks with their colleagues in reporting such wrongdoing, when their reports did not result in consequential action being taken against culpable RCOs. Those persons, lacking any legal training, may not have (through no fault of their own) appreciated the peculiar difficulties inherent in the investigation and prosecution of such matters. Naturally, some degree of disillusionment would ensue. Clearly, Mrs A felt frustrated with the Department's handling of her complaints.

However, in so finding that Mrs A either witnessed, or became aware of, client abuse or gross neglect during her employment at the Centre, I would hasten to add that I do not accept her evidence about such matters in its entirety. Mrs A was an exceedingly complex witness, and as noted by Counsel Assisting, any assessment of her evidence is fraught with difficulty. In all the circumstances, such an assessment cannot be undertaken on the basis that Mrs A's evidence is either to be believed, or rejected, in its entirety. Rather, to my mind, it is a matter where I can be satisfied, to the requisite standard, about some of Mrs A's evidence, and where other parts of that evidence must be rejected.

There is considerable merit in the observations of the two SROs, RPO H and SRO AI, that Mrs A's particular traits led to difficulties in her dealings with other persons. Certainly, in giving her evidence before the Inquiry, she appeared to be a forthright and very determined person; I do not expect that she would have been particularly tolerant of other RCOs who failed, in her opinion, to live up to the standards which Mrs A expected of them, and indeed asked of herself, in relation to the care of intellectually disabled clients. Such an attitude would naturally have led to friction arising between Mrs A and her work colleagues, some of whom did not share Mrs A's characteristics of extreme compassion for the intellectually disabled clients, and a zealous approach to client advocacy.

I have also had regard, in this respect, to the submissions of Counsel Assisting, Counsel for the State of Queensland and Counsel for the unions. In assessing Mrs A's evidence, it is necessary to note that the evidence relates primarily to events which allegedly occurred many years previously and about which Mrs A readily admitted she had difficulty recalling specific details. One must also appreciate, as noted above, that the very issues which were the gravamen of this Inquiry, insofar as they related to Mrs A, were inherently of an emotional and stressful nature. Additionally, one must have regard to the various other problems and upheavals faced by Mrs A, in her unsettled personal life, at the time that many of these events were taking place.

In making these comments, it should not be thought that I consider that, at any stage, Mrs A deliberately attempted to mislead the Inquiry, or any other person. While one can be critical of some aspects of her evidence, as Counsel for the State of Queensland and Counsel for the unions explicitly were, I cannot find that Mrs A, in making and pursuing her various complaints over the years, was actuated by improper motives. Rather, I view the situation as one where Mrs A, as a young RCO, suffered extreme disappointment and disillusionment with the realities of working in her chosen occupation at the Centre. This, when taken with other matters such as the harassment I am satisfied she was subjected to and various but substantial difficulties in her personal life, led her into an almost overwhelming situation. Indeed, in her evidence, Mrs A readily admitted her frequent difficulties in coping with these matters. This, I am satisfied, has led to some degree of inaccuracy in her account; these difficulties in turn led to a tendency to

attribute or associate certain events with the Centre, which in reality were not so connected at all. For these reasons, some of her evidence is clearly not reliable.

Nevertheless, I am satisfied that while employed as an RCO at the Centre, Mrs A either witnessed or became aware of a number of instances of what were in fact client abuse or gross neglect; these at times she brought to the attention of her superior officers. Some of the matters raised by Mrs A, however, had no relation to acts of official misconduct by other staff members. As RPO H noted in her statutory declaration:

> I believe that Mrs A generally thought the worst of people. At times she would suspect that something had happened to the clients. If someone had a bruise, she would suspect that it had been caused by staff. She was generally very suspicious of people and did not trust them.

There is certainly some truth in those remarks; but I am satisfied that Mrs A had good reason to be suspicious of at least some of her colleagues. In any event, her stance of noting and reporting all client injuries, such as bruises, which in her opinion were questionable, was to my mind an approach that at least led to some attention being given to those matters. The approach of many other RCOs, that is, the approach of not reporting such matters, due either to indolence leading to a failure to observe such injuries in the first place, or disregard of the Department's reporting requirements for whatever reason when injuries were noted, or wilfully failing to do the right thing, are in my view all less meritorious than Mrs A's sometimes over-zealous attitudes.

B) HARASSMENT

Episodes of harassment, in the present context, are similar in nature to instances of client abuse, in that they have generally, and intentionally, occurred in the absence of independent witnesses. It is therefore difficult to obtain corroboration which supports allegations of such events. The majority of the episodes of harassment complained of by Mrs A were covert in nature; for example, the disturbing telephone calls received by her from unidentified persons, the acts of damage caused to her motorcycle and motor vehicle, and the forwarding to her of unsigned threatening notices. In these circumstances, the Inquiry has not been able to establish, to the requisite standard, the exact identity of persons, be they staff or other persons, who may have been responsible for the various acts complained of by Mrs A.

I am satisfied that Mrs A's activist stance concerning matters of client advocacy, and her reporting of other RCOs for alleged acts of misconduct, resulted in her becoming deeply unpopular with a section of the Centre's staff. By stepping forward in early 1987 and formally reporting her allegations that Client 1 and another client were physically assaulted by an RCO with whom Mrs A then worked, she broke the mould at the Centre; she went against the institutional culture, of which the non-reporting of such incidents was a predominant aspect. Given the nature of that culture at the Centre, that such acts would make Mrs A unpopular with some of the RCOs is a matter of commonsense, although this was also established clearly by evidence before the Inquiry. For instance, Mrs AK said in her statutory declaration:

> I also was aware that Mrs A had a reputation of reporting staff and that you had to watch your back when Mrs A was involved. Most of the staff stayed clear of her because she had a reputation of reporting you even if you hadn't done anything.

The Inquiry also heard evidence from Mr AL, now retired, who worked as an RDO at the Centre for some 16 years. The aforementioned finding is best demonstrated by Mr AL's own words, which hardly need explanation. In his statutory declaration (Ex 384) he said:

> In connection with an RCO by the name of Mrs A, in the early stages of her enlistment, in my position as State President of the Hospital Employee's Union, I found from my observations of her as an RDO that she would not be an asset to our union if she joined it. I felt at the time that she was a "trouble-maker". I felt that she exaggerated stories about other staff members, that she was not as proficient as she said she was at handling clients, and that she would play one staff member off against another. I instructed . . . the Sub Branch Secretary of the Union, not to go out of his way to enlist her as a member of the Hospital Employee's Union.

These matters were taken up with Mr AL during his examination, when the following exchanges occurred, amongst others (T 5142–5145):

> Mr Plunkett: You say . . . you felt that Mrs A was a trouble-maker. On what basis did you have this feeling that she was a trouble-maker?---Well, just on my observation of her during – with her work, and attitude towards other staff. Nothing that I can really put my finger on. It was just a feeling that I felt that if she wanted to become a member of the union it would be in our best interests to keep away.
>
> Well, you have said her work, and her general attitude. What was it about her work which led you to believe . . . ?---Off-hand I can't remember that far back.
>
> Now, you mentioned her work and her attitude, can you think of any specific instances?---No I couldn't.
>
> All right, is it that you would be likely to reach a conclusion that someone was a trouble-maker without any basis to it?---Well, as I said, at that time I just didn't – it wasn't so much a trouble-maker, it was just so much – it was a feeling.
>
> Whatever it was, you did not want it in your union?---Yes.
>
> Because you thought that – why is that? Why didn't you want her in your union?---Well, we were thinking of having to chase round, if she got into trouble we would have to well and truly work our butts off to keep her out of trouble presenting cases.
>
> What, did you reach the view that she was a high risk, that she would get into trouble?---That's right.
>
> Now, you must have had some basis to reach that view about her high risk assessment?---Well, I can't remember at the time, but at the time when I did make that assessment, but there was just something there that I just couldn't put my finger on.
>
> The Commissioner: Mr AL, is this the truth of the matter – that you did not want anyone in your union who would even possibly be involved with making allegations about other staff members?---No sir.
>
> Was it that your union was not concerned about staff abusing clients, they were concerned with keeping the lid screwed down in case any suggestion of such practices leaked out?---No, sir.
>
> Nothing like that?---No.
>
> Well what was it about . . . ?---I don't know at the time sir.
>
> . . . about Mrs A that led you to believe that she would be unsuitable?---She was very airy-fairy sir.
>
> I beg your pardon?---She was very airy-fairy.

She was what?---Very airy-fairy, it was just something that I just couldn't put my finger on.

Very airy-fairy – so you wanted to deny her the opportunity to join your union because she was airy-fairy and you could not put your finger on why she should be treated in such a way? Is that what you say?---Yes sir.

So what was your reaction, to refer her to some other union, or let her make her own way, or what?---No, I think if she made the push and said she wanted to join the union there would be nothing stopping her from, from us joining her, but usually when new staff arrived there was always a drive to get them to join our union because at the time there were two unions . . .

There was some degree of, if not rivalry, there was at least some attempt on the part of each union to recruit new people?---That's right.

Well, when was it that you made up your mind that she was airy-fairy, although you could not put your finger on what it really was, that you did not want her in your union?---I couldn't tell you sir.

Vis-à-vis her time of joining the service?---Off-hand I couldn't tell you sir.

Mr Plunkett: Well, the statement records that you were supposed to have felt that she exaggerated stories about staff members, do you see that?---Yes.

Is that an accurate recording of what you told the police officer?---Yes, that's what I told them.

Do you still stand by that, you felt that she exaggerated stories of other staff members?---This was later on, this was after she had been with the Department for a while.

All right, can you think of any specific examples of these exaggerations?---No, I can't at the time.

Well, if it was after, then that could not have been a feature that you took into account in deciding that you did not want her in your union?---No, it was still – in that first four weeks, there was just something there that . . .

In addition to the something there and the airy-fairiness you talked about, was there any component of exaggeration by her in her stories about other staff members?---I think there was at the time.

There is a clear inference that Mr AL did not want Mrs A in his union because she could not be relied upon to do what was expected of her, namely, to protect her fellow members from accusations of wrongdoing, true though they may have been, and worst of all, that she may actually commit the unforgivable sin of making accusations herself. I am satisfied that Mrs A experienced significant difficulties with some of her colleagues, and indeed with some of her supervisors, during the period of her employment. While those difficulties may partially have arisen, at least in some quarters, as a result of Mrs A's views about client advocacy and client abuse, it is necessary to also bear in mind that the issue of harassment is a very subjective one. Some of the difficulties which Mrs A experienced with fellow staff members may have had no connection at all with issues of client advocacy, abuse or gross neglect. Similarly, I have had regard to matters such as those expressed within the following submission of Counsel for the unions:

Whilst harassment of fellow employees in the workplace can never be condoned, this Inquiry should be careful to discern between actual harassment, which is intended to intimidate people away from performing their duty, and the understandable human reaction on the part of an employee towards a fellow employee in circumstances where a close association may lead to

> vexatious and unnecessary reporting of minor incidents which occur during the course of their employment . . .
>
> The question of whether an employee is a "whistleblower" within the meritorious meaning of that term, or simply a person with an excessively sensitive notion as to how this work may be performed, is a very difficult question and one to which there can be no satisfactory answer. However, if a particular employee perceives themselves to be a whistleblower and a protector of the rights of the clients at this Centre and proceeds to report every minor incident of which they become aware, it is quite understandable that other employees who feel themselves at risk, rightly or wrongly, from the actions of such a person might be inclined to shun the self-appointed whistleblower. In turn, this shunning of such a person is taken by the whistleblower to be a form of punishment or harassment.
>
> In fact, a balanced approach to the whole question should lead to a conclusion that not every shunning, or criticism, of a person who perceives themselves to be a whistleblower can be taken to be intimidation or harassment . . .

While I do not suggest for one moment that any of the incidents of alleged client abuse or gross neglect reported by Mrs A were minor, I suspect there is certainly some truth to the submission that other RCOs, such as Mrs AK, held the opinion that Mrs A unreasonably reported other staff. In the main, I do not think that Mrs A's reporting of client abuse was unreasonable; rather, most aspects should be commended, as being in the best interests of the clients and completely within the spirit of the Department's aims, programs and policies. However, as matters stood at the Centre, it follows that a complaint made by an unpopular RCO, with a reputation of being a whistleblower, which is then found to be unsubstantiated, may lead to some staff members adopting cynical, sceptical and indeed actively antagonistic attitudes towards the reporting RCO.

As noted, harassment in this context is a very subjective notion, and I have also had due regard to a body of evidence establishing that Mrs A considered herself to be the subject of harassment, when in fact none existed. Much of this evidence related to Mrs A's dealings with the bodies to whom she reported her complaints, such as the Centre's managerial personnel, the police and the Criminal Justice Commission.

Regarding management, Mrs A perceived, on the part of her senior officers, a lack of support or interest about her complaints, both those about client abuse or neglect and those concerning her personal experiences of harassment. It is unnecessary to recite all of the evidence in this respect, which was considerable in its volume, as a few examples suffice for illustrative purposes:

- Mrs A's perception that Mr Dunn's interviewing of her, in relation to the obscenities which were written on her sign-on cards, amounted to further harassment of her, rather than any attempt to appropriately investigate Mrs A's complaints (Mrs AK was also questioned).

- The attempts by Mr Rohan and Mr Ross, in November 1990, to elicit further details from Mrs A so that they might then undertake investigation of her complaints of client abuse/gross neglect (T 5237):

  > Mr Plunkett: Why was it that you gave lists of incidents to Mr Rohan and Mr Ross without names? Why weren't you prepared to name names?---I wasn't prepared to give them anything, but they wouldn't – they kept insisting that I attend the interview. I didn't want to attend the interview.

But you wanted to do something about stopping the violence to clients, didn't you?---Yes, I did, from 1986 until I left there.

Well, here was an opportunity. You had two very senior officers at the Department sitting down with you saying "Okay, let us get to the bottom of it", and you are saying you are reluctant about assisting them?---Giving it to them, yes, I was.

But, nevertheless, despite that reluctance, you did in fact give them a lot of detail about instances, didn't you?---Yes, because they wouldn't leave me alone.

Well, was that harassment, was it?---Well, I felt it was, yes.

- Mrs A's claim that she received harassment while working as an administrative assistant at the Mt Gravatt regional office prior to her resignation taking effect (T 4242):

Counsel Assisting: It is clear that, from about October 1990 onwards, that you had not suffered any further harassment?---That's correct.

That is . . . ?---Oh no, it isn't correct, sorry. I received harassment while I was working at the Mt Gravatt office.

Yes?---From my senior staff there.

Yes. Who were the senior staff there?---Geoff Ross.

What sort of harassment was that?---He – when I first started working at the Mt Gravatt office, he told me that I was not to disclose my circumstances to other staff within that office, and Geoff Ross and Robin Shepherd, who arranged for me to work there, I told them previously that I had no office experience and that I didn't know how to do things that were required of an office assistant.

Yes?---And after working there for a little while, I noticed that there were reports in a meeting book about my competencies, and staff started to complain about my standard of work whilst I was at the office, and I spoke to several of the therapists there and they said that they had raised these issues with management, and management had told them that they couldn't understand why the Department had sent someone so incompetent to work in the office, and he well knew my circumstances, so I saw that as a form of harassment from him.

Mrs A also felt that at times she was being harassed by police officers attached to the Juvenile Aid Bureau Investigative Task Force (T 4242–4243):

Mr O'Sullivan: I want you to be very clear about this: see, you finished at the Mt Gravatt office on 30 November 1990, isn't that true?---That's right.

And we are very clear on this, that from that date onwards to the present time, you have suffered no other form – sorry – you have not suffered any form of harassment, is that correct?---From people at Basil Stafford?

Yes?---That's correct.

Well, from anyone else?---I felt harassed for some time by the police that were coming around to my home all the time and contacting me.

> The police?---Just wanting – they weren't really harassing me, but at the time I saw it as harassment, because they wouldn't leave me alone, they kept wanting more information.
>
> Well, they were trying to get information from you about your . . . ?---I realise that now, but at the time, because I'd had enough of everything that was happening out there, I felt harassed.
>
> Okay, objectively, looking back in time of course, you say that that was not harassment by those police officers, is that right?---That's right.

At times, Mrs A also claimed that Criminal Justice Commission staff were harassing her. These claims were publicly aired in a newspaper story printed in *The Sunday Mail*, during the course of the Inquiry, on 6 February 1994 (Ex 341). That story, attributed through a byline to a journalist by the name of Mr Stephen Lamble, appeared under a number of headlines, reading 'Woman scared to face CJC', 'Death threats to whistleblower', 'Ex-care worker moved house', and 'No protection offered – CJC'. The article made a number of claims, including that the CJC had not protected Mrs A, had harassed her by continually seeking information, had obtained Mrs A's private and unlisted telephone number (by implication against her wishes) and had failed to provide her with legal representation.

Yet, when examined on oath by Counsel Assisting, Mrs A retracted these claims. She admitted that she had suffered no harassment since leaving the Department (see above). Mrs A was then asked the following questions, amongst others, by Counsel Assisting (T 4255–4256):

> What was the CJC to protect you from then?---I just felt that if, when the Inquiry was starting again, or when the Tribunal in March last year started, that it could be repercussions for me for giving evidence against staff members.
>
> Yes, and to date, that has not occurred, has it?---No it hasn't.
>
> And you were advised very clearly by [Counsel Assisting's instructing solicitor] that should any incident arise you were to contact the Commission straight away?---That's correct, but I thought if someone did something to me then it would be a bit late to offer protection then.
>
> I see, but for about three and a half years, or a little less than three and a half years, nothing has happened to you?---That's correct.
>
> You do not feel that your fears are somewhat exaggerated about any threat to you?---No, I don't.
>
> Well what type of protection would you have like from the CJC? You see, you make the allegation that they failed to protect you, you really should address what protection you were after?---I wanted legal protection to start with.
>
> Yes, and you have been informed that that could not be provided by the Commission?---The Commission informed me of that, but someone else had informed me that it was within their powers to provide that.
>
> The Commissioner: Who was it that told you that it was within the Commission's powers to provide legal protection, as you call it?---Somebody – I can't remember who it was, but somebody gave me a copy of the, a page out of the CJC Act.
>
> Out of the Criminal Justice Act?---That's correct.
>
> Who is that somebody?---I can't remember their – who it was now.

> Was it a lawyer that gave it to you?---No, I don't think so.
>
> Was it a member of the whistleblowers' group?---It could have possibly been.

Mrs A then related (T 4256–4257) that she might have had a discussion with a person associated with the Whistleblowers' Action Group, which left her with the impression that she should be provided with protection and legal representation. Mrs A later stated that she was not a member of any such group, as she doubted their integrity (T 5249).

I have already, in the context of discussing the various applications for leave to appear made before me by Queensland Advocacy Incorporated, referred to the fact that the Commission has no power to fund representation for entities such as QAI, or for witnesses such as Mrs A, before its hearings. In the absence of any statutory power, there can obviously be no reproach of the Commission in such circumstances, relating to its inability to provide legal representation.

Additionally, Mrs A admitted that she may in fact have personally provided her silent telephone number to the Commission, rather than it obtaining the same without her knowledge (T 4246), and that the journalist apparently 'got it mixed up a bit' and that she 'probably should have explained it to him more thoroughly' (T 4268).

Mrs A's Counsel dealt with these matters in his written submissions, noting that at the time of the dealings with the media his client was suffering frustration and emotional strain, and may have in fact received bad advice (such as the advice about legal representation), and that I should not draw an adverse inference against Mrs A as a result of these matters.

I appreciate that at the relevant time when Mrs A was in contact with management, the police and Commission staff she was experiencing frustration and emotional strain arising from a number of factors including, and significantly, her employment by the Department and issues associated with client abuse. In particular, at the time of leaving the Department's employment, Mrs A appears to have been entirely frustrated and suspicious about the motives of the Department's senior officers. While I am satisfied that Mr Rohan and Mr Ross acted towards Mrs A with appropriate intentions, it is patently obvious that the Department lacked any effective strategy for dealing with the issues that had arisen at that stage. As admitted by Mr Whalan in his evidence, and Mr Plunkett in his oral submissions, the Department had been unable to counter the problem of harassment. In his evidence, Mr Ross admitted to feeling a sense of frustration about the entire sequence of events (T 118) stating (T 119):

> I don't know that I felt it was "good riddance". I felt that certainly there was an enigma about Mrs A and the way she operated and acted, that it wasn't going to get us anywhere; that she was certainly very angry and aggressive towards anybody in a senior position; that she interpreted actions that were taken in the most negative way that they could be taken, and then even in terms of her coming across to work as an admin assistant, I mean she interpreted that as being a negative act and yet I know for sure that from Ms Shepherd's point of view, and then from my own, that it was done to try and give her some relief of the situation. I mean I understand the trauma that she was going through at the time, but there seemed to be no ability to reach out and to have a joining in terms of where we were going to go . . .

Certainly, the situation had so deteriorated that it was unlikely that any resolution, perceived to be satisfactory by Mrs A, could be achieved.

I am satisfied that, due to all of her experiences and her sense of disillusionment, at times Mrs A wished to put the entire saga of events relating to the Centre behind her. Such an attitude is understandable. However, given the serious and repeated nature of her allegations, it was at all times necessary for the Department's senior officers, the police and staff of this Commission to

use their best endeavours in order to discharge their statutory functions, by seeking information from Mrs A. In so acting, they could not objectively be said to be "harassing" her. In all the circumstances, it was not a situation whereby Mrs A could simply and unilaterally elect not to be involved in such matters any more. In including these comments however, I hope that this Inquiry is, for Mrs A, the culmination, and something in the nature of a personal resolution, of her involvement with matters relating to investigations of the Centre.

Finally, it would appear that some of the harassment received by Mrs A was not work-related, but probably stemmed from difficulties in her personal life, particularly arising from her tumultuous relationship with her former boyfriend. Mrs A herself asserted in her evidence that this person was prone to undertaking acts of harassment of a most serious nature, including disturbing telephone calls, assaults, interference with Mrs A's personal liberty and damage to her property. This bracket of harassment arose in circumstances entirely removed from Mrs A's employment at the Centre, and her reporting of incidents of alleged client abuse or gross neglect, yet to a large extent mirrors the incidents of harassment that she alleges emanated from Centre staff in the same period.

The incident described by Mrs A as 'particularly disturbing', whereby she was followed in her motor vehicle by another vehicle containing masked occupants, certainly appears to pre-date the time that Mrs A publicly commenced reporting client abuse. There is no evidence to link that incident, in any way, with any staff at the Centre. Conversely, the RDO staff, from the relevant logs, appeared to have acted in a most supportive fashion to Mrs A. Similarly, there is no evidence to suggest that staff had anything to do with a number of other instances of alleged harassment raised by Mrs A, such as the interference with her motor vehicle brakes and the damage caused to her motor cycle. Bearing in mind the serious nature of these allegations, which have at times received wide publicity, I am not satisfied that there is sufficient evidence to establish any connection between those incidents and Mrs A's employment, and her actions in reporting client mistreatment, at the Centre.

However, as noted, I am satisfied that Mrs A's reporting of her colleagues' alleged improprieties exposed her to a significant current of dislike and suspicion amongst her colleagues at the Centre. I accept that Mrs A became an extremely unpopular figure amongst certain sections of the RCO community at the Centre; although some such RCOs may have taken a dislike to Mrs A for unrelated reasons, such as those of a personal nature, I am satisfied, on all of the evidence, that at least some staff resented Mrs A's actions of reporting her colleagues, and acted in a spiteful and vengeful way towards her.

C) DID THE CENTRE MANAGEMENT CONDONE THE USE OF VIOLENCE TOWARDS CLIENTS?

It was inherent in Mrs A's evidence that she believed that the Department either "unofficially" condoned the use of violence towards the intellectually disabled clients at the Centre, or turned a "blind eye" towards it. I use the term "unofficially" in this context, as there can be no doubt that the Department's official publications, such as the policies, procedures and memoranda referred to at section 7.13 herein specifically reveal a serious concern by the Department with matters of client abuse. Be that as it may, the evidence before the Inquiry has emphasised the discrepancy that exists between the Department's written position, and the real or practical position that such procedures were not observed by a significant number of staff at the Centre, regarding matters associated with the reporting of client abuse (and see Chapter 2).

Mrs A's suspicion that the Department unofficially condoned the use of violence towards clients, or turned a blind eye towards it, stems from her general perception that the Department did not act on her complaints. As noted above, I am satisfied that senior officers such as Mr Rohan and Mr Ross took all steps reasonably open to them upon learning of Mrs A's allegations. The myriad of factors operative at the Centre which militated against the successful conclusion of investigations of alleged client abuse, and the inadequate investigative methods generally employed by the Department, in the majority of cases resulted in an inability to substantiate reports of client abuse. Understandably, to a complainant such as Mrs A, this could be seen as less than a satisfactory outcome, particularly when such a situation was personally coupled with the receipt of harassment, or at best, antagonistic or unfriendly behaviour from one's colleagues as a result of making such a complaint. However, those matters do not support any suggestion that the Department condoned abuse, or devoted less than its best efforts to the problem, even though those efforts were largely ineffective.

Also, in support of her belief, Mrs A referred to the appointment of one RCO, to a particular villa to quell violent clients through violence [see the last point discussed in section 13.5(B)]. She said (T 5226):

> Mr Plunkett: Do you really believe that the Department condoned the use of violence by [a male RCO] against clients?---Yes, I do believe that.
>
> What basis is it that you draw that belief from?---Because the senior staff and management knew that [the RCO] used that type of method to restrain clients and to control a situation . . .

The former RCO in question was called to give evidence. The gist of this man's evidence was that he was appointed to work at one villa at the Centre, because of his size, and his ability to deal with the disruptive and violent behaviours frequently engaged in by the clients of that particular house, all of whom were males, some of whom were big and strong. The former RCO was of the view that management condoned the use of reasonable force to deal with these clients at times when they were being violent, but did not condone abuse (T 5525–5534).

13.8 CONCLUSIONS

As noted above, I have been unable to accept, or for that matter reject, Mrs A's evidence in its entirety; rather, I am satisfied about some aspects, but not about others.

I have found that Mrs A during her time at the Centre witnessed, or became aware of, a number of instances of clients being mistreated by her colleagues. Her allegations about such matters, all of which related to events that by necessity pre-dated her retirement in 1990, were not again traversed by this Inquiry for the reasons referred to at section 13.4(A), although one of those allegations had been tested in another forum, with Mrs A being described by the Member presiding as 'a person of truth and integrity'. Her allegations about client abuse before this Inquiry at times displayed Mrs A's extreme distrust and animosity towards the Department. Certainly, in respect of many incidents, Mrs A's evidence was marked by a lack of specific detail, and a tendency to exaggerate in order to paint the worst possible picture of the Centre and the Department. Some of the matters complained of by Mrs A may not have arisen as a result of acts of official misconduct, but from innocent causes unconnected with client abuse. I accept that Mrs A was most suspicious about the actions of many of her RCO colleagues; yet, it is a matter of considerable regret that I must herein report that, at least in relation to some of the RCOs whom I have heard evidence from, or about, I too hold such views. While Mrs A may have thought the worst of some of her colleagues, her complaints about client injuries and alleged abuses stand in marked contrast to the lassitude and wilful ignorance displayed by many other RCOs to such matters. To put things simply, I am confident that the interests of the intellectually disabled clients

of the Centre are much better served if RCOs have a tendency to perhaps "over-report" incidents and injuries, rather than to ignore such matters even when they are quite apparent, and serious (see Chapter 23).

I am satisfied that there was a factual basis, at least for some, of Mrs A's complaints of client mistreatment. As to the consequences of Mrs A making those complaints, in terms of alleged harassment, the evidence has not established that many of the more dramatic incidents of harassment, of which Mrs A has frequently and publicly complained, either occurred, or if they did occur, occurred as a result of any connection with the Centre, its staff or the reporting of client abuse. Some of the acts of harassment attributed by Mrs A to staff at the Centre were demonstrably not connected with matters of client abuse. Other aspects of complaint could not, when appropriately tested, be found to be acts of harassment at all, as conceded by Mrs A. Understandably, there is a considerable lack of corroborative evidence to verify the occurrence of many of the acts complained of by Mrs A. The Commission has been unable to identify, to the requisite standard, any person responsible for the various alleged acts of harassment touched upon in the evidence.

I am satisfied that the Department's senior officers, in considering Mrs A's resignation, did not act unfairly or opportunistically towards her. At the time of Mrs A attempting to withdraw her resignation, relations between her and the Department had deteriorated so greatly as to be, to my mind, irreparable. That is not to say that the Department's handling of the matter was in all respects adequate; as noted the Department had no effective strategy for attempting to deal with "whistleblowers" in order to adequately protect them, or to act effectively upon the information that such people provided, about issues such as client abuse or the occurrence of official misconduct. I will return to these matters, in order to further discuss them, in Chapter 23. At the present, it suffices to note that Mrs A was very much a victim of particular circumstances operating at that time, rather than any malicious or opportunistic behaviour on the part of any senior officers of the Department. Despite all of the above, I am satisfied that Mrs A did in fact suffer adverse consequences as a result of her stepping forward to make complaints about client abuse. In doing so, she did not conform to the pattern of behaviour expected by her colleagues of RCOs. Consequently, she became very unpopular with some sections of the Centre staff, who I am satisfied made her time at the Centre very difficult. One could apply many labels to such behaviour: harassment, ostracism, intimidation, or non-cooperation; the terminology is really irrelevant; the crux of the matter is that Mrs A was punished by some staff at the Centre for doing, what all fair-minded persons must agree, was her duty, namely reporting client mistreatment. Mr Poole, Mr Clutterbuck's instructing solicitor, aptly summed up the situation during his oral submissions (T 5901):

> She may have exaggerated or misplaced the origin of what she regarded as being harassment, but the fact remains, in my submission, that she was subject to harassment. At least some of it clearly had its origin in her stirring up the situation in the Basil Stafford Centre, and there were instances of abuse which justified her stirring it up.
>
> She, I would ask your Honour to recall, has no particular interest in raising these matters and her submissions do not proceed from a particular interest either in preserving an institution or the name of a department. Indeed, people in her position act in many respects contrary to their own interest in raising this sort of fuss which eventually gives rise to an inquiry of this or other type. I would ask your Honour to look at her evidence as a whole, to look at it as being in many instances supported independently. We do not, of course, concede that she is unreliable but we do concede that while she may have regarded, as I have said, the tampering with her motor vehicle as being connected with the Basil Stafford Centre, she could have been mistaken.
>
> I simply submit, your Honour, that she is like a person who has been bitten by a dog and exaggerates the size of the dog; the bite was there. She did suffer some harassment and I would ask your Honour to look to the evidence of the other senior officers, and that has already been referred to by learned Counsel

> Assisting and in Mr Plunkett's submissions, that they also have suffered harassment, and this, I say, supports her contention that she received such treatment, supports the contention that there was a culture existing at that institution and supports the contention that this harassment arose out of her raising concerns about the appropriateness or inappropriateness of treatment of clients and instances of abuse.

While Mrs A may have, by her very nature, encountered some difficulties with her colleagues irrespective of her complaints, she, and all reasonable people are entitled to expect that she would not have experienced problems with her colleagues as a result of implementing the Department's aims and instructions about matters as important as client advocacy and the full and timely reporting of suspected client abuse. That such problems arose is a condemnation of the persons who so acted towards Mrs A, merely because of the fact that she made complaints. Those persons are the very individuals, who unfortunately number more than a few "rotten apples", who actively sought to perpetuate the institutional culture at the Centre, for the benefit of their own interests and to the detriment of the intellectually disabled clients, the caring majority of staff members, and the Department's reputation. Attempts at re-educating or changing the behaviour of such recalcitrants, on the evidence presented to this Inquiry, are doomed to failure. In those circumstances, and bearing in mind all of that evidence and the ultimate or paramount concern which must be for the best interests of the intellectually disabled, whose care is entrusted to the Department, I am satisfied that the only way to destroy the institutional culture which promotes both the commission of acts of official misconduct and the victimisation of complainants about such acts, is to close the Centre, at the earliest possible opportunity.

In his written submissions, Counsel for the unions made a submission to the effect that this Inquiry may not have been necessary had Mrs A's allegations been subjected 'to a more rigorous inquiry' before the public hearings were commenced. During the course of his oral submissions, Counsel Assisting submitted that such a view was 'erroneous'. I entirely agree. By way of elaboration, Counsel Assisting noted Mr Plunkett's previously expressed concerns (see Chapter 12) as to the successful pursuit of an investigation in respect of issues of harassment, and the lack of real opportunity to test Mrs A's allegations, other than by way of the conducting of hearings. Indeed, Mr Herbert himself appeared to recognise that point, by saying in his written submissions:

> It was only during cross-examination of Mrs A, in the course of these proceedings, that it emerged that very many of her allegations had no substance or were inextricably linked with her serious difficulties in her personal life.

As will be obvious from the contents of Chapter 3, Mrs A's complaints were but one aspect of relevance to the decision by the Criminal Justice Commission to hold this Inquiry. Irrespective of Mrs A's allegations, a clear picture of concern about the Centre's operations had emerged over the years; one only needs to consider the six specific incidents of alleged client abuse or gross neglect examined during the course of the public hearings to realise this, as not one of those incidents was in any way connected with Mrs A or her allegations. Similarly, there were many other large brackets of evidence completely unrelated to Mrs A. To my mind, this aspect of the investigation was entirely worthy. Many witnesses before the Inquiry indicated a general awareness about Mrs A's harassment allegations, which I have already noted had attracted some degree of notoriety amongst the Department's officers. The situation was indeed as noted by Mr Rohan in his statutory declaration:

> The capacity of other witnesses [to acts of official misconduct] that is, the staff members themselves, is in my opinion influenced by the general staff perception of harassment. I am aware that harassment of staff is a real issue, but I think there is a gap between the reality of that harassment and the rumours or perception of the same. For instance, I do not believe that evidence exists to substantiate some of the more serious harassment rumours, for example, that there have been threats made to people's lives, however, the rumours create a perception or atmosphere amongst the staff so that people are reluctant to commit themselves to giving evidence in a matter.

In those circumstances, it was necessary for this Inquiry to probe, as exhaustively as possible, Mrs A's allegations and the evidence surrounding them as it is only when the true picture has emerged, that appropriate remedies may be considered, and informed recommendations made.

CHAPTER 14
THE MATTERS RELATING TO MR F

The Inquiry investigated, during its hearings, a body of evidence relating to a former RCO employed at the Centre, Mr F.

14.1 MR F AND THE DEPARTMENT

Mr F's Departmental personnel files were admitted in evidence as C Ex AG. Briefly, those files indicated that Mr F was originally appointed as a "male assistant" with the Mental Health Service at Wolston Park Hospital on 8 January 1974. Two members of Mr F's immediate family had worked at Wolston Park Hospital for considerable periods. Prior to taking up that position Mr F had worked for a number of years in the mining industry (T 4893). While working at the Wolston Park Hospital, Mr F dealt with psychiatric patients (T 4895).

In 1983, he was appointed as an RCO at the Centre, as part of a "deinstitutionalisation project" then being undertaken by the administration at Wolston Park Hospital. On 8 April 1988 an incident occurred at the Centre, involving one of the clients in Mr F's care, Client 9, which eventually led to a recommendation by Mr F's superiors that a disciplinary charge should be preferred against him for failing to conduct himself properly in the discharge of his duties. No such charge was preferred, as a result of a decision by the then Director-General approximately one year later, apparently on the basis of the effluxion of time since the alleged offence. Some aspects of the Department's disciplinary investigation were examined by this Inquiry.

Mr F apparently last worked at the Centre in 1991. At that time he took special leave from his employment, and eventually resigned his position as an RCO in June 1993.

The evidence reveals that Mr F has held a strong interest in trade unionism throughout his working life, and has held positions with various trade unions. At the time of appearing before the Inquiry Mr F held a full-time position as a senior officer with a trade union.

14.2 LEGAL REPRESENTATION AND ASSOCIATED MATTERS

During this bracket of evidence, Mr F was represented by Mr Logan of Counsel, instructed by Messrs C A Sciacca and Associates, solicitors. Leave to appear was granted on 10 May 1994. Mr F's legal representation before the Inquiry had been the subject of some discussion prior to that date, in terms of a possible conflict of interest arising should Mr Herbert and his instructing solicitors seek and be granted leave to appear to represent Mr F (T 4037).

Indeed, a number of letters had been forwarded by the Commission to Mr Herbert's instructing solicitors regarding matters relevant to Mr F's anticipated appearance before the Inquiry, prior to a decision being made by Mr Herbert's client unions that alternative representation should be arranged. Those letters were admitted as Ex 375. One such letter, dated 25 March 1994, from the Commission to Mr Herbert's instructing solicitors, made reference to the provision of a statement by Mr F, in accordance with the practice adopted in respect of the majority of witnesses, as to matters of relevance to this bracket of evidence. At the time of first appearing as a witness, Mr F had not so provided a statutory declaration or a statement, and was therefore (and quite properly) examined by Counsel Assisting as to his stance in relation to the provision, or non-provision, of any such document. During this examination, it emerged

that this situation appeared to have arisen, at least partially, as a result of the fact that the abovementioned correspondence, and other material held by Mr Herbert's instructing solicitors (T 4881) was not passed by those solicitors to Mr Logan's instructing solicitors (T 4890). In any event, Mr F consequently did provide a statutory declaration to the Inquiry (Ex 376). In all the circumstances, I do not draw any adverse inference against Mr F (or indeed, seek to reproach any of his representatives), as a result of the timing of his provision of a statutory declaration to Commission staff.

14.3 RUMOURS AND ADVERSE REFERENCES

As noted within the preceding Chapters, it was accepted by all legal representatives of the parties appearing before the Inquiry that harassment of staff at the Centre had been a problem during the period encompassed by the terms of reference of this Inquiry. I have also previously referred to the insidious nature of many of the acts of harassment complained of, and the problems thereby confronting any investigator attempting to ascertain the identity of those responsible for such acts. Accordingly, given the undisputed and serious nature of the problem of harassment that existed at the Centre, I was most concerned that this Inquiry should take all steps open to it in endeavouring to expose those responsible for such behaviour, so that they might thereafter be dealt with in an appropriate manner, to the benefit of decent officers of the Department and the clients. My concerns in this regard often took the form of urging witnesses who appeared before the Inquiry to fully and openly reveal any knowledge they had which might assist with the identification of such persons. It was in this context that Mr F was adversely named by a number of witnesses. Adverse references were also made in respect of Mr F, from time to time, by other witnesses, in relation to other aspects of his conduct while employed by the Department.

In the interests of fairness, having heard all the evidence presented at the hearings, I should indicate at this point that I am satisfied that there is no evidence to directly link Mr F with any act of harassment of any staff member, concerning the reporting of matters involving client abuse or gross neglect. For his own part, Mr F strongly denied any involvement in any such behaviour (T 4891–4893). Similarly, there is no evidence to directly link Mr F with any act of client abuse or gross neglect; participation in such acts was also strongly denied.

A former senior officer of the Department, in his statutory declaration, stated that Mr F was one of the names (of staff members) that had been put to him, over the years, 'in relation to intimidation and harassment'.

During the course of cross-examination of another witness appearing before the hearings, who was also a former senior officer associated with the Centre's management, I asked the following question (T 3686):

> . . . you told me a few minutes ago that you really are a supporter of the rotten apple theory, could you tell me please the names of some of these rotten apples? That is what we are trying to find out, if they are there, who are they?

The witness expressed some reluctance to answer the question, and Counsel for the unions sought clarification of my use of the expression "rotten apple", whereupon I stated (T 3686–3687):

> . . . what I am talking about Mr Herbert, are people who are making it difficult for the RCOs to reveal what they have seen. The standover merchants, if they exist. The people who are acting in the way that makes the RCOs 'dare not reveal', to use this witness' words, what they have seen.
>
> I am not talking about people who have not been properly trained and therefore are not in a position to give clients the best care that they could possibly have; I am talking about the people who are

> maintaining this culture of not dobbing, keeping it quiet, keeping things under wraps, keeping it within the four walls, do not let any light in, 'don't you dare do that because your tyres might be slashed or your roof stoned', or this happen or that happen, and the other things that we have heard, and I think will be hearing, as have happened in the past. That is the type of rotten apple I am talking about.

Thereafter, when the question was again pressed, the witness nominated Mr F, and stated 'and that's the only name' (T 3688).

When giving evidence, another senior staff member stated (CT 4522):

> . . . I was told by quite a few students that Mr F's work practices were pretty rough, pretty tough, very hard on people with an intellectual disability . . . they didn't use the words "work practices". They said "he's heavy with clients", I think, would be the word. I can't remember the exact words. I know that from conversations with them I gained the impression from quite a few people that Mr F's attitude and relationship with people with an intellectual disability was not within accordance with our principles and in accordance with our work practices. I can't be more specific than that . . .

At CT 4525, Counsel Assisting asked the witness:

> Is there anything else about Mr F that you can tell us?---No, no, sorry, not specifically. Just that there was a feeling amongst, I guess, probably amongst management, amongst the people that I knew, right, amongst the people that I worked with, that we wished Mr F well in his new career outside of Basil Stafford Centre.
>
> The Commissioner: That was a very kind way of saying you were glad to see the last of him, isn't it?---That's right your Honour, I felt that.

Another witness, in her evidence, while being questioned about incidents of harassment, stated that Mr F was 'very much part of that culture'; in reference to a culture of 'the victimisation of people who ratted on them to management'. The witness also stated that Mr F 'was very vindictive' (CT 4818–4819). The witness admitted that she had no evidence to connect Mr F to this culture, other than 'by widespread rumour' (CT 4819).

All of the abovementioned evidence appeared to emanate from a basis of rumours amongst staff members, and other hearsay material.

Accordingly, the evidence concerning Mr F, before the Inquiry, concentrated on three separate matters or incidents, namely:

i) Evidence from RCO AC of a conversation that she had with Mr F in June 1989;

ii) Evidence of a former Residential Program Officer, Ms AM, of a conversation that she had with Mr F in 1987; and

iii) Evidence of some comments allegedly made by Mr F during the course of the disciplinary investigation relating to the incident involving Client 9 in April 1988.

Other witnesses either directly, or by necessary implication, gave evidence that they perceived Mr F (and other union representatives) at the Centre as being more intent on union work than their jobs, and of being over-zealous in their defence of RCO union members accused of various acts of misconduct. These matters are not specific to Mr F, and accordingly, are dealt with in the general discussion of matters pertaining to the various trade unions, and their impact upon the operations of the Centre, included in Chapter 22.

In due course, Counsel Assisting and Counsel for Mr F provided detailed written submissions concerning the three aforementioned issues. While Counsel for the unions and Counsel for the State of Queensland did not address the abovementioned three issues in detail in their own written submissions, they did direct their attention to some of the more general issues, such as those relating to the trade unions and the Centre, which are also discussed at Chapter 22.

14.4 RCO AC'S CONVERSATION

A) RCO AC

RCO AC, who gave evidence during the investigation of the death of Client 8 (see Chapter 11) provided an additional statutory declaration to the Commission. Within that declaration, admitted as Ex 366, RCO AC related the following events:

> I recall an occasion in June 1989, I was working a relief shift at Melaleuca . . . I think it was the afternoon shift. I recall working with two fellow Residential Care Officers named RCO AN and Mr F. Two RCOs would normally work together in the house and the office area would be shared by both persons. The office area was towards the front of the house. I didn't know both RCOs very well and I can recall that this was the first shift I worked together with RCO AN and Mr F. I also did not know Mr F to be a union representative. At the time I was a member of the then Queensland State Service Union.
>
> I recall receiving a lecture from Mr F for about one hour in the office area of the house. During the lecture, chores were carried out, so the conversation was happening whilst the work was being done. I can recall Mr F and RCO AN were writing reports when the conversation actually started. Mr F did most of the talking and RCO AN nodded in agreement on several occasions, she just threw in odd comments here and there. I was of the opinion that both RCO AN and Mr F were good work colleagues.
>
> The conversation started by Mr F asking me "How are you settling in?" I replied "I am fine", and then Mr F went on to explain to me that "you don't need to listen to the nonsense at the top". I understood the people at the top to be the senior administration staff. The "nonsense" referred to relates to a suggestion made by Mr F that senior administration staff are telling the new RCOs to watch the old RCOs.
>
> Mr F then launched into the basics, like an instruction kit, on how to avoid getting into trouble with your fellow RCOs. He said words to the effect of "By not telling tales and not seeing things that don't affect you". Furthermore, "what can happen to you if you do tell on things around the Centre". He said that "you don't go blabbing to the top of the hill, terrible things can happen to people and they have happened. People have had their tyres slashed, your tyres can be removed from your car, threats have been made on your family and your kids could even be hurt". Mr F went on to say that "even your husband could be hurt, and in such a way that no one would believe a new staff member". I did not take this to be a threat, however, I considered that conversation to be good advice. I thought he was doing me a favour by putting me into the picture so to speak. Throughout the conversation, I listened to what Mr F had to say and on occasions I only said words to the effect, "Is that right" or "Really." As I was the new staff member, I kept quiet and listened to the more experienced staff members.
>
> I had no further conversation, beyond that day, with Mr F or RCO AN.

The roster sheets covering Melaleuca ward for the month of June 1989 were admitted as Ex 367. Those records indicate that it was possible that RCOs AC, AN and Mr F did work together at Melaleuca on some occasion during June 1989. The Department indicated that it was unable to produce the Melaleuca report books for that period (T 4725). As I noted at the time, in

relation to the roster sheets, it does not necessarily follow that the persons whose names appeared on such documents actually worked the shifts in question, and that evidence had been given, as one might have expected, that unforeseen circumstances arose on occasions, and other persons were called in to work rostered shifts (T 4725). Really, the only conclusion that can be drawn in relation to the roster sheets is that as suggested by Counsel Assisting, and accepted by Counsel for Mr F (T 5914), that the roster sheets do not disprove that there was an opportunity for the conversation, as alleged to have taken place by RCO AC, to take place.

Counsel Assisting asked RCO AC about her conversations with Mr F, and her impressions (T 4711–4712):

> Mr O'Sullivan: When he was referring to stories and tales did you understand that to mean do not go and tell untruths or . . . ?---No. I thought then that he probably thought that I might be going to tell tales, that maybe they do things differently to what we were told, and perhaps that I might go up and say, "They're doing it differently to what you're telling us".
>
> Yes?---That was as much as I made out from it.
>
> And did you ask him any questions during the course of this lecture, as you have put it?---I showed disbelief. I said, "Really – how could anybody slash your tyres just for telling something?" and he said, "It can happen, and does happen".
>
> And about your family being hurt, did he say that?---I thought that one was rather funny and I sort of laughed at that. I thought that was very melodramatic.
>
> But did you say anything to him?---I said to him, "Isn't that a bit rich?" and he said, "Don't underestimate what can happen".
>
> Did you say anything more about that topic?---Not really. I just thought it was rather silly. I did feel that there was a lot going on that I probably didn't know about, and that's why he was telling me in advance not to tell tales.
>
> And did he give any illustrations of any employee who may have been the subject of any form of harassment?---No. He just said on one occasion that someone did have her tyres slashed, but he didn't say who or emphasise – he didn't elaborate on that, because I thought that when I showed disbelief about it I think he was demonstrating to me that it can happen.
>
> Now in your declaration you said that you took this to be good advice . . . was that at the time that the discussion took place?---At the time that he said all of that I really didn't take it all very seriously in relation to anything possibly bad happening. I thought he was advising me not to go running with silly tales like, "We fold the towels this way, not that way" – that sort of thing.
>
> Yes?---I ignored it at the time. And recently when I saw a written account in the newspaper of the person who said these things had happened, they were exactly what had been said to me could happen, and would happen if tales were told, and I realised that they probably were serious.
>
> That is, the conversation, the context of the conversation you had with Mr F . . . ?---With him.
>
> . . . you took to be serious after you had found out that there might have been some substance in these allegations?---Yes, after I found out that somebody had said these things had actually happened to them.

Mr Logan also cross-examined RCO AC about the impression that she formed of her conversation with Mr F (T 4731–4732):

And this conversation that you have recounted, the first time you were asked to recall it was in December of 1993, was it?---No. I recall this – I've remembered this conversation. I haven't had to recall it. I didn't discuss this conversation or lecture or whatever you want to call it with anybody else.

What I am asking you is the first time you were asked to recall it was in December of '93?---Which part are you talking about? I'm talking about when Mr F spoke with me about the possibility of things happening.

Yes?---I made this known to the CJC people. After I had already made my statement, only after I had read the articles on the paper that this person had said these very things had happened to them and I realised that they were very serious.

Yes. That was against a background where, for the first six weeks or so that you had been working at the Basil Stafford Centre, nothing had come to your attention at all about any of those items you have described or incidents you have described?---I didn't hear anything about those incidents occurring to anybody, no.

And certainly did not occur to you?---Certainly not.

And afterwards, on this occasion that you have put in your statement in June of 1989, after then until the time when you made contact with the Commission staff you had heard nothing in that regard?---I had heard nothing about any of these things happening to anybody . . .

And they certainly had not happened to you?---And no one has told me, other than Mr F is the only one that discussed anything like this with me on Basil Stafford.

And it was not something at the time that you regarded seriously?---At the time I thought it was rather ludicrous and melodramatic and silly and stupid.

Something of a joke?---Something not to be taken very seriously.

Right, and, in doing that, you were bringing to mind someone who had seen something of life as well. You were not just an 18 year old or anything like that?---Well, exactly. I thought it was something like what happens at boarding school, you know, when the head boy tells the young boy what to do, that sort of thing.

So, it is the case that you have a recollection of some humour – a feeling of humour – associated with it?---I wouldn't say we were laughing or anything, but I wasn't taking it very seriously. I did actually laugh when he said about the tyres and your children and your husband, that bit. I thought that was rather funny. Obviously I wasn't feeling threatened.

Well, he did not at any stage over those years that passed before you made contact with the Commission staff, have that particular feeling?---I never felt threatened by Mr F at all.

As a result of that incident you have recounted?---I just discounted that as being – I didn't take that so seriously that I worried about it. If I took it that seriously I would've gone to somebody about it before now.

Yes. It is something you can recall actually being said?---Yes.

But not in terms of a recollection of something serious?---It was something that was said to me and, whilst I didn't take it terribly seriously, I did make a note that there was, you know, this was unusual, this type of introduction to the politics of the workforce.

As to Mr F's dealing with the clients at the Centre, RCO AC stated (T 4715):

> . . . the time I worked with him I observed him with the clients myself and he appeared to me to treat the clients with sensitivity and respect, and he never instructed me otherwise.

B) RCO AN

RCO AN was alleged, by RCO AC, to be the other RCO present at Melaleuca at the time of her abovementioned conversation with Mr F. Her written statement was admitted at Ex 369. In that statement, RCO AN confirmed that she knew Mr F, and had worked with him during June 1989 at Melaleuca, but could not recall ever working with RCO AC, and could not recall being a party to any conversation between Mr F and RCO AC.

When called as a witness before the Inquiry, RCO AN was asked about her recollection of the alleged conversation (T 4745):

> The Commissioner: Would it be fair to say, RCO AN, that whilst you have taxed your memory, you have tried to think about it, you cannot remember it, but on the other hand, neither can you deny it?---I suppose I can't deny it. But I've tried and tried . . .
>
> You have tried and tried your best but you cannot remember it?---No.
>
> Is that as far as you can go?---Yes.

On the whole, I was not impressed by RCO AN's evidence, particularly in relation to one line of questioning, pursued at length, by Counsel Assisting. Those questions were related to evidence given by RCO AC, to the effect that she had knowledge that two other RCOs at the Centre had been informed by RCO AN as to the contents of RCO AC's statement about her alleged conversation with Mr F (T 4703). When first questioned by Counsel Assisting about these matters, RCO AN denied having any discussions 'with any persons at work' about RCO AC's statement. When she was then specifically pressed as to whether she had discussed these matters with a particular RCO she conceded that she had in fact done so (T 4738 et seq). Her evidence about these matters was, to my mind, of a dissembling and contradictory nature.

RCO AN regarded Mr F in a favourable light (T 4773):

> The Commissioner: RCO AN, do you hold Mr F in high esteem?---I've got respect for Mr F, because he's a good worker. I worked with him.
>
> Yes?---He's a good worker. He's good with the kids. I can't fault him.
>
> Yes, you look to him, can I take it, for leadership?---Only if I needed sort of like anything to do with the union.

Indeed, RCO AN appeared to have a most blinkered view of life at the Centre, as demonstrated by her answers to the following questions asked by Counsel for the State of Queensland (T 4754–4755):

> Mr Plunkett: Well, do you think that from your perspective as a long-standing Residential Care Officer of some 18 years, do you think that things are operating well out at the Basil Stafford Centre?---Yes. Well, I enjoy my work there.
>
> Do you think there are any problems out there?---Only all this that's going on now seems to be the problem.

> What, the holding of an Inquiry?---Yes. I think just people being under stress and being called in . . .
>
> Do you believe there are any RCOs who abuse clients?---Well, I've never seen anybody. See I am in – I very rarely go out of my villa, very rare. I don't socialise much in the other villas and take my clients over, and not – very, very rare, because the clients I've got are real low level, and I've got two blind boys, so it's really difficult for me to go anywhere. So I never really visit much, I stay a lot to myself.
>
> I mean you've been out there for 18 years – do you believe that there are any RCOs who are not doing their job properly?---Well, I wouldn't know because I don't see them.
>
> Alright?---I don't socialise a lot at work.

C) MR F

In his statutory declaration, Mr F stated that he had no recollection of any conversations such as that alleged by RCO AC. In addition, he stated that he had no recollection of ever working a shift with RCO AC. Mr F did note that he had worked with RCO AN at Melaleuca, and stated:

> I had a good working relationship with her . . . I knew RCO AN as one of a number of fellow workers and union members from Wolston Park Hospital where we had both worked on the nursing staff prior to transferring to the Basil Stafford Centre.

Mr F gave evidence that although he could not recollect any such conversation, he could not deny it (T 4912). He also said the following (T 4912–4913):

> The Commissioner: . . . Can you think of any reason why RCO AC would say that she worked with you and RCO AN if in fact she had not?---Not really.
>
> And as far as you are aware, does RCO AC have any axe to grind with you?---I would like to think that I get on pretty well with everybody.
>
> Right, so you cannot point to anything, can I take it, which would indicate that she bears any ill-will to you?---Not really.
>
> Right, well, by the same sort of reasoning, can you think of any reason why she would make up this conversation which she says she can remember very well?---I don't know, your Honour.

When the specific conversation was put to Mr F, his evidence, in response, was frequently to the effect that he would not have used such words, as he did not talk in such a fashion. At T 4916, he said:

> I probably had a conversation with RCO AC somewhere along the line but certainly not along these sort of lines.

D) COUNSELS' SUBMISSIONS

Counsel Assisting submitted that RCO AC's views, about the comments allegedly made by Mr F, should be treated in the context of the other evidence received by the Inquiry about the harassment of staff at the Centre. As to the evidence of RCO AN, Counsel Assisting submitted:

> . . . that RCO AN was an unimpressive witness and one could form the view that she was not telling the truth in respect to these issues.

Mr O'Sullivan also noted that Mr F's Counsel did not suggest to RCO AC that the alleged conversations had not in fact occurred. By way of conclusion, Counsel Assisting submitted:

> . . . that the evidence of RCO AC is capable of confirming that Mr F was actively involved in perpetuating the anti-dobbing culture.

Mr F's Counsel, in his written submissions (also during the course of his oral submissions), noted that there was no suggestion that RCO AC 'was not trying to do her honest best', but if I was to find that the conversation did occur, I should make of it what RCO AC did at the time, that:

> . . . any such conversation was a mixture of shop talk, advice about the difference between classroom theory and having actual care of clients, black humour and Centre gossip – with no malice or sinister undertones.

[Note: The term "black humour" was first introduced by Mr F in his evidence – see section 14.5(B).]

In his oral submissions, Mr Logan submitted that any specific finding about RCO AC's evidence should not be used to 'leap' to a more general finding about Mr F being involved in harassment, client abuse, or overstepping the mark, vis-à-vis his union activities.

14.5 ALLEGATIONS BY A FORMER RESIDENTIAL PROGRAM OFFICER

A second specific bracket of evidence concerning Mr F arose as a result of allegations contained with a statement of Ms AM (Ex 371).

A) MS AM

At the time of giving evidence, Ms AM was employed by the Department within the ALS. She had previously worked at the Basil Stafford Centre. In 1987, she was employed there as a Residential Program Officer. In her statement she said:

> Sometime during that year, I believe that it was sometime between March and October, I had a conversation with a Residential Care Officer named Mr F . . . I no longer recall the exact details of this conversation but I do remember that it was during an afternoon and that Mr F and I were alone just inside the gate to Melaleuca villa . . .
>
> Mr F told me certain things about his dealings with a Basil Stafford Client [Client 10] . . . back in 1987 Client 10 had been absconding regularly from Melaleuca villa. He usually ran down to the local railway station or into the bush. I no longer recall the exact words used by Mr F but he told me that he no longer had problems with Client 10 running away. I asked Mr F something like, "What's your secret?" or "What's your magic formula?".
>
> Mr F said words to the effect of, "He only did it to me once", or "He only did it to me twice".

> From what Mr F said I understood that Client 10 no longer absconded from Mr F. Mr F said words to the effect of, "Last time he ran down to the railway station I made him run back in front of my car". Mr F told me that this incident had occurred one night. Mr F told me that he had made Client 10 run in front of the car, that he was driving all the way from the area of Wacol Railway Station to Melaleuca Villa. Mr F also said something like, "He wouldn't do that now". I understood this to mean that Client 10 would not abscond now.
>
> I got the impression that this event Mr F was telling me about was not a long time ago, like years ago, I gained the impression that it would have occurred relatively recently. I recall being particularly horrified because Client 10 very rarely wore shoes. He would definitely have been under the age of 13 years when I had that conversation . . .
>
> When Mr F told me these things about Client 10 I was shocked. I just stared at him open-mouthed and before I could say anything Mr F said words like, "But you prove that in a court of law". Mr F pointed his finger at me as he said this. Mr F further implied retribution in the form of a civil suit. I no longer recall exactly what he said but I remember feeling intimidated. I have heard that Mr F has commenced civil suits against people for slander. I think I responded to Mr F by saying something like, "That's really sick".
>
> I think that Mr F told me about what he supposedly did to Client 10 to taunt me. Mr F was smirking. I believe that Mr F would have known about my attitude to treating clients in that manner because I reported a temporary staff member for an incident and that staff member was subsequently sacked. That story got around and after that a lot of the RCOs were quite distant towards me . . .
>
> That conversation with Mr F was a one off. He did not regularly seek me out to say these sort of things. I think that Mr F would have been fully aware of my attitudes in regards to the clients and my response on that one occasion must have confirmed this to Mr F. I believe that I did tell other staff members about what Mr F said to me. I cannot recall exactly who I spoke to or when I spoke to these people. I am sure I did not speak to my line manager about it. This was because I saw my line manager rarely, and there has been a long history of tension between resource staff and residential staff. I did not want to cause further conflict over a matter which could not be proved or substantiated . . .
>
> . . . Mr F was perceived as a powerful person because of his union position and the stories of civil suits. There was no overt intimidation by him towards me.

During the course of her evidence, I asked Ms AM about what she described as her reputation 'at the Centre for not condoning abuse' (CT 4798):

> The Commissioner: How did you acquire that reputation, do you think?---There had been an incident the previous year . . . where a Residential Care Officer who was temporary, who hadn't been made permanent yet, hit a client across the face in my presence; this client had actually vomited at the dining room table, and she was blind, and the staff member hit her, and there were other staff members present because it was breakfast time and I asked the other staff member to look after the consumers, who she was looking after, and I took her outside and said, "What you've just done is very wrong and I'll be reporting you to the senior officer", and I did so and the person was then, within a certain period of time, as quickly as it could be done, was sacked.

In turn, Ms AM was cross-examined by Counsel for the State of Queensland about her failure to report her alleged conversation with Mr F (CT 4813):

> Mr Plunkett: Well, the point of these questions is why you did not report this serious matter to your line manager; you say it was one-on-one, there might not be any other material around. I am suggesting to you it is possible that there could have been medical records which would

have tipped the balance to an investigator your way. It seems to me that you were very derelict in the exercise of your duties and responsibilities in not reporting this incident, as recounted to you by Mr F, to higher authority?---I was also quite frightened.

So you agree with me that you should've reported it, now, with the wisdom of hindsight, this matter as recounted to you by Mr F?---I've often wondered about that, but I believe I did what I was able to do at the time.

Well . . . ?---And sometimes, yes, I've had regrets about that, but I still don't believe anything could've been done because of the way that people used to cover for each other.

Well, this is a much more serious abuse than the two that you did report, isn't it, the thought of a young . . . autistic boy, running in front of a car some kilometre and a half in bare feet, broken glass, at night time, as you understood it to be; this is a much more serious incident than being slapped over the face, isn't it?---It was still alleged, and Mr F was given to boasting; so there is a chance that it could not have happened, which is what I made in my late statement, that I don't know whether it occurred. All I know is that he said that it occurred.

Later, at T 4823, in response to further questioning by Counsel for the State of Queensland, the witness said:

Mr Plunkett: . . . So you did not consider Mr F [Mr F] to be a good worker?---No.

But you saw no evidence of lack of caring by him?---I saw evidence of lack of caring but I didn't see evidence of abuse.

Alright . . . ?---By lack of caring, I mean in the way that we talk to the consumers and the way that we listen to what they are trying to tell us . . . I thought Mr F was fairly cold, very cold towards them.

Okay, so they were observations that you made, and then later on . . . it is explained to us from those observations you then made assumptions?---Not just in those observations, from rumour as well.

Well, even if he was on some occasions cold towards clients and not a good RCO, again what is the logical basis for assuming that would involve ultimately conduct by him amounting to intimidation or threats to others?---Rumour.

Could it well be, Ms AM, that Mr F has been assumed to be involved in intimidation and threats, if it be rumour alone?---There's always a slim possibility of that.

Why do you say slim?---But – I say slim because of the degree in the strength of the rumours about him.

Yes?---And usually, you know, I mean it could be considered as the case where there's a lot of smoke, there could be some fire . . . and people were frightened of him.

In his cross-examination, Mr Logan referred Ms AM to a favourable performance appraisal form contained within his client's personnel files (C Ex AG) which had been completed by Mr F's SRO. Ms AM conceded that she was ignorant of the performance appraisal system (CT 4831). Mr Logan also directly questioned the witness about her alleged conversation with his client (CT 4847):

Mr Logan: Did you see it at all as an older person pulling your leg?---No, I didn't.

Having a go at you?---No, I didn't. I'm sorry, I didn't.

Did you have a particular difficulty in working with Mr F?---Not particularly difficult, no, he was always, on the surface, he was very pleasant, very polite.

Yes. Not someone who was ever rude to you at all?---No, just abrupt and aggressive in his manner.

Polite but aggressive?---Yes. Well, by polite I mean, it's by degrees, there were other RCOs who were openly rude.

He was not in that category?---Openly insulted you. No, he didn't do that. It was more like there was a sense that he was being nice but it was a bit sarcastic, but it was part of this opinion that people had about resource staff.

Aside from the alleged conversation with Mr F as recounted above, other information provided by Ms AM about Mr F, concerning other incidents, and alleged intimidation etc., was conceded by her to be based entirely on 'gossip and rumour' (CT 4860). In light of that concession, I have not dealt with those parts of her evidence within this report, other than is necessary in the context of the witness' alleged conversation with Mr F.

B) MR F

In his statutory declaration, Mr F stated that he knew Ms AM, and that he also knew Client 10, whom he remembered 'with affection'. He recalled working with Client 10, and in particular, occasions when Client 10 absconded (Client 10's file was admitted as C Ex AJ, and includes several entries making reference to times when Client 10 absconded from the Centre). Mr F categorically denied that he had ever 'run Client 10 in front of a car'.

His position was clearly that he had no recollection of any conversation with Ms AM, in the terms as set out above (statutory declaration and CT 4861). I asked Mr F about these matters (CT 4957):

Well, did you tell her anything like this?---Certainly not that I'm aware of.

Well, you see, I suggest again that this is an incident, and this time I refer to the incident of the conversation, of such an unusual nature that you would be hardly likely to forget – what do you say about that?---It's a long time ago. Yes, okay, I don't like being put in a position where I got to call other people liars because it's not, you know, I don't want to call anyone a liar.

If you say it didn't happen and she says it did, well one of you is either telling lies or is mistaken – that is right, isn't it?---That's right.

Alright?---Well, she could be, she is mistaken. I don't want to be in a position where I've got to judge people.

Well, if she is mistaken she must have a pretty vivid sort of imagination?---I would say so.

I wonder why she would do that, can you think of any reason why she would do that?---I don't know. For the life of me I like to think that I got on pretty well with just about everybody on the Centre.

Alright?---There was no reason for anyone to, you know, have a go at me.

For his own part, Mr F swore that he would not have said such things to Ms AM, even in the form of a black joke (CT 4953):

> Mr O'Sullivan: So could we be clear on this, that you would never have said these things to her that I have alleged, in the form of a black joke, black sense of humour?---I don't think I would ever have said things like that.
>
> But you would not call that part of your black humour?---No.

Mr F stated that he had never taken, or threatened to take, civil action against anyone at the Centre (CT 4966).

C) COUNSELS' SUBMISSIONS

Mr Logan submitted that:

> Ms AM was someone disposed to think the worst of Mr F and to leap to conclusions about him and unions on nothing more than whimsy.

After noting some particular features of the evidence, and Ms AM's concession that matters contained within her statement, apart from the incident of the conversation about a Client 10, were based on 'gossip', Mr Logan submitted:

> Mr F does not recall the conversation which Ms AM has alleged took place in 1987 concerning Client 10. Nor is there anything sinister to be made of his absence of recollection of an event which occurred seven years ago, if it occurred at all. Even if the conversation occurred, it does not follow that the event related in it did . . . if the conversation concerning Client 10 occurred at all, it was mere hyperbole. One could not find that the incident itself took place.

Counsel Assisting submitted:

> It is difficult to explain the conversation had between Mr F and Ms AM. It is not explained away as part of Mr F's black humour. It is difficult to see the point of the story unless the story was true. I note that Mr F denies such an allegation. It is submitted that one inference is that it was a candid admission by Mr F about his method of dealing with difficult clients. Such a view would be consistent with Mr F's statements concerning the best way in dealing with Client 9 [see below] . . .

14.6 THE MATTERS INVOLVING CLIENT 9

In April 1988, Mr F was involved in an incident with Client 9. One of the outcomes of this incident was that consideration was given by the Department to the preferring of a formal disciplinary charge against Mr F. During the course of the Departmental inquiry into this incident, certain remarks were attributed to Mr F which, in turn, became the focus of this bracket of evidence before the Inquiry.

A) 'CHALLENGING BEHAVIOUR'

In April 1988, Mr F was involved in an incident with one of the clients then under his care, a Client 9. By all accounts, Client 9 was, at least at that time, of large build; the incident is no

doubt one which the Department would have officially termed 'challenging behaviour'. Mr F's Counsel submitted to me that such a description was 'Orwellian' in nature; that is, euphemistic (T 5916–5917 and see my earlier comments about the use of this particular euphemism at section 1.3 herein). Certainly, Mr F felt quite challenged by the situation, stating (T 4932):

> I didn't want to go in there because I didn't want to get into a situation where – I'm a 50 year – at that time, whatever age I was. I've had a heart attack. I had a crook back. I wasn't going to wrestle this young man you know. I go to work with one head, two hands, two legs – I expect to go home the same. So when it becomes too challenging, when the challenging behaviour like that becomes, to me, then this was the only time that I have ever had to back out of a situation. Usually you can talk or, you know, talk your way out of these sort of things and that sort of stuff, and I couldn't with him. And I was scared. Believe me, I was frightened for my life, really scared.

At T 4933, Mr F described the actual incident that had occurred:

> Well, he came out of this room, starting throwing all these – the day before he actually grabbed me by the throat and held me up like that, and I didn't know what . . . and I was scared. Believe me that is a scary, that is a really scary situation, and I looked around. I thought what the hell can I do? You know, you can't hit the – what, if you hit, you only hurt your hand, and even then what – he doesn't let go. So I tried to make him let go and all that sort of stuff. I am looking around and singing out for help, and a little, I believe, I am trying to – the little RCO who knew him, did something that distracted him.

Mr F's personnel files (C Ex AG) contained various documents about this incident. Within those documents, it was alleged that Mr F said to an RDO, Mr Dobson, who attended the incident, the following words:

> Cassia [the relevant house] doesn't even have a cricket bat.

and

> Big bastards like him require psych nurses seven foot tall and wide to sort them out.

As a result of that incident, Mr F attended an interview with senior officers on 8 April 1988. A typed summary of that interview contained the following entries:

> When asked why he [Mr F] stated to Mr Dobson there wasn't a cricket bat in the house, he replied this was said in frustration, "only a figure of speech", and added, "there is a cricket bat in every house; you only have to show it to them and you have no problems".
>
> When asked why he said the house needs a "psych" nurse, seven foot high and wide – he felt a client wouldn't be aggressive to someone that big.

B) MR F'S EXPLANATIONS

When he appeared before the Inquiry, Mr F was asked about these statements. In relation to the first statement, referring to the "cricket bat", Mr F gave the following answers to some questions asked by Counsel Assisting (T 4930–4932):

> Mr O'Sullivan: And you made a statement to him [RDO Dobson] that Cassia does not even have a cricket bat. Do you remember saying something to him like that?---That is what's referred to as black humour.

No – well, just let us examine the humour at a later stage, I just want to find out what you said to Dobson?---I probably would have said what he needs, or somewhere along the line "What he needs is a couple of seven foot psych nurses and a cricket bat".

I see – it is a big joke – is that what you are trying to make of the matter?---That's it, yes, black humour I refer to it as.

Did you say to him that Cassia does not even have a cricket bat? Did you say that to him?---In the manner as I have described, yes.

And what was the significance of making that statement to him?---Oh, that's just black humour.

Well, the cricket bat in the sense that you have described could only be to have used it in some way in controlling Client 9?---I don't know how.

Well, how did you think that that statement by you is going to be interpreted?---I thought of that statement as just a black joke between – I'm sure lawyers have black jokes like that, a black joke between Phil Dobson and me, that's all. I don't even know what it – come to think of it, I don't know whether there is a cricket bat, I wouldn't know.

Look, it could only have one possible connotation, and that is that it was to be used, whether as a joke or not, it was to be used against the client to control the client?---How sick. No, that's not the way it was meant at all.

Well, how were you using that statement?---I was using it as I have already said as black humour.

But how – what was so funny about saying . . . ?---Because all the rumours were going . . .

Just hang on for a moment, Mr F – what was so funny about saying "Cassia doesn't even have a cricket bat"?---Because at that time there was all these rumours going around about these cricket bats being behind doors and heaven knows what – I don't know what you would do with a cricket bat if you did use it in some way. Oh, no, I have read it in the paper since then, apparently you hit them behind the knees isn't it? Well, understand that's what I got out of the paper.

You did not get it out of the paper in 1988?---No, that was when these rumours started going around about the cricket bats being behind doors.

What is the joke, though? Can you just explain to the hearing, what is the joke in saying that "Cassia doesn't even have a cricket bat". What is the joke?---It's an in joke. You wouldn't understand.

No, well, I am willing to listen – now, tell me what the joke is?---The rumour was going around that all these cricket bats were being behind these doors to be used against clients who showed challenging behaviours. And this client was showing challenging behaviour. So the joke was "there isn't even a cricket bat behind the door to be able to control this challenging behaviour".

My understanding of Mr F's reference to "black humour" in this context was:

- that there were rumours circulating at the Centre about the use of cricket bats and other implements to control clients;
- that Mr F would have me believe that such implements were not so used;

- that RDO Dobson knew such implements were not so used;

- that each party to the conversation appreciated the other party's knowledge that such implements were not so used; and

- in an endeavour to explain to me why he had made this remark, Mr F took the stance that, in light of the existence of these rumours, he was having a joke with RDO Dobson.

I was not favourably impressed by Mr F's explanation.

Having regard to all of the evidence presented at the hearings, which led me to conclude that during the period of reference of this Inquiry there were many acts of abuse and gross neglect perpetrated against severely and profoundly intellectually disabled clients residing at the Centre, several of whom were young children, and that in many respects a not insignificant number of persons entrusted with the welfare of those clients were completely unsuited to such duties, I must remark that I fail to see any humour as I understand the term, black or otherwise, in Mr F's comments.

Counsel Assisting also examined Mr F about his second comment (T 4932–4933):

> Did you say to Mr Dobson – "big bastards like him require psych nurses seven foot tall and wide to sort them out" – referring to Client 9, did you say that to Dobson?---I probably made that statement at the heat of the moment.
>
> And why would you have made that statement?---Because I was frightened stiff – frightened for my life. It needs more than this little fellow to sort this fellow out. I could've said that – meaning the same "and I'm not going anywhere near him".

The matter was again discussed at T 4937:

> Mr O'Sullivan: Did you say something to the effect that you felt a client would not be aggressive to someone that big?---Probably.
>
> Go on, I think I cut you off – were you going to say something else about that?---Yes, first of all, a psych nurse would – has got the training to properly deal with these challenging behaviours.
>
> What, particularly if he is seven foot tall and seven foot wide?---It makes it a lot easier, yes, I would think.
>
> Could it be said that you were trying to say this; that you needed someone who was large and forceful who could bring these clients into line?---That's not what I said.
>
> No, I am just trying to get the effect of the input, of what you are saying?---Mm. What do you mean, "into line"?
>
> I take the clients at the Centre would react to someone who did wield a cricket bat at them? They would cower and perhaps change their behaviour?---I don't know. I've certainly – I don't know. Why would you need a cricket bat?

C) COUNSELS' SUBMISSIONS

Counsel Assisting submitted:

> On the face of it, his [Mr F's] statements to his superiors in respect to dealing with Client 9 indicate that an appropriate method was by the presentation of forceful physical authority.

Counsel Assisting appeared to concede that it was not possible to say that Mr F's remarks were not part of his black humour, although he also submitted that:

> The expression of such humour in the circumstances under consideration shows a complete lack of sensitivity and poor attitude to his work environment and that of his fellow employees.

Mr Logan submitted to me that his client's explanations of the incident, leading to the admitted making of the abovementioned comments, were 'graphic and credible'. He noted that the disciplinary investigation of Mr F was, in essence, for 'an allegation of insubordination vis-à-vis a direction that he [Mr F] should have taken care of Client 9 without assistance', and that it was not part of the Commission's function to re-open the incident, as the Department regarded it as closed.

In that respect, I would wish to note that the Commission did not 're-open' that incident, in terms of calling other witnesses etc; that incident was merely touched upon in the context of ascertaining why Mr F made the abovementioned comments, which were the real issues of concern before the Inquiry.

In addition, Mr Logan submitted that his client's remarks 'concerning cricket bats were plainly black humour, not indicative of methods used by Mr F'.

14.7 CONSIDERATIONS AND CONCLUSIONS

As previously noted, there was no direct evidence before the Inquiry capable of sustaining any finding that Mr F was directly involved in any of the incidents of harassment covered during the course of evidence, or in the abuse or gross neglect of clients.

In respect of the evidence of RCO AC, I have already, at Chapter 11, remarked upon my impressions of RCO AC as being an honest, intelligent and articulate witness. Her evidence, and her cross-examination in relation to this bracket of evidence, did not alter my perceptions in that regard. Indeed, it was not suggested, by any party, that RCO AC was giving her evidence in other than an honest fashion. In comparison, I was not so impressed by Mr F's evidence. At times his answers to persistent questioning bordered on the obscure, and were given at times, in a fatuous or bombastic manner. Indeed, at any early stage of Mr F's evidence, I made the following remarks to his Counsel (T 4882):

> . . . May I suggest, with respect, that you tender him some advice as to his response to questions that are asked of him. He is here to give evidence and to answer questions, and it is quite clear that he is of sufficient intelligence to respond to questions rather than, so it seems at this very early stage, dissemble rather than answer. I think that that would be very good advice, if you were to pass that on to him; that it is necessary for him to answer, to be responsive to questions. He has heard what I have said. I shall endeavour to accord Mr F every opportunity to give his evidence and to respond to questions, but I will not, let me assure you, put up with speeches and non-responsive answers.

I have noted Mr F's position in respect of the occurrence of the conversation in June 1989, as alleged by RCO AC. Also, having regard to my abovementioned views about the evidence of RCO AN, I place no weight upon her evidence that she could not recall any such conversation occurring, in terms of my consideration as to whether the events related by RCO AC did in fact take place.

On all of the evidence, I am satisfied that the conversation related by RCO AC, with Mr F, did in fact take place as alleged. I reject the submissions of Mr Logan to the effect that the conversation had no 'malice or sinister undertones'. While that may have been the original impression formed by RCO AC at the time, that impression was substantially qualified by RCO AC before the Inquiry, in the context of her knowledge, gained by that time, of allegations of harassment of staff at the Centre.

With all due respect to RCO AC, I am certainly in a better position than her to fully appreciate the significance of Mr F's remarks. I am satisfied, as submitted by Counsel Assisting, that RCO AC's evidence confirms that Mr F was actively involved in perpetuating the 'anti-dobbing culture' at the Centre. [Note: That culture is further discussed in Chapter 16.]

I turn now to the conversation, alleged to have taken place between Ms AM and Mr F in 1987. Mr F denies that he was involved in any episode of abuse concerning Client 10 (or for that matter, any client at the Centre) as was allegedly described in that conversation. Again, Mr F could not recall participating in any such conversation.

I do not reject Mr Logan's submission to the effect that Ms AM was someone disposed to think the worst of Mr F; however, I would qualify any such conclusion by noting that Ms AM readily conceded the somewhat shaky foundations for some of her evidence about Mr F, which was based only upon rumours or gossip.

I am satisfied that there is no reason to reject Ms AM's evidence about this issue. In giving her evidence, she was quite forthright and credible, to my mind, in recounting her recollections; no motive has been suggested as to why she would fabricate such a story.

Mr F swore that he would not have said such things to Ms AM in any attempt at 'black humour'. Mr Logan has submitted that if the conversation occurred at all 'it was mere hyperbole'. Counsel Assisting submitted that one inference attaching to the conversation was to the effect that it was a candid admission by Mr F 'about his method of dealing with difficult clients'.

In all these circumstances, I am satisfied that this conversation also occurred. Given that the Inquiry did not exhaustively pursue the allegation of client abuse comprising the substance of the conversation, it is difficult to fully interpret the conversation, as to its purpose and intended effect, in the absence of information tending to suggest, one way or the other, whether or not the related incident of client abuse in fact occurred. It does seem inherently unlikely that any RCO, who had participated in such a disgraceful episode of client abuse as that related in the conversation, would make full and frank admissions about it to a senior officer with a reputation for reporting abuse, such as Ms AM.

Therefore, while I am satisfied that the conversation did occur as alleged, I make no further findings in relation to it, other than to note disquiet in relation to Mr F's values and work attitudes, as an RCO, at that time.

Finally, by way of consideration of the third issue, I have already herein remarked that Mr F's alleged "black" sense of humour did not impress me favourably. Mr F admitted in evidence that the remarks attributed to him in this regard, were in fact made by him.

To my mind, they are disgraceful remarks for any person to make, particularly a person entrusted by his employer, namely the State of Queensland, with caring for profoundly and severely intellectually

disabled persons. The remarks are reflective of work practices and attitudes which are completely antithetical to those sought to be developed and imbued in RCOs by the Department.

The attitudes and values inherent in Mr F's comments have no place at any facility such as the Centre.

I note that Mr F is no longer employed by the Department, and is therefore no longer readily amenable to the disciplinary jurisdiction of either the Department or this Commission. I note that he is now employed in a relatively senior position with a trade union. His Counsel submitted that he had a 'long and continuing interest' in such matters. Mr F may well be suited to such duties; I do not know. I am satisfied however that on the evidence presented to this Inquiry, Mr F was not suited to the duties of an RCO entrusted with the welfare of intellectually disabled clients.

CHAPTER 15
OTHER ASPECTS OF THE EVIDENCE ABOUT HARASSMENT OF STAFF AT THE CENTRE

As was noted in Chapter 12, from the specific evidence of relevance to Mrs A and Mr F, during the hearings the Inquiry traversed a further, and significant, body of evidence dealing with specific incidents of harassment endured by individual staff members, and the problems that were faced by management in their attempts to investigate and eradicate such behaviour at the Centre. I propose, within this Chapter, to refer to some of those matters.

15.1 CLIENT ABUSE AND HARASSMENT – A "CATCH 22" SITUATION?

Mr Geoffrey Ross, the Divisional Regional Manager, was the first witness called before the Inquiry. During his examination, the following was said (T 90–94):

> Mr O'Sullivan: You have had instances where staff members have complained of harassment at the Centre, is that correct?---That's correct.
>
> Is there any procedure in place by the Centre to assist these people in respect to their complaints?---We are certainly very concerned about the complaints that come and how we can protect people against harassment. Complaints have normally arisen when it's thought that the person has complained about another RCO having done something. We endeavour at those times of course to keep the person's name confidential, but with the guidelines that we're facing with FOI [Freedom of Information] and other such processes, it is not always possible for that to happen.
>
> Yes, well, let us just deal with the situation: say someone came to you and said, "Look, I observed another RCO assault a client, didn't leave any injury on the client, but I believe it was unsatisfactory. I made comment to other employees of the Centre and since that time I have been subjected to extreme harassment. The tyres of my car have been slashed at work. I want you to do something about it". Now, what would happen?---We would try to investigate it as best we could internally and we would encourage the person to make a complaint on their own behalf to the police. We would normally then also make a complaint through the CJC, through the Department. Of course, prior to the CJC occurring, that didn't happen. It was normally dealt with or tried to be investigated internally. If it continued and we could get no real evidence, we would offer the person who has been a victim change of employment in terms of going, perhaps, to the ALS where they may not be as well known, to try and deal with it in that way.
>
> You have told us you tried to deal with it internally; can you just describe how it is done internally?---With great difficulty. As I say, it's through interviewing people, "Did you do this" type interview.
>
> Who would conduct the interviews?---It would normally be done by either the Senior in conjunction with the Principal or by the Principal and the Residential Services Co-ordinator together.
>
> And where would they do this, is there an office?---They would do it in the office up in the administration building or in the Senior Residential Officer's office.
>
> And if you had a suspect, another RCO, who was called in for an interview with these officers, would they be there by themselves, or would anyone else have to be contacted to ensure that things were conducted according to the procedure?---Staff, of course, have call on union members, other union

members to be witnesses to any sort of interview such as that, although they would normally not do that until it became a disciplinary matter, but they do have the right to call in a witness through the union.

And so, who would attend as a witness?---It would be a delegate, a union delegate on the Centre.

And you have said essentially that it is difficult to keep the person's, who is complaining, name anonymous, is that right?---That's true.

How is that exposed to the person who has been accused?---Well, they can have call – I mean, if there is a report written about the person, they can have call on it through Freedom of Information legislation. And that's how they usually get it, but it would appear that there is a reasonably good grapevine that works within the Centre and it would appear that people can be revealed as having complained.

Does that mean that the Principal Residential Officer or someone else is, what, leaking information to other employees?---No, I wouldn't say that at all. I believe that they are very conscious of keeping confidentiality, but it has occurred that, even though that it hasn't been certainly leaked from that quarter, that the name has got around. Now, whether that's because the person has confided in somebody else, and it's that way that it has, I can't answer that.

Well, have there been any positive steps taken to protect someone who wants to make a complaint about another RCO?---I'm not sure what you mean by positive steps being taken.

Well, from what you have described so far there has been little done to protect a person who does make a complaint about another officer?---That's true. I mean, if you're talking administratively, we have certainly raised this matter Departmentally, well, that's not true. A report has been written that's been discussed at our Divisional management team, to take the matter up with the Department as a lack within Departmental procedures.

So there is a report that has been penned, by whom?---By the Senior Resource Officer, Brisbane South Region, Ms K.

. . . when is the report going to be next discussed?---At the Divisional management team meeting, which is the meeting of the Regional Managers and the Assistant Divisional Heads and the Divisional Head, and I believe the next meeting is the 20th or thereabouts of this month. [Note: Mr Ross was giving evidence on 11 January 1994.]

The Commissioner: Can I take it, in light of the fact that Ms K has written this report, that she was asked to do so by somebody in the Department or . . . ?---That's right.

. . . can I take it that she has done it of her own volition?---No, we – I asked her to do the report. In our regional management team we saw it as an issue that needed to be addressed and so we commissioned Ms K to convene a task force to investigate the problem and to furnish us with a report that would be discussed at the Division.

Very well, and does Ms K have some special qualification that would fit her to write such a report?---I believe so. She has worked in the Department for a long period of time, part of that being within Protective Services and Juvenile Justice where she's been aware of, been brought into touch with investigatory techniques and report writing. She has also been a Senior Staff Development officer within our region, as well as elsewhere, and I think she's certainly well-qualified to bring together the aspects that we have, in terms of difficulty, of protecting whistleblowers and put that into a report.

When was she asked to prepare this report?---It was the middle of last year, could've been a little bit later than that.

At that time, had the CJC already commenced inquiries about harassment of so-called whistleblowers?---Yes. The CJC . . .

I beg your pardon – I am sorry?---Yes. I believe so.

Right. Was this in response to that? Was this request to Ms K in response to the fact that the CJC was making an investigation and the Department was concerned that there may be some criticism? ---I don't believe so. We've faced this problem for several years, and the CJC investigation into Basil Stafford has been for a number of years, so we weren't aware at the time that Ms K was asked to write the report, that there would in fact be a public hearing on the matter. It was commenced before that time . . .

You say that there have been problems with harassment of whistleblowers for some years, is that correct?---Difficulty in protecting whistleblowers, yes.

Why was it some years then, before anyone was asked to write a report in relation to how such people could be protected?---Because at the time, it was considered to be one of those insolvable problems that there was no way out of, and we believe now that it's got to be a problem that needs to be solved.

Right. Well, I glean from what you tell me that the Department concedes that there has been harassment of so-called whistleblowers or people who have complained about unacceptable or inappropriate behaviour by staff, that the Department is well aware of this and concedes that it has happened?---Oh, I would believe so.

Right, so we are not dealing with a situation where the Department is saying, look, this is not happening?---Oh, no.

You accept that it has happened?---Oh, yes.

And over some period of years?---Yes. Well, I would be the first to concede myself, that it is a difficult problem to approach. To an extent, the Department is in between the devil and the deep blue sea in that, if the Department does not do something, the Department can be criticised, but if the Department does not make the person about whom the complaint of harassment has been made aware, then the Department could be criticised for denying natural justice to that person, and if that person is told, well, then that defeats the purpose in the sense of having an inquiry because the person who is making the complaint will be exposed to further harassment.

It is a bit of a catch 22 situation, isn't it?---Yes, it is sir, yes.

15.2 'BECAUSE I WAS MANAGEMENT'

As noted, a number of officers of the Department, in what might be termed senior or managerial positions, experienced harassment during the time that they were working at the Centre. The following are excerpts from the questioning of one such witness, who was previously employed at the Centre in a senior position during part of the period covered by the Inquiry's terms of reference (T 627–638):

Mr O'Sullivan: Your [statutory] declaration refers to your working address – is that correct?---Yes.

And for some reason you refuse to reveal your residential address. Is that right?---I'd prefer not to.

And why is that?---Because I'm trying to minimise harassment that's been – that my colleagues have had and I've taken precautions and that's been one of them.

And yourself, you have suffered harassment?---Yes, but I think I minimised it by suppressing my address, my home address.

And telephone?---No, you can't do that. I was on call all the time when I was working at Basil Stafford.

You started work at the Basil Stafford Centre in February '92?---Yes.

And you were [a Senior] officer until 25 June 1993?---That was part of my role there, yes.

What were the other roles you had there?---I was seconded to work out there initially for six months but it was extended to look at the performance and incidents out there, and try and improve performance.

You made a formal complaint about the Client 1 matter to the police; is that correct?---Yes.

You yourself have received nuisance calls on your private phone when you were working at the Basil Stafford Centre, is that right?---That's right.

How often did that happen?---It was irregular, but it could be anything up to a few times a week. Quite late at night sometimes, and they certainly went on for the time I was working at the Centre.

The Commissioner: Was this your phone at home?---Yes.

Did it have a silent number?---Yes, it was a silent number but I had to give it to the Centre because I was on call 24 hours a day.

Can you tell us about some of the others [telephone calls]?---Most of the others were – once I answered the phone, the other phone would just be put down. That was the more common way of it occurring.

And I think you said sometimes two or three times a week?---Yes, sometimes. It was a regular thing except Friday nights seemed to be a common night.

Well, how long did this go on for?---The last call happened my last Friday at Basil Stafford about half past five when I got home, and then I didn't have any more until they announced this hearing, this Inquiry.

Alright, and prior to that last Friday in June last, how long had this sort of thing been going on?---For the entire time I was at Basil Stafford.

And remind me how long that was for?---About 16 months.

Sixteen months – nearly every Friday?---It was fairly regular, but you wouldn't say every Friday.

Right, and sometimes two or three times a week?---Sometimes, yes, and then there would be a quiet period, and then it would happen again.

And how long would the quiet period last?---Maybe two or three weeks, and then it would start again.

To whom did you give your telephone number at the Centre?---To the RDOs.

All of them?---Well it was in their office.

What, it was written up on the wall, was it?---They have a gadget with cards in with people's phone numbers on.

Right, was that accessible to other staff than RDOs?---A lot of staff go through that office, but there is usually an RDO in it, and they usually – and they do not give – well, the procedure is that they don't give out people's telephone numbers. If someone wants to get hold of you they will ring you and ask you to ring them, you know, ring the other person who wants you.

But there would be time, would there, when the RDOs would not be in the office?---For a short time, there might be, yes.

Is the office manned 24 hours a day?---Yes.

Seven days a week?---Yes.

. . . when did these calls start again?---When this hearing was announced.

When was that?---Oh, a few months ago is it? Two or three months ago – or two months ago. I am not sure.

Was this about the time that it was publicised that I'd been asked to conduct the hearing?—When it was in the newspapers.

Could you describe what has happened since that publicity, so far as telephone calls are concerned, of this nature?---I had three calls over a short period, like over a – I think I might even have one in two days and then another one on another day and then nothing since.

And how long after the announcement in the media was that?---Just a few days.

When was the last . . . ?---Enough for me to connect – feel I could connect the two.

When was the last one then, was that in November last?---Yes, it must have been.

November or early December or something like that?---Yes.

Was anything said on those occasions?---No. The phone was put down when I picked mine up.

Was your telephone number the same in November/December last year as it was when you received those other calls?---Yes.

And it is still ex-directory?---Yes.

Right. Have you had any other type of harassment?---I suspected my filing cabinet at work had been interfered with because I arrived for work one morning and whereas I could unlock it very easily the lock was very stiff and I had to get somebody else to come in and turn the key for me.

Was there anything else by way of harassment or interference with your life?---No, that's all. Well, the precaution I took was to put my personal file in the safe at work so my home address was not accessible.

Mr O'Sullivan: And why do you think you were receiving the phone calls?---Because I was management, I suppose. Other managers were also experiencing similar things and worse.

But what was it about your management that might have caused people to give you nuisance calls? ---I don't know.

You do not know?---No.

During the time that you were there were you involved in reprimanding staff members for the way in which they treated clients?---Yes, I suppose I was involved with discussing issues of performance in various matters – staff performance.

Yes, well, have you tried to associate it with any particular incident of management?---No. Unfortunately it just seemed to be part of working at Basil Stafford. So I didn't – other than taking precautions that I felt I needed to do for myself, I just accepted that these things went on.

It was quite apparent to me at the time that this witness was considerably stressed by having to recount these events. I was particularly concerned with the attitude of resignation displayed by the witness, to

the effect that the receipt of harassment by persons holding managerial positions at the Centre was simply 'part of working at Basil Stafford'.

Shortly thereafter another witness gave evidence, and stated that she had received approximately 20 anonymous telephone calls over a period of a couple of weeks. The witness suspected that these calls were being made 'by virtue of my position at the Centre' (T 692). Counsel Assisting asked the witness (T693–694):

> You suspect that the calls were made by virtue of your position at the Centre as an RCO?---No, I was an RDO on the Centre.
>
> Why as an RDO would you think that you would receive these types of calls?---Maybe because I wasn't very popular in the RDOs' office.
>
> And why do you think that?---I felt that an RDO position should be a supportive position for the staff.
>
> Yes?---And I was reprimanded a number of times by my colleagues for supporting staff and for delivering mail to staff.
>
> Reprimanded by what colleagues?---My colleagues in the RDOs' office.
>
> What, other RDOs?---Yes.
>
> What sort of contact did you have with them, could you expand on that?---The general comments I got were that if I did too much for the RCOs they would expect the whole team to be doing it.
>
> What, the rest of the RDOs?---The rest of the RDOs.
>
> And what conduct by you was said to be unusual in respect of the RCOs?---If an RCO was upset or distressed and they rang I used to attend. I used to deliver the pay slips around because I was doing rounds anyway and it meant that an RCO on duty had to leave their clients or make arrangements for someone to look after their clients in order to collect their pay slip, so during my normal course of rounds I would take mail down and pay slips down.
>
> Were the other RDOs doing that?---No, they were angry at me because I did that.

15.3 PRESERVING THE STATUS QUO

Mr AJ gave evidence to the Inquiry. At the time of giving his evidence, he was on sick leave. His usual position with the Department was as an SRO at the Centre, a position that he had held since September 1991 (statutory declaration – Ex 132). He was represented by Mr Herbert, Counsel for the unions.

Mr AJ was somewhat of a rarity at the Centre, having risen to the position as SRO after working as an RCO at the Centre, and in ALS houses for a number of years. Prior to commencing work at the Centre, Mr AJ had worked as a hairdresser (T 1373).

In his evidence, Mr AJ related how he was, while at the Centre, subjected to a significant and unsettling campaign of harassment. Clearly, that campaign had a marked and distressing effect upon Mr AJ. Given the matters that he related, that effect is not at all surprising.

Counsel Assisting asked Mr AJ about the reasons why he received harassment (T 1381):

> Why do you think you were being harassed? Do you link it with any particular episode at work or outside work?---I think I was trying to instigate change.

> What type of changes?---Change that – a better working place. I was trying to return power back, power, autonomy and responsibility, to RCOs in houses. I was trying to achieve for clients some individual needs. I was trying to raise expectations of the RCOs' work performance. I would address any issue that was given to me. I would address – take it up.

In addition to Mr AJ's statutory declaration, a number of other documents which were of relevance to these matters were admitted in evidence, including documentary material (of a harassing nature) received by Mr AJ, Departmental records relating to these matters, Mr AJ's own records and the transcript of an interview between Mr AJ and Commission staff (Exs 320–328). In his written submissions, Counsel Assisting listed the harassment to which Mr AJ had been subjected, noting that the harassment included:

- Being followed or "tail-gated" while driving home from work at the Centre, on more than one occasion (CT 3959–3960).

- An obscene card, and other material, was mailed to him care of his work address at the Centre – Ex 320.

- An oversized condom described as being 'for the world's biggest prick' was left at his workplace (CT 3945).

- Human faeces was left outside his door (CT 3945).

- Rumours circulated around the Centre that Mr AJ was having affairs with various female staff at the Centre (CT 4014–4015 and T 4020). On Mr AJ's account, there were many such rumours, including ones to the effect that 'three of them I had pregnant, and one of them was even supposedly seven months pregnant . . .' (CT 4015). Counsel Assisting asked Mr AJ (CT 4020):

  > Mr O'Sullivan: What was the reason behind all that, do you think, the rumours?---I think they're just ways of discrediting you, yes.

- In something of a similar vein, rumours circulated around the Centre about Mr AJ's work practices with clients, both while as an RCO and as an SRO. Specifically, it was alleged that Mr AJ had the nickname of "Basher", and that he had abused clients. Indeed, such accusations were made, by more than one witness, in the course of these hearings. Mr AJ denied such allegations (CT 4046 and see his further statutory declaration – Ex 427), and gave the following evidence (CT 4046):

  > Mr O'Sullivan: So it was part of that pattern of that harassment that you referred to yesterday?---As far as I'm concerned, yes, it is. It's an attempt to discredit me and harass me and put pressure on me and on everyone else.

- His office was entered illegally on one occasion, and some personal documents were taken.

- Two union meetings were called for the purpose of discussing or passing a motion of no confidence in Mr AJ, as the SRO of his unit (CT 4020–4021).

- Mr AJ was reported by a union delegate, who was also an RCO within the unit under his supervision, for alleged acts of sexual harassment of female staff at the Centre (CT 4005–4006). Mr AJ stated that his behaviour had been wrongly interpreted, and gave the following evidence (CT 4006):

> Counsel Assisting: And did you see this allegation against you by [the union delegate] about the sexual harassment as some part of a vendetta against you?---Certainly. It was a vendetta to get me, to harass me, or to try and destroy my credibility.

Mr AJ gave evidence that he was clearly of the impression that the particular union delegate involved in this complaint was acting as a representative for, and at the behest of, other union members (CT 4008). The complaints were considered by Mr AJ's senior officer, who noted, in a Departmental record, that she:

> Spoke with Mr AJ re misbehaviour towards female staff. He believes he is more aware of possible misinterpretation and has adjusted his behaviour accordingly. In reality the claim is rather weak.

- He was told by staff that people were 'out to get him' (CT 4002 and 4009). I asked Mr AJ some questions about these matters (CT 4009–4010):

> The Commissioner: And did anyone identify who the someone was?---No. No one would ever say exactly who it was.
>
> What support were you getting from management?---Absolutely nothing.
>
> Well . . . who is the main member of management at the Centre . . . ?--- . . . My line manager . . . was getting exactly the same thing as I was getting.
>
> What was offered to you?---Absolutely nothing. All you'd do is get a pat on the back, and they say, "You must be doing the right thing because you're getting them all off side".
>
> You must be doing the right thing because you are getting them off side?---Yes, meaning you must be instigating some change, you must be turning around the culture, because they're fighting back, and I think that was definitely the case.
>
> Mr O'Sullivan: You feel that that was the true position?---Yes. I was – the culture was starting to get turned around.

[Note: The "culture" referred to by Mr AJ is discussed in further detail in the following Chapter.]

Mr Rohan agreed that the effect of the harassment placed Mr AJ 'under siege' (CT 4489). He was aware that Mr AJ had been warned against ever placing himself in a position where he could be 'set up' (CT 4489):

> Mr Plunkett: Moving to another topic, did you ever advise Mr AJ not to be left alone with a client, not to be in a position where he was with a client alone?---No, I didn't give him that advice but I was aware of the advice being given. I believe it was given by Ms K.
>
> What was the reason for that?---The advice was given on the basis that he believed he was being set up; that a situation would be constructed where a client would be, in some way, adversely affected in the situation where he was left alone.
>
> That he would be falsely accused of some sort of abuse on a client?---Yes, that would be the outcome.
>
> So, did you agree, with what appears to be Ms K's assessment, that people were out to falsely implicate Mr AJ in some sort of misconduct?---There seems to be some of that – some truth in that.
>
> Yes?---Can I just say there were some allegations made. I don't believe that the allegations had a great deal of substance. I raised with Mr AJ, myself, a couple of issues in which he was leaving himself

vulnerable. And I believed that, in his situation, he could not afford to be taking chances by leaving himself vulnerable.

I mean, the effect of that form of harassment was that Mr AJ was very much under siege, was he not?---Mm. [Affirmative]

Counsel Assisting submitted that the causes for the harassment of Mr AJ were threefold in nature:

i) The resentment of changes made by Mr AJ within the workplace;

ii) Resentment to Mr AJ, in his position as a Senior Residential Officer;

iii) Resentment towards Mr AJ's involvement in attempts at the Centre to break up "power bases".

To my mind, these three issues are not really separate in nature; I am satisfied that the severe harassment experienced by Mr AJ occurred as a result of his attempts to change the system, or the way of life of what might be termed the "old guard" of staff within his immediate sphere of influence at the Centre, and that the resentment flowing towards him as a result of such actions was exacerbated by the fact that Mr AJ had, by accepting an appointment as an SRO, "broken ranks" with his former RCO colleagues.

During the course of evidence, I asked Mr AJ about his dealings with a particular union delegate, which led to the following evidence (CT 4023–4024):

Was it all part and parcel of the perception that at least some people had a view of you as being, if you like, the spy or the plant that management had put there to report back to management as to what was going on?---I think that's one reason. I think probably another reason is the fact – I mean a lot of reasons – but another one was the fact that because I was there for staff, I was there quite a lot for staff – I was very, very supporting of staff, and they saw that I was winning most of the staff over in unit two, this was another attempt to get rid of me.

Was it the new staff you were winning over, and the old guard that was resentful?---Well, not just the new staff. Some of them were new, some of them had been there for quite a long period of time, that had been very, very good staff.

Well, in your assessment were the staff who were resentful at the changes that you were trying to implement, and which you were being successful in, up to a point anyway, the ones who were trying to maintain the status quo and who were not, in general terms, what you would describe as good, effective, caring staff?---Yes, they certainly wouldn't be.

I beg your pardon?---They certainly wouldn't be that, no. They would be all but effective.

It was the good, effective, competent, caring staff who welcomed the changes and the others who did not?---That's correct.

Counsel for the State of Queensland also questioned Mr AJ about these matters, and touched upon the role of the SRO in investigating suspected acts of client abuse, and the disruption that was consequently caused in the relationship between the SRO and the RCOs, under his or her supervision, which led to Mr AJ commenting (CT 4054–4055):

Mr AJ: It causes tremendous harm, and a lot of the times, you know, a lot of what I went through was because I had to speak to particular staff, and, I mean I always took up issues.

Mr Plunkett: And that generates resentment by the RCOs?---Most certainly.

To what extent are you able to surmise that was the cause, or a contributing cause, to the harassment that you have suffered?---I just think it is probably all part of a whole heap of stuff. A lot of it was to do with change. Most of it was to do with change and people did not want to change. They wanted the status quo, to stay as it was.

Mr AJ also gave evidence about the harassment of a former RCO at the Centre, who at the relevant time was under his supervision. Mr AJ stated in his initial statutory declaration:

In relation to the matter of harassment of staff who have reported or wish to report instances I recall the matter of a Residential Care Officer . . . He reported in writing another Residential Care Officer verbally abusing a client or a number of clients. This happened last year. I was looking after this matter. Ms K [Acting Principal Residential Officer] and I interviewed the staff person who denied everything. Following this I was not prepared to have [the reporting RCO] return to Basil Stafford and work. I was quite convinced that he would be in an unsafe situation if he returned here to work. I believe that his allegations were true. The other Residential Care Officer involved still works here at the Centre. [The reporting RCO] had leave due and I extended his leave and then he was put into a house in the community. [He] left the service early this year . . .

Mr Plunkett also questioned Mr AJ about these matters (4060–4061):

Mr Plunkett: Now, you say it would be unsafe for [the reporting RCO] to work back at the Basil Stafford Centre; what fears did you have for his safety, did you think there would be physical or emotional violence done?---Emotional, being set up for a fall, and whatever that means.

Yes, well, who do you think was going to set him up?---Other RCOs.

Who?---And perhaps a few RDOs.

Who, which RDOs and which RCOs?---I couldn't give names.

Well, would they be in the category of what you described yesterday as the old guard?---Yes, certainly.

By what you are saying the resistance to change by the old guard was apparently quite bitter, is that so?---A lot of what I got, I would consider to be bitter, yes.

And it has obviously upset you a great deal?---Certainly.

So, with great respect, those who set out to harass you achieved their objective to some extent, didn't they?---Most certainly.

I am just trying to get, come to grips with, understanding the bitterness that the old guard showed. Is it more than just resistance to change?---Yes, I think it is. It is also that people get into their little areas, and they form their own little pressure groups, and they have it working in such a way that it suits them. I will give you one example. Two staff came to me with a problem with their roster, and I said to these people, "well, look, it's not really a problem. If you just move this person to there and there, you can work your roster out", and they said, "we can't do that", and I said, "why can't you do that?" and they said, "well, that person refuses to go shopping, so we've got to do the shopping". And I said, "well, that's really not an alternative. That's a person getting the same pay as you, and should be expected to do the same job you get". They said, "well, it's not worth the hassles that we'd have to face from this person if we change his days", and I said, "well, you know, I need to take this up with that person as an issue", and they just refused to support me with it, because they weren't – their words; "well, it's not worth the hassles that we'd be subjected to".

Alright, well, if we can call the two categories old guard and new guard, within the old guard were there cliques within that, there were factions within that?---Certainly.

Alright, well, are you able to give us any insight into what the divisions between those cliques within the old guard are?---I think there's a – to me, there seemed to be a general consensus through all these people that we've got to keep things they way they are. We can't change, but also within that, there were these smaller, little groups, and those groups could be within a house or it may be within a unit where they were keeping things running their way, and they really didn't want anything to change. You'd have some people that could work in – and take this particular incident where this person just didn't want to go out shopping. So this person had worked himself into an area and as far as I could work out, he used to pressure everybody else to do things his way, and that worked very, very well for him.

These matters were further elaborated upon at CT 4064:

Mr Plunkett: Well, within the cliques, was there a conflict between the cliques as well as conflict as part of being the old guard against the new guard?---I think, in unit two, in 1992, there was a tremendous amount of conflict between an old group, and old guard or an old group and the group that wanted change.

Well, trying to understand the nature of the clique, would it be that a clique would engage in undesirable behaviour, as far as management was concerned, and operate in defiance of management?---I think a lot of the time that's what was happening with me.

Mr Plunkett also cross-examined Mr AJ about allegations and investigations concerning suspected client abuse (CT 4076–4077):

Mr Plunkett: Now, do you consider or believe that the harassment that occurs at Basil Stafford extends to RCOs falsely accusing other RCOs of abusing clients?---Yes.

And is that fact part of the mind games or harassment which takes place?---I think so, yes, yes.

Because, obviously, once an allegation of that nature is made out or is seeded, the suspicion is seeded in the minds of the management, then you would have to activate a whole procedure for investigation and so forth?---Certainly, certainly.

And most of these investigations, by reason of the fact that the victim cannot communicate, end up with fruitless results, don't they?---Yes. I mean, one of the major concerns I have if a new staff person goes into my unit and that new staff person's very, very good, that new staff person needs a lot of support because they are going to be got at.

Well how?---Because the staff will start to feel that we've got to discredit this person, otherwise we might be expected to do the same sort of job that this person's doing.

So, the new, good staff member can be raising standards which the other RCOs do not want to meet, because they have got a comfortable arrangement going there?---Yes.

So, to get at this new person they might have allegations which are false?---Yes.

Well, how ingrained – well, by your account, it is a pretty ingrained, entrenched subculture?---I think it is, yes.

Yes. What can be done to bust it?---I've tried and I've never succeeded because people just clam up and then refuse to take matters further.

Well, if what you are saying is correct, then it has got serious forebodings for the welfare of the clients, doesn't it?---It certainly has.

I am satisfied that Mr AJ's views are correct. In the words of Mr Plunkett, Counsel for the State of Queensland, my reaching such conclusions does indeed have 'serious forebodings for the welfare of the clients' at the Centre.

At an early stage of Mr AJ's evidence I suspected that he was answering questions in a manner that was somewhat defiant, and unlikely to assist me in my deliberations; Counsel Assisting made similar observations (T 3948). However, when the true picture of Mr AJ's recent experiences at the Centre emerged, when the magnitude of the harassment suffered by him, and its effect, was clarified by the evidence, my abovementioned perceptions changed considerably. Upon reflection, having heard all of the evidence and having taken into account the written and oral submissions of Counsel, I have reached the conclusion that Mr AJ's evidence exhibited an intelligent and thoughtful appreciation of his role at the Centre, including his role vis-à-vis his subordinate RCOs and the intellectually disabled clients. I note that no legal representative appearing before me sought to make any attack at all upon Mr AJ's evidence or his credibility; nor was his evidence the subject of any criticisms in Counsels' various submissions.

To put matters simply, Mr AJ endured a lengthy and severe campaign of harassment against him, of a most distressing nature, purely because he dared to do the decent thing; by faithfully discharging the duties of his employment in accordance with the best interests of the intellectually disabled clients and those decent members of the Centre's staff. The perpetrators of that harassment could not on the evidence be identified, to the requisite standard, in terms of enabling me to recommend that criminal or disciplinary charges be considered against any individual; nevertheless, in accepting Mr AJ's evidence, I am satisfied that the acts of harassment, perpetrated against him, were performed by staff members at the Centre. This harassment arose because Mr AJ attempted to undertake his duties in a manner no doubt intended by the Department; in part at least, those duties involved supporting people who complained of incidents of alleged client abuse or gross neglect, and the investigation of those complaints, the institution of a working regime at the Centre based upon respect for the clients' rights and the prevention or elimination of inappropriate work practices regarding the welfare of the clients.

As I commented in the course of considering the evidence relating to Mrs A (see Chapter 13), the Centre's management was ineffective in its attempts to deal with staff harassment problems. Mr AJ's evidence lends further, and considerable, support to that conclusion. In his endeavours to improve matters at the Centre, at the time of appearing before this Inquiry in April 1994, Mr AJ was a defeated man.

That he should have been subjected to such behaviour, merely as a result of attempting to do the right thing, in accordance with the Department's aims and programs, is a situation which I can only describe as abhorrent and disgraceful. It is a situation that, to my mind, can only invoke dismay and anger amongst all right-minded persons. It is a situation which is completely intolerable; no entity, entrusted with the serious duty of providing for the welfare of the intellectually disabled, should expect to be the repository of one iota of public confidence if it allows such a shameful situation to exist for one day longer than is necessary. The remarks that I made in Chapter 2 of this report, to the effect that the degree of civilisation of any community can be measured against the way that that community cares for its disadvantaged people, are apposite in this context.

As I have noted at various points in this report, I have concluded, and I recommend, that the Department and the Government should take all necessary steps to close the Centre, at the earliest opportunity, and to safeguard the clients in the interim period. To my mind, this is the only option which will ensure the prevention of further occurrences of official misconduct at the Centre, in the form of client abuse, gross neglect and/or the victimisation or harassment of staff. I am heartened by the Minister's announcement that the Government does indeed intend to close the Centre, albeit within a period of some three to four years hence. In those circumstances, I can now only urge the Government to advance that period, if at all possible. On the evidence adduced in this Inquiry, which is overwhelming and compelling, I am

satisfied that it is inevitable that acts of official misconduct, of the aforementioned types, will continue to occur at the Centre until such time as it is closed. That being the case, and by way of conclusion upon my considerations about this particular bracket of evidence, I can only repeat the words I spoke to Mr AJ at the conclusion of his appearance before the Commission (CT 4110):

> Mr AJ, thank you for your assistance. Your evidence has been most helpful. I think you should think very seriously about trying to go back to Basil Stafford. I believe that you are needed out there.

As is evident from all of the above, at the time of appearing before the Commission, Mr AJ exhibited an air of despair about his work at the Centre. To act as he did, when appointed to his SRO position, and attempt to change things for the betterment of the clients and the decent staff, was behaviour that one would wish to be displayed by all who are appointed to such positions in the public service. Unfortunately, this expectation could only be attained in an ideal world; the reality is that individuals such as Mr AJ are rare; for him to persist as he did with his endeavours in the face of intense and distressing incidents harassment, speaks highly of his character. He did persist in circumstances where many others at the Centre, in similar positions, did not. In making these remarks I do not denigrate those other persons, as I am mindful of the atmosphere at the Centre, and the events occurring there, at the relevant times. In all the circumstances, Mr AJ may not wish to continue performing duties as an SRO at the Centre in the immediate future. If so, I would find his attitude quite understandable. If that be the case, I urge the Department to take all steps as are open to it, in a thorough and conscientious effort, to ensure that Mr AJ is not further prejudiced or inconvenienced as a result of performing his duty in the face of adversity.

15.4 HARASSMENT OF THE CENTRE MANAGER

Mr Gerry Rohan, who held the position of Centre Manager for the majority of the period encompassed within this Inquiry's terms of reference, also gave evidence that he had personally experienced harassment.

In his statutory declaration (Ex 346) Mr Rohan stated that he was of the belief that such harassment was related to his involvement with the Centre. Mr Rohan stated that the first incidents of harassment occurred in December 1990, 'at about the time the police investigation into certain matters at the Basil Stafford Centre commenced'. Mr Rohan believed that these incidents were suspicious, 'given the coincidental nature and timing of events at Basil Stafford'.

Mr Rohan described the incidents of harassment to which he, and his family, had been subjected. They included:

- Eggs being thrown or "fired" at his house. The first such incident occurred at the time of the JAB investigation into various matters at the Centre, and other such incidents occurred in November 1993, on or about the weekend after the public announcement of the Commission's intention to hold hearings involving the Centre.
- His home milk deliveries were tampered with from time to time.
- Soiled underwear was left on his side fence on two occasions.
- A 'neatly-killed' rat was left in his back yard.

- He, and his family, received numerous and disturbing telephone calls at odd hours. Some were of an obscene nature, and included the use of sexual references. Some were abusive. All such telephone calls were anonymous. The last "spate" of such telephone calls occurred in February 1994. Since that time, Mr Rohan had used his answering machine to screen incoming telephone calls.

- During 1991, one of the tyres of Mr Rohan's car was punctured on three consecutive Friday mornings. Mr Rohan normally parked the car in his driveway, off the street. The same wheel was affected each time.

- In February 1992, shortly after driving away from the Centre, Mr Rohan discovered that one of his car tyres had been slashed.

- In August 1992, tyres on his car were again punctured. Again, the same wheel was affected each time:

  > Upon inspection at the garage on each occasion, I observed that the puncture had been caused by a fine hole. On one occasion at this time I found the tyre on the affected wheel was flat when leaving work. There was no puncture.

- In late 1993, around the time the Commission's intention to hold public hearings was announced, Mr Rohan discovered:

  > That three of the sliding aluminium door frames to my house had been marked by some implement in an attempt to break in. Although there had been a few burglaries, to my knowledge, in the area, our house has never been burgled.

- Mr Rohan's mother-in-law, who resided with Mr Rohan and his family but subscribed to a separate telephone service, also received a number of obscene telephone calls.

Mr Rohan could not identify any of the telephone callers, nor could he conclusively identify any person as being directly responsible for any of the abovementioned incidents of harassment. Nevertheless, he was firmly of the view that the harassment experienced by himself and his family, was connected with his role at the Centre:

> Given the timing, I believe that the eggs and the other incidents have been directed at me because I have publicly supported both the police and the CJC investigation into events at the Centre. Essentially, I believe that one or more staff resent the fact that I have been a liaison officer for the Centre and the CJC.

Mr Rohan also gave evidence of his knowledge of other instances of harassment at the Centre, such as the harassment of Mr AJ and Mrs A.

Additionally, within his statutory declaration, he described an incident in 1992 involving a newly-employed RCO, then working within the ALS, who reported another RCO and one of the Centre's RDOs for suspected impropriety. The reporting RCO later complained to Mr Rohan about the receipt of disturbing telephone calls. Mr Rohan stated:

> I am aware that [the reporting RCO] experienced some anxiety about harassment and subsequently resigned from the service.

Counsel Assisting asked Mr Rohan about these matters (T 4398):

> You refer to the incident where [the abovementioned reporting RCO] subsequently had to resign from the service, is that right?---Well, I believe that he felt it was necessary to. He did, in fact, resign.

And was it just over the issue of what occurred on that shift [which the RCO reported]?---As far as I could determine, yes.

Was there any effort made to protect [the reporting RCO] from any form of harassment?---Yes, I discussed the situation with Geoff Smart of the Commission [a Detective Sergeant attached to the Criminal Justice Commission].

Of the – yes?---And enquired as to ways in which his phone could be traced, and on Geoff Smart's advice proceeded to have that trace applied.

Yes?---I'm not aware of the phone calls having continued after that time. I think my impression was that [the reporting RCO's] anxiety about what the harassment could lead to overcame his desire to stay.

How long was he employed by the service?---He was employed for a relatively short time. It would've been perhaps two months, three months, something of that sort, and worked in the Alternative Living Service at that time.

And when he resigned from the service, did he leave the service completely, he did not go anywhere else?---That's right, he left completely.

Counsel for the State of Queensland asked Mr Rohan about the effects that this harassment had upon him (CT 4489–4490):

Mr Plunkett: I mean, the effect of that form of harassment was that Mr AJ was very much under siege, was he not?---Mm.

What about yourself? I mean, you in your statement dealt with harassment as occurred at your home?---Mm.

Do you see yourself as under siege in a similar way that . . . you saw Mr AJ?---I felt quite vulnerable.

So that means that your effectiveness as a manager is substantially inhibited, if you yourself cannot be in a villa alone with clients as Mr AJ was advised not to be, lest he be falsely accused of some sort of abuse?---I didn't have quite the same opportunities to be alone in the villa with clients as Mr AJ had, but I do believe that I was in a very vulnerable position and certainly I felt that.

I know it is very difficult to give mathematical precision about percentages, but to what extent do you see management as being inhibited by the harassment that has occurred: I mean, is it a minor matter or was it something that preoccupied . . . ?---If I can relate to my own personal matter where I can try to objectively assess the effect of that kind of harassment, I believe it was a considerable effect. It certainly caused me to lose time at work. It affected my sleep. It was quite severe.

So that as far as performing your duties as set out in your duty statement are concerned, that you are not able to do those things if you are attending to looking into harassment and the stresses that are incidental to it?---And looking after the others around me who are also stressed, yes.

Yes, and of course . . . ?---A very difficult position.

. . . that must have its ultimate impact upon the quality of services provided to the clients?---Yes, I agree.

Then in a sense it seems to have all the hallmarks of a power struggle between who is running the Centre; is it the management or is it these other anonymous harassers?---It certainly felt like a power struggle too.

15.5 CONCLUSIONS

From all of the above, I am satisfied that during the period encompassed by the terms of reference of this Inquiry, a number of both past and present staff at the Centre were subjected to serious and distressing incidents of harassment. Such harassment was experienced, to borrow a phrase used by Counsel for the State of Queensland (T 1438) 'from the lowest of the ranks all the way up to senior management'. On the evidence, I am satisfied that such harassment is inextricably linked to the prevention, detection and investigation of official misconduct occurring at the Centre; some officers were harassed, or at best thereafter shunned and distrusted, as a result of reporting incidents of client abuse or gross neglect, while others were harassed because of their perceived role in assisting with investigations of such matters, or simply attempting to administer the Centre's operations in a manner most beneficial to the intellectually disabled clients.

This Inquiry has been unable to identify, in terms of making concrete recommendations for disciplinary or criminal charges, the perpetrators of this harassment. That is a matter of considerable regret, although I should hasten to add that the Commission has, over a considerable period, employed its best endeavours, and its powers, in an attempt to identify these persons. In this respect, the Commission has been supported in its endeavours by the Department; and, throughout the currency of the public hearings, those legal representatives appearing before me who admitted that such harassment had occurred and that it presented a serious problem.

I have already remarked upon the disgraceful nature of that problem, and the fact that the same cannot be allowed to continue. The earliest possible closure of the Centre is, given the nature of the harassment problem, the only means which will achieve that end. That solution is one that is consistent with the Department's longer term policies of deinstitutionalisation and the adoption of alternative and more appropriate models of care. Those policies must now be put into practice, at the earliest possible time.

CHAPTER 16
AN INSTITUTIONAL CULTURE

16.1 THE EXISTENCE OF AN INSTITUTIONAL CULTURE AT THE CENTRE

The Commission, by its letter of 26 July 1994 over the hand of Mr Le Grand, suggested to the parties that the following issue may be of relevance to the written submissions that were then being prepared:

- Whether or not an institutional culture exists at the Basil Stafford Centre, and if so:

  (a) the features of the same,

  (b) the relevance of that culture in the context of the occurrence and reporting of instances of client abuse or gross neglect, and

  (c) the impact of any such culture in terms of the statutory provisions, policies, practices or procedures relevant to the treatment of clients.

On the evidence, I am satisfied that an insidious institutional culture existed at the Basil Stafford Centre during the period examined by this Inquiry. The features, or nature, of that culture are particularised in the evidence cited below, and are inherent in much of the evidence dealt with throughout this report. I am satisfied that that culture promoted the occurrence of client abuse and gross neglect, and the harassment or intimidation of staff members, by other staff members, in the context of providing an opportunity for such acts to take place, and in terms of minimising the likelihood of detection, of both the act and the offender. I am satisfied that this situation also had the effect of discouraging, to the point of stifling, the reporting of such acts of official misconduct. Similarly, I am satisfied that the institutional culture existing at the Centre has had significant impact upon the treatment of the clients at the Centre, in relation to the statutory provisions, policies, practices and procedures that are of relevance to such treatment.

In this context, clearly, the existence of an institutional culture cannot sensibly be examined in isolation; it is an issue inherently linked with many other aspects of the evidence presented to the Inquiry: for instance, the concept of deinstitutionalisation; the occurrence, detection and investigation of incidents of client abuse/gross neglect and staff harassment; staff recruitment; staff training; the role of the various trade unions associated with the Centre (in the context of the matters of interest to this Inquiry); the role of various other entities vis-à-vis the clients' welfare and so on. These matters are dealt with in separate sections of this report, and the existence of an institutional culture at the Centre is of general, and at times specific, relevance to those matters.

I have, however, chosen to include this specific Chapter, by way of discussion of the institutional culture existing at the Centre, in this part of the report, because of the degree of mutual dependency between the presence of such a culture and the problem of staff harassment.

16.2 THE SUBMISSIONS OF COUNSEL

A) COUNSEL ASSISTING

Counsel Assisting submitted that there was 'a very strong institutional culture' present at the Centre, and that evidence of the existence of such a culture had been given by a number of witnesses. Counsel Assisting recited some specific examples of that evidence, some of which I have included below.

In his conclusions, Counsel Assisting drew attention to the evidence of Mr Rohan, as to how such an institutional culture might possibly be overcome, and further submitted:

A. It is submitted that Mr Rohan was correct in recommending an attack on the institutional culture by:

   i) improved training;
   ii) increased resources;
   iii) deinstitutionalisation (down-scaling).

B. It is submitted that it is most important for the Centre to adopt appropriate staff/client ratios. The overwhelming evidence is that the current ratios place unnecessary stress on clients and staff members. This stress could lead to the abuse of clients.

C. Appropriate funding be made available to allow for the continuing training of Residential Care Officers.

D. The process of deinstitutionalisation be encouraged to proceed as rapidly as possible to close the Basil Stafford Centre.

B) COUNSEL FOR THE STATE OF QUEENSLAND

Counsel for the State of Queensland touched upon these issues in Volume 3 of his written submissions, stating:

> The evidence was that those staff who had a less than adequate approach to their work with bad work practices were numbered at about half a dozen. They were referred to as the "old guard". Centre Manager Mr Rohan explained that the Centre when reconstituted under Intellectual Handicap Services in 1977 it inherited staff from the "Psychiatric Services". A culture may exist among some of these staff. Notwithstanding educational and training programs, attitudes formed in an earlier culture may exist among some of these people, which is quite foreign to what is [sic] required staff at the Centre. (Mr Rohan's statutory declaration, p. 7.) This culture is [sic] manifested itself in treating people as being without rights where the role of the Residential Care Officer is one of keeper rather than supporter. This adverse culture "which would see dobbing on your mates as being something that you just don't do" (T 4379). The culture includes a clash between the loyalty to "mates" and the loyalty that one owes to the client group and the organisation (T 4379). Mr Rohan did not see the personal and domestic relationships among staff at the Centre as significantly contributing to the culture of the Centre. The overall conclusion that the Commission can reach on the evidence is that if there are inadequate staff at the Centre then such criticism is confined to only about six Residential Care Officers which is three percent of the total number of Residential Care Officers at the Centre. This is about 0.03 percent of staff. Accordingly, it follows that first there is no bad institutional culture of any sizeable significance and secondly the Commission should make it clear that the adverse publicity given to the Centre arising out of the observations of the 0.03 percent should not besmirch the other 99.9 percent about whom there was no evidence giving rise to any

> adverse finding against them. The 99.9 percent of Residential Care Officers and the Department should not be condemned by the 0.03 percent of possibly questionable staff. The Commission heard about the difficulties faced by the public sector in removing recalcitrant and poor performing staff. Nevertheless, in recent years there have been considerable initiative undertaken that will impact positively so as to deal with this possible three percent non-performing minority. It would be very wrong for anyone to think that the majority of staff were not dedicated and committed workers who are endeavouring and indeed carrying out their task to the best of their ability to a very high standard. It would also be very wrong to conclude that a great deal of good was not being done for a great number of people (T 158). The allegations are very much a minority blemish over a record of a great deal of [sic] being done at the Centre (T 160).

[Note: In the last sentence of the abovementioned submission, Counsel for the State of Queensland appears to have inadvertently omitted a description of exactly "what" a great deal of was being done at the Centre. I have assumed that the word "good" was so omitted.]

Mr Plunkett's assertions of figures such as a 0.03 percent minority and a 99.9 percent majority are clearly incorrect, both on the basis of his mathematical calculations, and on the evidence. Concerning the latter basis, I note the many examples of inappropriate behaviour, by RCOs, demonstrated in the evidence, and Mr Rohan's observation that some five to ten percent of the staff at the Centre would be better suited somewhere else rather than working with clients at the Centre, because of deficiencies in their ability to perform their duties (T 4447).

I have already referred to the fact that I have concluded that a considerable number of the staff at the Centre were decent and caring officers, who no doubt bring their best endeavours to their duties. However, I am also satisfied that the best endeavours of that group are in turn hampered by their own limitations, in some cases because of lack of education, in others by their own psychological unsuitability for the job at hand: that this situation exists is due in large measure to the low standard of acceptability required for appointment to the position of RCO. This low standard is evidenced by the selection criteria, salary and conditions attaching to the position. These are so unattractive as to appeal, in many cases, to persons who are unsuited to perform at an acceptable level the tasks required and expected of them. There are, of course, examples of suitable people applying for positions as RCOs (for example, RCO AC) but in my view this is in spite of the system, and not because of it. People such as RCO AC, and of course many others, are attracted to the position not because of salary considerations, but because they wish to dedicate themselves to the care of others. It is unrealistic, however, to expect that all such positions will be filled by such high-minded individuals, and it is incumbent upon the Department to raise the level of acceptability by making the selection criteria more stringent with a concomitant increase in the attractiveness of salary and other working conditions. These matters are further discussed in Chapters 19 and 20. In any event, I do not consider it helpful to attempt to apportion percentages to the respective categories of "good vs bad" staff at the Centre; it is enough to note that a significant number of RCOs are not, as observed by Mr Rohan (who was in an excellent position to make such a judgment) suited to their duties, and that acts of official misconduct have occurred. It follows that the deficiencies of those staff have necessarily impacted, to a corresponding degree, upon a significant number of the Centre's intellectually disabled clients. On the evidence, the deficiencies of those RCOs appears to have also impacted significantly upon the majority of management personnel associated with the Centre and its operations, in some cases, to the extent of demoralising them.

On a strict numerical basis, the so-called 'old guard' may in fact constitute a minority; an Inquiry such as this is not empowered, and in any event is a somewhat blunt instrument to use, to attempt to discern the aptitudes and abilities of individual RCOs, particularly when it is noted that many RCOs at the Centre did not in fact give evidence at the hearings. Nevertheless, I am

satisfied that the presence of an old guard at the Centre was of marked significance to the issues comprising the terms of reference of this Inquiry, irrespective of its numerical strength. The influence exerted by that group, because of its ruthless protection of what it saw as its own interests bolstered by mutual loyalty which led to a perception of invulnerability, was very considerable. This sense of invulnerability, exacerbated by ineffectual measures to curb it taken by management, has magnified the importance of this group out of all proportion to its numbers.

C) COUNSEL FOR THE UNIONS

Counsel for the unions provided detailed written submissions specifically addressing the matters as listed in Mr Le Grand's abovementioned letter. Mr Herbert submitted:

> There is very little, if any, evidence as to what is meant by an "institutional culture". In the absence of some reasonably concise definition by some person, it has been assumed for the purposes of these submissions that an institutional culture involves some form of common or organised consensus reached by the employees themselves without official sanction, as to the appropriate attitude to be adopted amongst employees of an institution, in relation to their dealings with figures of authority or with outside bodies. In its pejorative meaning, it is implied that such "culture" is intended to be mutually protective and supportive of employees, rather than directed towards the attainment of the objectives of the institution (see T 4530) . . .
>
> It is submitted there is no evidence of an institutional culture of this nature at the Basil Stafford Centre, particularly when one has regard to contemporaneous examples of such a culture in, for example, the police force or the prison service.
>
> There appears to be some anecdotal evidence and suggestion that certain groups of employees associated with each other with a view to making common cause to resist various changes which were sought to be introduced by Centre management. The full extent of the numbers of persons concerned and the success of their efforts to organise with the Centre appears to be extremely vague but, on the best evidence available, also appears to be very small. In any event, a number of the persons whose names were associated with such efforts have long since departed employment from the Centre.
>
> Of the large number of RCOs who gave evidence in these proceedings, the vast majority were unaware of any general organised resistance to the reporting of abuse or neglect. If such a culture existed, it would have to be a matter that was of almost universal acceptance by the persons working within that institution so that there were very few, or no, exceptions to the consensus view. It would be necessary to demonstrate that tight discipline existed in relation to persons who strayed from the standards imposed by the "culture". In the case of Basil Stafford, those persons who might have exhibited some of the attributes of an institutional culture were very much in the minority and did not have any support from the vast majority of employees at the Centre . . .

The above passages are excerpts from Mr Herbert's written submissions; however, I believe they accurately capture the gist of his submissions.

I reject Mr Herbert's submission to the effect that there was little evidence as to what was meant by the term "institutional culture". To my mind, that term is self-evident and widely understood, at least amongst those appearing before me who readily gave evidence about it. In any event, throughout the entirety of the public sittings, a large body of evidence was assembled wherein a variety of witnesses gave evidence about the presence of such a culture at the Centre. Indeed, such evidence was prolific.

For such a culture to exist, as is the case at the Centre, I do not consider that one needs some form of 'common or organised consensus' amongst the majority of employees. Leaving aside the tautological nature of that suggested requirement, as I have noted, it is apparent that a significant number of RCOs, and probably other staff at the Centre, were deeply entrenched in their endeavours to maintain the status quo, resisting the imposition of authority, whether by management or through external agencies: they placed their own interests above those of the intellectually disabled, particularly in relation to the abuse and gross neglect of those persons. Moreover, this old guard or clique sought to impose its views and standards upon the other staff. Those other staff members may not have embraced those views and standards, but I am satisfied that, in many cases, they were prepared to compliantly tolerate them rather than speak out and take the consequences, as, for example, did Mrs A. That culture was indeed 'mutually protective and supportive of employees', and it was opposed to 'the attainment of the objectives of the institution'.

Mr Herbert's submission, to the effect that there was no evidence of an institutional culture (of the above nature) at the Centre, particularly when regard is had to contemporaneous examples of such cultures in the police or the prison services, is one that I firmly reject, on the weight of the credible evidence presented to the Inquiry. However, Mr Herbert's submission is useful, for illustrative purposes, to emphasise the unhealthy and entrenched nature of the culture at the Centre.

In his report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (1989), Mr Fitzgerald (then of Queen's Counsel, now President of the Queensland Court of Appeal) devoted a Chapter to "Police Culture". In that Chapter, among other things, he said the following:

> Not all police officers are responsible for the nature of the police culture. Many officers retain their integrity and provide meritorious and usually unrecognised service. Most do not participate fully, especially in the various forms of misconduct which form part of the culture, but many acquiesce . . .
>
> Some of those who have exerted authority and influence in the police force in the last decade have practised and been recruited by the police culture for up to 40 years. Most police are recruited as school leavers. Recruits are therefore young, often immature and with little experience of work or the broader society. When they join the force, they enter an insular environment where they work and socialise almost exclusively with their colleagues. Their experience of the broader society is therefore not widened greatly . . . Police therefore tend to retain the views and attitudes they brought into the force, insofar as these are compatible with (or reinforced by) police culture. The unwritten police code is an integral element of police culture and has been a critical factor in the deterioration of the police force. It has allowed two main types of misconduct to flourish. A practical effect of the code is to reduce, if not almost to eliminate, concern at possible apprehension and punishment as a deterrent to police misconduct. The code exaggerates the need for, and the benefits derived from, mutual loyalty and support . . . Under the code it is impermissible to criticise other police . . . The police code also requires that police not enforce the law against other police, nor co-operate in any attempt to do so, and perhaps even obstruct any such attempt . . . A concern with the real but vastly exaggerated prospect of false allegations is effectively taken to the point that all allegations against police are assumed to be false and malicious . . .
>
> [A] Detective Constable . . . told the inquiry that, after he made corruption allegations . . . he was shunned by fellow police and got anonymous telephone calls in the early hours of the morning . . .
>
> As a group, police officers:

> initially lack the confidence or authority to act inconsistently with the police culture, and later become immersed in that culture and compromised either by their behaviour or by acquiescence or inaction, whereupon the incentive and the ability to act are diminished . . .
>
> The existing culture will not be rejected by the current elite or others who are amongst its central adherents, this influence must be reduced and finally excluded. The commitment of peripheral adherents must be reversed, new recruits must be protected from absorption into the culture, and fresh leadership must be found to educate and persuade the police force to modify its attitudes and practices . . .

Unfortunately, those remarks are of more than passing application to the situation existing at the Centre during the period examined by this Inquiry.

16.3 THE SUBMISSIONS OF QAI

As noted, QAI provided a number of written submissions to the Inquiry. Its position was quite clear; namely, that an institutional culture did exist at the Centre and that it was of a most undesirable nature, in terms of the best interests of the intellectually disabled. In Volume 8 of its written submissions, QAI submitted:

> QAI has identified the existence and impact of an institutional culture at the Basil Stafford Centre . . . QAI submits that the corruption of care evident at the Basil Stafford Centre is the environment which gives rise to the "institutional culture" referred to.
>
> In terms of the impact of such culture on the statutory provisions, policies, practices or procedures relevant to the treatment of clients, QAI notes that these areas have been reviewed and updated in the past . . . Counsel for the Queensland Government has also informed and provided the Inquiry with evidence and documentation citing examples of a system of checks and balances supposedly operating at the Basil Stafford Centre . . .
>
> The current Inquiry into Basil Stafford clearly demonstrates that these efforts have not borne fruit, despite their vision and intent. QAI maintains that this impasse is largely due to Basil Stafford's institutional culture that corrupts care and resists and invalidates change. As Jeff Whalan so succinctly put it " . . . the issue is more about the location and the model than it is about the people. I think that when you put good people into an institution such as the Basil Stafford Centre, it is very difficult for them to remain top quality people in the longer term" (T 5805). Indeed, a plethora of very positive laws and policies currently exist (T 5793–5796) and have existed since the mid-1980s when the *Intellectually Handicapped Citizens Act (Queensland)* and the *Disability Services Act (Commonwealth)* were passed. Nonetheless, little if any change <u>in practice</u> has actually taken place in the current residents' daily lives precisely because of the institutional environment which corrupts care.

In Volume 7 of its written submissions QAI developed its submissions about the concept of "corruption of care":

> The corruption of care is a phrase coined in the literature and research conducted around disability issues . . . examination of . . . research data in the area of human service provision for people with disability involving issues of abuse and neglect, and of the CJC Basil Stafford Inquiry transcripts reveals that Basil Stafford has some, if not all, of those elements peculiar to institutional settings, that contribute to the "corruption of care". These include:
>
> - Isolation and powerlessness of the "client group";
> - Client group seen as less than fully human;

- Staff largely untrained and unqualified;
- Isolation and alienation of workers;
- Inadequate resourcing leading to emphasis on control rather than individualisation;
- Management failure.

QAI submits that what the Inquiry has revealed to date warrants a look at the environment in which the corruption has taken place. This view sees the corruption of institutional care as produced by the very nature of institutions and has been the subject of widespread research and debate over many decades.

The rationale for QAI's best interests proposition [as to how the interests of the residents are best served] is based upon:

1. ...

2. QAI's belief that a process of improvement will not overcome the entrenched attitudes and practices endemic to institutions and which have such disastrous consequences for people with disability living in them. Any recommendations based on a process of improvement at Basil Stafford (eg more training, increased staff etc.) must take place within a wider framework of closure and inclusion in the community ...

These points were developed at length within QAI's various submissions, which I found to be generally helpful. QAI's stance was basically that client abuse and gross neglect would continue to occur in any institutional setting, irrespective of any improvements which could be made, which would themselves be of a "tinkering" nature only; and therefore the interests of the clients cannot be met within an institutional setting, leading to the ultimate recommendation that a process of closure of the Centre should commence immediately, and that the lives of the residents of the Centre should be safeguarded within that closure process.

16.4 FEATURES OF THE CULTURE

Many witnesses, including past and present officers from all staffing levels at the Centre, gave evidence before the Inquiry about the existence of, and features of, the institutional culture existing at the Centre.

A) THE 'FIVE TO TEN PERCENT'

In his statutory declaration (Ex 346) Mr Rohan said the following:

> The Department also "inherited" some of its RCO staff from "Psychiatric Services" when Intellectual Handicap Services was established in 1977. Some of these people have been around for more than 15 years and had a history within Psychiatric Services. While they had been through a course of RCO training, years of attitudes and practice are not always changed by that. Some have been able to move with the change. A culture, however, exists amongst these people. That culture is quite foreign to the sort of culture we wanted to uphold in a place like the Basil Stafford Centre where people care for people with intellectual disabilities ...
>
> I do believe that something in the nature of a culture exists at the Centre. This culture includes attitudes that "new things aren't to be trusted", and that there is a sense of comfort in things happening in a way that is not terribly demanding upon the RCOs. Whilst I completely accept that the RCO's job can be demanding in some ways, it can also be relatively easy in some aspects, for instance, clients doing what they are told and being told to amuse themselves in

> some fairly aimless sort of a way so that the RCO can get on with other activities. Another part of the culture is the regular meetings that occur between staff, over coffee, morning tea etc.
>
> Whilst there is some sort of a family connection at the Centre, this connection seems to also exist throughout the Division, and I do not believe it is of a level that makes it a distinctive feature of the Centre's culture. What might be more distinctive, in my opinion, is the number of people who have developed relationships with each other during the course of their work.

Mr Rohan's last-mentioned point, namely that of family connections and relationships between staff at the Centre, was a recurrent theme throughout the evidence. Counsel for the State of Queensland submitted:

> A significant percentage of the staff employed at the Centre are related. It should be noted that while in some cases relationships of a parental or sibling nature exist among the staff, the majority are spouse relationships of which many were formed after the individual staff members commenced employment at the Centre. It is argued that this would be a normal course of events in any large employment facility . . .

While it is to be expected that some such relationships will arise, in the natural course of events, at any institution or facility employing the number of people that work at the Centre, it strikes me that the proportion of such relationships at the Centre, at the time of these hearings, is not without significance. Obviously, one cannot quantify a "norm" figure in this respect, but it appears to me that the number of such relationships at the Centre is quite high. In light of the evidence and matters discussed within this Chapter, that fact is relevant in the context of the development, presence and maintenance of an institutional culture among the Centre's staff, and the adoption of inappropriate values and attitudes by 'new' staff.

Before the Inquiry, Counsel Assisting asked Mr Rohan to explain the "culture" referred to in the first-mentioned excerpt from his statutory declaration (T 4379):

> Mr O'Sullivan: . . . What sort of culture are you referring to?---I'm referring to a culture which would have clients as being people without rights, where the Residential Care Officer role is one of a keeper rather than somebody who is there to support, and certainly a culture which would see dobbing on your mates as being something that you just don't do. So that the loyalty is to the staff, rather than to the people that you're there to provide a service to, and, dare I say it, the organisation itself; so that there's a bit of a clash between the loyalty to mates and the loyalty that one owes to the client group and to the organisation.
>
> What has brought about this culture, do you think?---I think that part of it is the size of the establishment; I think it's always been there and I suspect that a lot of the elements of the culture came across with staff who joined Intellectual Handicap Services from the old Psychiatric Services.

Counsel Assisting also explored Mr Rohan's attempts, as Centre Manager, to deal with this culture (T 4380):

> Mr O'Sullivan: How can you overcome the culture?---Having spent a couple of years, more than a couple of years, trying to overcome the culture, I must confess that I don't really know. I believe that down-scaling, splitting the large organisation up into smaller chunks would be helpful in that process. I think having the means to more readily segregate off, in whatever way, whether it be through dismissal or re-deployment, staff members who one had real suspicions about would be helpful, but we don't yet have those means.
>
> How have you tried, in the past, to deal with the culture?---Through work with the Seniors and through the Principal Residential Officer, trying to also make myself available, being on the

spot as much as I can. I'm usually at work early and leave late. I've been approached at weekends and readily pitched in to help when it's been required, following up with staff issues where they're indicating that there is a problem with a particular staff member in the way that person is carrying out duties, or if that person is suspected of abuse. But I don't feel that I've got very far.

Is there any way that you can strengthen the reporting of suspicious behaviour by staff towards clients?---I don't believe so. I mean, essentially, the problem in that area at the moment is the problem relating to perceived harassment. Staff are not prepared to come forward when there is an aura of harassment around the place. So whatever suspicions people have tend not to be referred, in many cases, because of the harassment.

I also took these matters up with Mr Rohan (T 4381–4382):

The Commissioner: Mr Rohan, would your view be that this culture of non-dobbing and looking after your mate, at the expense of the client and to the detriment of the organisation, will continue, and that the harassment of people who do not adhere to that culture will continue as long as until Basil Stafford Centre itself, as it now exists, is dismantled?---Your Honour, I find it difficult to see how it's going to really be broken down to the point that we can say harassment is no longer an issue. I'd also add that it's not an issue just at Basil Stafford Centre. It is an issue throughout the organisation, to my knowledge, and one that I think is arising from much the same kinds of loyalties.

Yes. What you say does not, unfortunately, come as any surprise to me. But we are looking at Basil Stafford. That is the limit of the terms of reference in this Inquiry and we must concentrate on that. No one has come up with a solution yet, I might say, that has convinced me that anything will change dramatically unless and until you get rid of the place. Now, one of the ways you have mentioned is to break down the numbers of people there, to try to put individuals into home situations, and upgrading of the ALS or putting more people into ALS, stopping large groups being together. In other words, this type of situation goes with the territory?---That is one way of looking at it.

It is, some might say, a pessimistic way of looking at it; but I would suggest that it is a realistic way of looking at it. What do you say?---I would have to agree, and I think it is one of the reasons why I would strongly be advocating for much smaller services.

And, of course, the force that is militating against this is the vested interest of the people who maintain the place, because they see their jobs disappearing?---Yes.

Counsel for the State of Queensland cross-examined Mr Rohan about these matters (T 4451–4453):

Mr Plunkett: Well, do you see the culture that you are grappling with, the deleterious culture at the Basil Stafford Centre, as being inherited from the old Health Department days?---I believe so, but I also think that when you bring together a large number of people in an institutional type setting, then it provides a very fertile breeding ground for that sort of culture anyway, so it's something that you would always have to be fighting.

Well, what are the mechanisms for breaking down that culture? I mean – well, we have talked about the five to ten percent [of unsuitable staff – see section 16.2(B)] and it says under the Public Service Regulations it would be difficult to remove them from the Centre. Can you, do you have any proposals or suggestions?---I think, when you reduce the scale, you also reduce the extent to which that sort of culture can become entrenched, so I come back to the point that I was making yesterday, that a smaller scale will be better. I think that it is also important that all staff be given on-going training and development. While a number of people who have been

employed for many years are not performing to my belief well, as Residential Care Officers, that's not necessarily to say that will always be the case, although my feeling is that for many of those people, it will be so.

Yes?---I don't think though, that that should mean that we do not provide opportunities for training and redevelopment, that is one way which attitudes and cultural change can occur. I think too, that the more that we can bring in well-trained, fresh people, and shift some of the power balance towards the ideas that those people bring with them, then that will also bring about a change in the culture. At the end of all of that, though, I think that you also need to provide for adequate resources for the sorts of philosophies to be realised. It's one thing to talk about least restrictive environment, it's one thing to talk about social role valorisation, but to actually implement those in a real way demands certain resources. I don't believe that we have the resources at Basil Stafford Centre or elsewhere to properly implement the philosophies which we are espousing and trying to attain.

Well, to what extent is this five to ten percent – what share of the power have they got out there?---I think they have an inordinately high share of the power. I don't think that they hold a five to ten percent balance of the power. I think that part of the culture is a bit of a network. I am aware that some staff who come to the Centre new and fresh have it pointed out to them by some of the five to ten percent that if they want to get along they have to do things in a particular way, and that way can often mean maintaining control over the client that they are providing the service to, in a way that is not acceptable.

Well, we have heard evidence from Mr AJ . . . as to what you know about the harassment that he has suffered?---Yes.

Now, assuming that he would be seen as a person trying to bring new initiative . . . and trying to bring into play his personal resources . . . ?---And some fresh ideas.

. . . and fresh ideas, now, see, someone like him coming into a workplace like this, one would assume would never have anticipated that he would have been subjected to this sort of harassment. Now, that sort of harassment, do you see that as reflecting the values of these five to ten percent?---Mmm, I do.

Well, that means that the extent to which that has impacted on Mr AJ has worn his patience thin, to the point that he is obviously a very stressed man, would seem to suggest that the five to ten percent, in assessing the degree of inordinate power they exercise is pretty overwhelming?---Certainly, I would have to agree.

So that a small minority of staff can sabotage the whole administrative philosophies and thrusts of the majority of the staff?---Yes, that is true.

And frustrate the policy of the Government in this area?---Yes, that's true, too.

Now, Mr AJ of course, has continued to serve within the service during the time that he suffered harassment and is currently on leave – now, he is the example of a man who, if he leaves, this process that is occurring of this overwhelming sabotage and frustration being perpetrated by the five to ten percent, is it like a process of unnatural selection?---Yes.

Well-talented, well-meaning, hard-working people are driven out?---Yes.

So that, if Mr AJ was to leave, you have lost him?---Yes, and it has happened with other young and fresh staff who have come in too.

Well, the only solution you can offer about busting that sort of culture is training and resources?---Training, resources and down-scaling.

Down-scaling meaning what, closing down Basil Stafford?---Well, I mean that would certainly bust it.

Yes?---But I mean the smaller the body, I think that the more the problem can be dealt with.

Well, assuming that you close down Basil Stafford, what would then happen to the five to ten percent? They would go out to an ALS situation – supposing Basil Stafford is closed down and you all went to an ALS, that five to ten percent with their bad attitudes would then be out in the Alternative Living Service?---If that's the direction that was taken in closing down.

Yes?---I mean there's more than one way to down-scale, and an alternative way would be one in which jobs will be shed. That would be a difficult course for the Government to follow . . .

The Commissioner: Why would it be difficult for the Government to follow, Mr Rohan?---I think that the matter would be a very strongly-fought issue with the unions.

Strongly-fought though it may be, if it is the right thing, it ought to be done, ought not it?---Oh yes.

And Governments are elected to fight difficult fights and solve difficult problems, aren't they?---Certainly, but politically unpalatable issues sometimes get put aside.

Well, politically unpalatable though it may be, if it is the right thing, that nettle ought to be grasped by whichever Government happens to be in power, ought it not?---I absolutely agree and if, certainly if the . . .

And if it is the fact that there are unsuitable people there, and it seems to be the fact; in what numbers precisely, and precisely who they may be is not altogether clear, they ought to go, ought they not?---Absolutely.

Throughout the majority of the period encompassed by this Inquiry's terms of reference, Mr Rohan held positions of significant responsibility at the "coal face" of the problems at the Centre. He has admitted that management was largely unable to effectively counter the harassment problems that existed, and I am satisfied that management was also similarly unable to effectively detect or investigate incidents of suspected client abuse and gross neglect. In the performance of his day-to-day duties at the Centre over a number of years Mr Rohan became aware, of the details of the incidents of suspected client abuse or gross neglect, that did rise to the surface, and of the harassment problems experienced by his subordinate staff. He too suffered harassment; it affected him and his family personally and it affected his working capabilities. I believe it is fair to state that, more so than any other witness appearing before me, Mr Rohan had practical experience of the gulf between the intentions, policies and goals of the Department (and the Government) and the practical reality of the services, or lack thereof, which were provided for the intellectually disabled clients at the Centre.

In all those circumstances, I have accorded Mr Rohan's evidence, about these matters, significant weight, in terms of my ultimate findings and recommendations.

B) THE "DISEASE" OF DOBBING

Ms AP, now employed by another Government Department, worked with the Division for a period of eight years, until early 1992. At times she worked as a Principal Residential Officer at the Centre, and acted in the position of Residential Services Co-ordinator. At T 3679 she said:

> Ms AP: . . . this disease of dobbing – that you don't dob on what you see, to me comes from the belief that the staff put themselves first, whereas we are talking about highly vulnerable people, many of whom are non-verbal, who can never report abuse or neglect, and I think the whole philosophy of "you don't dob" shows that there are a number of people who haven't got the right values for the position that they hold. That may be an ideal view that I hold, but I believe it.
>
> The Commissioner: But there is no doubt in your mind that this exists – well, what has led you to that conclusion? Have you seen instances of this?---People have actually admitted to me that they dare not reveal, or other – they not be speaking about themselves, but they speak about other people in specific situations not being prepared to reveal what they have seen. Certainly, the fear of harassment comes in here, but I think the beginnings of all that is that it's almost the three wise monkeys: you see nothing, you hear nothing, etc. and you say nothing.

Ms AP also said that the culture had existed from at least the time when she started her employment (T 3683):

> Ms AP: Well, when you think there were a number of incidents that involved clients who had either been neglected or abused, and when it was clear that there was something wrong with the culture, when there was a lot of mistrust from one rank to the other, it was really, in my experience, and I was only there until the beginning of '92, it was really only in 1991 that I think we, as a group, really genuinely tried to change that culture to the better, and I think those things were in evidence from at least 1984 when I started.
>
> The Commissioner: Well, has there been a break through?---Well, I haven't been there for two years. I don't think I can say that.
>
> Right. See, what I am concerned about is . . . ?---Can I offer a strong opinion . . .
>
> . . . whether the management's efforts have been successful in breaking this culture down, because it seems quite evident that it is there, it exists. It is not a myth. What more can be done, if anything?---Well, one of the problems as I see it, is a public service problem. That if there are a number of people who for one reason and another are unsuited to the work and there has been nothing negative put on their file for a number of years, to me it is unjust. You can see it's not just for them, the next year, to be dismissed or moved. Perhaps it's not unjust to move them, but they may not be trained to do anything else. However, it seems to me if you were going to change a culture just as you were going to remove a bruised apple from a box of apples, that there has to be some way of, at day one, saying that there is a minimum standard of performance for various ranks and types of staff. And if you don't meet that standard, it doesn't matter what happened in the previous ten years, we have to do something about your job. Now, I don't know. That's a bigger problem than I can solve.
>
> . . . Forget about plucking out rotten apples and hoping you are going to change a culture. You cannot do it that way, can you? Or do you think you can?---I do believe from my experiences as a trainer, that when you have a new group of direct care workers for example, there is an enthusiasm, an energy, an ethical stance that nearly all of them have when they start. The fact that they lose that may be for a number of reasons. Perhaps they are jaundiced with management. But to me, it's the effect of some, and I say some, older staff who say, "we've tried that, it doesn't work, we'll get you into shape, we know how to work". So, I do believe in the rotten apple theory, but I don't think it's the whole story. I think the culture is larger and more complicated than the colleagues that people work with, that, if you like, are not doing the right thing.

During cross-examination by Mr Herbert, Ms AP stated that the "non-dobbing culture" could be characterised as a resistance on the part of employees at the Centre against providing information about other employees, so as not to get those persons, or themselves, into trouble (T 3692).

Ms AP also provided examples supporting her conclusion that a non-dobbing culture existed at the Centre; she cited the circumstances surrounding the extensive bruises inflicted upon Client 5, and the fact that Client 1's pregnancy went unreported for a period of some months (T 3719).

SRO U, a former SRO at the Centre, and a Principal Residential Officer in the ALS at the time of appearing before the Inquiry, was asked by Mr Plunkett (T 2179):

> Mr Plunkett: Are you aware of any cover-up of anything that should have been brought to the attention of the management and, or leave it at that level, with the management, something of an improper nature involving assault or something or neglect committed by staff members against clients that was not brought to the attention of management?---I'm not aware of specific incidents or allegations that have not been brought forward, but I am aware that there's a reluctance for people to come forward and stand out away from their peer group.
>
> All right. Well, has that – is it that you understand that that reluctance has prevented abuse from being disclosed to management and ultimate authority?---I'm sure on occasions, it has.

C) A CULTURE OF CONTROL

SRO AI gave some evidence before the Inquiry as to his perceptions about a certain class of staff (CT 4521–4522):

> SRO AI: If we're looking at institutionalised culture, then many of those people had come from Wolston Park Hospital and were recognised as fairly seriously embedded in institutional cultures, and I felt that their work attitudes and their work practices were not shining examples . . .

I examined SRO AI about these matters (CT 4530–4531):

> The Commissioner: And you say they brought with them the attitudes towards clients that were part of a Wolston Park culture; is that right?---Yes, that's my belief.
>
> What is that culture?---I have no knowledge of the culture specifically at Wolston Park hospital. I have worked in psychiatric hospitals, and I don't know whether this is relevant, in New Zealand in 1963, and they had a very strong culture of control over people; total control over people and I would call callous treatment over people, in that 50 people would be bathed in 20 minutes using six people, two to undress them, threw them in the bath. My understanding probably of Wolston Park hospital as a long-established hospital, that in the back wards, there was a culture. Basil Stafford used to be run by Wolston Park hospital. When it was handed over to Intellectual Handicap Services there were some staff that either elected to stay or were, or went to Basil Stafford Centre. My understanding of staff deployment in institutions and places like that is that Intellectual Handicap Services would not have inherited the most motivated staff from Wolston Park hospital.
>
> How did this manifest itself, as far as they were concerned – give us some examples about their non-caring attitude, their callousness, if it exists . . . Can you give me some examples?---For a while I had a really pleasant job as a Residential Program Officer at the Basil Stafford Centre, running dances on a Saturday night, and I used to get live bands to come out and we'd hold dances, and we had a disco machine when we didn't have dances, when we didn't have bands, and I would spend most Saturday afternoon ringing up villas to get people, to try and get people to take their clients to the dances. Of those people there, none ever, if they were on duty, none ever came to the dances.

And did not bring their clients?---And didn't bring their clients.

So what you are saying is there is a sort of, there was a "don't care" attitude?---Yes, yes. Yes. It was, "let's get through the shift".

And again, I do not want to put words in your mouth, but you have said that one of these persons described the clients as "them" . . . does that indicate to you that it was an attitude of treating these people as less than human, and just so many ciphers, as nuisances, as something less – children of a lesser God, if you like?---It's an indication that they see them as having – yes, not having the same feelings as us, not having the same rights, not requiring the same respect, that they can be left not to have – they don't need socks in winter, they don't need, there's no hurry to put sweaters on them on a cold winter's morning . . . there's this use of neglect and there's this use of control. Now, when I've got there six names, right; then there are another 120 names of people that don't think that way.

Right. You deplore this attitude that you say these people have, is that right?---Yes, I do deplore it.

And yet you are a product, or are you somebody who has worked in a psychiatric hospital or centre, and you have not carried that culture away with you, apparently?---No. But I guess I've learnt skills not to fall, not to go down that track; and I can see how people can go down that track and I can see how there is a responsibility. Once again there is a balance here, there is a responsibility of everybody in the Intellectual Disability Services and everybody in the Government Department, perhaps even in taxpayers, of how much money they're prepared to vote into welfare, of controlling things so that people don't go down that track. So those people aren't totally to blame because they've gone down that track. There is an environment that can exist where it is very easy to go down that track, in fact, at times, a little bit difficult not to.

D) PHYSICAL ATTRIBUTES

The Divisional Head, Mr Whalan, gave evidence about the need to have multiple systems and strategies put in place, in the context of adequately safeguarding the intellectually disabled. During the course of evidence, he spoke of the importance of physical attributes or characteristics to this debate, and commented (T 5802):

> I would argue that large institutions are more difficult to operate in such a way that you maintain a healthy culture and in such a way that you provide the best service for individuals who live there, and I'd say that in respect of any type of institution, not just the disability area. And, I would also say that an institution which is a long way away from the rest of the community also has its failings, and that geography is important because of the need, as I've mentioned many times, to involve individual citizens in people's lives. I'd also say that the size of an organisation or unit is an issue, and what I mean by that is that, and I mentioned it previously, is that large groups of people lead to inefficiencies of staff, lead to inefficiency, lead to helplessness within the organisation because people don't feel as if they are able to contribute and make a difference.

E) "THEM AND US"

Many staff pointed to the existence of one specific feature of the Centre's culture, namely a marked division between management and staff employed at lower levels, in particular, those employed as RCOs. Ms AG (see Chapter 11) said in her cross-examination (T 3081–3082):

Mr Plunkett: Did you ever perceive a culture of thinking among the RCOs at the Centre?---Yes.

Whereby they saw, there were divisions between them and management?---Yes, I did.

Well, as a staff development officer, did you see that as a bad thing or a good thing?---Oh, no, a bad thing.

And were there any steps taken to try and lessen the impact of that undesirable feature?---No, not that I can remember. No, I don't think so.

Have you got any notions about how it arises, having regard to your background in psychology and your involvement . . . in the development section, how does that culture come about?---The only thing that I saw that was a hindrance for a period of time, there was, that there was a constant change of Senior Residential Officers, Acting Senior Residential Officers that were only there for short periods of time, and that in itself would have made it difficult for Residential Care Officers to actually develop some trust and rapport with seniors. For a period of time there it changed quite regularly.

Why was that?---I'm not sure why they . . .

Was there anything that made the Senior Residential Officers want to leave?---I would imagine that the pressure of the job and trying to supervise a large number of staff might have something to do with it, or yes, I couldn't say.

The Commissioner: Ms AG, what was the nature of this culture of which you speak, and how did it manifest itself?---There was, I mean, there was the culture - there was always talk about the us and them with management not listening to staff and then management saying it was very hard to investigate or to find out whether various things happened because, within the RCO ranks, there would be, sort of, like, you just don't say anything, you don't dob or you try and keep it under wraps. That was - yes, that was my understanding of it. I mean, I certainly had, knew RCOs say to me that they felt a bit of pressure coming in and trying to change things because staff had been there for a while. Just, you know, they didn't want them rocking the boat and they found there was a lot of tension there.

So it was the old and more senior RCOs that had been there the longest who were resistant to change?---Yes, yes.

Is that what you are saying?---Yes.

And the new blood were not so resistant and really wanted to move things along?---Yes.

And improve things?---Yes.

Was there any union involvement in this?---Yes, my understanding was that there was.

A number of other witnesses also spoke of the "them and us" aspect of the culture; for example RCO AC, Ms AP, Ms AF, Mr AJ and Ms AM.

Not every witness appearing before the Inquiry readily admitted that anything in the nature of a culture existed at the Centre, or that there was a considerable division between the staffing levels.

Mr AL, a retired RDO of many years' standing, denied that anything in the nature of an old culture existed at the Centre. The following evidence was given, during the course of Mr AL's

cross-examination by Counsel for the State of Queensland, wherein Mr Plunkett suggested that Mr AL had unfairly attempted to suggest that occupational therapists at the Centre were responsible for an alleged act of client neglect (T 5158):

> Mr Plunkett: Is it that occupational therapists represent the new culture?---No.
>
> And that you represent the old culture from Challinor?---No. No. I didn't know there was an old culture at Challinor.
>
> Do you see any division among the attitudes of staff between those who came over from the old Health Department before the Centre was set up, and more recent recruits?---No.
>
> Do you see any institutionalised culture at all . . . ?---No.
>
> . . . at the Basil Stafford Centre – you know what I mean when I say "institutionalised culture"?---Yes.
>
> Do you see any groups among staff who are in conflict with each other? One group, it suggests, has a progressive, more caring attitudes towards clients; and another group of staff who just do their time without any enthusiasm at all?---No.
>
> Or little enthusiasm?---No.

Mr AL had a somewhat difficult time in the witness box. He was clearly uncomfortable when pressed about certain issues, particularly by Counsel for the State of Queensland; his evidence was most unconvincing. In the instant case, his assertions, almost off-hand in their manner, that nothing in the nature of a culture existed at the Centre are ones that I cannot accept, given the vast body of contrary evidence.

16.5 CONCLUSIONS

I am satisfied that an institutional culture exists at the Centre, or at least, existed during the time relevant to this Inquiry's terms of reference. Having regard to all the evidence, including that referred to above, it is unreasonable to assume that steps of a remedial nature taken by the Department in recent times (some of which are discussed in the following Chapters) will have had a significant impact upon this culture during recent months.

The features of this culture are evident from all of the above, and have, when combined, led to the creation of an atmosphere at the Centre in which a not insignificant number of staff (generally, but perhaps not exclusively, employed at the RCO and RDO level), have tolerated the occurrence of acts of client abuse or gross neglect, and harassment of their fellow staff members. I am satisfied that some such staff members have actively participated in such conduct. Others have passively, or wilfully, acquiesced in it. To some extent, all staff have been influenced by that conduct. The presence of such a culture at the Centre has had a detrimental effect upon the attempts undertaken by management to implement the various policies and aims of the Department and the Government. They have been unable to do so, leading to what I have already herein described as the gulf between the written, formal policies reflecting those aims, and the reality of the Centre's operations, as has come to light in the evidence before these hearings. Most importantly, the presence of such a culture has had a debilitating effect upon one of the Department's primary aims, that of promoting the welfare and development of the intellectually disabled clients, whose care is entrusted to it. In a significant and intolerable number of cases, the Centre has been unable to even physically safeguard the interests of those clients, and to a

serious extent the interests of those decent staff who have stood up for a better way of life for the clients.

I have had regard to the suggestions, as noted above, as to how such a culture might be broken. It is imperative, for the interests of the intellectually disabled clients and those decent staff members, that the culture be broken, and never allowed to re-establish itself in any environment or facility which purports to exist for the purpose of caring for people with intellectual disabilities. The aforementioned suggestions are, to my mind, generally of a commonsense nature, and sit well with the research and theory associated with the concept of "deinstitutionalisation". They are reflected within my general findings and recommendations contained within the following, and final, part of this report.

PART D
PARAGRAPH (3) OF THE TERMS OF REFERENCE – THE STATUTORY PROVISIONS, POLICIES, PRACTICES OR PROCEDURES RELEVANT TO THE TREATMENT, OR THE REPORTING OF THE TREATMENT OF CLIENTS AT THE CENTRE, AND RELATED MATTERS

CHAPTER 17
RELEVANT STATUTORY PROVISIONS, POLICIES, PRACTICES OR PROCEDURES

17.1 THE THIRD TERM OF REFERENCE

The third discrete area of inquiry during the hearings concerned the third paragraph of the terms of reference, namely, as part of the investigation of client abuse/gross neglect and the harassment/intimidation of actual and likely complainants, to consider generally and make recommendations concerning any statutory provision, policy, practice or procedure relevant to the treatment of clients of the Basil Stafford Centre or the reporting of treatment of such clients, and any related matters.

Accordingly, my general considerations and recommendations are contained within this part of the report. Before setting them out, however, it is necessary to make some comment about the scope of those considerations and recommendations.

17.2 THE LIMITED SCOPE OF THE HEARINGS

As has been noted on many occasions, this Inquiry was not a Royal Commission empowered to inquire into every aspect of the care and treatment of intellectually disabled persons in Queensland. The Inquiry's terms of reference were limited in a number of respects.

First, the Inquiry dealt only with considerations relevant to the Basil Stafford Centre itself. Taken in isolation, the Centre cares for a relatively small number of clients, and employs a correspondingly small number of staff, in terms of the overall operations of the Division and the Department. By parity of reasoning, many of the considerations and recommendations contained within this report may well be of application in a broader context; nevertheless, the evidence presented for my consideration was limited to that concerning the Centre itself. For instance, although there was frequently an inherent need to discuss matters touching upon the Alternative Living Service scheme, the allegations of client abuse or gross neglect arising in that context were not examined during the public hearings, nor was any "merit-based" review of that model of care, vis-à-vis that provided by the Centre as an institution, undertaken or attempted.

Secondly, the investigations conducted by the Inquiry were at all times predicated upon its jurisdiction concerning official misconduct (see section 4.5).

Thirdly, the terms of reference of the Inquiry dictated that the general consideration, and the making of recommendations concerning statutory provisions, policies, practices or procedures relevant to the treatment of clients of the Centre, or the reporting of treatment of such clients, and related matters; be carried out as part of the investigation of the abuse and gross neglect of clients, and the harassment or intimidation of actual or likely complainants.

For all of those reasons, the Inquiry did not consider specific or discrete brackets of evidence focusing upon any particular statutory provision, or policy, practice or procedure. For instance, in terms of the medical treatment provided to the clients, such an issue could only fall within the realm of permissible considerations and recommendations to the extent that it involved possible official misconduct. Therefore, while some aspects of the clients' medical treatment were considered, the Inquiry did not

conduct a broad-ranging investigation or review of every aspect of the medical treatment provided to the clients, or to which the clients should be entitled, during the period applicable to the Inquiry's terms of reference.

As would be evident to any reader of this report, the Inquiry's public hearings were conducted over a period well in excess of the earlier estimates of all participants. As already noted, many factors contributed to that development, and I am sure that all interested persons would agree that it was at times a complex and laborious process to investigate, by way of public hearings, allegations of client abuse or gross neglect in circumstances where many witnesses had to be called, and extensively examined, in order for all the relevant facts to be elicited so that procedural fairness might be accorded to all. Given the serious repercussions which may attach to my making an adverse finding against any person, it was necessary that such investigations be conducted properly, rather than on the basis of considerations of expediency. I am satisfied that this was done, despite the ill-founded and repetitive submissions of Counsel for the State of Queensland to the contrary.

Accordingly, each statutory provision, policy, practice or procedure relevant to the treatment of clients at the Centre, the reporting of treatment of such clients, and all related matters, could not be examined in such painstaking detail.

Rather, as I have stated, a number of such provisions, policies, practices or procedures of central significance to the treatment of the clients arose in the evidence from time to time in the context of the Commission's investigations into allegations of client abuse/gross neglect and staff harassment/intimidation. Those issues were the ones focussed upon during the hearings and the parties' submissions, and are the ones that I have generally considered and made recommendations about herein.

17.3 THE COMMISSION'S NOMINATION OF CERTAIN ISSUES

The letter from the Criminal Justice Commission to the parties dated 26 July 1994 over the hand of Mr Le Grand (see section 6.7) nominated five specific issues as being of relevance to this term of reference, namely:

(a) staff/client ratios;

(b) RCO recruitment, selection and training;

(c) funding levels applicable to the Basil Stafford Centre;

(d) the role of existing structures such as the Office of the Public Trustee, the Office of the Legal Friend, the Official Visitor scheme and the present investigative procedures employed by the Department and whether a need exists for any further independent body (in terms of the reporting and investigation of suspected incidents of client abuse/gross neglect or the harassment or intimidation of staff); and

(e) the medical treatment available to, and required by, the clients of the Centre.

The matters dealt with in this Chapter generally accord with the abovementioned topics. Additionally, I have included a Chapter in this part of the report dealing with matters associated with the various trade unions whose membership partially comprises persons employed at the Centre. The possible influence of those unions, in terms of whether they, or any person associated with them, had an adverse or undue influence upon the reporting and investigation of alleged incidents of client abuse or gross neglect, was a recurrent theme in the evidence throughout the hearings. As noted in Chapter 14, I have chosen to

deal with that body of evidence in this part of the report. To my mind, that body of evidence sits more comfortably within the description of a practice, policy or procedure relevant or related to the treatment, and the reporting of the treatment, of the clients, rather than within that part of the report dealing with allegations of harassment and intimidation. While it could be argued that those issues are not completely divorced, in the absence of any direct evidence associating any member of those trade unions with any demonstrable act of staff harassment or intimidation (in the context of reporting allegations of client abuse or gross neglect), it could also be argued that it is somewhat unfair to juxtapose my analysis of that evidence, and my recommendations, with the other Chapters of the report dealing purely with harassment. The issues involving the trade unions associated with the Centre, their membership, and particularly their delegates and member representation, are wider in terms of their relevance than being of singular application to harassment considerations. The role adopted by certain union figures at the Centre is, to my mind, of particular relevance to the present investigative procedures employed by the Department in terms of preventing, detecting and investigating acts of client abuse or gross neglect.

17.4 THE LIMITS OF MY RECOMMENDATIONS

From the above, it will be evident that it was beyond the scope of this Inquiry, and hence this report, to attempt to produce intricate and wide-ranging recommendations concerning the care of people with intellectual disabilities, and the provision of Government-funded and administered services for those people, within the State of Queensland. The fundamental recommendation resulting from this Inquiry is that the Centre should be closed, at the earliest possible opportunity, in order to reduce, as far as possible, the level of occurrence of further acts of official misconduct. As part of that process, which I accept cannot be achieved overnight, it is necessary that further steps be undertaken by the relevant entities in order to initially safeguard the interests of the clients in the interim period, and to eventually benefit those clients, and the decent officers within the Department, in the longer term.

In that context, I am unable to present the Government with a blueprint, in terms of saying – "follow these steps, this is *how* things must be done". For instance, the Inquiry did not receive detailed information, from all the necessary interested parties, as to appropriate models of care that might replace the one presently provided at the Centre. There is a huge body of literature and divergent opinion about such matters; the issue is one which falls more properly within the province of those persons with particular expertise in the area. It is those persons, be they within the Department or elsewhere, who should be consulted, as should all interested parties (and in this respect, I would particularly emphasise the importance of consultation with the relatives of the Centres' clients) in terms of implementing these recommendations. It would not be productive for this Inquiry to make the thorough and intricate procedural recommendations that are required, without being seized of all of the relevant and necessary information. In any event, to attempt to do so would be beyond the Commission's jurisdiction and the terms of reference of the Inquiry, particularly in light of the imposed limitation of considering such matters only "generally". Moreover, any such attempt would have necessarily required the calling of a further and voluminous body of evidence. In those circumstances, it was necessary to ensure that the Inquiry did not become open-ended, and that it would finish at a definite time so that these findings and recommendations could be made and implemented in a timely fashion.

In those circumstances, I have attempted to address, within this report, the more salient and pressing issues arising from the evidence, which are of major significance in terms of effectively preventing, detecting and investigating official misconduct should it occur at the Centre in the interim period, and within the Division, when the Centre is eventually closed.

It may be said, by an observer with knowledge of the field of intellectual disability, that many of these recommendations are, to an extent, quite obvious. I agree; but the making of such an observation does not explain the fact that such reforms or recommendations have not yet been put in place. Many of the officers of the Department who gave evidence before me exhibited an air of frustration with the situation that had developed at the Centre over the years. At times some of those officers, particularly those associated directly with the Centre's management, appeared to be demoralised by their conceded inability to rectify the serious problems highlighted by both the need for the Criminal Justice Commission to undertake this Inquiry in the first place, and the evidence adduced by the Inquiry.

Therefore, the recommendations made within this part of the report are by necessity of a somewhat broad nature. It should not be thought that their generality should in any way detract from their importance; I am firmly of the view that this Inquiry has been a most valuable exercise, and that the systemic administrative problems and deficiencies identified by the evidence must be remedied at the earliest possible opportunity. That some of those problems are of a most apparent or self-evident nature is all the more reason why the Government must now seize the opportunity, provided to it by the undertaking of these hearings, to do something worthwhile for the interests of people with intellectual disabilities, and those decent persons (who are after all employed by the Government), who hold the appropriate values and degree of commitment to enrich the lives of the intellectually disabled.

Those responsible for the provision of services to the intellectually disabled must realise that the system of care provided by the Centre for its clients has not worked. The problems identified within the evidence throughout the Inquiry, and elaborated upon within this report, are not minor in nature. If they are not rectified, it will be to the detriment of those clients at the Centre, and undoubtedly also to those clients elsewhere who rely, completely, upon the Department to protect their rights and promote their interests. It will also be to the regret, and indeed the shame, of all of the right-minded people of Queensland.

I am satisfied that the system which has existed at the Centre throughout the period of reference of this Inquiry does not even satisfy the Department's own objectives regarding the provision of services to the intellectually disabled. Sweeping changes must be made. Minor or "cosmetic" improvements, as have been undertaken in the past, will not be enough.

CHAPTER 18
FUNDING AND RESOURCES

I shall first deal with the broad issue of the funding, and the resources, available to the Division, in the context of its provision of services to the clients at the Centre. Questions of funding and resources are of fundamental relevance, and my observations about these issues are of application, to virtually all other considerations and recommendations mentioned herein.

18.1 WITHIN THE INQUIRY'S JURISDICTION?

From time to time, particularly within Volume 4 of his written submissions, Mr Plunkett, Counsel for the State of Queensland raised an objection to the Inquiry considering any issues related to the funding and resources available to the Centre, or the Division. This objection was taken despite the fact that he had cross-examined witnesses about these issues [see for example the evidence of Mr Rohan, given during his cross-examination by Mr Plunkett, and reprinted at section 16.4(A)], and had tendered a not inconsiderable volume of material of relevance to such issues, such as:

- Exhibit 13 – Overview material, which included, in Volume 3, material relating to the Divisional operating budget for the last five financial years;
- Exhibit 352 – A report regarding the cost benefit analysis of RCO training, and;
- Exhibit 357 – Four documents concerning costing comparisons and matters within the Division.

In his final volume of written submissions, Counsel for the State of Queensland submitted:

> The issue of general funding of the Centre is a matter for public or Parliamentary debate and not for the Commission. To purport to engage in a merit review of the allocation of funds to the Centre vis-à-vis other entities within the administration of the Division or the Department is outside the terms of reference and the jurisdiction of the Commission. Similarly, a merit review of the funding allocated to the Division of Intellectual Disability or the Department of Family Services and Aboriginal and Islander Affairs vis-à-vis other units of public administration is even further outside the terms of reference and the jurisdiction of the Commission. In any event, there was no evidence concerning a want of funds in any area relevant to the prevention, detection, reporting and investigation of cases of alleged or suspected misconduct at the Centre. Naturally enough to appropriate more money for the prevention, detection, reporting and investigation of misconduct of staff concerning clients at the Centre creates an expectation that the incident [sic] of misconduct will be reduced. This may be an observation that is open. But to go further than such a general observation is beyond the scope of the investigative hearings. It was not put to the Divisional Head or other senior officers that there was any inadequacy in funding relating to the prevention, detection, reporting, and investigation of misconduct of staff concerning clients at the Centre. Accordingly, this would be grossly unfair and therefore in breach of s. 22 of the Act to suggest any lack of funding by the Government in this area.

I do not, within this report, seek to be critical of the present Government (or for that matter its predecessor) as to the funding allocated to the Department, nor do I propose to be critical of the Department as to the funding allocated by it to the Division, and in turn to the Centre itself. The situation presently existing at the Centre is the product of a number of circumstances operating over a period of several years.

At no time during the entirety of the Inquiry's hearings did any party seek to engage 'in a merit review of the allocation of funds to the Centre vis-à-vis other entities within the administration of the Division or

the Department . . . ' or ' . . . of the funding allocated to the Division . . . or the Department . . . vis-à-vis other units of public administration . . . ' I do not propose, within this report, to undertake any such merit reviews. Rather, my observations upon the issues of the funding and resources available to the Centre (and by necessary implication, the Division and the Department) are of a very general nature, and are made in the context that one cannot sensibly divorce issues such as staff recruitment, staff training and the provision of services to the intellectually disabled from questions of funding. I am mindful of the fact that no Government has, at its disposal, infinite resources; and whatever resources are available are always subject to many pressing and competing claims involving other areas also of great need.

Bearing in mind all of the above, issues pertaining to the funding and resources available at the Centre are inherently relevant to my considerations concerning official misconduct, in the context of client abuse, which has occurred at the Centre. The recommendations for reform made throughout this report, which I believe are of critical importance to any attempt to reduce the likelihood of future official misconduct being committed at the Centre, are all, to some extent, related to funding questions and the availability of resources within the Division. Therefore, it is necessary to consider the evidence of those senior staff members who appeared before me, as to the present areas of deficiency, and to thereafter merely highlight the ways in which increased funding will have a beneficial effect upon the lives of the intellectually disabled, and those decent staff working at the Centre. While the implementation of recommendations and reforms, for example, such as the accelerated closure of the Centre itself, are undertakings which can only be carried out at significant cost; the converse side of that proposition is that in many respects, including the continued occurrence of official misconduct, the lives of those intellectually disabled persons placed within the care of the State will be less than satisfactory unless sufficient resources are, and continue to be, allocated to their welfare.

18.2 AVAILABLE RESOURCES

As noted, Ex 13 contains, inter alia, information about the Division's operating budget for the financial years 1988–1989 through to 1992–1993. The Division's operating budget for 1992–1993 was $45,754,000. The operating budget for the Division has been increased, by varying amounts, each year. Similarly, the Division's actual expenditure has increased each year. With the exception of one year, the Division's actual expenditure has surpassed the operating budget figure.
In his statutory declaration (Ex 414), Mr Whalan noted that the operating expenditure for the Centre, for 1993–1994, was $7.4m, and that the Centre's operating budget for 1994–1995, inclusive of salaries, was $8.6m.

18.3 THE PSMC REVIEW

In 1991–1992, the Public Sector Management Commission (PSMC) undertook a review of the Department. An executive summary of that review was admitted in evidence as Ex 22.

Within the executive summary of the PSMC's report, it was said:

> . . . the Department's ability to achieve its key welfare and social justice objectives is significantly compromised by its poor resource base. In fact, the Department of Family Services and Aboriginal and Islander Affairs is the most under-resourced and under-capitalised Department which the PSMC has reviewed . . .
>
> The key issue underlying many of the Department's problems is its lack of human and capital resources. Resource problems occur in almost every area of the Department but are particularly acute in the major service delivery divisions of Protective Services and Juvenile Justice and Intellectual Disability Services.

> In these Divisions there are significant shortfalls in staffing for Child Care Officers and Residential Care Officers. Infrastructure support such as information technology, vehicles, training, word processing equipment and accommodation are inadequate Department wide. The Department's budgetary problems are also well-recognised and of concern to the many organisations and individuals with whom the Department deals. The most common complaint expressed during the review was that the Department does not have the resources to cope with the level of demand for its services, and that the services it does provide are generally reactive in nature.
>
> Resolution of the Department's problems cannot be resolved by a simple injection of funds. Increased funding is the key, but needs to be linked with the Department's capacity to utilise the additional resources. In other words, there needs to be a comprehensive plan for a managed upgrading of the Department's resource base.

In light of these findings, the PSMC made a number of recommendations, to the effect that a major review of the Department's funding requirements should be undertaken; a five year plan should be developed to upgrade the Department's service delivery and capital structures, and the Department of Treasury should develop resource agreements for the Department's major service delivery functions.

18.4 THE BENEFITS OF INCREASED FUNDING

If properly deployed it can be anticipated that an increase in the funding provided to the Centre or the Division will improve the lot of the intellectually disabled clients, and the staff at the Centre. In her statutory declaration (Ex 417), the former Divisional Head, Ms Shepherd, stated:

> It is probably self-evident to comment that any human service area could, and would, benefit from more funds. I am aware that the Public Sector Management Commission conducted a review of the Department of Family Services and Aboriginal and Islander Affairs, and concluded that the Department, and the Division of Intellectual Disability Services, were under-resourced. I am aware that the PSMC review was quite a thorough investigation, and that some budgetary increases followed.
>
> In terms of the impact of funding issues or constraints upon the Centre and its clients, it was obviously necessary to attempt to pare back expenses so that available resources could be focused upon client matters, and directed as much as possible to the clients. In this regard a number of economy measures were instituted throughout the Division, such as the reduction in travel by taxis (for clients and staff), reduction of staff air travel, limitations on purchases of equipment, books, etc.
>
> During my period as Director and Divisional Head, the Department made the usual annual budget requests, which met with success from time to time, in much the same fashion as any other Government department.
>
> It would always be advantageous to have additional funds to provide further activities and resources for clients. In terms of the ratio between Residential Care Officers [RCOs] and clients, obviously increased staff resources would make the provision of care, and activities for the clients, much easier.

In the present context, I am satisfied that any increase in funding provided to the Division, and to the Centre, if appropriately applied, will assist with reducing the occurrence of official misconduct by staff members, either at the Centre or in the alternative care facilities, in which the clients are eventually placed upon the Centre's closure. Mr Whalan, said in his statutory declaration, in respect of the ratio of staff to clients at the Centre:

> . . . in the 1994–95 budget, the Government has allocated $6.2m over the next three years to improve the level of care for clients living at Basil Stafford and in the community villa complexes. The funds will be

> used to enable clients to have greater access to activities in the general community, and to increase staff training.

As further discussed in Chapter 19, I consider it imperative that RCO training be upgraded in order to lessen the occurrence of official misconduct at the Centre. My concerns in this regard are perhaps best demonstrated by the evidence of Mr Rohan, who said the following while being questioned by Counsel for the State of Queensland about how the institutional culture present at the Centre might be broken down (T 4451):

> . . . I think that it is also important that all staff be given on-going training and development. While a number of people who have been employed for many years are not performing to my belief well, as Residential Care Officers, that's not necessarily to say that that will always be the case, although my feeling is that for many of those people, it will be so . . . I don't think, though, that that should mean that we do not provide opportunities for training and development; that is one way which attitudes and cultural change can occur. I think, too, that the more that we can bring in well-trained, fresh people, and shift some of the power balance towards the ideas that those people bring with them, then that will also bring about a change in the culture. At the end of all of that, though, I think that you also need to provide for adequate resources for the sorts of philosophies to be realised. It's one thing to talk about least restrictive environment, it's one thing to talk about social role valorisation, but to actually implement those in a real way demands certain resources. I don't believe that we have the resources at Basil Stafford Centre or elsewhere to properly implement the philosophies which we are espousing and trying to attain.

The opinion contained within the ultimate sentence of the evidence of Mr Rohan was most plainly demonstrated by one facet of the evidence before the Inquiry, namely, the evidence of various staff members about the provision of activities for the clients. In his statutory declaration, Mr Rohan stated:

> During the period of my association with the Basil Stafford Centre, it is my experience that the general level of "resources" has decreased over the years.
>
> By way of explanation, in relation to the area of client activities, in 1983 I was working as part of an activity team at the Centre. At that time there was a minimum requirement or goal, in relation to the clients, that 20 hours of activities or programs would be provided each week. These activities would be individually client-based, and were generally regarded as being beneficial for the clients' learning and development of social skills. For instance, we would have the clients meet together in a group of say 12 or so at a time, to facilitate social interaction and attempt to have the clients express some interest, generally in a non-verbal fashion, as to the activities which they might prefer. The actual activities would take many forms, such as swimming, social outings, shopping trips, barbecues or woodwork. As stated, the activities were directed towards the enhancement of the clients' social skills in relation to the general community; for instance, the clients might experience how to cope with being in a crowd in the community, how to handle money, use public toilets etc. . . .
>
> From 1986 onwards a number of factors impacted upon the Centre's resource level, and its ability to provide these activity levels . . .
>
> . . . in 1987 a general staff freeze occurred within the Division. This affected our Region's resource staff numbers. There was a general policy implemented to the effect that when any position became vacant, other than that of an RCO, the same would not be filled . . .

Mr Rohan then provided a number of other examples of events that had occurred which had had an impact upon this issue:

> All of these factors made it apparent that, as of around 1987, we were unable to continue to provide 20 hours of activities a week to clients, or to continue to aim for that figure as a general activity level objective. We therefore made a regional decision that we would cut our activity service provision level

to half, ie ten hours per week. However, we did at that time decide to keep the model of activity services.

In 1988/89, when it was apparent that staffing levels would not improve significantly, I initiated an examination of activity services, to try to come to some arrangements to better meet the clients' needs. The eventual outcome of this review was that a different direction was implemented for client activities. The whole approach to activities changed, with the involvement of more community-based activities. The activity centres at the Basil Stafford Centre were phased out, due to the adoption of this approach, and the fact that we could not staff the centres in any event . . .

When I was last on Centre (mid-1993) the provision of activities to clients was quite uneven. Some clients were getting up to 12 hours of activities per week, others received very little. I recall that [a Principal Residential Officer] and I were looking at how the RCOs themselves could provide more useful day-to-day experiences and activities for their clients.

Mr Rohan's observations were supported by the evidence of a number of witnesses.

Mr Ross gave the following evidence (T 53–58):

Mr O'Sullivan: Well, is the ideal that the clients receive a minimum of 20 hours activities each week?---Again, you know, it's one of those questions, you know, "What's ideal?" Certainly, 20 hours was what we considered was appropriate at that time. We . . .

Well, what do they receive now, for example?---Now, it would be much less than 20 hours a week. In fact, some would not be receiving any activities or formal activities during the week - that is, structured activities. Some would be receiving activities out in the community, and others on centre.

And some on centre would be receiving none?---Some on centre would be receiving [none].

All right. And why is it – I will rephrase that. Is it in their best interest to receive no activity?---No, it's not.

And why don't they receive some activity?---Again, it's a matter of looking at the - well, two things, I guess. One is the change in focus within the philosophy of looking after people with a intellectual disability is to focus on having people receive activities within the normal processes of what's – what the community's offering. So that rather than setting up a . . .

I am not talking about the people who receive some activity outside the centre in the community; I am asking you questions about those people who you say receive no activity?---Yes. I – I'm aware of that.

All right?---And what I was going to say is that in terms of those that you can introduce into community services, there are a number who can't access those community services and need to be serviced on the centre. The residential care officers', of course, job is to provide activities during their shift for people. As well as that we have resource staff who are there to provide that help. Unfortunately, the ratio of resource staff to clients is such that we cannot provide the level of activities that we were providing at that stage.

Well, let us deal with the Residential Program Officers; their numbers have been drastically reduced, is that right?---The establishment has stayed the same. Our ability to employ people, though, has diminished. Yes.

Before I leave the area about activity, what do the clients who receive no activity do each week there?---It – well – I wouldn't like to use the word "no activity". I mean, the fact is that they have a Residential Care Officer who, part of whose job it is to provide activities within their house group on a day-to-day basis. I'm talking about structured activities outside of that. There are activities that are structured by professional staff to provide an experience outside of the home and to provide the client

with a fuller life in terms of having a more varied experience. Residential care staff are employed to provide activities during their shift with the clients that they're responsible for.

The Commissioner: Just before we do leave that though, there is just one matter, Mr Ross. Given the situation in relation to the ratio of staff and clients and given that the activity hut idea has never worked properly, I think that is basically what you have said, what sort of activities are provided for the clients at the moment?---At the moment there are some group activities, for instance, things like aerobics and swimming are provided in a sort of a congregate manner. As I recall, I think there are three of those programs that happen each week that are organised by the resource staff.

Are these clients or many of them, capable of aerobics?---At the level that it is provided - it is certainly structured at what they can do.

Would it be fair though to say that basically, you tell me if I am right or wrong, really the only activity that is provided for these clients is being taken for a walk, some sort of an outing?---That happens of course, and we would encourage people to get out of the home and to do those sorts of things, but there are other activities that clients are involved in in terms of shopping. Each of the houses buy their own food, cook their own food, and clients are encouraged to go out on those shopping outings with . . .

The clients are taken out to help with the shopping are they?---That's right. They also go out on outings to the coast, or to parks, or to recreation venues.

Right?---We have – I mean, we own a number of buses up there that allow us to transport people outside. So I don't think it is true to say that that's the level of activity that only exists – taking people for walks. What we would say is that we would certainly like the level of activity to be better than it is, so that more people can more frequently access generic community venues.

Would it be fair to say, from your point of view, the level of activity that is provided to the clients at the moment at the Basil Stafford Centre is unsatisfactory?---Yes.

And to make it satisfactory, what would be required?---To make it satisfactory, I mean, we are looking again at a couple of things. One, that we didn't have Basil Stafford for a start would be one of the ways of ensuring that people are accessing the community. Secondly, to have the number of resource staff, or access to resource staff that would be able to generate the sorts of activities that people with intellectual disability can do. It is really all a matter of – the philosophy of the Division would be that rather than providing on centre activities, it would be better for us to do it outside. If you can't do it outside, then it's certainly much better to provide a variety activities on the centre so people can access them. If you can't do it in the group situation on Centre, then it would certainly be better that they do it within their module group. So if you are coming back from the ideal, then being able to provide activities in their home group is the worst, whereas being able to readily access community venues to take up offers that are already existing in the community would be the best.

Mr O'Sullivan: Have you received any complaints from parents about the lack of activities for clients?---Oh certainly we have, yes.

And are those complaints of a small order or a large order?---When the complaints that – sort of – come directly to me wouldn't be all that large but they're complaints that would go to the administration at Basil Stafford, I think. Over the years, you would say that most people would complain about – most parents who are in contact with their son or daughter would complain about the lack of activities.

Mr Herbert's cross-examination of Mr Ross also revealed the correspondingly deleterious effect, upon staff, of the reduction in the provision of client activities (T 143-144):

Well, the activities – you would accept, would you not, that activities arranged for the clients by the support staff and conducted by the support staff provide a very significant means of relieving the constant pressure on the RCOs . . . ?---Certainly.

In their daily round; is that so?---Yes.

The weight is taken off their shoulders to a certain extent because the responsibility for occupying the clients and looking after their – and taking care of their attention needs is transferred to the support staff during the term of those activities?---Yes. I mean, the RCOs are usually there in attendance.

But not with primary responsibility necessarily for what is going on?---Well still with primary responsibility for the care of the client, but not for the development of the activity or the running of the activity.

All right. The activities seem to have - the level of which seems to have been reduced recently, I would suggest. The activities are, in many senses, therapeutic for the staff as much as they are for the clients in – obviously in different ways, but are as useful for the staff in relieving pressure as it is – as for the clients in developing their abilities?---I mean that could be yes, although that is not to give the impression that activities are a simple matter to do.

No?---In fact they require a lot of attention by all staff.

Yes?---You know to get the most out of them, so it – all I would probably say is that it is a different type of activity than having six people together and tending their – you know, their needs in one group, so that provides change for both the client and for the staff member.

And also there are – the support staff are there; they are present; there is lateral support for the RCO; they have got someone else of an equivalent intellectual standard to converse with, etcetera?---Yes.

And there may be some learning involved for them as well?---Oh, indeed, yes.

Yes. And that sort of a change can be quite a relief for the staff?---Yes.

From the daily grind of what they have to do back in the villas?---Mm.

Is that right?---Yes.

So a reduction in activities not only is bad for the clients, it can be very bad for the RCO staff?---Oh, yes, indeed.

Ms K, formerly a Principal Residential Officer at the Centre said (T631):

MR O'Sullivan: Activities: can you say anything about the activities that the clients have at the centre?---Yes. What would you like me to say?

Well, do you say that as at your last contact with the centre on 25 June '93 they had sufficient activities to keep them interested?---No, they don't have sufficient activities.

And can you just tell us why you say that?---Because we really don't have enough people in that job.

And is it that you need more RCOs or other officers that would allow these clients to have more activities?---The other officers, yes.

Such as what type of officers?---RPOs.

Sorry?---Residential Program Officers usually look after the activities . . .

Do you think that the level of activity offered to the clients at the centre now leads to any adverse behaviour by them?---I think it's likely to.

> In what way?---Well, if people are occupied and doing things that are interesting them then they may not get so frustrated.
>
> So do you . . . ?---And that may affect behaviours, yes.
>
> Well, do you see them as being more frustrated because they are not getting the activity that is appropriate?---It could apply to some people, yes.

I also note the evidence about the lack of activities given by various RCOs (for instance, see the evidence of RCO Q at section 8.14) and the recurrent complaints contained in the submissions to me made by various parents and interested parties.

The paucity of activities provided for the clients is a practical example of the point made by Mr Rohan in his abovementioned evidence, about the gulf between the Department's aims and philosophies and what can be achieved, in practice, due to the restrictions imposed by inadequate resources.

As noted, I do not consider that it is appropriate for this Inquiry to make any adverse findings about the level of funding provided to the Department, the Division or the Centre, in the sense of attributing blame to any party. It is enough to note that many problems, including the increased incidence of official misconduct, are at least partly attributable to resource and funding shortages. The entirety of the evidence before this Inquiry has underlined the nature of those problems, and the impact that they have upon the lives of the intellectually disabled clients, and those staff who are motivated and concerned to do their best for the clients. While it is conceivable that virtually any amount of extra funds could be utilised in some way or another by the Department, the evidence has highlighted the pressing need for more funds to be channelled to the Centre (and also to other facilities entrusted with administering for the welfare of the intellectually disabled) in order to overcome these serious problems. Funding shortfalls leading directly to a lack of resources, is one of the factors presently operating so as to prevent the Division delivering to the clients (and all relevant persons, such as family members, interested in the clients' welfare) services which are in full accordance with the expressed policy aims and philosophies of the Department, and the Government. If further funding cannot be found, then in fairness, the Department and the Government should re-evaluate their stated aims within this field, so that they realistically reflect what can be achieved with the resources available. As noted in section 7.3 of this report, society at large has not always held enlightened attitudes toward people with intellectual disabilities. There may be other areas considered by the public to be of a more pressing need, other areas where the public would rather see extra funding injected. If that is the situation I would make two comments; first, that such views are uncharitable and selfish, and secondly, that they should be ignored. At the end of the day, the public at large has a responsibility to adequately safeguard the welfare of its intellectually disabled members, particularly those who are placed in the care of Government administered facilities such as the Centre.

Before leaving these issues, it is useful to consider another of QAI's submissions which, to my mind, well illustrates the connection between resource shortfalls and the probable occurrence of official misconduct in an institutional setting, (Volume 7, paragraph 2.5 entitled 'Corruption of care is associated with inadequate resourcing leading to emphasis on control rather than individualisation'):

> Evidence pointing to a lack of adequate resourcing has been overwhelming. On day 2 of the Inquiry (11 January 1994) information of this nature was placed before the hearing including a Public Sector Management Commission review of the Department . . . [see above]
>
> Staff at both managerial and direct care levels have spoken to this issue. Reported results of poor resourcing has included the continuation of:
>
> - A staff ratio of 1:6;
> - The cut back of Program Officers;

- A decrease in activity hours and programs for clients;
- Increased behavioural problems of clients;
- Increased workload for staff.

More importantly, and perhaps more insidiously, the lack of financial commitment to the Basil Stafford Centre conveys to staff (and the public in general) the low value which Government and society puts upon people with disability and the work associated with their care. The work is wrapped in the rhetoric of high-sounding terms such as least restrictive alternative, valued roles, participation and access, but the limited resources and facilities made available ensures they never become reality.

Shortage of resources creates an emphasis on control and order to the detriment of the individual. The pressure is on to "get by". Research done on this precise point supports this claim and further points out that:

> "Few questions will be asked by management about what exactly is being done so long as the lid is successfully kept on the system (Ryan and Thomas, 1987 p. 49)."

CHAPTER 19
RCO RECRUITMENT, SELECTION AND TRAINING

19.1 SOME INTRODUCTORY REMARKS

As I noted at section 1.5, the regular duties of an RCO can, at times, be extraordinarily difficult. Ex 215 before the Inquiry was a list, compiled by RCO AC, of the duties routinely required of RCOs during their normal shifts. That list includes a comprehensive range of tasks; while I accept that many RCOs referred to in the evidence did not share RCO AC's high standards, nevertheless, it is apparent that the very nature of an RCO's work places many demands on his or her time.

As will be evident to any reader of this report, the RCOs are the "hands-on" care providers for those intellectually disabled persons whose welfare is entrusted to the Government, and to facilities such as the Centre. Appendix 2 to Mr Whalan's statutory declaration (Ex 414) consisted of a manual outlining the RCO training program. An early section of that manual, entitled 'Settling in – An Occupational Induction for Residential Care Officers', states:

> As a Residential Care Officer, your role is central to the function of the Division, and how effective we are in providing service to clients. This depends greatly on how you do your job. Your attitudes, values and enthusiasm will directly impact upon clients' lives.

Concomitantly, the attitudes, values and enthusiasm of RCOs will also impact upon the occurrence, detection, investigation and prevention of official misconduct at the Centre.

That being the case, it is essential that the right persons be selected to work as RCOs, and given appropriate training so that they might be best placed to implement the policy directives and aims of the Government and the Department. In this context, clearly, the interests of the clients are paramount; particularly in the circumstances that exist at the Centre where the majority of the intellectually disabled clients are unable to themselves speak up or complain about their care. To a considerable extent, they are in a situation of powerlessness, particularly those who do not have any concerned person, such as a parent, friend or other advocate, to raise matters on their behalf. In those circumstances, it is imperative that the welfare of the intellectually disabled not be put in the hands of those who are unsuited to the various and demanding tasks that are required.

This was well-recognised by the senior officers appearing before me; see the remarks of Mr Whalan and Mr Rohan outlined at section 1.5. Mr Rohan even went so far as to state, in his statutory declaration, that:

> Given the number of people seeking positions as RCOs, selection could be and was fairly picky and choosy.

Unfortunately, the evidence revealed that some of the past and present RCOs employed at the Centre did or do not hold appropriate attitudes, values and levels of enthusiasm which would enable them to adequately appreciate and implement the Department's philosophies and aims so as to beneficially impact upon the clients' lives.

That being said, it is also necessary to appreciate that issues of staff recruitment and training are issues which must also be considered from the view point of the RCOs themselves. As stated above, the work of an RCO is, at times, difficult and demanding. Coupled with the inherent difficulties attached to the position is the very real likelihood of the RCO being exposed to client behavioural episodes which the

Department euphemistically describes as 'challenging behaviour' or 'seriously disruptive incidents'. The evidence has revealed such incidents may, in reality, take the form of violent physical attacks by clients against staff members, often accompanied by the utilisation of pieces of furniture, or other implements, as weapons. To a significant extent, the occurrence of such incidents is unpredictable. Several staff members gave evidence at the hearings about how they had been injured in such circumstances, with their injuries sometimes being so severe as to require them to take time off work.

In this context, it is also necessary to bear in mind that the RCOs, for the most part, work alone and without direct supervision. Thus, they are isolated in the performance of their duties, and in their ability to quickly enlist support when violent or disturbing episodes occur.

There was a perception amongst several of the witnesses that management did not generally provide the RCOs, in the performance of their duties, with sufficient support. I am satisfied that the morale amongst a significant contingent of the RCOs appearing before me at the time of the hearings was quite low. This is reflected in the stark division, perceived by many witnesses, said to exist between the RCOs and the higher officers within the service [see section 16.4(E)].

It is less than fair to thrust a person into a position requiring the performance of duties expected of RCOs at the Centre, without endeavouring to ensure initially, that such persons are suited to such duties; and have been provided with all necessary training and support to facilitate the performance of those duties.

To put matters simply, the recruitment and selection of appropriate officers, and the affording of appropriate training to those officers, is essential before a beneficial impact will be effected upon the lives of people with intellectual disabilities who are clients of the service. A corresponding benefit will ensue to the lives of those staff members who are motivated and committed to employing their best endeavours for their clients.

19.2 RCO RECRUITMENT

It is critical that the Department endeavours to attract the very best possible applicants for RCO positions. Aside from considerations as to the best interests of the clients, and of fairness to individual RCOs, it is a matter of commonsense that the Department's financial and training resources not be wastefully expended upon persons who are unlikely to prove to be suitable for RCO duties and who are unlikely to remain for other than the short haul.

At times during the evidence before the hearings various RCOs were asked about their working backgrounds. Some of the following occupations were indicated:

- Prison officer;
- Hairdresser;
- Clerk with the Railways;
- Loader driver;
- Psychiatric nurse.

No formal qualifications are required for initial appointment to a position as an RCO. The Regional Manager, Mr Ross, was examined about these matters by Counsel Assisting (T 59–61):

> Mr O'Sullivan: By way of generality, what do you say a person needs to have to become an RCO now?--Generally, what I would see as an attitude towards people that is not discriminatory, that is accepting, that they have the ability to value differences in other people. On top of that, that they have the ability to work with others in an educated way rather than taking over a care role, that they work beside the

person, that they have the potential for learning skills that would assist them to work with and communicate with people who have an intellectual disability.

What qualifications do they require?---They don't need any qualifications coming into the position. Once in the position they receive training and in-service training.

And do they have to attend any colleges to obtain any further qualifications?---At the moment the Residential Care Officer course is run through TAFE and it's a certificate course. The course itself is over a 12-month period but their in-lecture situation is, I believe, about six weeks.

Is there any age qualification for appointment?---There is no age qualification now for appointment. There used to be one. We used to not take people who were younger than 19 years of age, but with the PSMC guidelines, of course, that becomes discriminatory.

The training that you have referred to; that is experience basically gained by working at the Centre, is that correct?---No, the training is in college. It's off the Centre.

But the other experience that they receive is what, by learning how to deal with these people . . .? ---That's right, on Centre.

. . . at the Centre, is that correct?---Mm [affirmative].

Are they trained by other RCOs?---There are other RCOs we employ as supervisors for their training whilst on Centre. There's training advisers - they're called. They're not trained by them but they're buddies, experienced buddies, that they can call on and if they have a number of assignments they have to do for college, and they're experienced buddies that they can call on to help them with that process.

Is there a minimum standard of education for these people?---I'm not sure what you mean in terms that they . . .

Well, do they have to have a junior certificate or a senior certificate?---No, not necessarily, no.

Do they have to have a junior certificate?---No.

So, there is no minimum?---There's no minimum, no.

The Commissioner: . . . you said, in answer to Mr O'Sullivan, a minute ago, that recruits for the position of RCO do not need any qualifications coming in?---That's right.

Did you mean that - that they do not need any qualifications at all?---They need no formal educational qualifications. So, the comments I made in terms - in response to what I see an RCO should have, I would see those as, if you like, qualities of the person that they would bring to the position that can then be trained through the training process.

But if there is no education much at all, that would - I would have thought, you correct me if I'm wrong - restricted the ability of the individual to be trained?---Sure. I mean, the selection process is certainly one that you would design to help you select the person who has got the better potential for being a good Residential Care Officer, and I guess in terms of those who would apply, there is no restriction on those who would apply. Those who get through the selection process, we would hope, would whittle them down into people who, we would feel, be best qualified to take on the Residential Care Officers' training and to become a good Residential Care Officer.

Mr O'Sullivan: Is it appropriate that people who have no qualifications whatsoever be appointed as RCOs?---I don't see that it isn't appropriate that they be appointed after they've gone through the training. I mean, there is no qualification available in the Queensland community at the moment that provides the qualifications that we would want people to have coming into a Residential Care Officer course. I mean,

> that's why, in fact, we did our own training and service, you know, many years ago. We did our own course. It went over to TAFE. We've just presently, just recently, reviewed what was happening and TAFE, and decided that we've got to remodel it again because TAFE is going off into serving a much wider market than ours and aren't providing the sort of input that we feel that people ought to have, so we're certainly looking at revamping the course and looking at the delivery of the course.

I was surprised by Mr Ross' evidence to the effect that no basic educational qualifications at all were required for an RCO position. To my mind, it is rather optimistic to hope that the selection process will adequately whittle out the persons who are not qualified to take on training as an RCO. Much of the procedural and training material admitted in evidence before the Inquiry is of a detailed nature. Simply put, RCOs, at the time of coming in to their positions, have a lot to learn. They must learn about appropriate values, methods of service delivery, procedural requirements of the facility in which they work, record-keeping and administrative procedures, and skills associated with the Department's philosophy of attempting to develop and enrich its clients' lives.

In his evidence before the Inquiry, Mr AJ spoke of a phenomenon he named staff "burnout" (T 4081):

> . . . the staff that I see are the ones that are really burnt out and not capable of giving any more; staff that feed and clean clients, and that's about all they're capable of ever doing any more, is just feeding them and cleaning them. A lot of staff with burnout are not able to give of themselves – they're not able to provide a situation where clients are going to develop new skills and things like that . . . then they get to the stage where they would get too frustrated to do anything else, so they just clean them and feed them, where clients are basically left alone to amuse themselves. The staff really aren't into the developmental model and trying to get some emotional contact with clients.

After Mr AJ expressed that view, I said the following (T 4081):

> Well, my observation, I must say, of several of the RCOs who have given evidence before this Inquiry is that they are so intellectually endowed as not to be able to ever improve or learn. In other words, I have been singularly unimpressed with the intelligence of many of the people who have come here to give evidence, the RCOs.

In reiterating that observation, I am mindful of the fact that there are many historical aspects imported into the making of such comments, in that the concerns presently held by the Department, and the views and procedures now employed, have evolved with the passage of time; certainly, to the extent that the current concerns and procedures are a vast improvement upon the attitudes and methods of previous years. However, I am satisfied that there were a number of RCOs who appeared before me who clearly did not have the intellectual capacity which would enable them to carry out some of the more complex tasks expected of the RCOs, such as program planning for the clients, or to fully grasp all of the objectives of the Department.

In this context, QAI submitted to me, in support of its opinion that the 'corruption of care' at the Centre is associated with staff being largely untrained and unqualified, that:

> Whilst QAI would never disagree with the importance and primacy of bringing right values to the position, the non-requirement of even basic qualifications in relevant areas leads to poor safeguarding of the position and ironically conveys the message that this is a low-valued job, involving low-valued people.

I accept that submission. I also accept that the Department is consciously wishing to convey, by a variety of means, an impression that the RCO position is not a 'low-valued job, involving low-valued people'. For those reasons, I consider that the selection criteria or recruitment procedures employed by the Department should adopt the imposition of a basic educational qualification for the RCO position. While in many circumstances the recruitment and selection procedures presently employed by the

Department will be sufficient to weed out applicants who are unsuitable on the basis of their lacking education or intelligence, I am satisfied that with the present criteria in place some unsuitable recruits will continue to be selected.

Additionally, and as noted later in this Chapter, I am of the view that the Department must take all steps open to it in an endeavour to raise the actual status, and the perception of, the RCO position. The Department must attempt to attract the best possible candidates. Those candidates must be imbued with an expectation that they will be adequately trained and remunerated for their efforts, and that there is a realistic opportunity of promotion in appropriate circumstances. Appropriate educational qualifications are, I would suggest, an inherent requirement of any such position. The imposition of educational qualifications will, I am satisfied, assist in dispelling a perception, which could easily arise in the minds of intending applicants, that a job as an RCO is a position which anyone can obtain, irrespective of their lack of even the most basic educational qualifications. In this respect, the salary paid to RCOs must be increased, in an attempt to attract better applicants.

While I have recommended the imposition of a basic educational standard for RCO applicants, I will not go to the extent of imposing, within my recommendation, any one particular nominated level of educational achievement. The Inquiry did not hear evidence about any such level of educational achievement that might be appropriate, such as a junior or senior school certificate. Additionally, to my mind, it is necessary for the Government and the Department to review these matters, in the course of its ongoing review of staff training. In light of the abovementioned evidence of Mr Ross it is possible to foresee further major developments occurring in the training field, such as a remodelling of post secondary educational courses relevant to RCO work, such as the previously offered TAFE course. It may be that if more in-depth post secondary training and education of RCO applicants is to be undertaken, a relatively high level of basic educational qualifications should be imposed, so as to ensure that only suitable applicants with a reasonable prospect of completing the Department's requisite training program are the beneficiaries of Departmental funding and resources.

If in fact Mr Rohan's assertion that the numbers and standard of applicants enables him to say 'selection could be and was fairly picky and choosy', then his and the Department's sights are set too low.

19.3 RCO SELECTION

The recruitment and selection of RCOs is presently carried out in accordance with the applicable PSMC Standard (Ex 14). The copy of the Standard admitted into evidence at the Inquiry was published in June 1993, and was a second edition replacing the Public Sector Management Standard for Recruitment and Selection which originally came into force on 1 July 1991. The stated primary objective of the Standard:

> . . . is to provide a framework for Queensland public sector recruitment and selection practices. The standard reflects the Government's commitment to appointment based on merit. Within this context, its purpose is to assist agencies to:
>
> - make appropriate selection decisions;
> - ensure that resources used in recruitment and selection are effectively utilised; and
> - develop consistent recruitment and selection practices that are aligned with the strategic direction of the agency.

The Standard itself provides a number of procedural mechanisms regulating the selection and recruitment process. For instance, it prescribes procedures and principles about recruitment activities,

selection strategies, shortlisting of applicants, information verification and selection recommendations, amongst other matters.

Counsel for the State of Queensland, Mr Plunkett, submitted to me that the implementation of the Public Sector Management Standard 'has had a significant impact in improving the quality of selection processes in the Division . . .' He also drew my attention to other initiatives undertaken by the Department in the recruitment/selection area; namely:

> A wide advertisement is employed to attract a large field of candidates (T 5760). In the last 12 months the Department has held information sessions for persons considering applying for the position Residential Care Officer at the Centre so that they can obtain information from first line supervisors on the role and requirements of the position and the aims of the Division (T 5761). This step has been successful in helping unsuitable candidates self-select out of the process (T 5761).

I accept the utility of those initiatives, particularly the holding of information sessions for prospective applicants. Indeed, the Department should be encouraged to take all steps that are open to it to provide prospective applicants who express some interest in working in the area of disability services, with as much information as possible about prospective career choices within that field.

An RCO selection manual, developed by Ms AG, the Acting Staff Development Officer, was admitted as Ex 28. That manual had been revised as of October 1993.

An RCO position description document was also admitted into evidence, as one of the annexures to Mr Ross' statutory declaration (Ex 12). That position description form lists the selection criteria for the RCO position. The selection criteria, which contained a note to the effect that selection for interviews was based on how well the applicant addressed the selection criteria, are:

1. Capacity to interact, work and communicate effectively with people with an intellectual disability, staff, families, members of other organisations and the public.

2. Demonstrated belief through language, attitudes and opinions expressed and position relevant behaviour, that people with a disability are valued members of the community and can develop new skills.

3. Written communication skills of a standard required to maintain client files and administrative records, to prepare brief reports and successfully complete a certificate level course.

4. Ability to perform tasks essential to running a household, eg preparation of nutritious meals, cleaning.

5. Capacity to solve problems in ways which reflect application of service principles and philosophies and demonstrated creativity and initiative where relevant.

6. Ability to perform all the physical requirements of the job.

19.4 CRIMINAL HISTORY CHECKS

Successful applicants are, in turn, advised by the Department that their appointment is conditional upon a satisfactory criminal history record check being undertaken. A document setting out the 'purpose and process' of the criminal conviction history record check was admitted as an annexure to Mr Ross' statutory declaration. That document relevantly provides:

The purpose of conducting criminal conviction history record checks is to ascertain whether a proposed appointee possesses any criminal convictions which may compromise his/her work with clients of this Department. This purpose can also be extended to employment of persons who possess criminal convictions which may erode the public/client confidence of the Department in its activities.

In addition, from a broader perspective, it could be argued that the employer would have a duty of care to all of its employees and the agency itself and therefore would require information on criminal convictions on prospective employees to assess that person's suitability for employment with other staff in the Department and in the conduct of business and use of public resources and assets.

Within IDS the Department could not tolerate the employment of persons who are working with vulnerable client groups and who possess criminal convictions or offences defined under various Chapters of the Criminal Code, Part II of the *Drugs Misuse Act*, the *Childrens' Services Act* or any other offence of a similar nature or involving an assault of a sexual nature.

A criminal conviction history record check is undertaken for all new employees to the Department including casual employees. It is current policy not to employ persons who have contact with "vulnerable client groups" of the Department and who have criminal convictions or offences defined in:

- the Criminal Code under Chapters XXII (offences against morality), XXXII (assault on females, abduction), XXXIII (offences against liberty) or XXXIV (child stealing and desertion of children).
- Part II of the *Drugs Misuse Act 1986*. [Note: i.e. that part of the Act containing offence provisions.]
- *Childrens' Services Act 1965-1987*.
- Or any other offence of a similar nature or involving an assault of a sexual nature.

The terms "vulnerable groups" refers to those Departmental clients who are either children, intellectually disabled persons, persons within a correctional institution or clients with drug dependency problems and drug offences.

In 1990, Cabinet determined a policy allowing Chief Executives to exercise their discretion with regards to the retention of persons convicted of minor drug offences. Under this policy employees working with vulnerable groups and who have been convicted of a minor drug offence will be suspended and/or dismissed if subsequently found guilty of that offence.

In line with this policy no new employee with a conviction relating to drug offences will be employed if working with vulnerable groups. In other work situations, the Chief Executive has the discretion not to take any action of suspension and/or dismissal.

At the present time the Queensland Public Service does not have a policy on criminal convictions (except for employees convicted of minor drug offences) for new employees, applicants or existing employees currently employed in the Queensland public sector.

The abovementioned offence categories are drawn from the provisions of Section 9A of the *Criminal Law (Rehabilitation of Offenders) Act 1986*. That legislation allows certain convictions to be disregarded, after the expiry of certain time periods (known as a rehabilitation period). Section 9A of the Act places a duty on persons applying for certain positions to disclose, if required or requested, particular aspects of their criminal history, irrespective of the expiration of any rehabilitation period. This duty relates to the positions and specific offences listed in the table incorporated in Section 9A of the Act.

Under Section 9A, I note that applicants for positions within the Department are not required to disclose all criminal convictions, only those referred to in the abovementioned appendix to Mr Ross' statutory declaration.

Since the date of Mr Ross providing that information to the Inquiry, the PSMC has implemented, within the Queensland Public Service, a Standard for Criminal Charges and Convictions. That Standard, which I have read, came into effect on 1 October 1994. Its purpose:

> . . . is to provide agencies with guidance in dealing consistently and fairly with existing employees or applicants for vacancies (ie, permanent, temporary or casual, who possess criminal convictions or who have been charged with having committed a criminal offence) . . .
>
> This Standard will assist agencies to develop policies in relation to criminal charges and convictions which:
>
> - are non-discriminatory;
> - are considered relevant to the position;
> - sustain public confidence;
> - maintain confidentiality;
> - follow the principles of natural justice; and
> - enable organisations to take swift and decisive action when a relevant situation arises.

The Standard provides a framework of principles and guidelines, for application in particular situations; including where an employee is charged or convicted of a criminal offence, in recruitment and selection activities, and in undertaking criminal history checks on current employees. As noted, the Standard sets out safeguards for the confidentiality of criminal history information, and for the provision of natural justice to employees or applicants who have relevant criminal histories.

It is a matter of concern that applicants for positions with the Division (and probably applicants for positions across the entire Department) are not required to disclose full details of their criminal histories. Under Section 9A of the *Criminal Law (Rehabilitation of Offenders) Act* certain categories of applicants, including police officers, officers or employees of the Queensland Corrective Services Commission, and Justices of the Peace are required to disclose:

> Contraventions of or failures to comply with any provision of law, whether committed in Queensland or elsewhere.

The PSMC Standard provides, as a general guideline, that in public sector employment the relevance of the charge and/or the conviction should be considered:

> Agencies shall not discriminate against any employee or applicant for a position who has a criminal history, except where it is directly relevant to the requirements of the position or the organisation. In determining the relevance of any criminal history, consideration must be given to issues such as the nature and timing of the offences committed and their imputed effects on the outcomes required of the position in question.

In this context, relevance is, to my mind, a two-sided concept. While not all criminal convictions may be of relevance to (for example) the duties of an RCO, one can readily imagine other criminal offences, which are not prescribed within Section 9A of the abovementioned legislation, which might well be of relevance to such duties. For instance, I have heard evidence to the effect that RCOs, as part of their duties, are required to handle and spend monies belonging to their clients. They have access to their clients' personal possessions. There is scope for a dishonest employee to abuse his or her position and to misappropriate client funds or property. Indeed, such allegations were occasionally aired in the evidence before this Inquiry, although no allegations of that type was pursued in the public hearings.

There are other offences under the Criminal Code which might be of relevance, including offences under, for example, Chapter XXVII 'Duties Relating to the Preservation of Human Life', and Chapter XXIX 'Offences Endangering Life or Health'.

Severely or profoundly intellectually disabled persons, such as those residing at the Centre, are in an extremely vulnerable position. On the evidence before the Inquiry, many of those clients do not have any regular or substantial contact with family members or other concerned persons. While an entity such as the Office of the Public Trustee may administer the affairs of such clients, to an overwhelming extent, their welfare, and the safeguarding of their rights, is placed directly in the hands of those officers employed by the Department to provide services of support and day to day care. The public at large, and the Division, must of necessity place a great deal of trust in those officers; trust that they will act properly, in accordance with the objectives of the Division, and in a diligent, honest and lawful manner. That trust is amplified in circumstances where the supervisory or regulatory mechanisms of the Division have not been, on the evidence before this Inquiry, adequate in all respects. Unfortunately, the evidence adduced by this Inquiry indicates that this trust has all too often been broken.

I cannot think of any group of society which is in a more vulnerable position than those intellectually disabled persons whose welfare and protection is entrusted to facilities such as the Basil Stafford Centre. In those circumstances, it is essential that those persons intending to apply for positions within the Division responsible for the administration of the welfare of the intellectually disabled, should be called upon to disclose all criminal convictions. The PSMC Standard sets out, to my mind, adequate guidelines for the protection of those individual applicants, in terms of dictating the relevance of convictions before the same can be considered by any selection panel, safeguards about confidentiality, principles according rights of procedural fairness and the like. While such a disclosure requirement, to an extent, impinges upon an applicant's rights, the situation is one where those rights must not be placed before the rights of the vulnerable intellectually disabled. Accordingly, I recommend that the provisions of Section 9A of the *Criminal Law (Rehabilitation of Offenders) Act 1986* be amended so that applicants for positions within the Division of Intellectual Disability Services be required to disclose any and all contraventions of or failures to comply with any provision of law, whether committed in Queensland or elsewhere.

Before I leave the issue of criminal convictions (and in this context, wherever appearing, the word "conviction" should include a dismissal of an offence after a finding of guilt without proceeding to the recording of a formal conviction), and Divisional officers, I wish to deal briefly with one aspect of the evidence before the Inquiry. During the examination of Mr Ross it emerged that a body of RCOs, namely those employed prior to 1987, had not ever been subjected to criminal history checks. Accordingly, inquiries were then undertaken by staff of the Commission. Those inquiries revealed that a number of the RCOs at the Centre had criminal records. As to be expected, those histories extended over a wide period, and incorporated a diversity of offences, including behaving in an indecent manner, drink driving offences, theft and possession of stolen property, and in one case, a conviction for an offence of gross homosexual indecency. That particular offence was committed by the RCO in question many years previously, prior to any effective disclosure requirement.

Even under the current law and operative Departmental procedures, not all of these convictions would be required to be disclosed if those persons were in the position of applying for positions as RCOs. Clearly, all of the matters giving rise to those convictions are of relevance to a position as an RCO, when one has regard to the duties expected of successful applicants, and the trust placed in them.

This bracket of evidence lends support to my recommendation that compulsory disclosure of all criminal convictions be required by applicants for positions within the Division.

19.5 ONGOING REVIEW OF RCO RECRUITMENT AND TRAINING

In his statutory declaration, Mr Whalan stated:

> A review of Residential Care Officer recruitment and selection practices commenced earlier this year and is still underway. The purpose of this review is to determine the overall effectiveness of existing practices, to identify any procedural dysfunctions that may occur and to make recommendations regarding any changes required to ensure best quality outcomes in appointments and initial orientation activities.
>
> Without pre-empting the final outcome of the review, I am able to say that I anticipate that some amendments to existing selection processes will be made. The review has already recommended changes in areas such as on-site orientations for shortlisted candidates, the information package provided to intending applicants, more stringent questioning of criminal history background, additional training for managers involved in staff selection, advertising practices and more rigorous performance assessment in the first twelve months of employment.

I am pleased to note that the Department is presently undertaking such a review. The recommended changes to existing selection processes appear to be necessary, although I would add to that list the abovementioned recommendation of imposing a basic educational qualification, as one of the selection criteria for the RCO position.

Certainly, the evidence before the Inquiry has stressed a most urgent need for the Department to adopt a 'more rigorous performance assessment' of recruits; but, to my mind, such an approach should be adopted across the board, rather than only during 'the first twelve months of employment'. The adoption of more rigorous, or realistic standards of performance assessment would appear to be critical to any attempt to prevent or lessen the occurrence of official misconduct by RCOs at the Centre, and also to assist in the detection of such conduct where it does occur.

19.6 STAFF TRAINING

I am satisfied that, in many respects, during the period under examination by this Inquiry, the training given to the RCOs at the Centre has been inadequate (although there has been some improvement, in the provision of training, during recent years).

Just as it is undesirable and unfair to place persons who are inherently unsuitable in RCO positions, it is also undesirable and unfair to place suitable persons in such positions and then fail to provide them with adequate training and ongoing support. It is a self-evident proposition that adequate training helps to equip people with the competence and confidence to effectively carry out their duties, particularly where those duties are often of a difficult nature. QAI drew my attention to some of the relevant research in this area, in support of its submission that the 'corruption of care' at the Centre is partially associated with staff being largely untrained:

> Wardhaugh and Wilding have found that "there is . . . the almost universal fact of social service provision that those staff with the most difficult jobs are the least trained, least supported and lowest paid. In many caring and controlling situations, staff are therefore simply out of their depth" (p. 16).
>
> This is supported by the findings of the University of Alberta Disability and Abuse Project at the Michener Centre, Alberta. Management at this institution have begun a support program for frontline staff as a deliberate strategy to reduce abuse. When this factor is accompanied amongst other things, by shortage of staff and lack of resourcing, the situation becomes one of survival.

The importance of adequate staff training was emphasised by much of the evidence before the Inquiry. Mr Whalan stated (T 5789–5790):

> . . . you have to select the right people, you have to train them well. In that training, you have to emphasise values-base training. You have to value the contribution of people, reward them for their work. You need to encourage open debate; new ideas; innovation; you need to expose those people to how other people are doing things – you know, sometimes it's called "best practice" in the jargon, and what's happening in other agencies, and you have to be able to retain good people.

When Dr Cleghorn gave evidence, I asked him the following questions (T 2077):

> The Commissioner: Doctor, would it be fair to say that whilst that situation presents itself at Basil Stafford, and indeed, at other like places, whether they be in Queensland or wherever, it is very desirable to have properly trained personnel looking after the clients, in such a place. Would that be . . . ?---I think that is a fair comment, your Honour, yes.
>
> It really goes to the heart of this Inquiry, that is how it seems to me. It is one of the issues that I will be paying close attention to, that is to say the standard of the recruits that are going into the place, the criteria for selection, and all that sort of thing; and it occurs to me that, within reason, the very highest standard should be aimed at. Would you agree with that?---I think that would be a laudable aspiration. I think that you would endeavour to get the best possible people looking after them with the best possible training.

The above excerpt from the transcript may seem self-evident, but in the prevailing circumstances I felt those questions had to be asked, for the purposes of the record. I would of course have been astounded if there had been a negative response from Dr Cleghorn.

Additionally, I have already herein discussed Mr Rohan's evidence and opinions regarding the use of training as one aspect of any attempt to break the unhealthy institutional culture existing at the Centre [see section 16.4(A)].

The lack of additional or continuing training provided to the RCOs was also the subject of commentary, during the evidence, by a number of witnesses.

Mr Whalan stated (T 5770):

> I'd accept the statement that there are a large number of staff in intellectual disability services who haven't had a lot of continuing education, and I'd go a step further and say that there are some staff who haven't had sufficient additional training.

In his statutory declaration, SRO AI stated:

> My experience with the Department, particularly as a Staff Training Officer, has enabled me to form some opinions about the training of RCOs. The Associate Diploma course that I undertook [a three-year Residential Care Diploma from Kelvin Grove College of Advanced Education] was, in my opinion, more advanced and better than the certificate course presently undertaken by RCOs. The only similar type of "degree" course that is presently offered is a Bachelor of Social Science Degree at Carseldine Campus. The Department no longer offers paid study leave for attending such a course.
>
> I believe that there are problems in funding the training of RCOs. Presently, there appears to be little facility for ongoing training for RCOs once they have obtained their certificate. Attempts have been made to provide ongoing training, but it is difficult to get people released for attendance purposes. There are limited resources in the sense of staff numbers, and the situation is also complicated by the fact that RCOs work to shifts or rosters.

> In my opinion, the welfare area is a constantly changing scene, and a lack of ongoing training can lead to a sense of isolation on the part of RCOs. I believe that people who have been working in the welfare area without ongoing training are disadvantaged, in that such workers become less motivated, and are not up to date with developments. If people have no ongoing training, I believe they feel devalued. They come to rely completely on their senior officer, or their peers, for support. This leads to the establishment of an institutional culture.
>
> I do not anticipate that there would be any resource problems in the sense of the availability of capable persons to administer such ongoing training. I would submit that an annual period of two weeks ongoing training per year would be ideal for RCOs.

During the course of being examined by Counsel for the State of Queensland about the existence of an institutional culture at the Centre, Mr AJ stated (CT 4077):

> . . . but I think that if you put the money in that should be there, that can provide staff with training. I mean, I was an RCO for ten years. I got trained in, I think I finished training in 1982. In 1982 to 1989 when I ceased being an RCO, I never received one hour's training from the Division as an RCO at all.

Mr AJ also stated (CT 4083–4084):

> I think what really is needed is an ongoing education system for staff within Basil Stafford, and I make that suggestion because when I started as an RCO, the training I did was over a two-year period, and it was an in-service training situation where you would do one or two weeks in the classroom, and then you'd go back to your area of work for a period of weeks or months. You'd go back to the area where you worked, and a lot of the time working with intellectually disabled people you don't readily see a lot of great steps. Steps are very, very small. Steps are very, very subtle; for a client to achieve a major goal in their life – might be just a slight sparkle in the eye from that client, but one thing that was really great that I considered about my training I had over that two-year period, was you would go up and you would spend one or two weeks in training. While you were in that training, you were shown a lot of the time films of situations that were taken maybe over one or two years where someone or a group of people was working with someone with an intellectual disability, and because that's over a two-year period, you're sitting down and seeing a ten minute film, you can see that it was quite a large development of a skill for that particular client, so you'd get all enthused and say, "well, this person's achieved that. I can also achieve that when I go back to my area of work' and to me that was something that really made me and a lot of other people enthusiastic and dedicated about their job . . . I mean, you get a situation where you say, "there's clients"; I mean, start saying, "look, we really need training in this particular area", and then the Division says, "well, look, I'm sorry. We can't afford to give you any training". I mean, staff then, I think, after that happens year in year out, start to think, "well, what's the use any more?".
>
> The Commissioner: Is there any room for manoeuvring in relation to the re-prioritisation of resources? Can you disperse them in any efficient way, or is it just that, simply that there are not enough?---I think we'd say simply that there is not enough. I mean, I've never ever been privy to the allocation of money that's around. I mean, I have absolutely no control over money situations in any way, shape or form. The way the money's divided within the Division or without our region, I wouldn't even have a clue how it's even divided there. I've never ever been told or shown, so I couldn't comment on "is there a better way we can distribute what we've already got" because I don't know how it's being down now. All I know is the PSMC went through with their investigation, and they labelled our Division as the most under-funded and under-resourced Division within the whole of the Queensland public sector, and the remedy of that by the Government was to take us back to where we were in 1984. I see that as absolutely appalling, and I see that as a neglect of client needs and client services.

Of the staff, Mr AJ also said (CT 4106):

Most of them would respond very readily to training. There are, however, some people who wouldn't, and I think we also need the means to be able to get rid of those people who flatly refuse to do any sort of training.

Ms AP also gave evidence about these matters (T 3678–3679):

Mr Plunkett: Are you involved in the training of RCOs at all?---I was until the beginning of this year.

I see, have you got any comments to make about the quality of the training course?---Well, that's a fairly subjective question because I'm the person that has been responsible for that, so I'm biased in that area.

Yes, all right?---I think that if it's combined with on the job training over an extensive period, and it's not too much just condensed to the first few months on the job, then it is a reasonable course. My big criticism is that there are so many staff at Basil Stafford who either have had no training or extremely limited training or haven't had any training for years, and to me that's one of the basic reasons for perhaps this Inquiry.

So what do you recommend to ameliorate that?---Well I think money has to be allocated for both in-service as well as ongoing – well, when I say ongoing training, I mean people need to have basic training at the outset, but this has to be supplemented through their career.

By what, refresher courses?---Yes.

The Commissioner: Ms AP, how does the reasoning that you have just enunciated, in relation to the lack of training in the first place, lack of refresher training etc. lead to your conclusion that this is one of the basic reasons for this Inquiry?---Because I think for a lot of people the stress of the job, the poor staff/client ratios, possibly lack of initial satisfactory selection of staff, means that people have no idea of the ethics of the job that they're doing, or they have forgotten such ethics; that it really isn't just a matter of whether they can perform the functions of the position but that they – but that the heart aspect of it – the total responsibility that the client comes first is lost sometimes, and training can bring that back. I'm not saying it always will but it can restore that concept of responsibility, ethics and social justice.

Well, I wonder if you could get down to specifics for me?---Yes.

Can you do that?---Well, this disease of dobbing, that you don't dob on what you see, to me comes from the belief that you – the staff put themselves first, whereas we are talking about highly vulnerable people, many of whom are non-verbal, who can never report abuse or neglect, and I think the whole philosophy of "you don't dob" shows that there are a number of people who haven't got the right values for the position that they hold. That may be an ideal view that I hold, but I believe it.

In his evidence, Mr Ross described the training that was provided to the RCOs at the time of the hearings (T 146–149):

Mr Herbert: You talked about the qualifications or perhaps the lack of formal education or qualifications required by RCOs or by persons who were to be recruited as RCOs, and you indicated that there was no formal education or qualification at all required for employment; is that so?---That's so.

But that there was an RCO course which was conducted by the TAFE College?---That's true.

So they can undertake the TAFE course, but as part of that course they have to do some in-house training at an establishment such as Basil Stafford?---That's right, or some other service.

Yes?---It could be care for the aged or whatever.

Yes. But it would be part then of the successful completion that they obtain some sort of a placement in some sort of an establishment of that nature?---No, I don't think that's quite necessary. They can graduate from the TAFE course without having to graduate into employment. It's like – I mean, it's a normally operating open course for anybody in the community to do, and they can go and they can get through the course and they get their certificate which then gives them a qualification if they want to go and apply in a number of care areas. And I guess what I was saying was that because TAFE has gone very generic in terms of looking at meeting a market, we've certainly questioned the value of the course over time for people who are going to be working with any intellectual disability services. And that's why the course requirements have been reviewed by the Division and a new curriculum and process of delivery is being looked at.

And that is what, not sufficiently specific to the intellectual disability area to be of particular use at the moment?---Yes.

The ordinary course of things then is if a person does not have the financial or other wherewithal to set the time aside and to enrol at a TAFE course on the hope that they will get a job in that area at some time, the ordinary course of things, however, would be that a person would obtain engagement as a Residential Care Officer on a training basis. They would then undertake the course at TAFE for a number of weeks, returning to the Basil Stafford Centre to do in-house training; is that so?---Yes.

The first period of training would be two weeks at the TAFE, is that so, followed by a number of weeks in charge of patient care with another employee?---The first process is orientation, so a person comes on almost day one; they have a orientation time where information that they need to work to operate on is given to them in terms of looking at care and the rights of the client, the value base that we're operating on. They also have a buddy-up situation. The first formal education besides that is the induction which would occur a couple of weeks or more into their employment, and that is the first formal recognised part of their education. And that goes through in more depth in terms of things like how to respond to people with difficult or with seriously disruptive behaviours, back care, hygiene matters and the processes and procedures of the Centre.

What does the TAFE course undertake?---The TAFE course - I mean, the TAFE course works on a semester basis so that . . .

Yes?---So there's an intake usually at the beginning of the year, and then there's a second one half-way through the year.

Yes. So work at the Centre is actually undertaken by the new RCOs until such time as a TAFE course opens?---That's right.

Is that so?---That's right.

And it might be that somebody might actually be working at the Centre for many weeks, some months, before they are actually able to undertake any of their TAFE studies?---That could be so, yes.

And the TAFE studies are done over approximately six weeks at the TAFE, but spread over slabs of two weeks at a time approximately. Is that so?---Well, yes. Different colleges operate it in a different way, but basically it's an hour component to the course and sometimes it's on a one day a week basis, sometimes it's two days a fortnight, sometimes it's a week at a time, so it depends on the college.

Yes. How long then would it be that an RCO who was newly recruited, without any formal educational requirement other than demonstrated attitude and other aptitudes that are set out in the recruitment standard – how long might it be that such a person would be required to work with a buddy before they are actually looking after patients on their own, and is that possible to occur before they have been to any of their TAFE course?---Oh, yes, that can occur before they go to a TAFE course and . . .

They can work on their own without a buddy with sole care for patients, without having had any TAFE study at all?---Yes, that could occur.

Yes. And that could go on perhaps – how long does the buddying-up system last for?---I'd have to check up in detail, but it's approximately a week that there's a buddy situation occurring.

So if a RCO was recruited a month or so after the beginning-of-year intake into TAFE, which was, what, in February/March?---Yes, February, say, yes.

If they were, say, recruited in April, just hypothetically speaking, they would spend a week being shown the ropes with their buddy, and then by the end of April they could then well be – spend May/June perhaps working or having sole care of patients without any formal training, without any formal educational requirements?---Within there, they would also have an induction period . . .

Which lasts . . . ?---which is the formal education – the start of their formal education process.

Yes. And that is conducted in-house?---That's conducted in-house, yes.

And how long is that?---It has been for a fortnight, but I know that that also, the components of that are being addressed within the review of the training program.

Now, when you say a fortnight, is it a full-time fortnight, or an hour a day?---No, it's a full-time fortnight.

All right. Yes. Well, so that somewhere within that April period that I postulated earlier, that induction could have been undertaken, and then they could spend the rest of the time of that half-year before being admitted to a TAFE course with sole care of patients, with nothing other than the original induction?---Certainly, we would want to keep to trying to get people into training within six months . . .

Yes?---of them starting with us, but that of course depends on the time of the year.

And many of the things, then, that the training course was intended to inculcate into those new employees they may not have learnt at all in that first three-month period that they are there and they have no knowledge of many of the things that the TAFE course is intended to teach them?---No, I think that they – well, they would certainly have by that time things that we believe are important, such as a value base for working within the philosophical background as being part of the process of them working there. They would certainly not have the technical knowledge that would be provided through attending the TAFE course.

As noted, there have been some improvements in changes made to the RCO training program in recent times. In his statutory declaration, Mr Whalan stated:

Since its inception, the training program for Residential Care Officers has been reviewed and upgraded regularly. Over the past two years, one such review of the program has been conducted. This review was based on a comprehensive needs analysis which indicated that the course needed substantial updating. This revision has been completed and the course content has been adjusted to more closely reflect developments in service provision in the area and the practical requirements of the job, and it encompasses both on and off the job training and assessment.

In particular, the new course has a strong values-based component focussing on the rights of people with an intellectual disability, and promoting and facilitating valued social roles with an intellectual disability. As well, the course focuses on duty of care, client grievance procedures, strategies for positive behaviour change, and women's and men's health and well-being.

The new course which is now being implemented across the Division has been developed in line with modern training standards incorporating competency-based performance assessment, self-paced learning strategies, action learning strategies and industry referencing . . . the new training program for Residential Care Officers is awaiting accreditation as a certificate program in line with the forthcoming

> National Competency Standards for the industry. This training program has attracted National interest and is recognised as being in the forefront of competency-based training for staff in this area.

In his evidence, Mr. Whalan explained what is meant by some of the terms employed in the last-mentioned paragraph of his statutory declaration (T 5810). He described a "self-paced learning strategy" as:

> . . . a way in which people who are trying to absorb a body of material or to achieve a competency can undertake an agreed schedule of work at their own pace rather than sitting people down in a classroom and forcing them through at the pace of the slowest.

An "action-learning strategy" is 'about hands-on learning rather than theory', and "industry referencing":

> . . . is about ensuring that what you are doing is consistent with the good things and the best things that are happening elsewhere.

Mr Whalan attached, as appendices to his declaration, an outline of the abovementioned training program and a copy of the Procedures Manual for the certificate program. I have read those materials. In some instances, the training program requires the new RCOs to develop an understanding of some complex issues, such as matters relating to clients' health, the values underpinning the provision of services to people with intellectual disabilities, and the legal implications of using protective actions in the management of incidents of seriously disruptive behaviour. To my mind, the expectation of what must be achieved by the RCO students emphasises the need for some basic educational qualification to be imposed at the recruitment stage.

Mr Whalan elaborated upon the Department's efforts to improve the standard of training, in giving his evidence before the Inquiry (T 5790):

> . . . One of the things that's been happening over recent months, over the last twelve months at least, has been that we've been putting a significantly increased effort into training and development – both training base-grade people and about trying to develop staff to open them up to ideas that are happening elsewhere, to allow them to go and visit and see things that are happening elsewhere. So, for example, we have got three staff in Adelaide at the moment looking at . . . how services are operating in Adelaide, and what are the good things that are operating there, both in the Government and the non-Government sector. We've just recently sent two people to Western Australia to spend six weeks there working in different services and seeing what is good there, not only for their own benefit but to bring it back and to try and show it, to put something on paper and to go around then to staff in the different regions, including Basil Stafford Centre, and talk to them about what they saw and what were the things they took from that that we ought to be doing. We've been trying to encourage an open door policy, the idea that at Basil Stafford Centre, for example, you ought not feel constrained about talking about things, ideas that you have or problems that you have, just because you don't think you can get through your supervisor. You ought to be able to go directly to the Divisional Head; you ought to be able to go to the Regional Manager, and to raise issues, because without that openness you get into trouble.

Other witnesses also accepted that the previously existing RCO course required some improvements. Mr F stated (T 5042–5043):

> . . . It's now been found that the Residential Care Officers' training course at the TAFE colleges is useless, for the want of a better word, and we are actually – the Department, and I'm representing the unions on the training council, on the Curriculum Advisory Council, we're actually putting a whole new curriculum together . . . the end result will be that we will, the Department will be the training officers or authority, and the curriculum that management and the unions have agreed to, that we see as necessary for the Residential Care Officers.

To a large extent, the provision of improved and ongoing training for RCOs is linked to funding issues. Again, it is a situation where I can only observe that it would be extremely desirable for further funds to be made available in this area, as tangible benefits, in terms of the standard of care provided, will result for the intellectually disabled clients. From all of the above, it is readily apparent that many problems have arisen over the years, and will continue to arise, if new staff are not provided with thorough and sufficient training prior to undertaking "hands-on" care roles, and if existing staff are not provided with ongoing and updated training. Obviously, the Department is in the best position to ultimately decide the specific aspects of an RCO's role, and the qualities required, that should be focussed upon by way of formal or structured training programs. It is not appropriate that I attempt to list, in any exhaustive manner, those specific aspects, or the aptitudes required by RCOs that should be encompassed within the provided training. However, I would wish to make the following general points, by way of recommendations and observations, which arise from the evidence before the Inquiry and which I believe should be considered by the Department in terms of its ongoing review of training issues:

- It is entirely inappropriate that a newly-appointed RCO could be placed in a position (according to Mr Ross' evidence) of having to provide care and support for up to six severely or profoundly intellectually disabled clients, without having undergone any theoretical training, or any period of training in excess of a one week period of "double-up" or "buddy" training instruction and a two-week induction program. It should be obvious to all who have followed the evidence that any such situation is a recipe for disaster. The Department must provide an initial training period which, in all the circumstances, adequately prepares newly-appointed RCOs for the challenging nature of their duties. This Inquiry has heard evidence about a number of acts of client abuse, gross neglect, and episodes of violent and disturbing client behaviour, about which it can only be concluded that the RCO in question could not cope, for a variety of reasons, with the situation then presented. Many of the RCOs involved in such incidents were of some seniority, in terms of years of experience. It is inconceivable, and unrealistic, to expect that a newly-appointed RCO, with a very short period of practical and theoretical instruction, will act appropriately should such difficult circumstances arise, which undoubtedly will be the case from time to time.

  Similarly, the Department must be mindful of the obvious risk of exposing such newly-appointed RCOs to the unsavoury influence of the old guard, or the institutional culture at the Centre, without first instilling in that incoming RCO some formal instruction about appropriate philosophical values, and the practical requirements of the Department's stance in relation to the commission and reporting of client abuse or neglect. While incoming RCOs may personally hold appropriate values and attitudes in this regard, such qualities must be supplemented by concerted training and appropriate support.

  To conclude this point, the Department must ensure that an adequate period of training is given to its incoming RCOs before those RCOs are placed in hands-on caring situations. To some extent, the provision of double-up or buddy supervision and instruction is dependent upon funding, and upon the issue of staff/client ratios, which is more fully discussed in the following Chapter. That being the case, if an RCO is appointed, but is unable to receive formal instructional tuition due to the non-concurrence in time between appointment and the offering of such training, that RCO should only work in double-up or buddy situations with clients, until such formal training has been provided.

- Obviously, just as worthwhile values and work practices can be inculcated in newly-appointed staff through the buddy system, equally, undesirable attitudes and work practices can similarly be passed on. For example, one only needs to consider RCO AC's evidence, in the context of this Inquiry, about the lecture she received from Mr F shortly after commencing employment at the Centre. Within the following Chapter I make a general recommendation to the effect that

staff/client ratios should be significantly improved. The adoption of such a recommendation, and the provision of suitable funding to allow it to be implemented, will no doubt provide the Division with a greater range or pool of RCOs, who can be appointed to work with recruits. Additionally, in terms of my recommendations about the detection and investigation of incidents of suspected client abuse (see Chapter 23) I recommend that there should be an increase in the supervision of RCOs, by their SROs (and that SRO numbers should correspondingly be increased). Mr Whalan gave evidence (T 5793) that the SRO position was presently undergoing some change, including a change in title to that of "Unit Manager". Whatever the nomenclature applied, there should be an increase in the numbers of first-line supervisors. The implementation of these recommendations will assist in providing some assurance that recruits are receiving appropriate practical instruction, and are being imbued with an appropriate respect for the Department's desired work practices and attitudes.

- Any training, whether it be theoretical or practical, and whether it be provided to new recruits or existing staff members of whatever level of experience, must stress the critical importance of the observance of the Department's procedures relating to the reporting of client injuries, and particularly suspected incidents of client abuse or neglect. Simply, every step must be undertaken to ensure that all officers of the Division, of whatever seniority, fully accept their responsibilities to the clients in terms of detecting and preventing behaviour that might either amount to official misconduct, or to a breach of some lesser disciplinary standard. As part of the training, every endeavour must be made to ensure that all staff fully understand the consequences of failing to adhere to the necessary standards and procedures. Every step must be taken in this context, to turn around the culture which has existed at the Centre, and which, I have no doubt, will be sought to be perpetuated by at least an element of the Division's staff, whether employed at the Centre or at some other facility. In educating all staff about these matters, the Department should have no hesitation in utilising other entities, such as the Corruption Prevention Division of this Commission, or any other relevant body. Training must include detailed instruction about procedural issues relating to RCOs' obligations in terms of reporting client abuse or neglect, and instruction about the provisions of the *Whistleblowers' Protection Act 1994*, and any other relevant legislation.

- I have already noted within this report the importance of establishing a realistic career pathway for RCOs. In this respect, Mr Whalan stated (T 5791):

> We've also been looking at trying to get a better career path for Residential Care Officers. We've got over 1,000 Residential Care Officers, a huge number of staff at a very – you know, at a base-grade level within the public service. There are actually very few places for them to aspire to go, and you know, anyone who is a student of organisations and who looked at it would say that's quite unusual to have such a large number of staff at a level without many alternative options for them, because you're then expecting that people are going to come and join at a young age, and theoretically, retire from that job and are going to maintain an interest, and enthusiasm, and that good people are going to maintain an interest and enthusiasm for the length of their time . . .

The Department should continue its endeavours to provide an adequate career path for RCOs. Prospective applicants must be encouraged to recognise that they will not necessarily remain at a base level of either salary or duties, if they show relevant skills and/or abilities which merit promotion to higher duties. Information must readily be made available to such applicants, and to existing RCOs, as to further studies that may be undertaken by them in an endeavour to secure promotion, and how best to equip themselves with such skills and abilities as are needed for higher duties. Appropriate support, pursuant to the Public Sector Study Assistance scheme, must be provided in this respect. The Department must endeavour to guard against the phenomenon referred to by Mr AJ as "burn out", by providing continuing training, and

opportunities for its staff. In this regard, I believe there is considerable merit in SRO AI's views that all staff should receive a minimum of two weeks' continuing training each year, particularly given SRO AI's evidence to the effect that he considered there would be little difficulty in providing qualified 'trainers' to undertake such instruction. Attendance at such training should be made a compulsory duty requirement for at least the RCO position, and disciplinary action should be taken against those who refuse, or are unwilling, to participate.

Any deficiency in the training of Residential Care Officers, either at the intake stage or throughout their working careers, has the potential to have disastrous results. To some extent, those results will be detrimental to the Department, but more importantly, the first impact of training deficiencies will always be upon the intellectually disabled clients. There is no justification for placing the welfare of those clients in the hands of persons who are not equipped to adequately perform the diverse, and often arduous, duties that are expected of them. When those duties are not performed (such as in a case of neglect), or an RCO, for whatever reason, resorts to client abuse, it is not acceptable to offer the excuse that the relevant RCO lacked sufficient training to enable him or her to respond adequately to the particular situation. Inadequately-trained staff will provide inadequate care. At a personal level, a lack of training may, to some extent, excuse an RCO; it should not, and will not, exculpate the Department.

CHAPTER 20
STAFF/CLIENT RATIOS

20.1 AN UNFAVOURABLE COMPARISON TO OTHER STATES

In his written submission, Counsel Assisting submitted that 'the evidence in respect to the ratio of staff to clients was almost unanimous'. The suggested unanimity was to the effect that the ratio of staff to clients at the Centre at the time of the hearings, was inadequate.

There was a considerable body of evidence that the Centre's ratio of staff to clients was too high, in the sense that there were, at the time of the hearings, too few RCOs to adequately care for the clients.

The Regional Manager, Mr Ross, was the first witness examined about the issue of staff/client ratios. He gave the following evidence (T 48-51):

> Mr O'Sullivan: What is the current ratio of clients to RCOs?---At Basil Stafford Centre?
>
> Yes?---Generally, it's a ratio of one to six on shift at any particular time. There are some variations to that where we have a couple of modules of one to five, and, I think, of one to four at the moment, but on the whole it's an average of one to six, three shifts a day.
>
> Is that an acceptable ratio?---It's a ratio that we would certainly want to improve on if we could.
>
> Well, what would be the optimum ratio?---For the sort of people that we're caring for, or assisting, within Basil Stafford during day time, and depending again on the level of their need, a ratio of one to three would be an optimum. I mean, that would be the ideal, and not necessarily that we would want to put two staff on with six clients at any – in a house, particularly at the same time, but to have that sort of support to provide activities for clients.
>
> Well, why is it better to have the lower ratio?---Because of the individual needs of clients. We're talking about people who have very high support needs. They need support in a lot of their daily functioning to be able to learn to cope for themselves. We're not talking about people who can't learn, but we're talking about people who, to learn, need a lot of individual attention.
>
> So, what, they would get more individual attention if you had a lower ratio of staff to your clients?---That's true.
>
> Yes. Well, does that mean that they are not getting satisfactory treatment at the present time?---They're getting the quality of treatment that you can give with a ratio of one to six.
>
> Well, that does not answer the question. Are they getting satisfactory treatment at the present time?---I'm sorry. It depends on what you would call satisfactory treatment . . . the Division is providing a quality of care that you can provide with a ratio of one to six which means that a lot of the time people's individual needs aren't being met for their growth and development. So that people aren't progressing in terms of their ability to do for themselves, such as to clean their own teeth for instance, or to prepare their own – prepare a meal, or to make their own beds. So, what happens is the quality of care reduces by the amount of care that you aren't able to give to them, or individual care that you are not able to give them.
>
> The Commissioner: Mr Ross if I could just ask you this . . . how does this ratio compare with the ratio in other States for similar types of institutions?---Oh, your Honour, it doesn't compare particularly well.

> All other States have a higher ratio than Queensland [in the sense of having more staff to care for clients].
>
> And I do not know about this, but could you give us some examples in other States?---I'm sorry, I don't have the information in front of me, but generally it's in the order of one to four or one to three throughout New South Wales and South Australia . . .
>
> The optimum is one to three, isn't it?---In general terms, yes.
>
> Mr O'Sullivan: Is there any other State in Australia that has as bad a ratio, or worse ratio than Queensland?---No, not to my knowledge, no, there isn't.
>
> And has there been any recommendation by yourself, or your section, to the Department seeking a better ratio of staff to clients?---Certainly the Department is aware of the need.
>
> How is it aware of the need?---Because we had submitted to the Department the need for increased staff ratios.
>
> And when was the first submission made, to your knowledge?---it's a bit hard to put a time on it. I can say that I know that last year there was certainly a firm submission put to the Department that we increase the ratios. As far as the Regional Manager is concerned, and being part of the Divisional Management team, we have discussed the need for better ratios, to my knowledge, probably for the last ten years.

In his later evidence (T 128) Mr Ross provided information about comparative interstate staff/client ratios. Those ratios are as follows:

New South Wales	–	1:3 (in some instances 2:5)
Victoria	–	1:4
South Australia	–	1:4
Western Australia	–	2:4
Tasmania	–	2:4
Australian Capital Territory	–	2:4

20.2 EFFECTS OF THE PRESENT RATIO AT THE CENTRE

In his statutory declaration, Mr Rohan noted that during his time at the Centre, the usual staff/client ratio was 1:6. He also stated that this ratio:

> . . . was one that we were never satisfied with. It was an allocation of staff/client numbers which was established early in the history of the Centre and elsewhere. The needs of clients living there at that time were not as great as today. Increased need has led to a demand for additional resources.

Counsel Assisting examined Mr Rohan about this statement (T 4362–4363):

> Mr O'Sullivan: But you do make the comment that it is one that we were never satisfied with. What do you mean by that?---What I mean by that is that one staff member providing support, assistance, care for six people with severe intellectual disabilities and, with that, very high needs; it is an insufficient level of staffing. I don't think there is anyone who would disagree with that.

Yes. What is an appropriate level?---I believe that it's difficult to say what is an appropriate level for a general view of people with intellectual disabilities; however, given that there will be quite large differences in respect of the needs of people within that large group, I would believe that something like two people for six clients would be more an appropriate level overall.

Yes?---I would also add that if we had that level of staffing I don't believe that the model of service that is provided either at Basil Stafford Centre or in the ALS would be the one that I would be advocating for.

What model would you advocate?---I think there are far more individualised ways of providing the support and care to people than that which is present when you have five or six people living together. There's all sorts of problems when you bring together a large group of people. Five or six people with severe intellectual disabilities is a pretty large group. I think there are reasons why groups of that size were established in the past and it was useful, in the past, to work in that number. However, if we're looking at increased levels of staffing, I think there are far better models that would provide more individual, more personal, care to those people.

What is a better model?---I think there are ways in which an individual can be provided with support and supervision, not necessarily through our own services directly, but through various arrangements that could be made with voluntary agencies, non-Government agencies, agencies which are funded to provided support. It is possible for some people – in fact, we have done so with some children from Basil Stafford Centre, to move them into family situations where they are one individual within a family and the support that the family needs to maintain that arrangement is provided by converting the salaries of RCOs who would've been employed in a group situation.

Does that mean converted to the use of the people who are within the household providing support to the client?---It would be converted for their use, yes, and certainly to maintain a range of, perhaps, therapies or other needs that had been identified that the person had.

Yes, and would that lead to the closing down of the villas that are presently used at the Centre?---I think if we had that level of staffing we could go very close.

Mr Rohan was also asked about the effect of the present staff ratio upon the RCOs (T 4363–4364):

Mr O'Sullivan: The present staff ratio of one to six, does that place any stress on staff?---It certainly does.

And how does that manifest itself?---I think one of the end manifestations is in high levels of worker's compensation claims for stress, certainly some worker's compensation claims for injury. When you have groups of five or six people with severe intellectual disabilities living together the level of frustration among the group is occasionally so raised that seriously disruptive behaviour will emerge, and, in those situations, it can be very difficult for staff to deal with that and sometimes people do get hurt.

Yes, do you think that it could lead to clients being abused by staff?---I think it could.

Because of the elevated stress levels and the difficulty in dealing with SDIs [seriously disruptive incidents]?---Yes. I'm sure it could. Dealing with a person with an intellectual disability who is physically assaulting people around you or assaulting you, yourself, is likely to lead to responses which are untoward.

Mr Rohan's thoughts in that regard are entirely supported by the evidence of the assaults, occasioning bodily harm, committed by RCOs upon Clients 2 and 3 (see sections 1.7 and 1.8).

Mr Rohan was also asked about the effect of the current ratio upon the clients (T 4364):

> Mr O'Sullivan: And you have spoken about stress on the staff and injury to staff but what about the effect of the current ratio on the clients? How does that affect them?---Well, I don't think that the care that clients receive is as good as it could and should be. We have situations where children are attending school and the schools complain about the state of the child on arrival. Occasionally, things like untreated suppurating ear or manifestly dirty face, untidy clothing, all sorts of indicators of inadequate care in that sort of situation. For adults, I think that what I would say – is a more general effect, is one of neglect.

Mr Rohan's views were supported by the evidence of a number of other past and present managerial officers. Mr AJ gave evidence about the difficulties faced by RCOs in their attempts to develop new skills with their clients, in light of all of the demands placed on their time. In this context, he said of the one to six ratio: 'It's just an unrealistic working ratio' (CT 4105).

While Ms AF was giving her evidence, I asked her some general questions as to her views on how the system at the Centre could be remedied, so that it might work more efficiently than it apparently did at the time of the hearings. She gave the following evidence (T 3024–3025):

> Ms AF: You cannot have a one to five or a one to six ratio. It cannot be effective. You cannot also, as a client – you and I don't live with six people and have someone in your house 24 hours a day. So clients' frustration levels are constantly up and down. They get frustrated of having so many people in there and then if you have visitors, you've got ten people in there. I personally believe that you require lower ratios. You need a one to three at least. You need to be able – they need to be able to live in accommodation that is suitable to them because we have got so many people, in my opinion, who don't live together compatibly. They have got different interests, different needs and different likes. You also need an effective communication system where you can talk regularly with a person and that means, sir, that I would recommend there be a Senior Residential Care Officer there on the spot. They know what's going on and they have access, if you need the management structure, because I think you do, but there's that link there and a smaller ratio and more access to psychologists and people who know what they're doing, people in the community, access to psychologists, senior psychologists, to occupational therapists.

Mr Plunkett cross-examined SRO T about his use of the expression "financial constraints", in the context of the Centre's operations, and asked SRO T (T 2094):

> What extra would you want that you did not have?---If the numbers of clients were to remain at five or six in a house, or a living group or module as we call them in the Centre, then I would suggest that we would need to have two staff working with that group at all times, with the exception of the night shift. The other alternative would be to reduce the number of clients in a house to four as a maximum, possibly less, depending on the individual needs of clients.

Similarly, past and present RCOs supported the view that the current staff/client ratio was too high. Mrs A gave the following evidence (T 4157):

> Mrs A: Sometimes it was adequate but . . . it depended on the clients. Like, if I had a group of clients that contained three clients who were known absconders, then it would be rather difficult to watch them all in an eight-hour period. Or if there were clients who – there was a group of clients that contained one or more who were physically aggressive or violent; it was not, I don't think it was an adequate ratio.

RCO AC also gave evidence (T 2733):

> The Commissioner: . . . one of the complaints we have had, and which may or may not be sustained, at the end of the day, is that there is not sufficient supervision of clients because of the ratio between staff and clients?---Yes, yes your Honour. I agree with that. That does exist, that propensity for tragedy or

danger because of the high ratio of clients to staff, makes it almost impossible for staff to be able to watch clients at all times in those areas.

RCO Q was also asked as to whether she thought the current ratio was appropriate (T 561):

> Speaking for my house specifically at the moment, I am working with one client that exhibits continual disruptive behaviours, attacking staff and other clients that live with her. We have got two absconders. We also have two other clients that hit staff and clients on a regular basis. We have a client that at meal times needs to be fed because if we don't feed him he throws his meals at us and throws the other people's meals away and he also reacts in an aggressive manner and we have got two other ladies that need constant supervision while cooking, or we've got anything cooking on the stove. Otherwise they will go and take food from the stove while it's cooking. So no, the ratio isn't enough in our particular house, we've asked for extra cover and the management has told us that where possible, they cannot guarantee us a permanent double-up at present, but when there are spare staff available they will give them to us because they see the need, but the problem is not enough staff.

One might also note the views expressed by Mr AD, in his letter to the Minister (see section 11.4).

20.3 MR WHALAN'S EVIDENCE

In his statutory declaration, Mr Whalan stated:

> The ratio of staff to clients at the Centre is generally 1:6, with a ratio of 1:5 in a small number of live-in units. These ratios are consistent with accommodation services operating elsewhere in the Division, with the Alternative Living Service ratio being 1:5 or less. These ratios have existed since 1977 when the Service was first established as a separate entity from the Health Department. A decrease in the staff to client ratio would have significant cost implications for those services and reduced services provided to other consumers.
>
> I am able to comment on two recent developments that will impact positively on the existing staff to client ratio. In the 1994-95 Budget, commitment was given for substantial increased funding to enable new services that will be developed to support clients being moved out of Challinor Centre to operate on a staff to client ratio which will not exceed 1:4. As well, in the 1994-95 Budget, the Government has allocated $6.2M over the next three years to improve the level of care for clients living at Basil Stafford and in the community villa complexes. The funds will be used to enable clients to have greater access to activities in the general community and to increase staff training.

Mr Whalan was asked about these matters when he appeared before the Inquiry (T 5811-5812):

> Mr O'Sullivan: . . . you deal with the question of the ratio of staff to client. What do you say about the appropriateness of ratios of one to six, or one to five, at the Basil Stafford Centre, because we have heard evidence put which could lead one to the conclusion the system is strained?---Staff-client ratios are a simplistic measure. They have worth as a measure, but they are a simplistic measure. The reason they are simplistic is some people say to me that, "well, really what we ought to do is double the staff/client ratio. Really what we ought to do is to have two staff available to provide support to, at Basil Stafford, the six people who live in a villa". Now for me, that would be a backward step and the reason it would be a backward step is that, if I had available the resources to fund two staff, I would much rather have one person remaining providing support in the villa and to have the effort provided by the salary equivalent of the other, providing a range of other supports, be they activities, community linking etc. To have two people at the worst leaves you open to situations where poor quality staff, and most are not, but where poor quality staff spend their time talking to each other and having a cup of tea rather than actively providing decent quality support and assistance for the people who are living there. It gets you

no further. So to talk about client/staff ratios as if an increase in client/staff ratios is the answer, I think is simplistic.

I see. You say in [your statutory declaration] that "for the people moving out of the Challinor Centre, the ratio will not exceed one to four". Is that an appropriate ratio?---It is a better ratio.

Well, certainly it is a better ratio, but is it an appropriate ratio?---Yes, it is.

Well, well, if that is an appropriate ratio for clients of a similar type to those at the Basil Stafford Centre, why is one to six, or one to five, appropriate?---In the Challinor Centre changes, whilst we talk about there being a ratio of one to four, you know, it may be that for some people there is a ratio of significantly less than that. Those ratios will have to change very much, depending on the needs of the individuals. So that is the first thing, it is not a blanket one to four. It is a very hard job for an RCO to be in a ratio of one to six, and there is no doubt that the quality of support that is provided is very strained at one to six, and it would be better if there was a more generous ratio at Basil Stafford Centre. But I would still add that ratios are not the only answer.

20.4 THE SUBMISSIONS OF COUNSEL FOR THE UNIONS

Mr Herbert, who appeared before the Inquiry as Counsel for various trade unions who had members at the Centre, also appeared for many of the witnesses called to give evidence, including some of the witnesses whose evidence is mentioned above. He delivered written submissions about the staff/client ratio issue, reflecting the views and concerns of his client unions:

. . . it is submitted that the staff/client ratios are generally inadequate as has been attested to by almost all witnesses questioned on this subject. In particular, during day time and early evening shifts, it is often beyond the capacity of the single RCO present in a villa to cope with some of the challenging behaviours of the clients. Further, the fact that RCOs are left entirely on their own for the majority of their working day is a circumstance which, on the evidence, appears to have led to a number of situations where staff were subjected to unacceptable levels of violence and stress, which is a factor which could well lead to abuse and/or gross neglect of clients if allowed to continue over a period of time.

It is also submitted that the unlikelihood of the work of a care officer being immediately observed or supervised by another employee, in most instances, is a factor which could cause an employee who is so inclined to take short cuts in relation to their work which could lead to incidents of abuse or gross neglect. Whilst there is limited evidence of such matters occurring, it is well within human understanding that the absence of peer supervision and peer review may well lead to a situation over time where standards could be permitted to fall in relation to the care of clients. This is particularly so in circumstances such as exist at the Basil Stafford Centre, where the villas in which the clients are housed are in a reasonably isolated location in relation to the supervisory staff.

It is submitted that staff/client ratios should be improved in two ways. Firstly, there should be a much higher incidence of staff being rostered in company with each other in villa locations to provide support and assistance to each other and to allow for the disruptive incidents which occur from time to time, and which are beyond the capacities of a single care officer. Secondly, the staff required for the organising of activities for the clients should be greatly increased, in order to provide recreation and distraction for the clients to enhance their quality of life and, in particular, to relieve the boredom of the continuous residence in the villas. This would have the added benefit of allowing respite time for the staff concerned.

It appears that the rapid deterioration in recent years of organised activities for clients has been matched by an increase in the reporting and apparent incidents [sic] of possible mistreatment. It would appear logical to suggest that these two matters may be linked in some way.

> It is submitted that this Inquiry should make affirmative findings in relation to the inadequacy of staffing levels in the two aspects outlined above, which will then provide a substantive basis for ongoing negotiations between the unions concerned and the Department. The detail of the precise levels of staffing for different occasions and different locations is, perhaps, best left for such negotiations between the unions and the Department, however, the assistance of this Inquiry in making such findings would be of great benefit in expediting the improvements which are long overdue in this area.

I agree with those submissions.

20.5 CONCLUSIONS AND RECOMMENDATIONS

Much of the evidence before the Inquiry about the adequacy of the existing staff/client ratios at the Centre is now of an historical nature, in light of the Government's announcement that it intends to close the Centre. In due course, the Centre's clients will be placed in different models of care. As noted, it is not for this Inquiry to attempt the complex task of dictating to the Service alternative appropriate models of care that should be employed in those circumstances; however, the fact remains that it is necessary that the interests of the Centre's clients be safeguarded in the interim period pending the Centre's closure. As well, observations about the existing client/staff ratios at the Centre may be of broader application to other systems of service provision adopted by the Department.

I am satisfied that the presently existing staff/client ratio at the Centre, namely that of one RCO to six clients, or in some cases, one RCO to five clients, is inadequate. I am satisfied that this inadequacy is reflected by detrimental consequences for both the clients and the staff at the Centre. I am also satisfied that the inadequacy of the existing staff/client ratio is inextricably linked to the prevalence of official misconduct at the Centre. I am also satisfied that it is probable that the inadequacy of that ratio has led in the past and if allowed to continue will lead in the future to a situation where clients are neglected; while that level of neglect may not always reach the level required for it to constitute official misconduct, in many respects, it is probable that the clients are not receiving the level of care to which they are entitled, and which is intended by the Department. In that regard, I do not make my latter observations in a pejorative manner; it is a matter of commonsense that it is and will always be beyond the ability of one human being, no matter how skilful, well-trained and dedicated to cope with scenarios such as those described in evidence by RCO Q (see section 8.14).

I accept Mr Whalan's views to the effect that, at least in some respects, the mere improvement of the staff/client ratio is a simplistic measure and not a panacea. While Mr Whalan, and the Division, might wish to divert any additional funding available to them into the provision of extra resource staff, in this context, one of the points made by Mr Herbert must be borne in mind: RCOs who are inclined to treat their clients in a less than acceptable manner, are well aware of the difficulties that management has in detecting such failings on their part, due to the pervading isolation, and absence of peer supervision, that exist in their daily working environment. In those circumstances, the presence of a second person should operate so as to provide a disincentive for any RCO to engage in such misconduct; if such misconduct were to occur, then the second person may well be a witness to it. Given the climate which has been shown to exist at the Centre, that may not necessarily mean that the second officer would willingly come forward and report what he or she has witnessed; but at least the Department, and any investigating entity, would be in a better position than would be the case if the culpable RCO were the only person present capable of speaking out.

I accept that there is a risk that if two poor staff are placed together a higher standard of care may not result; the presence of an extra RCO may achieve little more than provide an opportunity for distraction. However, if the correct emphasis is placed upon recruiting suitable applicants, training them

appropriately, and rigorously assessing their performance, I anticipate that the Department will be able to reduce the numbers of such poor staff, thus minimising any such problem.

In any event, the present ratio of one RCO to five or six clients is too high. It is out of step with every other State in Australia. Queensland must accept that it has, by far, the worst ratio of care providers to intellectually disabled persons of any State in the Commonwealth. That situation must be improved. More RCOs must be provided. I do not intend to recommend a particular ratio; this is a matter for the Department to resolve in terms of its available funding, RCO numbers, client numbers, and the models of care which are eventually adopted to replace that provided by the Centre. However, it is imperative that the inadequate ratio which existed at the time of the hearings be rectified at the earliest possible opportunity.

Additionally, I recommend that the Department takes every step open to it to ensure that two staff are allocated to work with the clients in each house at all possible times, particularly during the morning and afternoon shifts. On the evidence presented to the Inquiry, I accept that it appears unnecessary, in the majority of cases, that an extra RCO be rostered to work in the houses during the night shift. While RCOs working that shift have a number of tasks to perform there would appear to be a lesser need for another person to be present, in either a supervisory or assistant capacity, during that shift, than during the other two shifts.

In stating that where possible RCOs working the morning and afternoon shifts should be in the company of another person, it is unnecessary that that person be, in each instance, another RCO. Mr Whalan has referred to the need to provide more resource and support staff for the clients. Within this report, I have also referred to the need, which I perceive on the evidence, for more staff to be appointed to positions of a direct supervisory nature in relation to the RCOs, whether those positions are described as Senior Residential Officer duties or by some other term. I would expect that, in light of all of those circumstances, some balance could be achieved between the employment of further resource and supervisory staff, and additional RCOs, so that the direct care officers would be provided with extra support at the times of greatest need. As a consequence there would be greater scope for clients to be provided with more resource activities: all of the above should occur under the close supervision of a senior officer, who would also be able to assist with tasks as the situation demands.

Obviously, the implementation of such recommendations will require increased funding and resources. However, if my recommendations are adopted there will be significant benefit to both clients and staff. Given that the Department is moving towards the adoption of alternative models of care, which may place greater reliance upon family support and the provision of assistance by resource staff, extra funds must be found to facilitate the Department's moves towards such models of care, and to protect the interests of clients in the period prior to the Centre's closure. As QAI submitted to me, when there are insufficient resources, the emphasis becomes one of merely "getting by" or "keeping the lid on" the situation. Such an approach is inconsistent with the Department's stated aims of attempting to develop and enrich its clients' lives. There will be a much greater chance of realistically fulfilling those objectives if the staff/client ratio is improved.

CHAPTER 21
ASPECTS OF THE CLIENTS' MEDICAL TREATMENT

One of the issues nominated by the Commission in its letter of 26 July 1994 as being of possible relevance to the parties' submissions about statutory provisions, policies, practices and procedures, was:

> the medical treatment available to, and required by, the clients of the Centre.

The Inquiry did not conduct an exhaustive review of the Centre's medical practices. Rather, from time to time, evidence was heard which touched upon certain aspects of the medical treatment provided to, or required by, the clients at the Centre. The evidence about these issues was also of relevance to the possible occurrence, or prevention, of acts of official misconduct by staff members.

In those circumstances, I have not, within this report, attempted to undertake any broad-ranging analysis of the standard of medical care provided at the Centre. This report deals only with the select issues relating to medical treatment that were canvassed during the evidence. Those aspects of the evidence related, in the main, to hygiene in the clients' houses, and the right to obtain a second medical opinion for clients.

I have already, at Chapter 11, made certain recommendations in relation to staff first-aid training, the level of awareness, amongst relevant medical personnel, of the Centre's facilities and the Centre's emergency procedures concerning contact with Ambulance facilities by the staff. While those issues are of relevance to the clients' medical treatment, it is not proposed to further comment upon them in this Chapter.

Before I turn to the evidence, it is necessary to briefly note some of the written submissions of Counsel appearing before the Inquiry.

21.1 THE WRITTEN SUBMISSIONS OF COUNSEL

A) COUNSEL FOR THE STATE OF QUEENSLAND

Mr Plunkett submitted that recommendations about the medical treatment available to, and required by, the clients of the Centre, would only be within the terms of reference and the jurisdiction of the Commission:

> If it is being alleged that there has been a wilful denial or gross negligence by staff in failing to provide medical treatment to clients. This was not alleged by any witness, nor was it suggested by any evidence that this is the case.

As noted, the Inquiry did not embark, during the hearing of evidence, upon any broad analysis of all aspects of the medical treatment provided, or available to the clients at the Centre. Nor do I intend to embark upon any such analysis within this report. The issues pertaining to the medical treatment available to and required by the Centre's clients, which were the subject of evidence and which are discussed within this report, are matters which could amount to official misconduct. I am satisfied that they are therefore within the Commission's jurisdiction.

B) COUNSEL FOR THE UNIONS

In his written submissions, Mr Herbert did not take any such jurisdictional objection, but submitted:

> . . . the medical treatment available to, and required by the clients of the Centre, has been generally inadequate, at least insofar as there has been a perception on the part of staff, for some years, that a specialist medical opinion, or a second medical opinion outside the Centre, was not a matter which was able to be easily obtained. The care officers, in many situations, are in loco parentis to these clients and are often in the very best position to know and understand whether medical opinions given are consistent with their own observations. In many such cases, the clients' interests require that a second medical opinion be obtained, and this is not being perceived by employees as being readily available.
>
> If any such fetters exist, they should be removed. If such fetters do not exist, then procedures for the obtaining of specialist medical opinions from outside the Centre, or simply a second opinion from another medical practitioner outside the Centre, should be made available to the staff. It is not suggested that unlimited access to any medical practitioner of the whim of the care officers should necessarily be available, however, sensible procedures should be in place where the first line care officers can request, and readily obtain, such alternative medical advice and assistance for the clients.

21.2 THE OBTAINING OF OUTSIDE MEDICAL OPINIONS

The "on site" medical services available for the treatment of the clients have previously been described at section 7.10.

Before the Inquiry, evidence was given by some RCOs to the effect that there was a difficulty, or at least they perceived that there was a difficulty, in being able to obtain outside or second medical opinions about matters pertaining to the clients. For example, RCO AC stated during her examination (T 2551):

> Mr O'Sullivan: What about the obtaining of outside opinions in respect to the medical care given to clients, does that occur?---Well, we can't do that. We have to depend upon the medical profession within the Centre doing that for us. We may not do that, so we have to just consult with the Nursing Service, who consults with the doctor, who will then make a decision as to whether an outside person should be consulted.
>
> Well, if you did not agree with the doctor, what could you do about it?---We'd just argue with her until she concedes. Generally speaking, if we put up a good enough argument eventually the client will see another doctor, or another person that might be able to help.

RCO AQ said in her statement (Ex 290):

> The Centre does have a doctor but it has been my experience that the Centre appears to be reluctant to refer any of the clients to a doctor, other than the one at the Centre.

When cross-examined by Counsel for the State of Queensland, RCO AQ conceded that, at the time of giving her evidence, RCOs could refer clients to outside medical care, although she stated 'I don't think that used to be the practice though, we had to fight to get them out' (T 3624). At T 3625, RCO AQ gave evidence to the effect that she was of the opinion that the medical staff did not take much notice of the RCOs in these circumstances.

SRO U, previously an SRO at the Centre, gave the following evidence during her cross-examination by Counsel for the State of Queensland (T 2180–2186):

> Mr Plunkett: . . . so there is no instance of disregard of the health needs of the client that you are aware of in your time at the Basil Stafford Centre?---I guess my way in which I would answer that is that there's a reluctance to allow individuals to be provided the opportunity of second opinions. You and I have a choice to go to a GP. If we're unhappy with that service, we go to other GPs. There's a reluctance to do that because people live at a larger residential.
>
> Who has that reluctance? Who are we talking about?---Well, I think the doctor. I, personally, on a number – and I don't remember dates or anything; I personally have spoken with the doctor about people having the opportunity to have second opinions.
>
> All right. So you think that – well, is that reluctance to enable people to have second opinions such as to constitute a disregard . . . ?---No.
>
> . . . for the health needs of the client?---No. It's really just to further investigate an issue.
>
> . . . And there is no rule which prevents clients if they have some way of communicating a desire to get a second opinion; that is so, is it?---That's correct, but many of those children do not have that capability of expressing their own desire or wishes.
>
> Okay. Well, let us take that situation. There is no rule or practice or procedure that prevents an RCO from taking a child in that situation to have access to an alternative medical treatment outside of the Centre?---It is not a practice that's encouraged in the Centre for direct care staff or other staff to strongly advocate for individual, whether it be children or adults, to seek second medical opinions.
>
> All right. You say . . . ?---The atmosphere is very difficult for that to occur.
>
> All right. So it is not encouraged and there is a difficult atmosphere, but it does happen, does it not . . . ?---Hasn't in my . . .
>
> . . . that RCOs – sorry?---Has not in my knowledge, in my experience.
>
> Well, are you – we have heard evidence of people being taken to medical practitioners at the Ipswich Hospital, for example?---Mm.
>
> Are you aware of that?---Yes, I'm aware of that. I'm speaking about in terms of seeking a second GP opinion . . .
>
> Yes?--- . . . as in outside of even a large hospital section.
>
> All right. You say that it is not encouraged. Are you saying that it is discouraged that people would go outside of the centre to get a second opinion?---All I'm saying – yes. All I'm saying is except for the usual appointments that are made at larger hospitals, all I'm saying is to seek a second opinion with a specialist, for example, up at the Terrace or wherever, it's very difficult because of organising transport. It's difficult to – this is in my experience when I worked there some years ago, it was difficult sometimes to convince people that it may be appropriate just to have a second opinion.
>
> All right. Are you aware of any event where someone required a second opinion but did not get it because of this ethos?---Not in the unit that I was working in.
>
> The Commissioner: Mr Plunkett put to you that if there was a situation where an RCO and/or somebody such as yourself thought that a second opinion should be obtained, there was nothing to stop you from putting things in train for that to occur. Who would pay for that?---Depending on how old the individual is that we're speaking of, sometimes family would assist with that if they were under the age of 16. If

> they were pensioners they would pay for it themselves with Medicare. Some individuals are also members of a medical insurance such as MBF.
>
> And is it correct that that could be arranged, but the culture or the ethos, if you like, was not conducive to that occurring?---Well, it appears today that it's very likely and very much a process that people can do that. I'm speaking about the time that I was working at Basil Stafford, some three years ago. It certainly wasn't the feeling that one could feel free to do that. There was people in positions you had to go and speak to, to talk about the reasons why you would like to see . . .

In response to this body of evidence Mr Plunkett tendered a Departmental memorandum dated 18 February 1992 under the hand of the then Divisional Head, Ms Shepherd. That memorandum was subsequently admitted as Ex 201. It was entitled 'Right to a Second Opinion' and stated:

> Certain concerns have risen about the need for clients in residential care to have access to a second opinion.
>
> As discussed at the Divisional team meeting on 18 February 1992, it is the policy of the Division of Intellectual Disability Services that any client, or any relative or other advocate acting on behalf of a client, has the absolute and unquestioned right to obtain a second medical, legal or other professional opinion, whether an initial opinion has been given by a practitioner employed by or contracted by this Division or Department, either on a full-time or part-time basis, or by an external practitioner.
>
> This should not be taken as reflecting any criticism of the provider of the initial opinion but confirms that clients of this service have the same right as any other citizen to question or test that opinion by recourse to another practitioner.
>
> Would you please ensure that all relevant staff are made aware of this policy.

The memorandum was addressed to senior managerial staff within the Division.

From the contents of that memorandum, it is apparent that there are no formal or policy impediments to the obtaining of second or outside medical opinions for clients. Without in any way intending to be critical of the Centre doctor or the Centre's nursing personnel, I would accept that situations will arise from time to time wherein those trained medical officers might be less than receptive to the views of particular RCOs, about complex medical issues. Irrespective of the Divisional policy, I consider it inappropriate for RCOs to be placed in a position, or to hold the perception that they will be placed in a position, of having to argue with the Centre's medical personnel in order to obtain a second or outside medical opinion. Such a situation would not be productive of harmonious staff relations. In making these observations, I am also mindful of the opinion expressed by Dr Reid in her evidence (T 1928 and T 1937) that some RCOs saw regular checks or visits to the residential houses by the Centre's nurses, as somewhat intrusive.

While the abovementioned Departmental memorandum refers to a client's right to obtain a second opinion, it must be remembered that the Centre's clients have a level of intellectual disability which precludes them from being able to take such steps by themselves. It is necessary for those clients, if they are to be able to exercise those rights, to rely upon some other person to act in their best interests. As I have mentioned from time to time throughout this report, some of the clients at the Centre appear not to have any concerned relatives or friends, or other advocates, who are willing to make such necessary representations on the client's behalf. The situation emphasises what I perceive to be the need for all clients at the Centre to have someone in the form of an independent advocate (that is, somebody with no connection or allegiance to the Department) maintaining an interest in their personal affairs.

Outside medical opinions and treatment cannot be obtained without cost. Some or all of that cost either may be borne directly by the client, or by the Department. In those circumstances, informed and

thorough consideration must be given to the taking of any steps directed towards the obtaining of outside or second opinions; as noted by Mr Herbert, there should not be unlimited access to medical practitioners on the whim of the care officers. Additionally, interested family members or other advocates should be informed of all of the relevant circumstances, and their advices sought. It is not a matter that should simply be resolved by discussions, whether amicable or argumentative, between individual RCOs and the Centre's medical officers. Greater consultation, and an element of independence, is to my mind required in each case so that the clients' interests are best served.

The obtaining of outside or second medical opinions is not an area readily amenable to the imposition of strict guidelines, in the sense of my putting forward definite proposals or recommendations for reform. I would simply urge the Department to note the concerns and the perceptions, of the RCOs, as expressed in the evidence before the Inquiry, and to review its procedures in order to ensure that full effect is given to the Departmental objectives of endeavouring to allow the clients to live as normal a life as possible. One aspect of that 'normal life' is the right to obtain second opinions where circumstances reasonably warrant such a course of action.

In this context, my recommendations contained in section 23.8, in relation to the issue of client advocacy, are applicable.

21.3 HYGIENE AT THE CENTRE

During his evidence, Mr Ross referred to a number of hygiene problems that arose in the care of severely and profoundly intellectually disabled persons (T 138):

> Mr Herbert: And there is another problem from a management point of view, and that is that they [the clients] are in many cases because of their intellectual disability, there are quite pronounced hygiene problems, and particularly for those who are incontinent and are otherwise unable to deal with their bodily functions in an ordinary sort of way?---Yes.
>
> Is that right?---That's right.
>
> And the distribution of faeces and the eating of faeces in some cases, is a behaviour problem that the staff have to deal with?---That's true.
>
> Is that right? And of course, those sorts of hygiene problems create ordinary exposure to a range of diseases which are not prevalent in the outside community, not as prevalent in the outside community?---Yes, well, I mean, I certainly don't have a medical background, but I don't know any diseases that we have within Basil Stafford that don't occur in the normal outside community.
>
> But with the hygiene problems there, there is a much higher risk for . . . illnesses and medical conditions caused by want of normal hygiene?---Exactly, yes. We would certainly be impressing, and we do impress on our residential care staff the hygiene, and their own hygiene, as well as hygiene with the clients is something they need to be very aware of.

Dr Cleghorn also referred in his evidence to some of the difficulties that are presented in the management of highly infectious diseases amongst the intellectually disabled [see 10.6(B)].

From time to time during the evidence before the Inquiry one particular hygiene issue arose, namely a question as to whether some RCOs, as a practice, washed their hands in the kitchen sink, that behaviour allegedly occurring in the context of those staff members having to perform duties which included cleaning up after incontinent clients and thereby handling faecal matter, and thereafter preparing meals, utilising the kitchen facilities, for the clients and themselves.

Mrs E gave the following evidence (T 1406–1407):

> The Commissioner: What do you say is wrong with the hygiene that is maintained there [at the Centre]?---There's very little precautionary measures. Often, we even run out of liquid soap, Hibiclens.
>
> Where does the washing of the hands occur after faecal matter has been handled?---After?
>
> Where do the staff wash their hands after they have been handling . . . ?---They wash them over the sink where the dishes are washed.
>
> They wash them over the sink?---Where the dishes are washed, yes.
>
> After they have been handling . . . ?---Excreta, that's right. [A medical practitioner] was shocked when I told him I don't wash my hands after handling one resident and handling the next because there's not enough liquid soap. So, my hands are washed about two or three times during the shift, before I have a break, because I smoke, I put my hands close to my lips, and I have a small cup of coffee before I leave to come home. That is the only time I use paper, and these people give themselves finger enemas, there's faecal matter often all over the place, on the walls, light switches, door handles. Most of them play with their genitals for various reasons. Then they handle everything. So it's just not the staff handling excreta. They handle themselves, and then handle everything that's in sight.

I asked Dr Reid about these matters (T 1927–1928):

> The Commissioner: Dr Reid, I wonder if you could assist me in relation to some evidence that we have heard about the practice of staff washing their hands in the kitchen sink after they had handled human faeces?---Well, it was certainly not the recommended procedure.
>
> We have heard in evidence from one witness in particular that this was quite a regular thing, and from another witness that in some houses dispensers have actually been placed in the sink so that staff can easily wash their hands in the sink?---I think the soap containers were placed there so that they could wash their hands prior to preparing food, just a standard procedure which I'm sure most people do at home.
>
> But not in the kitchen sink, surely?---No, no, again I don't know why that happened. I was not responsible for that, but . . .
>
> Well, I can see how it might happen. For example, if it was a common practice for staff to wash their hands in the kitchen sink, and there had been some effort to stop them doing this, but despite management's best efforts RCOs persisted in doing it, and I suppose management might have taken the view, well at least if they are going to do it despite our entreaties for them not to do it, we may as well given them something to wash their hands with. I can see that as being a course of action that might appeal. It does not appeal to me, I might tell you?---I do not think those soap containers, as far as I'm aware, were only introduced – there was a new nursing administrator appointed about, just over two years ago . . . and I think she was responsible for introducing the soap containers. There was a lot of Hibiclens being used, which we felt was not necessary. Soap and water is still one of the best cleansing agents available – that Hibiclens was not always necessary to be used and it was very expensive, and she was responsible for replacing those Hibiclens containers with soap containers. And I think there is still one Hibiclens near the bathroom sink.
>
> I am simply appalled that staff wash their hands in the basin where dishes were going to be washed, after they had handled faeces?---I am too, but I'm sorry, I am there for three sessions a week; you can tell people and advise people and ask them not to do something, but they're left unsupervised for a large part of the day. The nursing staff over the years have been discouraged from doing regular checks on the houses, and you know, some of the staff even see it as an intrusion if the nursing staff go into a house if someone is not even ill in that house.

Counsel for the State of Queensland then made an objection, submitting that there had been no evidence that either Mrs E or any other RCO had washed their hands in the kitchen sink after handling faeces. After examining the transcript of the relevant portions of Mrs E's evidence, which included the abovementioned passage, I said the following to Mr Plunkett (T 1933):

> . . . there is clear evidence from Mrs E that other members of staff use the kitchen sink to wash their hands after they have been handling faecal matter. Clear evidence, and the evidence of SRO T on Friday last was similar. Certainly some – in fact most, RCOs have not been asked about this because, quite frankly, until Mrs E gave that evidence it did not enter my head that people could be so absurdly unhygienic as to do that.

Dr Reid also gave some other relevant evidence (T 1929–1931):

> The Commissioner: Forget about handling faeces, what about just washing your dirty hands in the kitchen sink after doing ordinary chores; that is not too marvellous either is it?---Well, it's not desirable, but I think probably most of us have been guilty of it at some time or other.
>
> But as a regular thing in a place where there are incontinent people that staff have been handling, and almost inevitably get their hands dirty after that?---In situations like that, no, it shouldn't happen.
>
> See, we were told that, by Dr Driver I believe it was, the other day, that some of these bacteria that have been described, such as Shigella and other bacteria, such as Giardiasis and so forth – is that the name of the bacteria?---Yes, but it is not a bacteria.
>
> What is that, a virus?---It is a protozoan infection.
>
> Protozoan, all right – well, be they bacteria, viruses, or protozoa, or whatever; we were told, and you tell me whether you agree with it or not if you would, that mere soap and water will not kill such things. It has to be at least boiling water, at the least?---Killing the organisms – yes, it would need to be something like that, but I've always found that just soap and water and washing your hands well with soap and water before doing something and after doing something will help, will prevent, I've been working with these clients for 20 odd years now, and I have never had a bowel infection that I could say I contracted from either Centre.
>
> Right, I take it you do not wash your hands in the kitchen sink when you go down there?---Unfortunately the surgery at Basil Stafford has one – our surgery only has one sink which we are expected to use for all purposes, which is deplorable.
>
> Is this . . . ?---And we have asked to have others, and we have been told that they are just too expensive.
>
> One sink to wash hands after treating patients?---One sink.
>
> And the same sink to wash the dishes?---One sink. This is at Basil Stafford. At Challinor we have what we call a dirty sink, which is where instruments and things go, and we have a scrub sink, and we have a sink where we wash.
>
> But you do not wash the dishes, the cups and saucers that you have had a cup of tea with, in any one of those sinks do you?---I wouldn't put it in the sink. Wash it under hot water in that sink, but not – that is at Basil Stafford, that is all we have available to us in our surgery.
>
> But in the houses the evidence is that the kitchen sink is where the dishes are washed?---Yes
>
> And the cutlery is washed?---Yes. They used to have dishwashing machines in the houses but they don't have them now.

> I mean, I would have thought that the place for staff to wash their hands after they had been doing their chores, whatever they may be, including handling of patients who are dirty after having cleaned them and so forth, would be the bathroom wash basin?---Yes, that's what I'd expect, and that's where I wash my hands . . . when I go to the houses.

At this point, I must note that I find it completely untenable that the situation described by Dr Reid, concerning the Centre's medical facilities and surgery, has been permitted to exist for what appears to be a not insignificant period. Her description of the existence of a single sink facility for the washing of hands, surgical instruments and everyday items such as cutlery is Dickensian in its nature. The situation must present considerable problems in practice for the medical staff, as well as a risk to the health of those staff and to the clients that they treat.

I therefore recommend that the Department, as a matter of urgency, takes whatever steps are necessary in order to upgrade the facilities at the Centre's medical premises to a safe and hygienic level. It is inexcusable to refrain from the taking of such imperative steps on the basis that they would be 'too expensive'. Funds must be found, irrespective of the fact that the Centre is to be closed in the near future. The existing situation, which does not even pay lip service to the most rudimentary concepts of medical hygiene, must be improved; if it is not, the Department would appear to stand at considerable risk of an accusation of negligence being made against it should illness, to either a staff member or a client, identifiably result from the inadequate facilities provided.

The evidence of Dr Cleghorn, a recognised expert in the field of gastroenterology, is also of relevance in this context. Dr Cleghorn said (T 2059–2060):

> Mr O'Sullivan: If Residential Care Officers dealing with people, such as the type that you know about are cared for at the Basil Stafford Centre, washed their hands over the kitchen sink, would there be any difficulties with that practice?---Well, I think that's a practice which you would not be overly keen on. I think I'd be sort of somewhat sort of reticent about using food taken from that particular sink. I think that it's a practice that one should discourage.
>
> And what would you discourage it?---What is . . . ? Oh, I just think for a variety of reasons, from an infectious point of view. You don't know – handwashing is the most effective way of being able to prevent infections from – in an infectious diseases ward primarily. But, certainly one tries to keep it away from food in those sort of contacts. One would presume that infected material would be coming out with a patient, could be sitting on that bench for some period of time, you know, I just think that it's a practice that one should try to discourage.
>
> And if Hibiclens was used for soap at the scene?---Well, Hibiclens is – obviously, if you're going to do that, Hibiclens is better than nothing at all. Hibiclens is an effective antiseptic, in many – although there are some spores which it would take a very prolonged period of exposure. You know – sort of, if one digresses in things such as some of the microbacteria which we see with tuberculosis, to kill contact of spores you need perhaps an hour of exposure, or beyond, to do that. So it really – having a practice like that is laying the ground work for potential problems. They may not occur, but they could be there.

Counsel Assisting also examined RCO AC about these matters (T 2550):

> Mr O'Sullivan: Can I take you to another point about care of the clients. Is there any particular place where, in the villas, staff would wash their hands?---Some houses – all houses have a laundry, and there is a hand basin in that area in which they can wash their hands, and use the various hygiene products. Some of – I think they all have access in the laundry to a hand basin. We have a small – in the house I am in, we have a small little staff toilet with a little hand basin, a tiny hand basin, in which we wash our hands.
>
> Yes, well I understand what is present – what about the kitchen sink, does anyone ever use the kitchen sink?---I've seen people use the kitchen sink to wash their hands.

And would that happen if they had handled faecal matter?---Possibly.

Well, have you seen that happen?---I have seen it happen; I've been deplored by it. There seems to me to be a lack of awareness amongst many RCOs of the importance of good hygiene. I don't believe that they know much about it.

Is there any standard that has been in place to ensure that people by direction do things in the laundry as opposed to the kitchen sink?---To my knowledge there is no direction as to where you should wash our hands, or where you should deal with laundry and such. My understanding is that it is general knowledge.

RCO Y also gave evidence about this practice (T 2237–2238):

Mr O'Sullivan: The washing of hands in the villas, do you know where that was done by staff? Would they wash within the laundry or bathroom?---We had a bathroom area that was sort of in between the laundry and it was sort of off to the bath.

Yes?---It wasn't actually in the bathroom and it wasn't actually in the laundry.

The Commissioner: Well that is very interesting. What did you do there?---Wash your hands sir.

Mr O'Sullivan: What about in the kitchen sink area?---Sometimes, people would wash their hands there, yes, sir.

Well, how often would that occur? Does it still occur?---I don't know. I don't work in Pandorea. Haven't worked there for a long time now, sir.

Well, how often was it happening when you did work in Pandorea?---Fairly often sir.

The Commissioner: Did you ever see anyone wash their hands in the kitchen sink after they had been cleaning up after the clients or cleaning the clients themselves who had either wet themselves or defecated?---No, sir.

You did not?---I don't remember anything like that.

I beg your pardon?---I don't remember anybody doing that after they'd been cleaning up anything like that, no, sir.

Well, when did they do it – you have told us that they washed, you have seen them often washing their hands in the kitchen sink, quite often?---Before they cooked tea and things.

Pardon?---Just before you cook tea and that.

Just before you cook tea, wash your hands in the kitchen sink – is that right?---Yes.

Why didn't you wash your hands, or wouldn't they wash their hands in the basin in the bathroom?---Well, sometimes, the Hibiclens in the bathroom, there was none there, so they used the Hibiclens in the kitchen.

And having washed their hands, the meal was prepared, is that right?---Sometimes, sir.

Where was the meal prepared?---The meal was prepared in the kitchen.

Whereabouts in the kitchen, specifically?---Well, if it was a frozen meal, they'd probably put the frozen meal in the oven, but if it was vegies, they'd probably have to peel the vegies.

> Where would they peel the vegies?---Probably in the sink, sir.
>
> In the kitchen sink, is that right?---That's right.
>
> Did the vegetables get washed in the kitchen sink?---They would sir, yes.
>
> Yes, immediately after the hands had been washed, almost – is that right?---That's right, sir.

The medical evidence before the Inquiry about the management of contagious and infectious diseases at the Centre was to the effect that one could hardly encounter a more difficult situation than that of attempting to prevent the spread of highly contagious and infectious diseases amongst persons with intellectual disabilities such as the clients at the Centre. This situation is also exacerbated by the presence of young clients. Indeed, the Inquiry heard a graphic body of evidence about the extraordinary gastrointestinal problems suffered by young Client 4, over a very lengthy period, during his time at the Centre.

Given all of those circumstances, including the disabilities of the clients, it is trite to note that the Centre staff can well do without any additional factors likely to contribute to the hygiene problems that they encounter in their day to day activities. As noted above, I remarked during the course of evidence that I found it almost inconceivably absurd that persons, charged with the duty of caring for the intellectually disabled and performing all the tasks necessarily inherent in that task, would be so lacking in knowledge of basic hygiene as to wash their hands in the kitchen sink, which is in turn used for the purposes of preparing meals. It does not matter whether this practice is engaged in routinely, or only on isolated occasions; it simply should not be tolerated at all. Again, significant and obvious potential exists for the spread of serious illness, among staff members and clients, when such appalling and negligent practices are followed. I repeat: the Department should be fully aware of its possible exposure should it not take steps, immediately, to eradicate such practices.

Among a number of Departmental procedures admitted into evidence as Ex 30 before the Inquiry was a Regional Divisional procedure, dated 17 November 1992 and approved by Mr Rohan, which stated:

> Nursing Service is responsible for overseeing hygiene and safety conditions at Basil Stafford Centre .
>
> Nursing sisters on duty will constantly monitor hygiene and safety and make suggestions for change to Residential Care Officers in houses or the Nursing Administrator for changes to Centre procedures.

I would recommend that the Department immediately take steps, whether by employing the assistance of its nursing staff or otherwise, to enforce an instruction amongst all staff that they are not to use the kitchen sink for handwashing purposes, in order to prevent the spread of communicable diseases. Additionally, all staff, either at the time of their initial training or during periods of continuing training, should receive instruction about hygiene issues, and the particular hygiene problems that are presented in the duties associated with caring for the intellectually disabled. The Department must, at the earliest possible opportunity, enforce an appropriate training regime stressing the critical importance of maintaining adequate and safe hygiene practices in the houses, and elsewhere on the Centre. As part of that instruction staff must be made to understand that serious consequences will personally ensue should they fail to observe the required hygiene standards. Those consequences should include the routine bringing of disciplinary charges where breaches are detected.

CHAPTER 22
TRADE UNIONS AND THE CENTRE

In its letter of 26 July 1994, the Commission suggested that the following issue may also be one of relevance to the parties' further submissions:

> Whether any of the unions, whose membership includes persons employed at the Basil Stafford Centre, and whether any person associated with those unions, including Mr F, have had any adverse or undue influence upon the reporting and investigation of alleged incidents of client abuse or gross neglect.

The specific evidence relating to Mr F has been dealt with in Chapter 14 of this report.

22.1 THE TRADE UNIONS AT THE CENTRE

At the time of the hearings, two trade unions were primarily associated with the staff working at the Centre. They were the Australian Workers' Union (AWU) and the State Public Service Federation of Queensland (SPSFQ). As previously noted, Mr Herbert of Counsel was granted leave to appear before the Inquiry on behalf of those trade unions in their general capacity, and also on behalf of a number of their members.

Two statutory declarations were admitted into evidence, as made by Mr Kelvin Johnston and Mr Barry Meiklejohn (Exs 416 and 430 respectively), which dealt with many historical aspects of the association of the two abovementioned unions with the Centre's staff.

Mr Johnston, an industrial officer with the SPSFQ, referred, in his statutory declaration, to the amalgamation in January 1993 of the State Service Union (SSU) and the Queensland Professional Officers' Association (QPOA), which gave rise to the SPSFQ, as it is presently constituted. Mr Johnston stated:

> Historically, both the SSU and the AWU have had coverage of employees at the Basil Stafford Centre. Predominantly the AWU has had coverage of the Residential Care Officers, while the SSU had coverage of a range of employees from the Residential Care Officers, the Residential Program Officers, some Seniors etc. When the SSU amalgamated with the QPOA in 1993, the SPSFQ obtained considerably more membership from the professional branches at the Basil Stafford Centre, such as the resource and assessment area.
>
> The SPSFQ and the AWU both operate entirely separate organisations at the Basil Stafford Centre. We maintain completely separate membership, separate meetings with the staff etc. When the unions are called on to discuss issues with management, a representative of both the AWU and SPSFQ will attend these meetings with management . . .
>
> The group of the SPSFQ as it exists at the Basil Stafford Centre is described as a common interest group. This is a group that is specific only to the Basil Stafford Centre. It consists of a President, Secretary, Health and Safety representative and the members.

In his statutory declaration, Mr Meiklejohn stated that he was the Southern District Secretary and the Branch President of the AWU. He described the amalgamation of the Hospital Employees' Union (HEU) with the AWU in 1991, which in turn led to the creation of a new organisational structure within the AWU, namely the Health and Community Services Division. In specific reference to the Centre, Mr Meiklejohn stated:

> I am aware that the HEU structure, prior to its amalgamation with the AWU was based on a Sub-Branch structure, unlike the AWU. The Union as I understand it, consisted of a General Secretary, a State Executive and an Industrial Officer/Organiser. Below that there was a Sub-Branch executive with Sub-Branch secretaries in each Sub-Branch, all of which were autonomous. These Sub-Branches were located in geographic locations, or within work places. For instance, at the Basil Stafford, there was a Sub-Branch which was called the Basil Stafford Sub-Branch. It had a Sub-Branch Secretary, Sub-Branch President and Sub-Branch Executive, whose function was to represent their membership at local level and at State Executive level . . .
>
> I am aware that since amalgamation the AWU services members at Basil Stafford through a full-time official of the AWU.
>
> The AWU in servicing the membership both at Basil Stafford and at other work places, utilises both the Job Representative structure and the Sub-Branch structure. These structures are located at the work site to represent the workers at that site. The primary role of such structures is for recruitment of membership and to act as a conduit for information, advice and education between the local organiser and the work place. These structures and individual Job Representatives are not officials of the AWU and do not bind the Union in any decision-making.
>
> Their process is one of co-ordination and co-operation between the employees at the work site and the union. It is an important position, but nevertheless voluntary and with no formal authority. The union, in dealing with matters, generally takes advice from the Job Representative and relevant Sub-Branch structure. This can occur for instance where a member has been the subject of a dismissal proceeding by the employer. The Job Representative will take information regarding the matter from the member and contact the local Organiser. The local Organiser will take the details with both the employee and the Job Representative present and advise the District Secretary to co-ordinate with the Branch office regarding their obtaining legal advice, counselling and to pursue applications in the [Industrial Relations] Commission for reinstatement.

The evidence before the Inquiry indicated that the level of union membership amongst employees at the Centre was quite high. In his statutory declaration, Mr Rohan said:

> Most workers at the Centre are union members. I would suggest that the actual figure of union membership is not far short of 100%. Since 1989 there has been a preference clause in operation in relation to the employment of union members. Accordingly, people commencing work at the Centre, if they are not already union members, are basically obliged to join a union. The effect of the preference clause is that if two people are applying for a job, all other things being equal, the job should be given to the union member. Similarly, if a decision has to be made as to the termination of a person's services, all other things being equal, the union member should retain the job. I understand this policy is as a result of a Cabinet decision and is a policy instituted across the board within the public service.

22.2 A STRONG UNION PRESENCE?

In his opening address, Counsel Assisting referred to the investigations previously conducted at the Centre by the Juvenile Aid Bureau (see section 3.3), and stated (T 23):

> During the course of the police investigations, it has been established that the most difficult problem facing any investigation is what is referred to as institutional culture. The police found, during the course of their investigations, that the institutional setting lent itself to information being withheld by persons who are motivated to conceal abuse. The hierarchy of old staff were persistent in resisting changes and there was a strong union presence at the Centre, which the police believed combined to curtail any effective reporting of abuse.

Counsel Assisting's above remarks appear to be based, at least in part, upon the contents of the report concerning the JAB investigation, as prepared by then Senior Constable Angel. Mr Angel clarified these views during his evidence (T 5513):

> Mr Herbert: Well, I accept that you say it [the union presence] is combined with other matters. I am really trying to isolate whether – you see, the suggestion as I have taken it from your report, the suggestion seems to carry with it some form of criticism of the union, that the union was in fact acting in some way that was untoward or that was improperly shielding wrongdoers?---No, I'm not criticising the union in any way.
>
> No, and . . . ?---It was the presence, existence and behaviour of – I'm not looking at the union as an entity of itself but, you know, actions of some of the members.
>
> The way some members sought to utilise union services could have assisted them, perhaps, to escape detection, is that right?---Yes, yes,.
>
> But that does not reflect, in any way, upon the performance of the union itself?---No, I agree.

The Inquiry also heard a body of evidence, mainly from managerial staff associated with the Centre, about their belief in the existence of a "strong" or "heavy" union presence at the Centre, and the effect of that presence upon the reporting and investigation of incidents of client abuse or other official misconduct. One officer said:

> I am aware that there is a fairly heavy "union" presence at the Centre. Whilst I believe unions are a necessary thing, and I am a member of a union myself, some union delegates and active union members have been loosely associated with alleged incidents of intimidation and harassment, in my perception. These people generally have been at the Centre for many years, without any ongoing training. My perceptions in this regard are not based on any hard evidence. They are based on my memories of discussions with other people, from rumours heard over the years and from my personal observations of these people.

In his statutory declaration, Mr Rohan referred to his belief that there were a number of factors which influenced the process of taking formal disciplinary action against staff members. Those four factors were:

i) The availability of evidence;

ii) The capacity of witnesses;

iii) The skills of investigators;

iv) The Department's record or history of having taken action.

These matters are discussed in further detail in the following Chapter; however, it is timely to note Mr Rohan's particular remarks, in this context, about the union bodies associated with the Centre's employees. He stated:

> At the Centre we also had to contend with a union body which would "have us on toast" if we took any action against a staff member without strong proof. I would stress that I am not "anti-unions"; I have been a union member for the majority of my working life and I believe that unions have a legitimate role, working with management, to benefit a work place.
>
> I believe there is a strong union presence in the context of disciplinary action against staff. When someone is interviewed in relation to a disciplinary matter they have a right to have an independent

witness present, however, at times I believe the role adopted by the union representatives, particularly those attached to the Australian Workers' Union (AWU), goes beyond a situation of independence. Such representatives often clearly demonstrate partiality towards the subject of a complaint, or "suspect" . . .

. . . commonly union delegates would hold positions as RDOs or RCOs . . .

I believe there is a very strong potential for conflict of interest in a union delegate also holding a managerial position. The conflict is apparent when the delegate/Manager is required to carry out a very difficult role in following up on disciplinary situations. In terms of employing managerial staff, the Centre is unable to discriminate against a person carrying out any particular role merely by virtue of them holding a union position. Hence reliance must be placed upon the individual officer to be aware of the conflict and address it himself . . .

In my perception, at times the Centre has been paying to have persons employed in the role of delegates, rather than carrying out their duties as RDOs.

I feel some sense of disappointment that the union role at the Centre has become somewhat less than objective . . .

Also, my perception is based upon my view that staff, acting in good faith, have often reported things that they have seen, that they have felt should not be occurring. Instead of the union recognising that one union member is making a point about other staff members, the union always comes in on the side of the person who has been reported, not the member making the report who may subsequently be subjected to harassment. I cannot recall one instance where the union has actively supported a complainant, even where that person has been harassed.

I perceive that part of the reason for this is related to the position of the union delegates on Centre, who appear to have a strong vested interest in seeing that things do not change.

Later in his statutory declaration Mr Rohan said:

In relation to the union presence, I am aware that in recent times pressure has been brought to bear on complainants, by way of threatened legal action. If these threats were put to the test, I would expect that where a person has acted properly in reporting a matter that should have been reported, that there would then be assistance given by the Department in that matter if it ever came to court . . .

I cannot recall any occasion whereby the Department has been threatened by direct industrial action, from a union, in relation to an investigation. There have been occasions where the unions have been quite demanding about a particular investigation of a staff member . . .

In my opinion, the union presence affects the general issue of the capacity of witnesses. It strikes me as somewhat unbalanced that in examining an incident concerning an alleged violation of a client's rights, whilst the suspect may have union assistance, the client is dependent upon others to advocate for him, and has no general right to an advocate. Even if such a right did exist, the types of procedural factors that are in place to protect the staff member tend to all be stacked in the suspect's favour. We have not been able to address the situation so that the client is really adequately represented.

22.3 UNION BODIES AND THE INVESTIGATIVE PROCESS

Mr Rohan's remark, that 'we also had to contend with a union body which would "have us on toast" if we took any action against a staff member without strong proof', is to my mind illustrative of an important aspect of the evidence before the Inquiry, namely, a sensitivity on the part of the Centre's management to situations which they perceived might elicit some adverse or unfavourable reaction from a trade union or its representatives. This sensitivity was demonstrated during Mr Ross' evidence about the carrying out of criminal history checks of employees (T 64–65):

Mr O'Sullivan: I take it from your answers, there is no question of anyone being checked at the present time who was employed before '87?---Not that I'm aware of now, no.

The Commissioner: Why is that?---As I said, your Honour, I mean – I see the logic of the question. It's never been addressed that we should go back and check all employees who were employed before 1987. I'm sure and certain that should we do that, that the unions certainly would be interested in it as well, in our ability and our right to do so.

As well they may be; but is it the Department is frightened of some union reaction if you go and check to see if people in charge of these handicapped people, to whom this community owes the very best of care I would suggest, have criminal convictions?---No, I don't think that the Department would be concerned about that at all. It would be . . .

Why did you mention unions being interested?---That it's a fact to take into account that they . . .

Why is it a fact, why is that a factor to take into account, that the union might be interested in whether or not some people who are in charge of the care of these handicapped people – why is it a matter for the union?---The unions can answer that for themselves.

Well, why did you mention it?---What I'm saying is that in terms of looking after the welfare of staff generally and not coming into conflict with things like the anti-discrimination legislation, the PSMC guidelines, we haven't addressed the question.

Well, I am sure that none of us would want anyone to be discriminated against, but I would have thought, you tell me if you agree, that the people who deserve the best are the clients; they are the ones that should not be discriminated against, aren't they?---Exactly.

Mr Herbert, Counsel for the unions, then advised me that, upon his instructions, the issue of criminal history checks about existing employees had never been raised between the unions and the Department, and further advised that his understanding of the unions' position was that the unions acknowledged and accepted the sense of making criminal history checks before employment, as 'an upfront pre-condition to employment' (T 67–68). Mr Herbert advised me that in those circumstances his clients' only likely concern would be about the use to which such information might be put; any such concerns in that regard would appear to have been overtaken by the event of the recent publication of the PSMC Standard (see section 19.4), which specifically sets out guidelines about those issues.

Counsel for the unions submitted that:

Industrial unions in the position of the AWU and the SPSFQ are in a difficult position in relation to matters of this nature. They are, in a sense, in the same position as the police union in relation to allegations of misconduct and criminality made against police officers. On the one hand, the unions stand for the upholding of the law and proper standards of treatment and care for the clients who are in the charge of their members. On the other hand, however, the unions also exist partly for the purposes of providing legal and moral support to members who pay their dues, when such members are confronted with serious charges of misconduct or gross neglect.

The fact that representatives of a union support members of that union in cases where they are accused of misconduct should never be confused with the condoning by that union of the conduct which is the subject matter of the charge laid against the member. Whilst the unions concerned in this Inquiry have a firm policy of condemning client abuse or neglect, they are also bound to support members who are charged with that type of conduct. Their support of the members is for the purposes of discharging their duty to the member to ensure that they receive a fair and proper hearing and are only dealt with in accordance with the correct procedures covering those situations, and upon the obtaining of proper and probative evidence. In the event that the conduct alleged is made out, and is of sufficient severity to

> warrant disciplinary action, neither of the unions involved at the Basil Stafford Centre have indicated any opposition whatever to a member being disciplined in a proper way . . .
>
> On the evidence before this Inquiry, there is no reason to suggest that the industrial unions concerned on the site took anything other than an entirely proper industrial stance in relation to industrial and employment issues, or that the circumstances of the Basil Stafford Centre are such that the ordinary rules about industrial conduct between unions and employers ought to be suspended or cancelled in some way.

The declarations of Mr Johnston and Mr Meiklejohn related similar attitudes and practices to those described by Mr Herbert. The evidence before the Inquiry indicates that the two union bodies primarily associated with the Centre regularly provided support to union members who became subjects of disciplinary investigations. This assistance variously took the form of the provision of legal advice and representation, representation by an independent union member at disciplinary interviews, and the provision of general assistance and advice by union members to their colleagues.

The abovementioned evidence, as given by various officers associated with the Centre's management is indicative of a perception on the part of those officers that the unions' efforts on behalf of those members facing disciplinary investigations or proceedings went 'beyond the pale', or was over vigorous or something of a hindrance to the efficient resolution of those inquiries.

On the evidence, I am satisfied that the various union bodies did not step beyond the limits imposed by law in their provision of assistance to their members at the Centre. In so finding, I am not being critical of any of the Centre's managerial officers, and their formation of the abovementioned perceptions. I am satisfied that those perceptions have arisen as a result of a combination of factors, with which the unions, and their representatives, have necessarily been involved. Those factors are:

i) The imbalance presently existing in the investigation of allegations of client abuse or gross neglect: that is, the general lack of representation or advocacy on behalf of a client allegedly subjected to abuse or neglect;

ii) The imbalance which has occurred because the unions have seen it as their role to support officers accused of untoward behaviour rather than officers making complaints about such behaviour;

iii) The inadequacies in the Department's own internal investigative procedures, as illustrated by the evidence before the Inquiry;

iv) The obvious and strong conflict of interest between an individual officer's duties as a delegate for the unions, and a representative of other union members, and that officer's duties regarding the trust placed in him or her as an employee of the Division and a care-giver to people with intellectual disabilities; and

v) The degree of mutual support between the ranks of the union representatives and those officers involved in the preservation of the institutional culture at the Centre, that culture having the features and effects previously described at Chapter 16.

To large extent, these factors are also of relevance to issues concerning the investigation of official misconduct in the form of client abuse or gross neglect, and accordingly, they are the subject of further comment in the following Chapter. However, for present purposes, it will suffice to note that allegations of responsibility for acts of client abuse/gross neglect, or the harassment or intimidation of persons who have commendably reported such matters, are allegations of a most grave and serious nature.

While there is a readily identifiable interest in pursuing such allegations with all the vigour allowed by the law, and punishing the guilty, the serious character of such accusations, or any charges arising, contemporaneously requires that any officer suspected of such behaviour be accorded his or her usual rights at law.

Counsel for the State of Queensland submitted that:

> During the hearing, reference was made to the balance between meeting duty of care obligations to clients and providing procedural fairness to staff. The opinion was advanced by [the Commissioner] that care needs to be taken to ensure that duty of care to clients who are vulnerable are not overridden by the protection of staff's rights to procedural fairness. This sentiment is strongly supported.

Mr Plunkett was referring to some comments that I made during the course of the hearings, at T 5798, as to the standards that should be applied in balancing the rights of an intellectually disabled person (alleged to be a victim), and the rights of a suspect officer, in the context of a report of client abuse. At that time, I indicated my preliminary view point; namely, that in situations of staff non-performance, the rights of officers should not take precedence at the expense of the vulnerable intellectually disabled persons, whose rights should be paramount.

That being the case, the apparent imbalance should be redressed by way of strengthening the rights of the intellectually disabled clients, rather than through any erosion of the established rights of the individual. This is particularly so in the context of the applicable principles and standards which are brought into operation in any disciplinary process involving an officer of the public service; for example, the PSMC standards for disciplining of officers of the public service.

Despite that perspective, the Department, or any other body charged with the duty of investigating allegations of client abuse or neglect, should not at all be influenced or deterred in the pursuit of its inquiries by a trade union offering assistance, whether through the provision of advice or legal assistance, to a member who may be suspected of such misconduct. Just as the individual officer has rights recognised and protected by law, any investigative body has the right to conduct its inquiries to the full extent allowed by the law, unfettered by acts of obstruction or hindrance that any person or entity might conceivably undertake. To put matters simply, management at the Centre, or any other person, should not refrain from diligently pursuing an investigation for fear of some adverse reaction or interference emanating from a concerned body such as a trade union. Such interference is not countenanced by the law, and should not be permitted by the Department. Any person seeking to cause such interference should be confronted, and dealt with as the law provides.

I have already noted herein that I am satisfied that no evidence was presented to the Inquiry to suggest that the various trade unions, which have members at the Centre, acted inappropriately, in terms of their legal obligations, in providing assistance to members who had been accused of various acts of misconduct. In this particular context, I am satisfied that there is no evidence to suggest that on any occasion considered or touched upon during the hearings did the actions of any trade union, or any representative of such unions, identifiably impact upon the outcome of an investigation. Perhaps the best illustration of this situation is that provided by the criminal and disciplinary charges preferred against a former RCO, as described in section 1.7. That officer was originally arrested and charged with a criminal offence alleging a serious assault upon a client. Thereafter he was committed for trial, with the Office of the Director of Prosecutions eventually electing to withdraw the charge against him on the day of trial. Subsequently, the matter was further pursued by the Criminal Justice Commission which resulted in a charge of official misconduct being preferred against the officer. All of those events took a not inconsiderable time, during which the officer was suspended from his position as an RCO, without pay. Evidence was given by Mr F about how this situation caused some disquiet amongst the membership of the relevant trade union, the AWU, to the extent that industrial action was foreshadowed

(T 5042). This situation eventually resulted in a dispute conference being held before a Commissioner of the Queensland Industrial Relations Commission. Without going into the outcome of that conference, the fact remains that the matter was resolved without the union members taking industrial action; indeed, Mr F commented that he would be loath to undertake such action because of the consequences to the intellectually disabled clients (T 5042):

> . . . even if we wanted to, I don't think we could really take industrial action, even if the members wanted to. You know, because it's like walking out on your own children, and you just can't do that. Even people with a strong union background would – I couldn't walk out on the kids like that.

It is to be expected that tensions will arise at times in the dealings between management on the one hand, and trade unions on the other. Counsel for the unions submitted, of this situation:

> It is perhaps understandable, although to be regretted, that certain members of management of the Centre took the attitude of certain on-site union officials as being "anti-management". It is part of the eternal industrial conflict between unions and employers that such perceptions will arise from time to time. This does not mean that there is any fault with any person in respect of such matters or even that such perceptions are true. It simply means that the industrial unions, by their very nature and charter, have a different perspective on many issues than management personnel and it is understandable that they will disagree from time to time on such issues.

It is probable that from time to time, during the investigation of persons who may be union members for suspected acts of misconduct, that tensions will also necessarily arise between the Division or the Department (or any concerned investigative agencies), and the union membership. As is evident from the abovementioned example, the law provides adequate machinery for the attempted resolution of those tensions, just as it provides for the rights of both the suspect officer and the investigating agencies. Those officers within the Division who hold managerial positions should not, in those circumstances, be cowed into failure to perform their duty, in relation to the thorough investigation of such matters, merely by considerations that a union or some of its members may disapprove of the course of action being undertaken. Not every investigation undertaken will result in a successful or satisfactory outcome, from the Department's point of view; that is to be expected. The Department, and its officers, must dispel any notion that its actions are in any way subservient to the likely consequences of industrial unrest. If such concerns are allowed to dominate, or even to permeate, considerations pertaining to the investigation of abuses of the intellectually disabled, then those officers or entities giving weight to any such considerations are themselves creating an irreversible imbalance between the rights of the vulnerable intellectually disabled, and the rights of the relevant staff member.

In conclusion upon this point, I expect that any problems in this regard will abate, to a significant degree, if regard is paid to the general recommendations contained within this report concerning the investigation of complaints of client abuse or gross neglect, or other staff misconduct, at the Centre, and like facilities.

22.4 UNION BODIES AND THE REPORTING OF ABUSE

In his opening address, as cited above, Counsel Assisting made reference to the Juvenile Aid Bureau investigation of matters concerning the Centre, and the view that the existence of 'a strong union presence at the Centre' was one of the factors which operated to curtail any effective reporting of client abuse.

I am satisfied that none of the trade unions, the membership of which extends to staff at the Centre has adopted, in terms of a policy decision, an attitude of either discouraging the reporting of client abuse, or the condoning of such appalling behaviour. The statutory declarations of Mr Johnston and Mr

Meiklejohn, and the written submissions of Mr Herbert, quite clearly reflect the unions' views which are, as a matter of policy, supportive of the observance of proper standards of care for the intellectually disabled clients.

To my mind, the curtailing of the reporting of client abuse arises more from the institutional culture existing at the Centre, as described in Chapter 16, than any officially condoned actions on the part of the relevant trade unions. Even so, I must note a certain degree of confluence between some of the persons who have previously held positions as union representatives or delegates, and some of those persons whom, on the evidence before the Inquiry, I have found to hold attitudes consistent with, and supportive of, the presence of an institutional culture at the Centre. As already noted, one of the unfortunate features of that culture was to curtail the reporting, and hence the effective investigation, of incidents of client abuse or gross neglect. I have previously described that culture as "insidious" in its nature, and how I am satisfied that the influence exerted by the proponents of the institutional culture, arising from their ruthless protection of what they saw as their own interests, bolstered by a mutual loyalty leading to a perception of invulnerability, was indeed very considerable. It is unnecessary to attempt to quantify the degree of correspondence between those staff members who were influential in terms of the presence of that culture, and the various union representatives or delegates at the Centre during the period of reference of this Inquiry. Indeed, it is impossible to do so upon the evidence. Rather, it should be recognised that some degree of confluence existed, as could reasonably be expected in circumstances where such a culture was institutional and widespread in its nature, and where nearly all of the staff at the Centre were also members of various trade unions. The fact that some union delegates or representatives may also have been among the more prominent advocates of the Centre's culture has understandably led to the perception arising, in some quarters, that there existed a nexus between the trade unions and attitudes and behaviour associated with the institutional culture. While in the individual cases of some union representatives, such a nexus may exist, I am satisfied that there is no generic link between the unions and the preservation of the culture at the Centre.

22.5 CONFLICTS OF INTEREST

The abovementioned excerpts from Mr Rohan's statement also clearly illustrate his belief that a very strong potential existed for conflicts of interest to arise when a staff member simultaneously held a managerial position and a union office. Mr Rohan was of the view that such conflicts could only be resolved by reliance being 'placed upon the individual officer to be aware of the conflict and address it himself'. He also referred to some officers whom he believed were unable, during his time at the Centre, to acknowledge the existence of potential conflicts of interest.

Additionally, the former Divisional Head, Ms Shepherd, said in her statutory declaration (Ex 417):

> I accept that the situation of a union official also holding a management position might possibly give rise to the existence of a conflict of interest. While this issue may have been raised with me as the Divisional Head, and I am conscious that the problem could exist, anyone in a union has a right to hold a position with that union, and promotion could not be denied to someone on the basis that they were active in a union movement. I believe the Division, and the Department, would have to depend upon the individual integrity of the person in question to separate the two roles, and to act appropriately and that action might need to be taken if this did not occur. I do not see the potential conflict as a problem in any individual sense, as the problem is one that could occur in any large organisation.

I accept that such conflicts of interest may occur in other organisations; however, in the present context, it is necessary always to be mindful of the special features of the role of a managerial officer at the Centre, specifically those duties relating to the reporting and investigation of suspected acts of client abuse (including the provision of support to complainants) and the overall obligation to promote the

interests and welfare of the intellectually disabled clients. Employment at the Centre entails an overriding obligation, on the part of every officer, to employ their best endeavours to provide the highest possible standard of care to severely and profoundly intellectually disabled clients. The public at large places a great deal of trust in such employees.

Clearly, a conflict of interest would arise if an officer at the Centre became involved in the investigation of a suspected act of client abuse by an RCO, when that officer simultaneously held a managerial position at the Centre and a representative function within a union, of which the suspect RCO was also a member. There is a clear conflict between, on the one hand, the obligation as a union officer to arrange or facilitate legitimate support and assistance for the RCO accused of misconduct, and on the other hand, the obligation as a manager to diligently and expediently use all appropriate means to assist in bringing any investigation to a satisfactory conclusion. Indeed, the entire concept of an RCO's immediate supervisor conducting an investigation of an alleged act of misconduct by that RCO presents an opportunity for division and disruption in the normal working relationship, both between that manager and the RCO, and the work unit as a whole: Mr AJ said (CT 4054):

> It causes tremendous harm, and a lot of the time – you know, a lot of what I went through was because I had to speak to particular staff and, I mean, I always took up issues.

In his written submissions, Mr Clutterbuck, Counsel for Mrs A, submitted that if trade unions were run on a 'branch basis by persons from an old regime' those persons could, in some circumstances, 'wield an extraordinary amount of power'. He also submitted that his client had been prejudiced severely, at the time she commenced her employment at the Centre, by Mr AL, who was then the on-site representative of the HEU [see Mr AL's evidence about his purported reasons for not wishing to enlist Mrs A as a member of his union, at section 13.7(B)]. To my mind, that body of evidence well illustrates the difficulties that particular individuals might encounter in attempting to distinguish, and adequately perform, their respective duties as union advocates and officers of the Division. Clearly, on the evidence, some officers have not been able to readily acknowledge and resolve the conflicts which inherently arise when both positions are held by the one person; see, for example, Mr Rohan's view that 'at times the Centre has been paying persons employed in the role of delegates, rather than carrying out their duties as RDOs'.

I find that it is unsatisfactory that the only mechanism in existence for the resolution of such problems is one of self-determination, in that the Division must depend upon individual officers to recognise, acknowledge and resolve any conflicts of interest that may arise. While I do not suggest that any category of employees be prevented from holding positions in a union, I am satisfied that improvements can be made to the investigative procedures currently employed by the Department which will significantly lessen the impact that such conflicts of interest may have upon the investigation of allegations of client abuse or related matters. My considerations and recommendations in relation to the statutory provisions, practices, policies and procedures concerning the investigation of client abuse or gross neglect are more particularly discussed in the next Chapter. In short, I believe that the detection and investigation of official misconduct will be promoted by the Department refining, and relinquishing (at least to some extent) its internal investigative role; this in turn should lead to less disruption in the relationship between the RCOs and management arising from investigations, and a corresponding decrease in the existence and impact of conflicts of interest as discussed within this Chapter.

CHAPTER 23
THE REPORTING AND INVESTIGATION OF MISCONDUCT AT THE CENTRE

The Commission, in its letter of 26 July 1994, raised the following issue as being of possible relevance to the parties' written submissions:

> The existing provisions, policies, practices and procedures relating to the reporting and investigation of suspected incidents of client abuse/gross neglect or the harassment or intimidation of staff in the context of the reporting of alleged client abuse/gross neglect including:
>
> (d) the role of existing structures such as the Office of the Public Trustee, the Office of the Legal Friend, the Official Visitor scheme and the present investigative procedures employed by the Department and whether a need exists for any further independent body (in terms of the reporting and investigation of suspected incidents of client abuse/gross neglect or the harassment or intimidation of staff).

This Chapter contains, by way of conclusion of the undertaking of this Inquiry and the contents of this report, some further specific considerations and recommendations about the reporting and investigation of official misconduct at the Centre. In addition to the abovementioned matters, I have herein had regard to all of the preceding Chapters of this report (in terms of the findings and recommendations contained therein) and the evidence before the Inquiry, in making my further observations and recommendations about the prevention, detection and investigation of official misconduct at the Centre.

23.1 A STARTING POINT

In any consideration of the reporting and investigation of official misconduct at the Centre, and the roles of the various persons or entities charged with the duty of investigating such matters, it is necessary to have initial regard to the earlier findings that I have made within this report. Briefly, in this context, my salient and general findings are that during the period under inquiry:

- A number of brutal assaults were perpetrated by staff at the Centre upon clients with severe or profound intellectual disabilities. Additionally, there were instances of those clients being neglected by their care-givers; on occasions, that negligence was gross.

- An insidious institutional culture existed at the Centre, which discouraged the reporting and effective investigation of staff impropriety, and in turn promoted the harassment and intimidation of persons who found the courage to speak out about such matters. That culture also promoted a deep and entrenched division between the various levels of staff, particularly between the RCOs and the Centre's management personnel. Across the board, and for a variety of reasons, staff morale was low.

- The Department's efforts in attempting to carry out investigations of allegations of client abuse/gross neglect/unexplained injury or staff harassment did not, for the most part, result in satisfactory conclusions.

- The situation existing at the Centre was such that I am satisfied that the incidents of client abuse or gross neglect which have been exposed by these hearings, or by other entities, and referred to herein, are not the entirety, or even the majority, of the incidents of official misconduct that

have occurred at the Centre. All of the above indicates that it is probable that many other acts of impropriety have taken place which have not been so exposed.

- The above conclusions cannot be satisfactorily explained by the postulation of a "rotten-apple" theory relating to the Centre's staff. The serious problems highlighted by the evidence are too complex and widespread to be dismissed so summarily.

It must at all times be remembered, and thoroughly appreciated, that the acts of client abuse and gross neglect referred to in the preceding Chapters of this report were committed against clients with severe or profound intellectual disabilities, whose welfare had been entrusted to an institution administered and funded by the State. In many cases, those individuals did not have a family member or other interested person who was willing or able to advocate, either in a forceful and informed manner, or at all, on their behalf. Thus, they were completely dependent upon the Centre's employees in terms of their welfare, protection and development.

There is ample evidence to demonstrate that the system, on many occasions, has failed these people.

23.2 THE DETECTION AND REPORTING OF CLIENT ABUSE

As noted above, on the evidence, it is probable that many acts of client abuse have occurred at the Centre, during the period under inquiry, which have not ever been exposed, and have therefore never been investigated. Moreover, several of the incidents of client abuse referred to in the evidence were not originally exposed, and consequently investigated, at an early or timely stage. It is fundamental that the successful investigation of suspected client abuse, and associated matters, will in most cases depend upon the relevant facts being brought to the attention of the necessary parties at the earliest possible opportunity.

The bases of any successful investigation of client abuse are first, the recognition and detection of such acts, and secondly, the immediate and thorough reporting, to every necessary entity, of all relevant facts.

These steps have not always been taken at the Centre, and many factors have led to this. As I hope would be obvious, many of the matters considered within this report are of relevance in this context, such as issues of RCO selection procedures, staff training, staff/client ratios, deinstitutionalisation and the like, all of which necessarily have some impact either upon the occurrence and/or the detection and reporting of client abuse. I do not propose herein to rake over, in any detailed fashion, my earlier considerations of those issues; rather, it is necessary to examine some further aspects of the evidence about the provisions, practices, policies and procedures of relevance to these matters.

A) A RANGE OF MECHANISMS

Counsel for the unions, Mr Herbert, submitted to me that:

> The one significant matter which emerges from the evidence in relation to the investigative processes which are undertaken at the Centre is that the system of reporting of incidents, injuries and other significant events, is plainly and seriously inadequate . . .
>
> Further, it must be assumed that the increased likelihood of immediate detection of any injury will act as a significant deterrent to any employee who might be inclined to inflict an injury upon a client. Under the present reporting system, it appears that a particular injury might go undetected and/or unreported for some days after it has been incurred. In these circumstances,

it is quite possible for the guilty party to avoid detection by reason of impossibility of placing the occurrence of that particular injury into a particular time frame some days earlier.

Counsel for the State of Queensland, Mr Plunkett, in his written submissions, drew my attention to a number of mechanisms, described in the evidence, which he termed the 'public sector and Departmental procedures and processes relating to client abuse'. He noted that these procedures and practices emanated from a number of sources, 'some are public sector wide, some are Departmental requirements, and others still are Divisional and Centre level procedures and practices'. He listed the various mechanisms as being:

- Centre reporting requirements
- Public sector procedures

  Performance management standards

  - Performance planning and review
  - Managing diminished work performance
  - Discipline

  Code of conduct

  The discipline process

  Impending policy on criminal convictions

- Departmental/Divisional procedures

  Service standards

  Duty of care policy

  Guidelines for choosing the least restrictive alternative

  Consumer grievance procedure

  Relevant service delivery guidelines

  - Behaviour management guidelines
  - Procedures for management of seriously disruptive behaviour
  - Individual plan system

  Quality assurance project.

It is useful to consider these mechanisms, in light of the other conclusions that I have reached in this report, and the aforementioned submissions of Counsel for the Unions.

B) CENTRE REPORTING REQUIREMENTS

Mr Plunkett submitted:

> The Centre has in place a number of specific procedures to be followed to ensure that instances of suspicious injuries are identified and responded to.

In making that submission, he referred to the procedures requiring the making of reports, by RCOs, to their line managers (or to the RDO outside hours); the requirement to provide immediate medical treatment and investigation; the directive to advise incoming shift workers on handover of any known incidents or injuries, and the obligation to record in the House Report Book all injuries and illnesses. Material relating to these procedures was admitted into evidence as part of Ex 30. On paper, the Centre's reporting requirements appear to be adequate. The problem consists of the application of those procedures in practice. I am satisfied, on the evidence, that on many occasions these procedures were not followed. Moreover, staff were not routinely taken to task by their superior officers for failing to observe these procedures. Proper supervision was almost completely absent.

I have previously referred to the particular features of the abuse of the intellectually disabled which makes such behaviour difficult to investigate. The perpetrator of abuse cannot be expected to report his or her own misconduct. In virtually every case, the victim of that misconduct cannot provide a version of the events that transpired. Furthermore, such misconduct generally occurs in the absence of other witnesses who might be inclined to report it, or in the presence of a staff member who chooses to remain silent.

The Department must immediately take steps to ensure that every staff member at the Centre is aware of, and fully and consistently complies with, the existing procedures regarding the reporting of client injuries or other suspicious occurrences. Initially, all staff should be reminded of these procedural requirements, perhaps by way of immediate refresher or continuing training. This training should not merely take the form of lecturing the staff about these procedures; testing or some other method must be employed to ensure that the staff have absorbed the relevant information and can exhibit a familiarity with the reporting requirements that are expected of them. It must be stressed to the staff that there is a need to be meticulous in the recording and reporting of matters; that it is far better to thoroughly record the details of an incident or injury which in turn proves to be insignificant, than to overlook a matter possibly associated with client abuse or neglect. While it may seem self-evident to stress the importance of staff being aware of and understanding the relevant procedural requirements, it must be remembered that I found cause to remark, during the course of the hearings, upon the lack of understanding demonstrated by many of the RCOs who appeared as witnesses before me (see section 19.2). If, for some reason, any staff officer demonstrates that he or she is unable to grasp or appreciate the contents of the Centre's reporting requirements, then the Department must take action against that person, by the applicable public sector performance standards and procedures (see below). Ignorance of the appropriate reporting procedures should not be accepted as an excuse for non-compliance.

Additionally, if each and every staff officer receives full instruction and training about these matters, there will be no impediment to the taking of disciplinary action in each and every case where the procedures are not complied with. A new culture must be created at the Centre, one in which every staff officer understands that a failure to comply with the reporting and recording requirements which are of relevance to client abuse or gross neglect will lead to an automatic instigation of the disciplinary process. In some circumstances, the failure to appropriately record and report suspicious matters may expose the culprit to criminal action, or an investigation for a possible offence of official misconduct under the *Criminal Justice Act*. In

other cases, of lesser gravity, a disciplinary charge under the public sector disciplinary regime may be appropriate. Whatever the form that such an investigation takes, the important factors are that it occurs and that the staff know that it will occur. To ensure that staff comply with these procedures there must be stringent supervision of staff, and the Department must show that it will simply not tolerate lackadaisical or slipshod behaviour as it undoubtedly has done in the past.

The Department should not be deterred from its duties in this regard by considerations of workplace unrest and the like. The Department, in pursuing such matters, would be acting within the law and entirely in keeping with its service aims. The evidence also clearly indicates that the trade unions associated with the Centre are entirely opposed to any form of client abuse or improper treatment (see section 22.4).

It is not enough for the details relevant to any client injury or suspicious circumstance to be recorded in a haphazard or obtuse fashion. During these hearings I examined a large number of reports prepared by staff at the Centre (generally RCOs) and contained within report books or other documents. Many were of poor quality, containing little by way of helpful information. Some, as noted at section 7.11, were demeaning to the clients.

It is difficult to issue any person with a detailed set of instructions which could reasonably be expected to cover the broad and differing circumstances which will arise in the Centre's day to day operations. It would be more useful for the Department to attempt to instil in its officers an appreciation of the need for thorough and detailed information to be recorded, in a timely manner, about injuries and other matters. All staff must appreciate the reliance that will necessarily be placed upon such records should an investigation ensue. That is a lesson which I suspect has been brought home to some of the RCOs appearing as witnesses before me, who were subjected to lengthy and detailed examination about their various reports. Full, timely and accurate recording will also operate to the benefit of staff members, both as an aide-memoire, and, as submitted by Counsel for the unions:

> Whilst these systems might increase the administrative time required by RCOs, they have the capacity to offer greatly enhanced protection to the clients and also to the employees. It has emerged on a number of occasions that an injury which is discovered on one client, and which is of indeterminate origin, immediately causes all staff members in that villa to be placed under suspicion as to it [sic] causation. If such clients are regularly inspected during each shift, and all injuries are recorded and monitored over time, the occurrence of such injuries will be able to be recorded at the nearest possible time to their occurrence, and all employees who are not able to be implicated in such matter can be instantly exonerated from any investigation. This will have great efficiencies in undertaking such inquiries as are necessary in such matters.

Mr Herbert also submitted to me that, in addition to the adoption of an improved reporting system, a further system should be introduced:

> Whereby clients are physically inspected as to possible injuries or medical conditions at an appropriate time during each shift that it is possible to do so. In such cases, a continuous record might be generated of the physical health and well-being of each client, so that the occurrence of bruising or other injuries is able to be detected and is required to be reported at the earliest possible moment.

The adoption of such a procedure could be seen as contrary to the Department's adherence to the philosophy of "normalisation", and certainly would be an intrusion upon the clients. From the evidence, I am not satisfied that it is necessary for a rigid, quasi-military system of client inspections to be introduced. Clients at the Centre are bathed, or should be bathed, at least once

a day, or more frequently if circumstances dictate. The evidence was to the effect that the majority of clients require assistance in performing such tasks, thus affording RCOs a full and adequate opportunity to notice any injuries, such as bruising, which may be present on a client's body. Clients can be observed in those situations, in a manner less intrusive than a formal inspection. However, such a formal inspection should be carried out at the earliest opportunity if a client is involved in any untoward incident such as an accident or as the victim of an assault by a staff member, another client, or other person.

There may also be those who see any increase in the recording of details, possibly of an intimate nature, about the clients and their lives as also being contrary to trends and views currently in vogue in the field of intellectual disability. Be that as it may, I am satisfied that some compromise must be made in this regard. Without wishing to dwell on the physical or intellectual disabilities of the Centre's clients, the fact remains that those people require a high degree of support in most activities, and are unable to personally speak up about matters such as injuries and illnesses that they may suffer. While inspections and record-taking is to an extent restrictive, regard must also be had to the fact that people with intellectual disabilities have the same rights as others, which include the right to be protected from assault, or other forms of abuse or neglect, and the right to expect that breaches of their rights will be acted upon in a fair and efficient manner.

Just as timely and detailed recording and reporting is required at an intra-Centre level, it is equally important that, in appropriate cases, external investigative agencies be advised of the occurrence of possible criminal or official misconduct at the earliest opportunity. It is entirely inappropriate to leave the investigation of suspected criminal offences or official misconduct to internal investigation by the Department, for the reasons apparent from the entire contents of this report and those specifically expressed below.

The Criminal Justice Commission is the body which has been specifically created to investigate official misconduct in organisations such as the Department. Counsel for the State of Queensland advised, in his written submissions, that 'according to standard operational practice at the Centre all incidents involving client abuse or suspected abuse are referred to the police'. The Commission, and the Police Service, are the bodies equipped with the facilities and powers to undertake efficient investigations of matters such as client abuse and gross neglect, which are of a serious nature. Those organisations must be involved in the investigative process immediately upon sufficient facts existing to give rise to a suspicion that client abuse has occurred. "Immediate" in this context means just that: it does not mean that a delay of several days should occur while management at the Centre wait for relevant staff members to submit reports, or return to work, as has been the case previously (at least in some instances). In the case of a matter such as the assault of a client, the critical importance of the timely gathering of evidence cannot be over-stressed. Delay may result in essential evidence being overlooked or having its probative value diminished. The greater the delay, the greater the opportunity for a culprit or an associate or accomplice to fabricate evidence and obstruct any subsequent inquiries.

It is therefore necessary for the Department to ensure that it establishes a close working relationship with the Commission, and the Police Service, in order to achieve the expeditious referral and investigation of allegations of suspected client abuse. In this context, I consider that it is also necessary for the relevant bodies to discuss, and to put into place, procedures whereby reported matters are investigated as promptly and as efficiently as possible. In his written submissions, Counsel for the State of Queensland pointed to the delay that has occurred in the Commission finalising some of its investigations of matters reported to it by the Department. His observations in that regard are applicable to the matters referred to the Commission by the Department which have in turn eventually been dealt with in the course of

the hearings of this Inquiry. As previously noted herein, the mechanism of a public inquiry is not the most expeditious tool to employ in investigating an individual allegation. The process of a full public inquiry and report results in delay which will not be present when matters are referred by the Department, in the normal manner, to the Commission's Complaints Section, and investigated and reported upon in accordance with the usual methods and practices employed by that section. Mr Plunkett himself submitted that:

> A more integrated and expeditious response to suspected or reported misconduct between the Division, the Queensland Police Service and the Commission could be considered.

That submission is to be endorsed, the relevant bodies need to refine or adopt procedures that are the most appropriate for this area. It is necessary that discussion and continuing liaison take place between those agencies with a view to achieving that objective. In reporting and investigating, time is indeed of the essence.

C) PUBLIC SECTOR PROCEDURES

The staff at the Centre are public servants. As such, they are amenable to the same standards and procedures that apply to all public sector employees. No dispensation or exception is or should be made for them, despite the specialised nature of their work and the vulnerable position of the Centre's clients.

The relevant procedures, as set out by Counsel for the State of Queensland in his written submission, are highly structured. They incorporate admirable standards, goals and detailed procedures for managing disciplinary or performance related problems. However, despite those characteristics, Counsel for the State of Queensland made the following observations in his written submissions:

> Dealing with unsatisfactory staff - during the Inquiry, reference was made to the fact that because of the need to have substantial proof before action can be taken against an employee, it is sometimes difficult to remove unsatisfactory staff. Furthermore, there may be some situations where an employee is unsatisfactory in some respects but has not committed an identified misdemeanour. The need to strength [sic] existing provisions to remove unsatisfactory staff from caring for service recipients who are vulnerable and dependent is warranted.

The evidence before me supports Mr Plunkett's observation that it has been, at times, difficult for the Department to remove unsatisfactory staff at the Centre. While employees are quite properly entitled not to have an adverse inference drawn against them in the absence of proven impropriety, I am satisfied, on the evidence, that some of the RCOs appearing before me during the hearings did not hold satisfactory attitudes and values towards either their work generally or the welfare of the intellectually disabled clients under their care.

It is not easy to envisage how the existing provisions might be strengthened, as suggested by Mr Plunkett, in an endeavour to remove staff who are unsatisfactory from positions where they are entrusted with the duties of caring for vulnerable and dependent persons. There would appear to be only two ways in which such a task could be undertaken; this could be achieved either by a global revamp of the performance standards and disciplinary processes applying to all public sector employees (in an endeavour to strengthen the same), or by introducing further specific and additional standards and procedures only operative in respect of employees of the Division, or perhaps the Department. Either method raises a host of considerations going well beyond the

terms of reference of this Inquiry and the jurisdiction of the Commission. For example, Counsel for Mrs A, Mr Clutterbuck, briefly alluded to the concept of privatisation and its application in the field of service provision to people with intellectual disabilities:

> It may be one way to overcome the institutionalised culture that exists and private corporations may be able to offer attractive benefits to new and existing staff. It should also be considered that State-run institutions such as Basil Stafford could intermingle quite comfortably with privately-run institutions or that corporatisation of a Government department and a total view of strategic planning and policies may promote a more effective environment.

Certainly, in terms of the issue presently under consideration, privatisation is one method of obtaining greater scope, through the mechanism of employer/employee contracts, for the resolving of problems presented by unsatisfactory staff performance, although many other considerations are involved which demand attention well prior to the making of recommendations about the adoption of such a concept.

It is unnecessary to consider such issues further, other than to emphasise the wide-ranging implications of any attempt to strengthen the existing provisions, in an endeavour to be able to deal with unsatisfactory staff. Perhaps, if the immediate future does not result in an improvement in the provision of services to the intellectually disabled clients whose welfare is entrusted to the State, measured in the context of performance indicators such as the reporting of client abuse and neglect, and the investigation of the same, then the Department may be forced to consider these issues at further length.

However, at this point, I would urge the Department to avail itself of the existing provisions when it is confronted with the problem of an unsatisfactory staff member. A Public Sector Management Standard for managing diminished performance exists. Managers within the Department should rid themselves of any notion that they are "stuck" with unsatisfactory employees, whether those employees are inherited from another service or come from elsewhere, merely by virtue of the fact that they are now officers of the public service. In terms of accountability, those persons are not immune from the expectation that they will be required to perform the duties expected of them in a satisfactory manner. Should they fail to satisfactorily perform those duties, then the Standard for managing diminished performance, and thereafter, or alternatively, the disciplinary process, must be invoked. Management at the Centre must take a greater "hands-on" role in monitoring the performance of *all* staff: performance reviews and appraisals must be carried out to adequately reflect an employee's performance. If that performance is unsatisfactory, that conclusion must be adequately recorded and documented. Again, this is an area where detailed and timely records must be kept. During the course of the evidence, I asked one witness about management's efforts in attempting to break down the culture at the Centre, and what more, if anything, could be done in that regard. The witness replied (T 3683):

> Well, one of the problems as I see it, is a public service problem. That is there are a number of people who for one reason and another are unsuited to the work and there has been nothing negative put on their file for a number of years, to me it is unjust. You can see it's not just for them, the next year, to be dismissed or moved. Perhaps it's not unjust to move them, but they may not be trained to do anything else. However, it seems to me if you're going to change a culture just as you're going to remove a bruised apple from a box of apples, there has to be some way of at day one saying that there is a minimum standard of performance for various ranks and types of staff, and if you don't meet that standard, it doesn't matter what happened in the previous ten years, we have to do something about your job . . .

It is inappropriate for unsuitable staff to continue to receive satisfactory performance appraisals. This Inquiry has presented the Department with a great deal of evidence which completely

supports such a conclusion. To my mind, the abovementioned submissions of Counsel for the State of Queensland are an implicit acceptance of this conclusion: the Department must bite the bullet and henceforth conduct rigorous but fair performance appraisals for those staff members involved with the care of the intellectually disabled. Indeed, I would hope that the Department has already embarked upon this process, given the strength of the evidence arising from the hearings, and the magnitude of the problems which have been exposed as existing at the Centre. If it has not, the not insignificant number of plans, strategies, solutions, guidelines, criteria and the like, the assurances contained within the submissions of Counsel for the State of Queensland and the evidence of individuals such as Mr Whalan, count for nought in terms of improving the lot of the clients [see section 23.2(D) et seq].

While some extra administrative effort and documentation may be necessary, on the part of officers with management responsibilities, that imposition is of minor concern in comparison to the rights and the welfare of the intellectually disabled, and in any event, should be lessened to a significant degree with the appointment of further direct supervisors or line managers for the RCOs, as I have recommended herein.

D) DEPARTMENTAL AND DIVISIONAL PROCEDURES

Reference was also made in the evidence to a number of procedures and policies, either implemented, or in the process of being implemented, at Divisional or Departmental level, which were of application or impacted upon issues of staff performance in the context of client abuse or neglect and other aspects of misconduct. Those procedures and processes included draft service standards specifying outcomes that are to be achieved in each element of service delivery and performance indicators; a draft duty of care policy; guidelines for choosing the least restrictive alternative – to assist staff in making balanced decisions in situations involving risk and a duty of care; a procedural manual on behaviour management and the like. It is unnecessary to dwell at any length, in this report, upon the specific contents of those procedures and policies. At an early stage of this report I referred to the glaringly apparent discrepancy 'between the written expression of admirable aims concerning the care of people with intellectual disabilities and the official policies and procedures drafted with due deference to those aims, and the realities of the actual lives of [the clients]'; that is, the distinction between theory and practice (Chapter 2). The most worthy laws are useless if they are not observed, and if such non-observance is allowed to occur without challenge. Similarly the persons at whom the relevant provisions are directed must be made aware of their contents.

In the present context, it is not enough for the Department to prepare policies and procedures if they are not enforced. As Mr Whalan stated (T 5797):

> I'd make the point that all the procedures that are developed have both an implementation and an evaluation component to them because no procedures are actually worthwhile unless you actually implement them well, and unless you look at them quite regularly.

Improvements must be made as a matter of practical reality, rather than simply on paper. My remarks about the need for stringent supervision of staff, at section 23.2(B), are also pertinent in this particular context.

One specific procedure referred to in the evidence was the consumer grievance procedure (Ex 25). That procedure was developed:

> As a means of ensuring a consistent and accountable way of responding to complaints about aspects of service delivery made by consumers (memorandum of the Divisional Head dated 26 October 1993).

This procedure, in the context of client abuse, is discussed at further length at section 23.6(E).

In his evidence, Mr Whalan also referred to a number of additional strategies of relevance to the issue of client abuse, including attempts to involve individuals in clients' lives. These aspects of the evidence are also discussed, with more particularity, at section 23.8.

E) QUALITY ASSURANCE PROJECT

In his statutory declaration, Mr Whalan referred to the quality assurance project that was underway at the Centre, at the time of the hearings. He stated:

> The Quality Assurance project was initiated at the Basil Stafford Centre in August 1993, after some months of planning, in order to review a range of practices and procedures impacting on service quality. It was considered that while the focus was on Basil Stafford Centre, the outcomes of the project would have relevance for all Divisional accommodation services. The particular issues that are being addressed by the Quality Assurance team established at the Centre include monitoring of service quality through internal and external processes, family contact and involvement with Centre residents, performance planning and review for staff, procedures for reporting, detecting and addressing injuries to clients, effective and flexible allocation of available resources both human and financial, further development of the unit management system, implementation of the consumer grievance process, analysis and redressing of the workers' compensation situation, implementation of additional mechanisms to focus on client rights, and the review of a range of other administrative processes to improve operations.
>
> - Achievements to date include a re-arrangement of staff rostering practices to free up extra resources for client activities, introduction of additional processes to prevent abuse, a significant increase in the involvement of families with their relatives resident at the Centre and the establishment of regular family information and discussion events, and the development of a plan for the effective deployment of new resource staff.

Some of those issues, as mentioned by Mr Whalan as being part of the focus of the Quality Assurance project team, have been dealt with in evidence at the hearings and in this report, while others have not. I would expect that there is some degree of correspondence between my findings in this report, and the recommendations or results arising from the undertaking of the Quality Assurance project (which were not tendered as evidence before the Inquiry; I presume that the project had not been completed at the time the investigative hearings concluded).

Given the degree of correspondence in some of the areas investigated by both processes, the recommendations and results of the Quality Assurance project, involving the development and implementation of improved administrative processes, may be able to be utilised to implement some of the more general recommendations contained within this part of my report. To some extent, the recommendations of this Inquiry, and those arising from the Quality Assurance project, are of limited application to the Centre in light of the Government's announcement of its decision to close the Centre at some future time. However, as noted by Mr Whalan, while the focus of the Quality Assurance project was on the Centre 'the outcomes of the project would have relevance for all Divisional accommodation services'. Analogous remarks can be made about many of the findings and recommendations contained within this report.

23.3 THE INTERNAL INVESTIGATIVE PROCESSES OF THE DEPARTMENT

The evidence reveals that the Department's internal investigations of allegations of suspected client abuse or gross neglect were marked by a consistent lack of success. My observations in this part of the report, should not be regarded as being hypercritical of the relevant individuals at the Centre who were called upon, from time to time, to investigate such allegations. I am satisfied that those individuals employed their best endeavours, with the best of intentions, but were handicapped in achieving satisfactory results by many factors, including their admitted lack of adequate training (and consequently, adequate skills), a paucity of resources and assistance, the pernicious influence of the strong institutional culture, management's track record of failure in undertaking such investigations (in terms of identifying and punishing culprits), and all of the peculiar factors inherent in the commission of an act of abuse or neglect against a person with intellectual disabilities. Some of these factors will continue to exist and complicate any investigation of such incidents, whether that investigation be carried out by an officer of the Division, police officers, or officers of this Commission. Be the above as it may, while the staff at the Centre who were called upon to undertake such investigations did the best they could, on all but rare occasions, it was not enough to satisfactorily identify those responsible for committing acts of client abuse.

In his statutory declaration, Mr Rohan referred to a number of factors which he perceived as complicating the successful investigation of acts of client abuse at the Centre (see section 22.2). He also stated:

> . . . it is a difficult task to investigate matters. It is hard to get enough information to come up with something that is conclusive enough to be able to sustain a criminal charge or to justify disciplinary action. Where the person in question maintains a denial of the alleged incident, our record of success in taking action is dismal. I believe that staff are reluctant to come forward, as they feel that history is on the side of the suspect, and are aware of our poor record. I believe that some staff display an attitude of "why bother" especially, if they do bother, there is evidence of a corresponding history of harassment.
>
> The result of all these difficulties is that, in my opinion, some staff believe that they can do virtually anything and get away with it because there is simply no way to prove the charge. However, I do believe that the number of staff who feel this way, and abuse the trust, is small.

Mr Rohan also explained, in his statutory declaration, that during his time at the Centre:

> From time to time instances of alleged client abuse/gross neglect/unexplained injury come to the attention of management staff. In my position as Manager at the Centre I tended to rely heavily upon the records that were provided to me by the SROs, RDOs and the PRO. At one time these records included the daily summary sheets, until that system was replaced by the new report book. I also read the records kept by the nursing service of matters to which they attended during the course of their shifts. These reports were daily. The nurses' daily notes would indicate that they had attended clients for a range of problems, sometimes including an injury. In 1992, the "injury report" system was introduced.
>
> From time to time I would request information as to how an injury had occurred if I had any concern. I would generally obtain a report from the relevant SRO about the event. If the matter was not satisfactorily explained, investigation would occur.
>
> In the initial stage this investigation was done by the SRO. These persons had no formal investigative training. Indeed, they had no specific training to equip them for the position of SRO. They were required to pick up the role through reference to the relevant duty statement and through guidance given by the PRO during supervision. Most SROs did not have a background as an RCO; some came through the position of RDO or from the area of resource staff.

> There are no written procedures or Divisional guidelines as to the way an investigation should be conducted. The standard form of investigation involved interviewing the relevant staff, and looking at any physical evidence that may have existed. Assistance would also be sought by the SRO from myself or the PRO, as to any particular direction that the investigation might take.
>
> In relation to the gathering of physical evidence, there was generally no firm policy that photographs of clients' injuries should be taken until this requirement was introduced in 1992 as part of the procedure for following up client injuries . . .
>
> The initial interviews conducted by the SROs would generally consist of talking to people after reports had been called for. The relevant staff would be interviewed about any discrepancies in their reports; hence these interviews would often take place some days after the relevant event. Usually the SRO would be unaccompanied at the time of conducting these initial interviews. Occasionally, if the SRO is inexperienced, he or she may be assisted by the PRO or myself.
>
> If a formal or disciplinary interview was conducted with an RCO that interview would be conducted by the PRO and SRO. Written records were kept of those interviews. From time to time staff expressed some difficulties with the nature of those written records, however, there was also some unease expressed about the possibility of tape-recording such interviews . . .
>
> I feel that any deficit in the investigative training of SROs may have been overcome, to some extent, by the discussion process that would occur and the information sharing that occurred between new and more experienced SROs, as well as through the supervision process with the PRO.

At a later stage of his declaration, Mr Rohan stated:

> . . . investigators really developed their skills "on the job". I have some reservations about the complexity of the roles of investigator and Line Manager. That is, the person who is investigating the matter also has to be able to perform his or her managerial role in the particular situation, and deal with the effects of the investigation upon other staff. There is also the question of perceived impartiality or bias with internal investigations, which leaves the Centre open to allegations of a "cover up". There is also a risk of allegations being predetermined when the investigating SRO knows, and works with, the relevant RCO.

Evidence was also received from some of the officers who had been called upon to undertake investigations of allegations of client abuse at the Centre. In her statutory declaration (Ex 365) RPO H stated:

> From time to time my duties have entailed carrying out investigations. I have never received any investigative training. My general procedure, in undertaking an investigation of alleged client abuse, was to make contact with the client or arrange for a medical examination, and then talk to other staff. If at that stage I felt there was some basis to the complaint I would interview the person against whom the allegation had been made. This interview would be of a formal nature, and I would be required to write to the person, to give them notice, and to have a union representative present at the interview.
>
> These interviews would later be written up. There have been suggestions made once that tape recorders should be used to facilitate accurate recording, but . . . the issue became too difficult to pursue . . .
>
> Once this interview had taken place, I would discuss the matter with my Line Manager. In most cases it was one person's word against another, and if concern remained, the subject of the allegation might receive increased supervision, or team meetings may be arranged to resolve the issue. RCOs would only be put on "double-up" shifts if something was established and the investigation was to be continued.
>
> I am not aware of any written guidelines for investigations. I believe that there may be some written procedures, but I think that these are more along the lines of what has to be done, rather than the skills involved, and the actual process to be followed.

> I believe that there is some difficulty with the investigation process, as generally the incidents only involve one person's word against the other. I feel that an issue that needs to be addressed is the vulnerability of the people involved (the alleged victims of assault/abuse etc) and the historical difficulty of terminating someone's services in a Government position. I feel that the staff member has all the rights in these situations. It is a different situation to that of private organisations . . .

SRO AI stated in his statutory declaration (Ex 360):

> In my capacity as an SRO I was, from time to time required to investigate incidents . . . I have received no investigative training at all. The first time I had to investigate an incident . . . a fellow SRO . . . walked me through the process . . .
>
> Although I had no investigative training, I consider that I had a fair knowledge of the investigative process, due to my experience. My procedure was generally to go and talk to people, to decide if an investigation was warranted. If I made such a decision I would then hold a formal investigation with interviews. 99% of the time because of the isolated way people work I could not come to a conclusion about my investigations, if the subject officer denied the allegation.
>
> The "informal" initial part of my investigation could usually be done within a day. I would speak to people and ask for written reports. Those reports may take two to three days to come in. Then a decision would have to be made about a more formal investigation. I would talk this over with my line manager. If a criminal offence was suspected I would inform the Residential Services Co-ordinator, Gerry Rohan, then the police would be called in.
>
> I did not keep notes of my informal discussions. I did not tape-record those discussions. I did not have anyone with me at the time of conducting those discussions.
>
> If the incident involved an injury sometimes the client would be photographed. I am aware that a system of taking photographs of such injuries came in shortly before I left Brisbane South, in approximately late 1992. As to the issue of taking photographs of clients' injuries, I feel there are points for and against such a process. People with intellectual disabilities lack fine motor skills, and they do tend to take a few knocks from time to time. Taking photos is an invasion of their privacy. Even though the photos may be for the clients' protection, I feel that one should be very careful.
>
> I personally would not take photos for minor injuries, however, now I would probably take photos if I suspected abuse had occurred.
>
> I feel that some sort of investigative training would be advisable for the SROs. I am not aware of any published guidelines regarding procedures for carrying out investigations etc, although some may well exist.

The above excerpts are illustrative of a host of problems which, when taken together, virtually ensured that it was improbable that the Department's internal investigations of allegations of client abuse would result in sufficient evidence being obtained to successfully prefer a criminal or disciplinary charge against a suspected offender. The problems inherent in the employment of such methods of investigation are both practical and theoretical in nature.

Clearly, those officers at the Centre called upon to perform investigations lacked adequate training and experience. On numerous occasions throughout this report I have referred to the particular difficulties that will be encountered inevitably, by any investigative agency, in the gathering of sufficient evidence to prosecute an offender for a charge related to client abuse or gross neglect. While Divisional staff may have significant experience in the field of intellectual disability, and an acute appreciation of the rights of people with intellectual disabilities, it is naive to expect that those persons are also, merely by virtue of the aforementioned qualities, capable of undertaking difficult and serious investigations of

suspected criminal or disciplinary offences. Again, I would stress that I am not being critical of the individual officers referred to in the evidence at the hearings, they simply did not have the training and experience to equip them with the requisite knowledge.

This lack of training and experience manifested itself in the investigative methods employed by those officers. The evidence is clear, that during the initial stages of an investigation, the process of inquiry was very informal. Conversations with complainants, relevant witnesses, and indeed the likely suspect of the investigation, were not tape-recorded, or even reduced to writing. On some occasions, staff were simply requested to provide reports which, as I have noted above, were not infrequently scant in length, poorly written and uninformative. On occasions, this preliminary phase of the investigation took several days even when client injury was involved; apart from an injury report (for example Ex 16) being prepared, no medical records other than the usual notations in the clients' medical file were specifically prepared. Photographs of injuries were not always taken; while on some occasions client injuries were photographed by investigating officers, the evidence reveals that those photographs were of a very poor quality. In support of that conclusion a comparison need only be made between the photographs taken by the Centre staff, and those taken by police scientific officers, during the investigation of the injuries sustained by Client 5 (Exs 254 and 255). The quality of the photographs taken by Centre staff, and admitted into evidence at the hearings, was such that the same were not able to be consistently used as reliable forensic aids for the purposes of further inquiries. No criticism of staff should be levelled because a camera which was suitable for the task was simply not available (T 2092).

As well, in his statutory declaration, SRO AI alludes to an attitude apparently existing in some quarters at the Centre that the taking of photographs of client injuries was somehow an overly intrusive process, in terms of a client's rights. Ex 107 is evidence of that attitude. It is a polaroid photograph of Client 6, purporting to depict the burn injuries suffered by her, and again is of very poor quality. The one photograph taken is of the client's naked torso. In that photo, the client's pubic region has been "blacked out" with a felt tip pen. The markings on the photograph obscure the burns that the client apparently suffered in this region, according to the medical evidence before the Inquiry. That evidence has been lost.

The taking of extensive and accurate photographs is essential in cases of physical injury arising from a suspected offence. It is routine police practice. The reasons for this practice are obvious in terms of proof, in subsequent inquiries or proceedings, of the full character and magnitude of the relevant injury. The preservation of appropriate physical evidence of this nature is of inestimable assistance in subsequent proceedings in which it is necessary to establish issues such as causation and timing of injuries.

Any argument to the effect that the photographing of client injuries or the detailed examination of such injuries by qualified persons at the relevant time is somehow overly intrusive, is misguided. It is beyond argument that the commission of an act of assault or gross neglect involving an intellectually disabled client is more intrusive than the taking of a series of photographs, or the conducting of a medical examination. Acts of client abuse and gross neglect must be regarded in light of their true character: they are crimes of an appalling nature, particularly when perpetrated by individuals entrusted with the care of the victims. The need to identify and punish culprits, and to deter other likely offenders, entirely outweighs misguided philosophical objections.

The practical or procedural problems arising from the methods of the Centre's internal investigations and the time delays caused, are obvious impediments to the reaching of successful conclusions, whether those conclusions be the successful identification of responsible offenders, or the obtaining of satisfactory proof to demonstrate that no suspicious circumstances, and no staff impropriety, were involved in a particular incident. Perhaps less obvious are some further conceptual difficulties inherent in the process of internal investigation. The practical problems can be remedied by training, or by the

employment by the Division of trained investigative personnel. The conceptual problems cannot be so readily corrected.

By way of illustration, in the case of law enforcement agencies, there is presently a well-merited, concerted and wide-ranging trend favouring the rejection of internal methods of investigation of complaints against members, replacing such procedures with a system of outside inquiry or oversight. This trend is well documented, and has been the subject of extensive research. A critical reason for favouring the introduction of a system of external investigation in such cases is the need to ensure independence, both in the conduct of the investigation and in the perceptions of all relevant parties, including the public. Serious complaints against members of organisations, particularly those performing public duties, are often, at least to some extent, embarrassing in their nature. As Mr Rohan noted in his statutory declaration, in such cases, there is always the question of perceived bias, which leaves the organisation open to allegations of a "cover up" if it investigates itself. There may be conscious or unconscious pressures placed upon internal investigators to achieve a result which does not expose their employer to censure or embarrassment.

Furthermore, internal investigators cannot operate independently within their own organisation; they must answer to certain sections of that organisation and accordingly may encounter difficulties in freely conducting their investigations, or in obtaining full compliance with investigative requests.

Additionally, as I have already noted (see section 22.5) when managerial staff at the Centre conducted investigations, enormous disruption was caused to the normal manager/RCO relationship. Further pressures will naturally be placed upon an investigating officer in those circumstances; lasting effects or divisions may result from the pursuit of an investigation. There is also a very significant and real risk of predetermination of allegations in these circumstances. I am confident that all right-minded persons would regard an offence such as the assault of an intellectually disabled person as being a crime of a most appalling, perhaps even unthinkable, nature. There may be difficulties in an internal investigating officer being able to regard a particular employee as a possible suspect for such an offence, in circumstances where no other information about questionable work practices by that employee has previously come to light, and where the investigator believes that he or she knows the suspect well enough to remove the employee from the purview of the investigation.

One must also again have regard to the pervading nature of the institutional culture existing at the Centre, and the harassment that was experienced by senior officers, such as Mr Rohan, who took a stance in support of those investigating allegations of client abuse. I am satisfied that external investigative officers are less likely to be subjected to harassment than officers working on-site. Moreover, external bodies, such as this Commission and the Police Service, are imbued with adequate powers to take action against those persons who attempt to hinder or obstruct the lawful performance of their duties.

In all the circumstances, I am satisfied that the investigation of suspected incidents of client abuse or gross neglect at the Centre must be carried out, to the widest extent possible, by outside agencies, which in terms of the relevant statutory framework, comprise the Criminal Justice Commission and the Police Service. Obviously, it will be necessary for some internal inquiries to be conducted at an early stage by Centre staff. Those inquiries must be conducted with a view to ensuring that if there is *any* suspicion that staff impropriety has occurred, the relevant investigative bodies are notified without delay. The Commission, and the Police Service, should be notified at the same time. It then would be for those bodies to dictate the further conduct of investigations. It is simply unacceptable that a delay of several days should occur between the discovery of circumstances giving rise to suspicion, and the provision of notice to external investigative personnel. When such delay occurs, obvious handicaps are presented for the investigating officers.

Strengthened reporting requirements, as discussed above, should lead to the timely notification to management of client injuries and other circumstances which may be suspicious in character. Upon receipt of that information, it should be evaluated by management and external investigative agencies notified in appropriate circumstances. A decision to invoke the assistance of those agencies should not be a matter which has to be passed through each level of management between the SRO position (or its replacement) to the Director-General of the Department; expedited procedures must be adopted. Again, it probably would not be helpful to attempt to set out, in this report, detailed guidelines in that respect. I see it as more efficient for the Department, the Commission and the Police Service to consult with a view to ensuring that the objectives expressed herein will be achieved by the adoption of mutually acceptable practices. It is essential that a system of close and immediate liaison between those bodies be put in place so that investigations are accorded the greatest possible chance of arriving at successful conclusions.

23.4 PROTECTION OF COMPLAINANTS

The evidence has revealed that one of the most disturbing aspects of the institutional culture existing at the Centre, during the period of reference of this Inquiry, was the ruthless harassment of officers who had the courage to report their fellow officers for suspected misconduct. In turn, senior officers who took a role in investigating those allegations, or adopted a supportive stance, also received harassment. I am satisfied that that situation both detrimentally affected the reporting of suspected client abuse and/or gross neglect, and the efficient investigation of the same. I am also satisfied that if internal methods of investigation continue to be employed it will be all the more difficult to eradicate harassment of this nature. External investigative bodies must be utilised in order to reduce these problems.

Many of the incidents of harassment described in the evidence were underhanded and cowardly in nature. Rarely did the harassers directly confront their targets. The opportunity to engage in such behaviour, against outside investigative personnel, simply does not exist to the same extent. Furthermore, should any officer of the Department attempt to harass, intimidate or obstruct police officers, or officers of this Commission, those investigators are equipped with ample powers to adequately deal with such situations.

I note that the Criminal Justice Act contains extensive provisions relating to the protection of complainants, witnesses and other persons associated with the Commission (Parts 3 and 6 of the Act). Obviously, it is necessary for the Commission to become involved in an investigation for those provisions to be of application.

I also note that the recent proclamation of the Whistleblowers' Protection Act 1994 (Queensland) extends further protection to persons making public interest disclosures to appropriate entities in the public sector, including this Commission. The Act specifically refers to the disclosure of information by a person about 'a substantial and specific danger to the health or safety of a person with a disability' [Section 19(1)(A)]. The Act contains provisions giving protection to people who make disclosures in the specified manner, including protection against reprisals, and procedures for obtaining injunctions. Section 39 of that Act provides for a defence to an action for defamation based upon the making of a public interest disclosure.

Similar protection is provided by Section 101(2) of the Criminal Justice Act in respect of publications made to or by the Commission, or an officer of the Commission, for the purpose of the discharge of the Commission's functions and responsibilities (which relevantly include the investigation of suspected official misconduct at the Centre).

The Inquiry heard evidence about some complainants receiving threats of legal action, should they persist in the making of allegations against fellow staff members. The aforementioned statutory provisions afford protection to complainants, when appropriate disclosure is made, against such threatened action.

I am aware that the Whistleblowers' Protection Act has been the subject of some controversy, in terms of the width of its provisions and the fact that protection is only provided to complainants who make disclosure to the bodies that are deemed to be appropriate. In the context of persons who complain about abuses of the intellectually disabled it will be evident, from the above, that I am strongly of the opinion that it is necessary for the full disclosure of relevant facts to be made, in a timely fashion, to trained and experienced investigative personnel. The longer the delay between the occurrence of the abuse, and the reporting to the Commission and the Police Service, the greater the difficulty will be in successfully investigating the relevant facts. Disclosure in this fashion will result in a greater chance of protection being afforded to both the complainant, against harassment and reprisal, and to the clients, against being placed in the care of unsuitable officers prone to participation in acts of abuse.

23.5 IS A FURTHER INDEPENDENT INVESTIGATIVE BODY NEEDED?

The issue of whether a need exists for any further independent body, in terms of the reporting and investigation of suspected incidents of client abuse/gross neglect or the harassment/intimidation of staff, was raised for the parties to address in their written submissions. It should be apparent, from my above comments, that I do not believe that a need exists for any further independent investigative body. Leaving aside the Commission and the Police Service, there are already a number of other entities which purport to have varying roles in matters of client abuse or gross neglect. These entities are further discussed in the following section of this Chapter. My general conclusion is that those bodies are not equipped to respond to the problems involved in the reporting and investigation of such matters.

As to the need for a further investigative body, Counsel for the unions informed me, in his written submissions, that he did not propose to make submissions about that aspect other than to submit:

> . . . that it is consistent with the policies of the unions that the best possible system should be in place in order to detect client abuse or gross neglect with the only qualification being that the employees, or other persons, who are subjected to investigative processes should continue to be permitted the usual entitlements to procedural fairness.

Counsel for the State of Queensland, Mr Plunkett, in his written submissions, noted the existing checks and balances and submitted:

> In the light of the legislative provisions and external bodies that are already in existence to safeguard the rights of the clients, the creation of yet another body is not warranted. The police and the Criminal Justice Commission, the Public Trustee and the Legal Friend all have substantial powers in relation to their particular areas of relevance. It is difficult to see how another agency would succeed if the present ones cannot.

My recommendation, in this regard, is that it is unnecessary for any further independent body to be established for the purposes of reporting and investigating suspected client abuse or gross neglect. The Commission and the Queensland Police Service are the bodies which are best equipped with the skills and resources to enable those matters to be investigated productively. To my mind, it is only necessary that those bodies be utilised when allegations arise. Adoption of some of the recommendations contained herein, such as improved staff/client ratios, better reporting systems and the like should result, at a primary level, in fewer acts of misconduct being perpetrated, but if they continue to occur, then there will be a greater probability than hitherto was the case, that they will be reported at the earliest

opportunity, thus resulting in their investigation by either this Commission or the Police Service. As noted, there must be a close working relationship between the Commission, the police and the Department. It would be superfluous and unproductive to attempt to create any additional body with investigative powers.

Of some relevance in this context is a submission of Counsel Assisting, who stated:

> . . . that what is needed at the Centre is a mechanism to ensure that there is an independent evaluation of the standard of care given to clients. The mechanism needs to be proactive.

I agree with those submissions. These issues are considered in section 23.8.

23.6 EXISTING CHECKS AND BALANCES

During the evidence, a number of other mechanisms or entities were referred to, as comprising some "checks and balances" for the rights of clients. Some of those mechanisms, to an extent, have an involvement in issues pertaining to client abuse and neglect.

A) THE OMBUDSMAN

In his evidence, Mr Ross referred to the Ombudsman (the Parliamentary Commissioner for Administrative Investigations) as having a role in receiving complaints from parents and clients (T 180). Mr Ross stated that he was aware that the Ombudsman had investigated one matter involving the Centre in recent years. He was unable to recall what that matter involved.

There was no evidence to suggest that the Ombudsman had ever received a complaint from any interested party about an allegation of client abuse at the Centre, nor had the Ombudsman ever been involved in any of the inquiries about the allegations of client abuse or gross neglect raised at the hearings.

B) THE INTELLECTUALLY DISABLED CITIZENS' COUNCIL OF QUEENSLAND

Mr Ross also referred, in his evidence, to the Intellectually Disabled Citizens' Council of Queensland (T 180 et seq). That Council is constituted pursuant to the *Intellectually Disabled Citizens' Act 1985*. Under Section 27 of that Act, an intellectually disabled citizen, or various other entities or categories of persons acting on that citizen's behalf, may make application to the Council for the provision, to the citizen, of special assistance under the Act.

Mr Ross described his understanding of the Council's powers (T 181):

> Mr Plunkett: And what's your understanding of the power that they have over the client's life at the Centre?---They have power to certainly give consent in matters of medical/dental areas, and also to make recommendations in their quality of life and quality of life issues. They certainly can represent clients, or arrange for that representation should that become necessary, and I am talking about legal representation. They have the power to have the person have – appoint a volunteer friends' program, one that tries to match volunteers from the community with selected people who have been through the Council, to provide them with an outside source of stimulation and friendship.

> Yes, but the Council has power, does it not, to review the kind of assistance that is given to the client?---It does have that power, yes.

Mr Ross also stated that the Department referred all clients at the Centre to the Council 'so they can have the benefits of the Act' (T 182). The Division also publishes and circulates brochures informing parents, and other interested persons, about the role of the Council. Evidence was given by Mr Ross that the Division issues a number of such publications (Ex 24), also dealing with other matters, such as the role of the Legal Friend (see below).

On the evidence, the Intellectually Disabled Citizens' Council does not appear to have played a part in investigating or resolving any of the incidents of client abuse or gross neglect which were referred to during the hearings, nor is it geared to do so.

C) PARENTS' GROUPS

Another of the checks and balances referred to by Mr Ross in his evidence was the group entitled Queensland Parents of People with a Disability (QPPD). QPPD also forwarded a written submission to me, in which it was stated that:

> Queensland Parents of People with a Disability is a State-wide organisation involved in vigorous advocacy via parent networks to ensure sons, daughters and others with disabilities experience quality lives as respected, valued members of our communities.

Mr Ross gave evidence about the role of QPPD at the Centre (T 186–187):

> Mr Plunkett: Can you tell the Commission about the interaction between the Basil Stafford Centre, or officers of the Division of the Basil Stafford Centre, and Queensland Parents of People with a Disability Incorporated?---Yes. They certainly are an advocacy body who have access to Basil Stafford on an issue basis, to take issue with matters that may be concerning them about clients. Normally it would be a child of perhaps one of the parents who is part of that body. There isn't a formal ongoing relationship with them, such as we don't meet, you know, every month with them, but they have open access to the Centre.
>
> All right, and from time to time have they brought matters to the attention of the officers of the Division . . . ?---Yes, they have.
>
> . . . concerning the treatment of clients?---They're normally individual actions on behalf of QPPD, yes. A person has brought issue to the Centre . . . it's normally client issues in terms of a general sense. I mean, I know that they took issue with us in terms of things like the quality of food that was being provided at Basil Stafford at one stage, and through interaction with them, that certainly has been addressed and improved. So they're looking at quality of care.

As noted at section 6.7 during the course of the Inquiry I also received a number of submissions from parents of persons residing at the Centre. Included among these submissions was one from the Basil Stafford Parents and Friends Association.

D) HUMAN RIGHTS AND ANTI-DISCRIMINATION COMMISSIONS

Counsel for the State of Queensland, Mr Plunkett, asked Mr Ross about some material relating to the Commonwealth Human Rights and Equal Opportunities Commission (T 187):

> Mr Plunkett: . . . you will see an article there that sets out for the reader information concerning the role of the Human Rights and Equal Opportunities Commission?---Yes.
>
> All right, that is a Commonwealth body, isn't it?---Yes.
>
> And this article is in fact written by the Commissioner, Ms Quentin Bryce?---That's right.
>
> All right. It is a fact, is it not, that persons have access to that independent Commonwealth reviewing body in respect of complaints that may be entertained about clients of the Basil Stafford Centre?---Yes.
>
> All right. Has any matter been brought to the attention of you concerning the clients of the Basil Stafford Centre by the Human Rights and Equal Opportunities Commission?---No, not to my knowledge.
>
> All right. Are you aware of any intervention by the Human Rights and Equal Opportunities Commission?---No, I'm not.

Mr Plunkett also referred Mr Ross to Queensland anti-discrimination legislation which, in part, is concerned with discrimination against persons with disabilities. Mr Ross confirmed that there had not been any intervention by the Queensland Anti-Discrimination Commissioner in respect of clients at the Centre.

It of course does not follow that simply because these Commissions did not intervene in any matter at the Centre, that no violation of the clients' rights occurred (this would clearly be contrary to the evidence).

E) THE DIVISION'S CONSUMER GRIEVANCE PROCEDURE

Evidence was also given about the Division's consumer grievance procedure, which was in the process of being implemented when the public hearings commenced. Documents relating to that procedure were admitted into evidence as Ex 25. Within those documents, by way of background information, the following was said about the procedure:

> The consumer grievance procedure provides an avenue for the internal resolution of complaints that consumers may have with respect to any aspect of the delivery of services, eg procedures used, decisions made, actions of staff, standards of services, etc. It provides a process for consumers, or people acting on their behalf, to lodge a consumer grievance when other internal means have not been an appropriate or preferred choice, or have not been successful.
>
> The consumer grievance procedure should not be seen as a substitute for:
>
> a) the informal resolution of complaints that occurs directly between parties on a day to day basis, ie parent raising an issue with a Residential Care Officer or social worker; and/or
>
> b) the existing formal internal procedures such as reporting an incident or advising an appropriate line manager about a matter of concern.
>
> The above internal processes will still continue to operate. Staff remain obliged to follow existing procedures with respect to reporting an incident of abuse. The consumer grievance procedure provides a strategy which consumers, and families and staff acting on behalf of a consumer, may choose to use when they wish to lodge a consumer grievance about some aspect of service delivery.

> Consumers and their families should be encouraged to use this procedure when they require formal resolution of complaints. Staff should use this procedure when they wish to act on behalf of a consumer in relation to a grievance and follow the process through until successful resolution is achieved.

From the above, it is apparent that the consumer grievance procedure is not intended to supplant the existing processes of application to the investigation of allegations of client abuse or other staff misconduct. However, the procedure may be applicable to some cases of possible client neglect.

As is the case with any such system of procedures, the initial and critical step, necessary to invoke the process, is the making of an informed complaint or grievance. The evidence indicates that the Centre's clients have disabilities such as would prevent them being able to individually lodge complaints; it is necessary for the clients to rely, in probably every case, upon some other person to lodge a complaint on their behalf. While the procedure envisages this, it is necessary to bear in mind the evidence given at the hearings to the effect that some clients have no concerned parents or other relatives who take an active role in their lives, in terms of performing advocacy duties.

It cannot reliably be expected that individual staff members will invoke the grievance procedure on behalf of a client, in every appropriate circumstance; in light of this Inquiry's experience it should be assumed that such will not be the case. In numerous sections throughout this report I have made reference to the fact that unsuitable persons who do not have the clients' best interests at heart, are sometimes employed as RCOs. Accordingly, it is clear that some RCOs lack the motivation to attempt to improve the lot of clients. In other cases, the conduct of a particular staff member, such as an individual RCO, might be the very subject of complaint. In those circumstances the situation is immediately encountered that such a person is unlikely to inform upon himself or herself, and all the corresponding difficulties to which I have referred where one staff member makes a complaint against another, will arise in the context of the entrenched institutional culture at the Centre (see Chapter 16 specifically). Furthermore, a staff member may well be reluctant to complain against a more senior member of staff, for the obvious reason that such action will probably create difficulties in the employment relationship.

Nevertheless, such a scheme is necessary, although not strictly of application to the matters of relevance to this Inquiry.

F) THE LEGAL FRIEND

The Legal Friend fulfils a statutory role, as prescribed by the *Intellectually Disabled Citizens' Act 1985*. The position of Legal Friend is presently held by Mr Hugh Carter, a Barrister-at-Law. Mr Carter provided a statement (Ex 419) and a submission to the Inquiry. In his statement, Mr Carter said:

> The role of Legal Friend is established under s.26 and 32(1A) of the *Intellectually Disabled Citizens' Act 1985*.
>
> The Legal Friend may (subject to the direction of the Minister) provide information and advice, advocate, and instruct solicitors to act on behalf of Assisted Citizens [s.26(1) and (2)].

The Legal Friend may provide substitute consent to surgical, medical, dental treatment, or any other professional treatment and care, when the person with a disability cannot do so for him/herself.

Such substituted decisions are made in consultation with that person's family or significant others.

In emergent circumstances the Legal Friend, with the prior approval of the Chairperson, may provide all assistance available under s.26, or may appoint the Public Trustee to manage a person's affairs under s.32(1A).

The Legal Friend assists Assisted Citizens, adult residents of Queensland who have an intellectual disability.

The Legal Friend also assists people who satisfy the criteria in emergencies under s.26(9) with the prior approval of the Chairperson.

The Legal Friend is currently responsible for providing assistance to more than 5,000 persons with an intellectual disability, and their families.

Some persons who the Legal Friend assists are residents of Basil Stafford Centre . . .

Assistance is provided upon request. Many assisted citizens may not require regular assistance – some may require considerable assistance, but only when the Legal Friend is alerted to such needs can assistance be provided. .

The Legal Friend is not a guardian, but provides vital assistance when alerted based on need, that person's well-being, expressed wishes and on the principle that assistance provided is the least restrictive option [see s.26(2) and (5A)].

Staffing of the Legal Friend's area includes the Legal Friend (Barrister at Law), permanent, full-time, one legal officer (solicitor) permanent, full-time, one legal officer (solicitor) temporary, full-time and one legal officer (solicitor) temporary, part-time . . .

Operational budget for this legal group, excluding salaries, was $49,999 for the 1993/94 financial year. Such sum was hopelessly inadequate to provide the quality of service required . . .

Repeated requests for additional resources have only been addressed in terms of non-recurrent funds to address perceived difficulty in meeting the Council's need to hold proceedings.

Funds have not flowed into the key area of hands-on service provision, apart from one or two additional temporary staff. This was not the solution required.

The Legal Friend's principal role is as a substitute decision-maker in the legal and allied health areas.

This is not subject to the direction of the Minister, and involves the exercise of a statutory discretion.

The Legal Friend is not accountable to the Chief Executive of the Department, or to the Council in the discharge of duties under the Act . . .

Apart from specifics, the role of the Legal Friend and delegates is to protect the rights of adult persons with an intellectual disability.

> In relation to the Legal Friend and assistance provided to Assisted Citizens at Basil Stafford Centre, the greatest difficulty encountered by the Legal Friend has been the reluctance of staff to speak openly about abuses which have occurred.

It should be noted that the Queensland Law Reform Commission is presently undertaking a review of the entire process of assisted and substituted decision-making for people who need assistance because of mental or intellectual disabilities. A discussion paper about that review, dated July 1992, was admitted in evidence as Ex 424. I have been advised that the report of the Law Reform Commission's review is due for publication in early 1995. There is some general coincidence of interest between the context of assisted or substituted decision-making on behalf of people with intellectual disabilities, and the concerns of this Inquiry with matters pertaining to client abuse and gross neglect, in terms of the issue of client advocacy. This aspect is dealt with at further length below.

Mr Carter also provided a written submission to the Inquiry, which provided information about assistance given by the Legal Friend to four clients mentioned in the evidence; namely, Client 1 (in respect of her rape and consequent pregnancy), Client 2, Client 5 and Client 6.

As noted previously, the Legal Friend assisted Client 1 to recover a sum of money by way of criminal injuries compensation in respect of the offence committed against her which resulted in her pregnancy. Mr Carter also detailed the legal assistance that had been provided to Client 2, in relation to the incident where that client sustained a fractured jaw (see section 1.7).

In relation to Clients 5 and 6 (the two incidents investigated by the Inquiry which have resulted in my recommendations, to external agencies, as outlined in section 1.2), Mr Carter advised that he had only been able to take appropriate legal action on behalf of those clients, as a result of the evidence arising from this Inquiry.

Mr Carter had some strong words to say about the communication, or lack of communication, between his office and the Division:

> It is my view that communication between staff of Intellectual Disability Services and this office have been stifled, resulting in a disgraceful lack of protection of the rights of vulnerable residents of Basil Stafford training Centre.
>
> It appears that in only the most obvious instances was notification made to this office of the need to protect the rights of persons who had been abused.
>
> This failure to utilise a form of assistance, funded by the same Department, raises issues of accountability at levels higher than those of the apparent perpetrators of the assaults.
>
> The failure to notify the Legal Friend of incidents such as those relating to Clients 5 and 6 are not isolated . . .
>
> There has been a reticence by staff of Intellectual Disability Services to co-operate with the Legal Friend by providing timely information. Such reticence has also applied to providing information to families of persons receiving Intellectual Disability Services' assistance.
>
> It is hoped that an outcome of this Inquiry will be a reversal of such history.

The Inquiry did not embark upon any detailed analysis of the communications that had or had not passed between the Legal Friend and the Division as a result of any suspected incident or incidents of client abuse or gross neglect. However, no party took issue with Mr Carter's

submissions on this point, and clearly, given the history of matters, it would appear that information about the injuries sustained by Clients 5 and 6 was not brought to the attention of the Legal Friend other than by way of the evidence arising from this Inquiry.

Given the current status of the Law Reform Commission's review of the law in this area, I do not propose to make any detailed findings or recommendations about the role of the Legal Friend, other than to note the following two points. First, the role of the Legal Friend, in terms of allegations of client abuse or gross neglect, appears to very much be ex post facto in its nature. For assistance to be provided through the mechanism of the Legal Friend, it is necessary that the relevant client is, or becomes, an assisted citizen. The Legal Friend's role did not appear to extend to issues of investigation of specific incidents, other than in the pursuit of actions at law. The Legal Friend's office does not have investigative resources and is thus precluded from being proactive in the protection of clients' rights. It would seem that the Legal Friend is completely dependent on matters being brought to his attention in some extraneous way.

Secondly, whatever entity is eventually empowered, or entrusted with the responsibility, to take action on behalf of a person with an intellectual disability, as the Legal Friend presently does, it is necessary that there be full and frank disclosure of all relevant information between the Division (and the Department) and that entity. If injuries or abuses occur, which are not brought to the attention of the relevant entity (including the Legal Friend) by the Division, it is crystal clear that this is in breach of the philosophies of social role valorisation, and normalisation, which are so proudly espoused by the Department. As I have noted herein, given the fallibilities of human nature, it must be anticipated that further acts of abuse or gross neglect will unfortunately be perpetrated against clients in the care and protection of the Division. While it may be embarrassing to the authorities for knowledge of those incidents to become widespread, they must be brought to the attention of the necessary persons (legal or otherwise) so that any flaws in the system can be remedied, and so that the clients concerned may have their rights protected as would any other member of society. Little is to be achieved, in the long run, by misguided attempts to "keep the lid on" such problems. The evidence heard by this Inquiry provides ample support for that view. The Legal Friend, through no fault of his own is, unfortunately, a lame duck, dependent on a most unlikely source for his information, before he can act.

G) THE OFFICIAL VISITOR

The *Mental Health Services Act 1974–1984* provides for the role of an Official Visitor at the Centre. From 1984 until December 1993 the position of Official Visitor was held by Mr Raymond Petersen, a retired Stipendiary Magistrate. Mr Petersen provided a statutory declaration to the Commission (Ex 418). He stated, inter alia:

> I saw my role of Official Visitor as one of attending the Centre. I did not spend a lot of time at the Centre, each visit would be of one to two hours' duration, once a month. I would have morning tea whilst I was there. The visits themselves did not take a great deal of time; at each visit I would be conducted to one of the villas or other areas; I would always be escorted by someone from the administration office . . .
>
> During my visits, I generally would not be looking for anything specific. If anything particular needed attention, I would mention that in my report. Usually this would involve issues such as repair work for the buildings or fixtures.

> I would speak briefly with the staff, that is, the Residential Care Officers. These were informal conversations. I would ask them generally how things were, and whether they had any problems. I do not recall the staff pursuing problems with me, or bringing matters to my notice. I do not recall any of the staff ever bringing to my attention any issues concerning the welfare of a particular client, or the clients in general. If such matters had arisen I would have made reference to the same in my reports.
>
> . . . no approach was ever made to me by any relatives regarding ill-treatment of clients. I cannot recall ever being approached by any Parents and Friends Association members, or any persons at all, in relation to client welfare issues . . .
>
> I do not recall any of the management personnel ever raising with me issues such as client abuse. I cannot recall any reference ever being made to me about an incident such as the pregnancy of the Client 1 . . . I would not anticipate that such matters would have normally been raised with me as the Official Visitor. I would expect that such issues would be dealt with by the Department. In my opinion, it was understood that my role did not extend to such issues, nor did I believe that my role was such that I should be involved in such matters. I felt it was for the Department to act on, or for the matter to be reported to the police. I did not see my role as that of a policeman . . .
>
> I have been informed that the Juvenile Aid Bureau of the Queensland Police Service undertook an investigation of certain matters at the Centre during 1990/1991. I have also been informed that a subsequent Criminal Justice Commission investigation took place. I had no knowledge of these matters until such time as the same were reported in the media. I was quite surprised that I had not heard anything of these investigations, whilst I was the Official Visitor to the Centre . . .
>
> I have no knowledge whatsoever of any issues relating to the harassment or intimidation of staff, in respect of the reporting of incidents of client abuse. I was never approached by any staff member, or management, to discuss such an issue.
>
> I would generally report upon issues to do with the maintenance of buildings and fixtures. My recommendations were usually followed up, although not always immediately . . .

Clearly, the role of the Official Visitor had little impact in terms of the issues which were the subject of this Inquiry. In so remarking, I am not being critical of Mr Petersen, as an individual, in relation to the way he carried out his role. Rather, that role was perhaps something of an anachronism, and certainly had no application, as a check or balance, to issues relevant to the clients' welfare, beyond the inspection of some aspects of the facilities provided at the Centre. I ask rhetorically, need I say anything further about the efficacy of the role of Official Visitor? On the evidence presented to me I am compelled to agree with Mr Rohan who said, when asked about the roles of the Legal Friend, and the Official Visitor, in the context of client abuse, gross neglect and injuries at the Centre (T 4386):

> Mr O'Sullivan: Well, do you think that they have effective roles presently?---In relation to these matters, no.

H) THE OFFICE OF THE PUBLIC TRUSTEE

Evidence was also received about the role of the Public Trustee, vis-à-vis some of the clients at the Centre. The present Public Trustee, under the provisions of the *Public Trustee Act 1978*, is Mr Kevin Martin. The Public Trustee provided a statement to the Inquiry (Ex 420), submissions, and also exchanged correspondence about the areas under consideration by the

Inquiry. In the context of the clients at the Centre, the Public Trustee's primary role is in relation to the management of a person's affairs. Pursuant to the provisions of the *Mental Health Services Act 1974-1984*, the *Intellectually Disabled Citizens' Act 1985* and the *Public Trustee Act 1978*, the Public Trustee can be appointed as the manager of a person's affairs. At the time of the hearings, the Public Trustee was managing the affairs of some 98 of the residents at the Centre. The Public Trustee stated that his role was identical to that of a committee of the estate, as opposed to a committee of the person: there is no need, so the submission went, for a committee of the person to be appointed for residents at the Centre because of the existence of the legislative scheme which provides for the accommodation, care and treatment of the clients. Mr Martin stated that control over finances has the effect of placing the Public Trustee in the position of a defacto guardian in the sense of determining lifestyle issues related to financial expenditure.

In relation to allegations of client abuse, gross neglect, unexplained injury and the like, the Public Trustee stated:

> Notification or Investigation of Incidents
>
> The Public Trustee responds to information from a variety of sources, both internal and external, which may suggest an opportunity for the improvement in a person's lifestyle, or a potential infringement of the property or personal rights of a client or any other person under a legal disability. Whilst a number of contacts are derived from other activities, eg. administration of a deceased estate, notifications ordinarily come from parents, relatives, carers, community service and advocacy organisations, State, Federal and private agencies and private citizens involved in the care of people with disabilities or having an interest in a particular person.
>
> Where a person with a disability is living in a closed environment such as Basil Stafford Centre (and this would include public and private facilities) where lifestyle needs are met by staff, the potential for reporting of incidents of suspected abuse or neglect is more limited. To a large extent there is necessarily reliance on statutory officers charged with investigation and reporting of these types of issues.
>
> *There have been no reports to the Public Trustee of incidents of suspected client abuse or neglect at the Basil Stafford Centre either during the period relevant to the Commission's Inquiry or at any other time*. [My emphasis] If any such complaints were received they would have been subject to the same careful consideration as is given to any information received using the Public Trustee's legal and other resources both internal and external to the office.
>
> Role of the Public Trustee in Investigation
>
> Because of the particular issues which arise from the movement of people with a disability into the community and a desire to provide the highest level of service to our clients, a need has arisen to provide an internal disability support facility. Whilst not designed as a primary service provider, in conjunction with other internal professional units, a presently limited but expanding investigatory role is being undertaken.

In a letter to the Director of the Official Misconduct Division dated 25 May 1994 the Public Trustee advised that his office has been involved in claims for criminal compensation in the cases of Clients 1 and 2, as a result of action taken by the Legal Friend. The Office of the Public Trustee has funded legal costs to enable those claims to proceed. Furthermore, the office is presently assessing the position of Client 3, in terms of commencing legal action concerning his assault (see section 1.8).

23.7 SOME OBSERVATIONS UPON THE EXISTING "CHECKS AND BALANCES"

The evidence at the hearings indicates that the above mechanisms have been unsuccessful as "checks or balances" in terms of preventing, detecting or satisfactorily investigating acts of client abuse and gross neglect that have occurred at the Centre. In making that comment, I am not being critical of any of those entities, nor of any of the persons holding statutory office. All of the abovementioned entities have functions and responsibilities ranging greatly beyond the specific issues that were of relevance to this Inquiry, and those bodies were not created to have a dominant role in this area.

In the circumstances, I am satisfied that the above mechanisms, either taken individually or collectively, do not constitute adequate safeguards against client abuse. When such entities do become involved, it is only in a retrospective fashion, in terms of seeking some redress on behalf of a client who has been abused, where that act of abuse has been uncovered and investigated through means independent of those entities and subsequently reported to one or more of the entities.

23.8 CLIENT ADVOCACY

As is evident from the above, I am satisfied that a person with intellectual disabilities stands to greatly benefit if there is a concerned individual, or preferably, individuals, involved in their affairs. Such persons can act as advocates for the clients, who cannot speak up for themselves. Such advocates should also be independent of the service provider, which in the present context, is the Centre, as administered by the Division and the Department. The element of independence, in this context, is essential.

My views, in this regard, reflect the evidence of Mr Whalan, who said (at T 5794–5795):

> . . . Going back to your comment yesterday where you talked about the value of a burr under the saddle [Mr Whalan was here referring to a comment I made about the need for client advocacy on the previous day] I guess my analogy there is big organisations, not just in the disability area, but big organisations are very good at treating those burrs as a piece of grit in a pearl shell and actually covering them, you know, so that they no longer become a bit of grit, they become something which is far more easy to live with. The result of that, my point there, is that you need a range of organisations, they need to be at arms length, and my additional point is that the most powerful of these influences I think are individuals. You need organisations, but the most powerful influences are individuals. If you live in a local street it is your neighbour, and the person at the local corner shop, and the teacher in the school, and your relative and friend, and the person who sees you at the bus stop who is, in my opinion, more powerful than all those formal structures, and one of the difficulties . . . with a place like the Basil Stafford Centre is that whilst all those formal arrangements can exist, and you can add more, and I question that, but you can add more, what isn't powerful enough is the influence of individuals, and it is difficult for that to be powerful when you have a location that is a long way from the rest of the community, and the location that is quite uninviting, and a large number of people with a disability together.

In his evidence, Mr Whalan referred to attempts by the Division to substantially increase the involvement of parents, in the affairs of their children who reside at the Centre. These efforts include attempts to involve parents in the planning of how services are delivered to individuals at the Centre. Such actions by the Department are to be encouraged. To my mind, there should be an ongoing process of information exchange between parents or concerned relatives of clients, and the Division. That exchange of information should be free, frank and extensive. The Department must persist with its endeavours in this regard, for the benefit of its clients.

I am also mindful of the evidence that many of the clients residing at the Centre were not in regular contact with parents, other relatives or friends. It is not possible to quantify, on the evidence, the exact number of clients who are in this situation, although several witnesses referred to the fact that many clients did not have any "outside" individual in their lives.

The benefit of having an independent and concerned advocate, at least from the client's point of view, is quite obvious. In my view, this will also benefit the service provider. Such a person, maintaining a regular interest in a client's affairs, is in a good position to detect the signs of abuse or neglect, to alert the relevant authorities, and to agitate, if necessary, if a less than satisfactory response ensues. It is not a sufficient answer to suggest that such a role can be performed by concerned staff members, even if those officers do act with the best of intentions, which, on the evidence presented to the Inquiry, would be an unrealistically optimistic assumption. Those officers are not independent, and are subjected to all the pressures associated with their position as employees of the service. In any event, as noted throughout this report, such officers may be reluctant to complain about the actions of their colleagues, and are certainly unlikely to inform upon themselves.

Of the need for client advocacy, QAI submitted to me:

> QAI knows that people with a disability and their families are open to abuse, exploitation and neglect. In order to obtain what is right and just and lead quality, valued lives, people who are in this vulnerable situation need strong, independent advocacy.
>
> This need for advocacy can come from:
>
> - the impact of impairment;
> - the social situation facing people with a disability;
> - the effects of the human service system.
>
> This section will focus on the latter.
>
> Many people with a disability have a heavy reliance on formal direct human services to meet many of their basic needs. Since human services are imperfect, often serve their own interests first and often reinforce negative myths and stereotypes, people with a disability are in a particularly vulnerable and powerless position.
>
> Human services can "lose their way". They are not comprehensive and often not co-ordinated and cannot meet all human needs, especially the fundamental human need for relationships, affection and security that cannot be provided by formal service structures. Standards and principles of consumer, user and human rights protection alone are not sufficient. Nowhere is this more apparent than in institutional settings – be they large or small – which exercise control over all or most aspects of the life of a person with a disability (*Disability Services Act Queensland 1992* s.18).
>
> To speak of rights in an institution is inherently contradictory. Institutions by their very nature work against the existence and protection of rights. In such circumstances, a person who is already vulnerable because of disability becomes doubly vulnerable and open to many forms of abuse, exploitation and neglect. The enforcement of rights, even where they do exist, is extremely difficult in an institutional setting. All the more reason why advocacy is needed. QAI believes that strong, independent advocacy must be available to all people who need it.

I agree with QAI's submission that strong, independent advocacy must be available to people who need it. In the present context, those people are the clients at the Centre. That advocacy must be independent of the facility providing residential services and the like, to the intellectually disabled person, whether that facility is, in the present case, the Centre itself, or in the future, upon the Centre's closure, some other form of direct service provision. It must also be independent of the Division and the Department.

The relevant advocacy must be provided on an individual basis, for the purposes of achieving the greatest efficiency. That is not to say that organisations such as QAI, who informed me that they were engaged primarily in law reform and systems advocacy work, do not have a place in the advocacy process. From the evidence of their contributions to this Inquiry, I am satisfied that the involvement of organisations such as QAI in the collective affairs of intellectually disabled persons who are clients of the Division, will ultimately be to the benefit of all parties involved. It is unnecessary for me, in this report, to attempt to address the specific requirements of implementing any such view, rather, it is necessary for the Department and QAI, or other concerned and reputable advocacy organisations, to consult and agree upon ways in which the resources and abilities of such community-based organisations can best be deployed for the benefit of people with intellectual disabilities.

Many of the issues relevant to the need for independent individual advocacy for the Centre's clients, (and other Queensland residents with intellectual disabilities) appear to be within the province of the abovementioned Queensland Law Reform Commission review, which dealt with the issue of advocacy in Chapter 13 of its discussion paper (Ex 424). Within that Chapter it is noted that there is no existing legislation in Queensland which expressly confers an advocacy role of an individual nature, for the protection of intellectually disabled persons' rights (cf the *Victorian Guardianship and Administration Board Act 1986*). The Law Reform Commission expressed a tentative view that an Adult Guardian Office could be created which could incorporate a number of roles, including advocacy and assistant or substitute decision-maker.

The creation of any such body gives rise to a number of issues and questions, going greatly beyond the limited scope of this Inquiry. Accordingly, pending the publication of the Law Reform Commission's report, it would be premature for me to express specific conclusions or recommendations in this regard, other than to emphasise the need for each and every client at the Centre to have a reliable and independent individual advocating on their behalf. Whether that objective is achieved through the mechanism of a newly-created guardianship body, access to other individuals in the community, or through greater involvement with community-based organisations such as the QAI and QPPD, it is imperative that the objective of strong and independent individual advocacy be achieved. Additionally, it is necessary to note that that advocacy must be of an informed nature, in the context of the field of intellectual disability: it will be less than useless to involve persons with the best of intentions, but little knowledge of the field of intellectual disability and the particular problems faced by intellectually disabled persons in residential care, such as the prospect of abuse or gross neglect. Simply, advocates must be aware of what constitutes an appropriate standard of care, if they are to be entrusted with making decisions about whether the individual client is receiving the standard of care to which he or she is entitled, as a matter of law, and as a matter of common decency.

23.9 THE ANGEL REPORT

It is timely, by way of concluding my considerations and recommendations about the reporting and investigation of client abuse at the Centre, to revisit the report prepared by then Senior Constable Jeffrey Angel, of the JAB, as a result of the 1990–1991 Queensland Police Service investigation of various allegations concerning the Centre (Ex 406). I have previously referred to Mr Angel's report at section 3.4, and listed a number of issues which Mr Angel was of the opinion were relevant to the welfare of the clients residing at the Centre. Mr Angel's report was prepared in June 1991. He was called as a witness at the hearings. Prior to his appearance, Counsel for the State of Queensland, Mr Plunkett, made a lengthy and detailed objection to the receipt of that report into evidence.

In his written submissions, Mr Plunkett strongly attacked the contents of Mr Angel's report. Mr Plunkett submitted that various aspects of the report were:

- Of questionable value;
- Unsupported other than by speculation;
- Without evidence;
- Baseless and hypocritical;
- Of a specious basis;
- Of an unqualified and inadequate basis;
- Qualified as beyond him (Mr Angel) and slanted.

In his conclusions, Mr Plunkett submitted:

> As far as the investigative hearings are concerned the Angel report has no evidential value at all and no weigh [sic] should be given to it whatsoever. The evidence heard at the Commission hearing not only discounted the principal thesis of the Angel report of systematic and institutionalised abuse and gross neglect of clients by staff at the Centre but demonstrated that the fears expressed in the Angel report are not only not proved but the opposite is very much the case. It presented as an undoubtedly well-intentioned but amateurish attempt to deal with a host of misconceptions about the Centre . . .

Mr Angel impressed me favourably during his time in the witness box. His answers were thoughtful and intelligent, and in my opinion, demonstrated a grasp of the relevant issues perhaps beyond that which one might reasonably expect of a police officer, of his rank and experience (at the relevant time). His cross-examination by Counsel for the State of Queensland could perhaps be best summarised by noting his willingness to make concessions, about the limited nature of his inquiries, and the information available to him in forming certain of the conclusions expressed within his report.

There is a significant degree of coincidence between the conclusions that I have reached in this report, and those arrived at by Mr Angel in June 1991, albeit, in his case, on the basis of relatively brief inquiries and general impressions. The processes of this Inquiry have not been brief, and I am satisfied that the conclusions expressed herein, and those outlined over three years ago by Mr Angel, in relation to matters at the Centre such as the existence of an institutional culture, the effective curtailing of the reporting of client abuse, an atmosphere of perceived intimidation, concerns as to the level of attention given to clients, possibly inadequate staffing numbers and supervision arrangements, concerns expressed by parents, and the realistic possibility that abuse was continuing to occur, are supported by a preponderance of evidence.

While it may be argued that the methodology employed by Mr Angel in arriving at some of his conclusions was less than perfect, the validity of many of those conclusions, when considered in the context of all of the evidence heard by this Inquiry, is not open to question. Mr Angel was right.

23.10 THE NEED FOR ONGOING, PERIODIC REVIEW

At the conclusion of the hearings, Mr Herbert, Counsel for the unions, remarked (T 5996):

> We, all of us who have been in these proceedings, earnestly hope that your Honour never has to say at some future time that the report that you prepared was never implemented. It would indeed be a very great waste of a very great opportunity that has been before us all.

Just as it is necessary, in the interests of the intellectually disabled, to implement the recommendations contained herein, it is also important to ensure that improved standards are maintained in the longer term. Periodic reviews of the situation at the Centre are necessary in order to ensure that over time, when the initial enthusiasm for reform has waned, there is no regression to past unsatisfactory practices.

To that end, I recommend that the Department liaise with the Criminal Justice Commission in order to establish that an appropriate periodic review system is put in place to ensure first, that the recommendations contained herein have been implemented, and secondly, that appropriate standards are being maintained. As part of the aforementioned liaison the Department and the Commission should determine the appropriate entity to undertake such reviews, and the applicable methodology by which those reviews will be undertaken, bearing in mind that there must be independence in that process. Internal review, by the Department, will be insufficient.

CHAPTER 24
SOME CONCLUDING REMARKS

The Terms of Reference of this Inquiry required an investigation of some specific and serious aspects of the lives of people with intellectual disabilities, residing at the Basil Stafford Centre, over a lengthy period. Abuses at the Centre had been widely reported and criticised prior to the undertaking of the Inquiry's public hearings, and to some extent, particularly in recent years, attempts have been made to introduce reforms and procedures which are of some relevance to the problems addressed within this report.

The evidence presented at the hearings has revealed deep-seated and disturbing problems at the Centre. At times, those problems have had catastrophic consequences for the intellectually disabled clients and also, at times, for some courageous staff members who spoke out in protest at the unsatisfactory state of affairs. For the greater part, the Department has been unable to effectively redress the problems. At the time of the hearings, many of the staff at the Centre were demoralised.

As foreshadowed during the latter part of the public hearings, the primary recommendation of this report was to be to the effect that the problems at the Centre, in terms of the official misconduct revealed by the evidence, were of such a nature that the only practicable solution was to close the Centre at the earliest possible opportunity. After the conclusion of the hearings, but prior to the release of this report, the Queensland Government has announced that it intends to close the Centre in the future. However, it remains imperative that the considerations and recommendations contained within this report be implemented, and receive adequate consideration as the basis for future reform, in order to safeguard the rights of the Centre's clients in the period prior to the Centre's ultimate closure, and later, in whatever environment they find themselves in.

The regime existing at the Centre prior to, and at the time of the hearings, was unsatisfactory. There has been a vast and irreconcilable gap between the theory of the relevant statutory provisions, practices, policies and procedures relating to the care of the intellectually disabled, and the day to day reality of the lives of many, if not all, of the clients at the Centre.

In many cases, the standard of care provided to those intellectually disabled persons has failed to meet the objectives of the Division, the Department and the Government in relation to the care of intellectually disabled persons residing in facilities administered by those entities. One can talk at length about concepts such as normalisation, social role valorisation and the least restrictive alternative; in this context, the words of the late Mr Justice C L D Meares, of the New South Wales Supreme Court, a man deeply interested in assisting the disabled, are apposite:

> The "least restrictive alternative" is a wondrous expression which one now hears in regard to persons with disabilities.
>
> It involves the principle that support for them should be designed to develop and enhance their rights to personal freedom, to live in the community and to control their own destiny. Wondrous as it is, it is an expression which, as yet, is being preached but not substantially practised. (Quoted in *The Sydney Morning Herald*, 10 August 1994 p. 8)

In conclusion, it should be noted that the Government has a long-standing policy of deinstitutionalising its residential facilities. In recent years, active steps have been taken in this respect, in relation to other residential facilities for the intellectually disabled administered by the Department such as the Sandgate

and Challinor Centres. The process of deinstitutionalisation is now to be applied to the Basil Stafford Centre, and the sooner the better.

In its fifth written submission to me, QAI submitted that:

> Extensive and documented research over more than 25 years points to the fact that institutions and institutionalised living in themselves, are causal factors in the presence and perpetration of frequent and sustained forms of abuse and neglect of persons who are devalued and vulnerable. Some of the worst offences are as follows:
>
> - By keeping people away, out of circulation, institutions perpetuate and enforce the image of severely disabled people as oddities.
> - By definition, institutions deny people community living experiences, and so the skills needed for community life wither away or are never learned.
> - An ideology of custodialism pervades the institution.
> - Personal possessions (eg clothes and shoes) are quickly lost or destroyed.
> - Congregation ensures the worst effects of modelling, with one "maladaptive behaviour" yielding another.
> - Incidents of physical abuse reach epidemic proportions, as do communicable diseases.
> - Hours upon hours of each day are spent waiting for activities.

In support of that submission, QAI listed a number of texts and research papers which supported the validity of the abovementioned conclusions. It is to the great shame of many, particularly those specifically charged with the duty of administering for the care of the intellectually disabled clients at the Centre, that there is overwhelming evidence supporting the views and conclusions, concerning institutionalisation of people with intellectual disabilities, expressed within the abovementioned submission of QAI.

The processes of this Inquiry have been exhaustive and lengthy in their nature. As such, while it is unrealistic to expect that every relevant organisation or individual will be satisfied with all of the outcomes of the Inquiry process, it is to be hoped that the Inquiry will, by publishing the facts contained in this report, dispel rumour and provide the basis for informed improvements to be undertaken. Reforms should not spring from a basis of ignorance, or misguided assumptions about the utility of existing structures in dealing with the problems at the Centre. As I have noted at several places throughout this report, all members of society have a stake in this process, and are entitled to expect that people with intellectual disabilities, whose welfare is paramount, are as a matter of reality provided with standards of care and attention, and accorded basic human rights, that give some practical effect to the noble objectives expressed so frequently on paper. It is time for those objectives to be met in practice.

APPENDIX

RESOLUTION BY THE CRIMINAL JUSTICE COMMISSION TO CONDUCT AN INVESTIGATION AND APPOINT AN INDEPENDENT PERSON

WHEREAS:

The Criminal Justice Commission [the Commission] has received a number of complaints alleging that at a unit of public administration, namely the Basil Stafford Centre, there has been the:

(a) abuse of clients by members of staff;

(b) gross neglect of clients by members of staff; and

(c) harassment and intimidation by members of staff of persons who have complained of or would be likely to complain of the abuse and gross neglect of clients.

AND WHEREAS:

Such conduct may constitute official misconduct within the meaning of the *Criminal Justice Act 1989* [the Act].

AND WHEREAS:

It is a function of the Official Misconduct Division of the Commission pursuant to the provisions of section 2.20(e)(ii) of the Act to investigate alleged or suspected official misconduct by persons holding appointments in a unit of public administration, and further that it is a function of the Official Misconduct Division of the Commission pursuant to the provisions of section 2.20(f) of the Act to offer and render advice or assistance by way of education or liaison to units of public administration concerning the detection and prevention of official misconduct.

THE COMMISSION HAS RESOLVED:

(1) to revoke the previous resolution dated 26 November 1993 by the Commission concerning the Basil Stafford Centre;

(2) to conduct an investigation into cases of alleged or suspected official misconduct by persons holding appointments at the Basil Stafford Centre concerning:

   (a) the abuse of clients;

   (b) the gross neglect of clients;

(c) the harassment or intimidation of those persons who have complained of or would be likely to complain of the abuse or gross neglect of clients;

for the period 1 January 1990 to 31 December 1993;

(3) as part of the investigation referred to in paragraph (2) hereof to consider generally and make recommendation concerning any statutory provision, policy, practice or procedure relevant to the treatment of clients of the Basil Stafford Centre or the reporting of treatment of such clients, and any related matters; and

(4) to engage the services of an independent qualified person pursuant to section 2.55 of the Act, that person being THE HONOURABLE DONALD GERARD STEWART to conduct the investigation and to report thereon to enable the Commission, the Commissioners and the officers of the Commission to discharge the functions and responsibilities imposed by the Act.

DATED at BRISBANE this 10 day of DECEMBER 1993.

Professor J Western
Commissioner

Mr B M Ffrench
Commissioner

R. S. O'Regan

Mr R S O'Regan QC
Chairman

Mr L Wyvill QC
Commissioner

Mr J Kelly
Commissioner