Royal Commission
into Institutional Responses
to Child Sexual Abuse

REPORT OF CASE STUDY NO. 19

The response of the State of New South Wales to child sexual abuse at Bethcar Children's Home in Brewarrina, New South Wales

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The response of the State of New South Wales to child sexual abuse at Bethcar Children's Home in Brewarrina, New South Wales

November 2015

CHAIR

The Hon. Justice Peter McClellan AM

COMMISSIONERS

Mr Robert Fitzgerald AM

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Preface

The Royal Commission

The Letters Patent provided to the Royal Commission require that it 'inquire into institutional responses to allegations and incidents of child sexual abuse and related matters'.

In carrying out this task, we are directed to focus on systemic issues but be informed by an understanding of individual cases. The Royal Commission must make findings and recommendations to better protect children against sexual abuse and alleviate the impact of abuse on children when it occurs.

For a copy of the Letters Patent, see Appendix A.

Public hearings

A Royal Commission commonly does its work through public hearings. A public hearing follows intensive investigation, research and preparation by Royal Commission staff and Counsel Assisting the Royal Commission. Although it may only occupy a limited number of days of hearing time, the preparatory work required by Royal Commission staff and by parties with an interest in the public hearing can be very significant.

The Royal Commission is aware that sexual abuse of children has occurred in many institutions, all of which could be investigated in a public hearing. However, if the Royal Commission were to attempt that task, a great many resources would need to be applied over an indeterminate, but lengthy, period of time. For this reason the Commissioners have accepted criteria by which Senior Counsel Assisting will identify appropriate matters for a public hearing and bring them forward as individual 'case studies'.

The decision to conduct a case study will be informed by whether or not the hearing will advance an understanding of systemic issues and provide an opportunity to learn from previous mistakes, so that any findings and recommendations for future change which the Royal Commission makes will have a secure foundation. In some cases the relevance of the lessons to be learned will be confined to the institution the subject of the hearing. In other cases they will have relevance to many similar institutions in different parts of Australia.

Public hearings will also be held to assist in understanding the extent of abuse which may have occurred in particular institutions or types of institutions. This will enable the Royal Commission to understand the way in which various institutions were managed and how they responded to allegations of child sexual abuse. Where our investigations identify a significant concentration of abuse in one institution, it is likely that the matter will be brought forward to a public hearing.

Public hearings will also be held to tell the story of some individuals which will assist in a public understanding of the nature of sexual abuse, the circumstances in which it may occur and, most importantly, the devastating impact which it can have on some people's lives.

A detailed explanation of the rules and conduct of public hearings is available in the Practice Notes published on the Royal Commission's website at:

www.childabuseroyalcommission.gov.au

Public hearings are streamed live over the internet.

In reaching findings, the Royal Commission will apply the civil standard of proof which requires its 'reasonable satisfaction' as to the particular fact in question in accordance with the principles discussed by Dixon J in *Briginshaw v Briginshaw (1938) 60 CLR 336:*

> ... it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal ... the nature of the issue necessarily affects the process by which reasonable satisfaction is attained.

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

Private sessions

When the Royal Commission was appointed, it was apparent to the Australian Government that many people (possibly thousands) would wish to tell us about their personal history of child sexual abuse in an institutional setting. As a result, the Commonwealth Parliament amended the Royal Commissions Act 1902 to create a process called a 'private session'.

A private session is conducted by one or two Commissioners and is an opportunity for a person to tell their story of abuse in a protected and supportive environment. As at 16 October 2015, the Royal Commission has held 4,241 private sessions and more than 1,535 people were waiting to attend one. Many accounts from these sessions will be recounted in later Royal Commission reports in a de-identified form.

Research program

The Royal Commission also has an extensive research program. Apart from the information we gain in public hearings and private sessions, the program will draw on research by consultants and the original work of our own staff. Significant issues will be considered in issues papers and discussed at roundtables.

This case study

This is the report of the public hearing which concerned allegations of child sexual abuse of a number of former residents of the Bethcar Children's Home in Brewarrina, New South Wales (Bethcar), and the way that the State of New South Wales (the State) responded to those allegations and the litigation brought by a number of those former residents.

The scope and purpose of the hearing was:

a. the experiences of the former residents of Bethcar

b. the monitoring and control of residents of and operations at Bethcar

c. the response of the NSW Police Force to complaints made by some residents of Bethcar

d. the conduct of the civil proceedings brought by 15 former residents of Bethcar against the State between 2008 and 2013

e. the applications made by former residents of Bethcar for victims' compensation and the current operation of the victims' compensation scheme in New South Wales.

Executive summary

Bethcar Children's Home

Bethcar Children's Home (Bethcar) was originally located in Brewarrina in New South Wales.

Bethcar started operating under informal arrangements in 1969. In 1976 the State of New South Wales (the State) granted a permit to operate Bethcar as a children's home. In about 1984 Bethcar was moved to Orange in New South Wales, where it operated until it was closed in 1989. It received funding from the State and dozens of children were placed in Bethcar over the time of its operation.

Between about 1974 and 1984, Mr Burt Gordon and Mrs Edith Gordon (a married couple) ran Bethcar. Their adopted daughter AIT and her husband, Mr Colin Gibson, also resided at Bethcar. Mr Gibson and AIT were involved in running the home.

Residents' experiences at the Bethcar Children's Home

Six former residents gave evidence at the public hearing of their experiences at Bethcar. Ms Kathleen Biles gave evidence of sexual abuse at the hands of Mr Gordon and physical abuse by Mrs Gordon. Ms Jodie Moore gave evidence she suffered sexual abuse at the hands of Mr Gordon and Mr Gibson, and physical and emotional abuse by Mrs Gordon. Ms Amelia Moore, AIH and AIQ gave evidence that they were sexually abused by Mr Gibson. Ms Leonie Knight gave evidence of sexual abuse by Mr Gordon almost immediately after arriving at Bethcar.

All of the women gave evidence of the devastating effect the sexual abuse has had upon their lives. Some of those women further gave evidence of the distress and anguish caused by the delays and approaches to the handling of their subsequent civil claims.

Complaint to the police in 1980

In March 1980, a number of Bethcar residents complained to the Brewarrina police about Mr Gibson's behaviour towards them.

Detective Inspector Peter Yeomans from the Child Abuse Squad in the NSW Police Force reviewed the available police documents and gave evidence that there were a number of areas in which it appeared that the police response in 1980 did not comply with the applicable procedures in place at the time:

- There was a delay between the report to the police and police interviewing the complainants.
- The complainants were not taken to see a doctor.
- Separate interviews with the complainants were not conducted.

- Mr Gordon was present at the interviews.
- The residents were returned to Bethcar with Mr Gordon.

A later police response in 1983 also failed to comply with the procedures in place at the time.

We are satisfied that these failures by the police seriously undermined the effective investigation of complaints by the children.

Mr Michael Coutts-Trotter is the current Secretary of the Department of Family and Community Services (formerly the Department of Community Services). He accepted that from at the latest March 1980, and then again in 1983 and 1984, Community Services had information suggesting that children were at risk in Bethcar. He gave evidence that Community Services could have done more to protect the children at Bethcar once Community Services officers were aware of the risk. We accept his evidence.

Despite the serious nature of the complaints, children were returned to and required to remain at Bethcar. We are satisfied that the actions of the police and Community Services placed the children at an unacceptable risk of harm at that time and that there was a failure by Community Services to adequately support those children who had made complaints.

Charges against Mr Gibson

In May 2004, Mr Gibson was charged with a number of offences. He was convicted of most of them and sentenced to 18 years' imprisonment.

Mr Gordon was never charged, because he was elderly and in ill health. Detective Senior Constable Peter Freer, who had been involved in the prosecution of Mr Gibson, said in February 2008 that Ms Biles' complaints against Mr Gordon were legitimate.

Civil litigation commences

In 2008, former residents of Bethcar commenced two separate proceedings against the State in the District Court of New South Wales. The plaintiffs alleged that they were abused while at Bethcar and that the State was liable for the abuse.

The Crown Solicitor's Office (CSO) was appointed to act for the State. The management of the proceedings was allocated to a solicitor then employed by the CSO, Mr Evangelos Manollaras. Mr Manollaras was supervised by Ms Helen Allison. The 'client' or agency providing instructions to the CSO was Community Services.

Mr Manollaras had never received any training about any particular issues that arose in child sexual abuse cases, as compared with the issues which he was used to dealing with in other personal injury litigation. Ms Allison also could not recall receiving any specific training in child sexual abuse issues.

Mr Ian Knight, the Crown Solicitor, said that solicitors at the CSO should not be permitted to conduct litigation involving allegations of child sexual abuse unless they have been trained.

We are satisfied that the system that the CSO adopted in 2008 in allocating matters involving child sexual abuse to solicitors was deficient, in that those matters should only have been allocated to solicitors who had been given appropriate training.

We find that the system of supervision in this case discloses failures on the part of the CSO. A solicitor with limited experience in dealing with child sexual abuse claims was left largely unsupervised, with no regular oversight. There were no regular file reviews of the nature identified by Mr Knight in his evidence and there ought to have been such file reviews.

The CSO retained experienced junior counsel, Mr Patrick Saidi, at an early stage.

It also retained Mr Peter Maxwell, investigator, in about July 2008 to conduct a detailed investigation. The investigation involved Mr Maxwell taking steps to find all relevant people and relevant documents. Mr Maxwell was experienced in conducting investigations for State bodies including Community Services in cases involving child sexual abuse, including cases where a limitation defence was raised – that is, where the proceedings were not brought within a specific time period.

We are of the view that the proper management of complex litigation requires the early provision of detailed advice to the client. This permits the client to properly evaluate its exposure and requires the solicitors running the case to focus more properly on the real issues in the litigation. No such advice was given in this case.

Procedural matters

The State's early attitude to the litigation included seeking information from the plaintiffs that the State already knew or had available to it.

Mr Knight accepted that, by requesting particulars of matters within the State's knowledge, the CSO was in breach of the New South Wales Model Litigant Policy for Civil Litigation (the Model Litigant Policy). Mr Coutts-Trotter also accepted that it was a breach by the State of the Model Litigant Policy to request particulars of matters which were within its knowledge.

We accept the evidence of Mr Knight and Mr Coutts-Trotter. Asking the plaintiffs to provide information known to the State, in circumstances where it was likely that the plaintiffs would not have that information, did not accord with the CSO's and the State's obligations under the Model Litigant Policy to deal with the claims promptly and not cause unnecessary delay.

Ms Allison did not accept that, in seeking particulars of matters within the State's knowledge, the CSO and the State were in breach of the Model Litigant Policy.

Mr Saidi did not accept that it was inappropriate for the State to ask the plaintiffs for information the State could have found out for itself. He could not see how seeking that information from the plaintiffs would cause a delay in the conduct of the proceedings.

Ms Allison's and Mr Saidi's approach to this issue is not acceptable.

The State then took a number of procedural points, including that each plaintiff file a separate statement of claim. Mr Paul Arblaster, junior counsel for the State, appeared in relation to this part of the proceedings.

We accept Mr Knight's evidence that it was a breach of the Model Litigant Policy for the State and the CSO, when taking the point about the pleadings, to fail to offer to put in place remedies such as offering to pay for any costs incurred by filing the additional statements of claim.

The State denied liability and did not admit that the abuse occurred.

Mr Knight accepted that there was a breach of the Model Litigant Policy in failing to admit that the acts alleged against Mr Gibson did occur. Indeed, Mr Knight went further – he said that, once the CSO was aware that Mr Gibson had been convicted or had pleaded guilty, the State was on notice that all of the abuse alleged against Mr Gibson probably occurred.

Mr Knight accepted that there was also a breach of the Model Litigant Policy in not admitting Ms Biles' allegations in respect of Mr Gordon.

Mr Coutts-Trotter accepted that the State breached clause 3.2(e)(i) of the Model Litigant Policy by requiring the plaintiffs who had made complaints that led to the convictions and guilty plea of Mr Gibson to prove the abuse. He said, 'we completely breached our obligation there'. Mr Coutts-Trotter accepted that the actions of State 'would have been baffling' to the women involved, who had made complaints to the police and who had given evidence resulting in the convictions and the guilty plea.

We are satisfied that there was a breach of the Model Litigant Policy in failing to admit that the acts alleged against Mr Gibson did occur and in not admitting Ms Biles' allegations against Mr Gordon.

Mr Saidi gave evidence that there were no breaches of the Model Litigant Policy by putting the plaintiffs to proof of the allegations of sexual abuse – even those plaintiffs who had made complaints about Mr Gibson of which he was convicted or to which he pleaded guilty. He considered this to be appropriate conduct. We reject the evidence of Mr Saidi.

In June 2009, the plaintiffs sought to mediate the proceedings. The State did not agree to mediate.

Misleading the court

The State asserted that it was prejudiced in its ability to have a fair trial by the unavailability of a number of witnesses, including a number of Resident District Officers from the period 1980 to 1984. In making the application the State relied on Mr Maxwell's investigations and the affidavits he swore about those investigations.

In one affidavit settled by Mr Arblaster, Mr Maxwell identified witnesses who were dead and witnesses who were alive but who could not give relevant evidence. However, he made no reference in the body of the affidavit to the people who he knew were available to give relevant evidence or to the fact that he had located any relevant witnesses.

Mr Arblaster made the changes to Mr Maxwell's affidavit at a time when he was aware that Mr Maxwell had obtained statements from relevant witnesses. The paragraph that Mr Arblaster introduced was misleading with regard to the people Mr Maxwell had located and who could give relevant evidence.

Mr Knight said in his evidence that he had no doubt that the obligation falling upon a litigant asserting prejudice in those circumstances was to tell the court the whole story. Relevantly, in this case, that meant that the State was obliged to tell the court about both the witnesses it had managed to find and those it was unable to find. Mr Knight said that it was a matter of being frank with the court. Mr Knight accepted that, in the circumstances of this case, by relying on Mr Maxwell's first two affidavits 'the court doesn't have the full picture'.

Mr Coutts-Trotter accepted that it was a breach of the Model Litigant Policy for Community Services to have attempted to run its permanent stay application on evidence it knew omitted matters relevant to the issues in dispute.

It is plain that, in asserting that it suffered prejudice, the State was obliged to disclose to the court the witnesses it had managed to find along with those it could not find, and that the result of not doing so was that the court did not have 'the full picture'.

There is a question about the role of the solicitors and barristers for the State involved in the conduct of the limitation applications. A lawyer owes a duty of candour to the court. This duty derives both from relevant professional rules and from the common law.

Counsel has a 'paramount duty to the court', including a duty not to mislead the court. That duty can be enforced through the court's inherent disciplinary jurisdiction. This duty of candour is owed by a legal practitioner 'when performing any act in the course of practising their profession, not only when they are making oral submissions to the court'. It has been breached through the preparation of a misleading affidavit. The obligation, as with the professional rules, extends to requiring a lawyer to correct a misleading statement once he or she becomes aware it is misleading.

Further, the court can be misled by an incomplete disclosure of facts if this gives an impression that is misleading overall, even if the facts that are disclosed are individually true.

We are satisfied that Mr Arblaster and Mr Manollaras believed that the adversarial system permitted them and their client to conduct the limitation motion by relying on Mr Maxwell's first two affidavits and that no further disclosure was required. They were clearly wrong to hold that belief. They should have known that it was not open to the State to conduct the proceedings by relying only on Mr Maxwell's first two affidavits in the form sworn. The effect was to mislead the court by the omission of relevant information.

Regardless of whether the omissions were committed in good faith, in our opinion, if the adversarial system did permit a party to conduct applications, such as the limitation applications, by deliberately omitting evidence that is relevant to the determination of the applications then public confidence in the judicial system would be seriously diminished.

We find that the submissions to the court that Mr Michael Cashion SC, senior counsel for the State, made on 14 February 2012 misled the court as to the true position. In making those submissions, Mr Cashion SC intended to advance a case on behalf of the State at the hearing of the motions that the State had suffered irremediable prejudice by relying on evidence that was misleading by omission.

It is unclear whether Mr Cashion SC knew on 14 February 2012 about the existence of the statements that Mr Maxwell had obtained. However, before making submissions to the court on 14 February 2012, he should have attempted to 'get to the bottom' of what information the State had in its possession.

Settlement and apology

A mediation took place on 17 December 2013. Apart from Community Services offering an apology, each of the proceedings was settled. The terms were:

a. Verdict for each of the active plaintiffs in the sum of $107,142.85.

b. The State to pay the plaintiffs' costs in the Kathleen Biles proceedings in the sum of $892,000.

c. The State to pay the plaintiffs' costs in the Douglas Biles proceedings in the sum of $352,000.

Mr Coutts-Trotter accepted in his evidence that the State breached the Model Litigant Policy in failing to agree to attend a mediation by, at the latest, the middle part of 2010.

Mr Knight accepted that it was incumbent upon the CSO, if it was acting in accordance with its obligations under the Model Litigant Policy, to give very strong advice to its clients to go to a mediation by, at the latest, May or June 2011. He apologised for that breach. We are satisfied that the State's failure to pursue mediation by at least mid-2011 was a serious failure of its obligations under the Model Litigant Policy, led to unnecessary costs being incurred by all parties and created additional stress and anguish for the plaintiffs.

At the mediation, an apology was delivered on behalf of Community Services. Mr Coutts-Trotter accepted that the delay in providing an apology involved a breach of clause 3.2(i) of the Model Litigant Policy. This is plainly correct.

We find that, at least by the time that Community Services ought to have been prepared to attend a mediation, it was appropriate for Community Services to apologise to the plaintiffs.

In his evidence, Mr Coutts-Trotter said that he had introduced a policy change whereby Community Services will now not rely upon a limitation defence unless Community Services is involved in any litigation where there are co-defendants.

Systemic issues

This case study raised the systemic issues of civil litigation and redress. The Royal Commission's final report on redress and civil litigation is available on our website.

1 Bethcar Children's Home

1.1 Establishment and operation

Bethcar Children's Home (Bethcar) was originally located in Brewarrina in New South Wales.

Bethcar received funding from the State and dozens of children were placed in Bethcar over the time of its operation.

Burt and Edith Gordon, a married couple, first began to take children into their care in 1969, at their residence at the Old Mission in Brewarrina. Initially, the arrangements were informal.

By 1974, the local magistrate had started to commit some children who came before him to the care of the Gordons at the Old Mission. In that year, the Gordons received a $90,000 grant from the Australian Government to construct a new home at the Old Mission site. The home became known as Bethcar Children's Home.

In 1974, the Department of Community Services (Community Services) conducted three inspections of Bethcar. The inspections were conducted by employees of Community Services known as Resident District Officers (RDOs).

In 1975, the Gordons received further government funding to operate Bethcar.

In 1976, the State of New South Wales (the State) granted Mr Gordon a permit under section 32 of the *Child Welfare Act 1939* (NSW) to operate Bethcar as a children's home. That permit was renewed until December 1978, when Mr Gordon was granted a licence under section 29 of the Child Welfare Act to operate Bethcar as a children's home.

Between about 1974 and 1984, Mr and Mrs Gordon's adopted daughter AIT and her husband, Mr Colin Gibson, also resided at Bethcar. Mr Gibson and AIT were involved in running the home.

In or about October 1980 Mr and Mrs Gordon received an award from the New South Wales Minister for Youth and Community Affairs, Mr Rex Jackson, as child care parents of the year.

In about 1984 Bethcar was moved to Orange in New South Wales. It operated there until it was closed in 1989.

1.2 Experiences of former residents of Bethcar

At the public hearing, six former residents gave evidence about their experiences at Bethcar: Ms Kathleen Biles, Ms Jodie Moore, Ms Amelia Moore, AIQ, AIH and Ms Leonie Knight. There was no challenge to any of their evidence.

Ms Kathleen Biles

Ms Biles[1] gave evidence that she was made a ward of the State at the age of two and then placed at Bethcar. She lived there until she was about 15 years of age.

Ms Biles gave evidence of sexual abuse at the hands of Mr Gordon and physical abuse by Mrs Gordon. She said the sexual abuse started from when she was about five years old.

Ms Biles recalled several instances of abuse at the hands of Mr Gordon until she was 15 years old, including digital penetration, rubbing his penis in her face and trying to put it in her mouth, oral sex and full sexual intercourse. On one occasion, Mr Gordon attempted to give her $20 after abusing her.

She recalled that she complained to Mrs Gordon the first time the abuse happened. Mrs Gordon called her a liar, flogged her with a belt and sent her to bed. From that point on Ms Biles learned that she would get that sort of response whenever she complained of the abuse.

Ms Biles never felt safe at Bethcar.

Ms Jodie Moore

Ms Jodie Moore[2] gave evidence that she lived at Bethcar from the age of six until she was 16.

Ms Jodie Moore said that, during her time at Bethcar, she suffered sexual abuse at the hands of Mr Gordon and Mr Gibson; and physical and emotional abuse by Mrs Gordon.

Ms Jodie Moore gave evidence that she was sexually abused on average once a week by Mr Gibson. The abuse ranged from digital penetration to penile penetration. She gave evidence that she often suffered physical pain and bleeding from her vagina as a result of the assaults. She said that she was so afraid of Mr Gibson coming into her room to sexually abuse her that she wet the bed until she finally left Bethcar. She deliberately broke her own arm just so she could get a break from the sexual abuse.

On occasion, she ran away from Bethcar, only to be brought back and beaten by Mrs Gordon for running away. She learned not to tell adults of her problems for fear of causing more problems.

Ms Jodie Moore also gave evidence of witnessing assaults on other children in the home, including a baby.

She gave evidence that she was distressed by Mr Gordon being awarded father of the year whilst she was at Bethcar being abused by him.

Ms Amelia Moore

Ms Amelia Moore[3] gave evidence that she lived at Bethcar between the ages of six and 16 years. She was taken there by her father for safe-keeping after her mother died.

Ms Amelia Moore gave evidence that she was sexually abused by Mr Gibson. There was an occasion when Mr Gibson grabbed her and tried to push her onto the floor of one of the houses and kiss her on the neck, but they were interrupted by Mr Gibson's wife. On another occasion, Mr Gibson touched her on the breast.

In 1980, she told a number of people about that assault, including a welfare officer with Community Services. She remembers the welfare officer taking her and three other girls to the police station. Mr Gordon was called to the station, was present at the meeting with police and drove the girls back to Bethcar. Ms Amelia Moore does not recall any police action after that.

AIQ

AIQ[4] gave evidence that she lived at Bethcar from the age of three months until she was seven or eight years old.

AIQ gave evidence of sexual abuse at the hands of Mr Gibson from about the time she was two or three years old.

On two occasions, when she was five years old, there was penile penetration, causing bleeding from her vagina. On one occasion Mr Gibson lured her into his bedroom with lollies. AIQ gave evidence of another occasion of sexual assault causing her to again bleed from the vagina and be late for dinner. She was flogged by Mrs Gordon for being late.

AIQ gave evidence that she did not report the abuse for fear of reprisals. She eventually confided in her foster sister when she was in her late thirties.

AIH

AIH[5] gave evidence that when she was about 11 years old she was taken from her mother by the welfare department and placed at Bethcar. She said that no-one came to check on her whilst she was at Bethcar.

AIH gave evidence of sexual abuse at the hands of Mr Gibson. On one occasion when she was about 12 years old, he came into her room, pushed her under the bed, touched her breasts and rubbed her vagina. He only stopped when someone approached. She then had to attend a bible reading class, which was being led by Mr Gibson.

AIH did not tell anyone about the abuse because she felt that no-one had believed the other girls when they complained and she thought she would just get a hiding.

Ms Leonie Knight

Ms Knight[6] said that at about the age of 13 she was placed at Bethcar after being picked up by the police or Community Services and taken to the Children's Court.

Ms Knight gave evidence of sexual abuse by Mr Gordon almost immediately after arriving at Bethcar.

She gave evidence that in 1983 she went to the Bourke Police Station to make a statement about the abuse, but no action was taken at that time. She was contacted again in 2005 about a court case relating to Mr Gordon, but then he passed away and nothing further happened.

1.3 Effects of the abuse on the residents

All of the women gave evidence of the devastating effect the sexual abuse has had upon their lives, including alcohol, drug and mental health problems, problems with intimacy, violent domestic relationships, and difficulties in caring for their children and obtaining or maintaining employment.

Some also recounted their anguish, frustration and emotional stress at the time taken for the State to deal with their civil claims.

2 Police and Community Services awareness of the abuse

2.1 Events in 1980

Residents report abuse to police and Community Services

In March 1980, a number of Bethcar residents complained to the Brewarrina police about Mr Gibson's behaviour towards them.

About seven or eight days later, the residents attended the Brewarrina Police Station and told the police that Mr Gibson had made a pass at one resident, was seen peeping at some of the residents through bedroom windows and had touched the breasts of another resident, Ms Amelia Moore. Ms Jodie Moore also alleged that she had woken in the night to see Mr Gibson hiding between beds dressed in his underpants or pyjamas. She also saw him peeping at her through a bedroom window.[7]

Mr Terry Madden, an RDO from Community Services who was stationed at Brewarrina, was present at the interview. The police also permitted Mr Gordon to be present at the interview. The residents were all interviewed together.

After the residents were interviewed by the police, they returned to Bethcar with Mr Gordon.

Mr Madden's memorandum

After he attended the interview at the police station, Mr Madden prepared a memorandum titled 'Problems at Bethcar Children's Home, Brewarrina'.[8] He noted that at the interview the Bethcar residents had 'answered their questions very truthfully and without any prompting and appeared to be genuine in their belief that these episodes had occurred'.[9]

Mr Madden concluded that Community Services should await the outcome of the police enquiries.

Detectives interview residents

Once the residents who had made the complaints had been returned to Bethcar, they were contacted by police detectives. The detectives interviewed the residents to determine whether charges should be laid against Mr Gibson. However, by the time the detectives interviewed the residents, the residents said they had no complaints about Mr Gibson, were happy to stay at Bethcar and had no problems.[10]

In light of the residents withdrawing their complaints about Mr Gibson, the police took no further action.

Mr Madden's ongoing concerns

Mr Madden was still concerned about the residents. He recorded in a memorandum dated 8 May 1980 that he was 'still apprehensive about whether Colin [Gibson] did or did not do anything' and that when he attended the police interview on 5 March 1980 'the girls appeared to be composed and did not appear to be telling lies'.[11]

Mr Madden's conclusion was that, as there was no police action, the only course Community Services could take would be to adopt a watching brief.[12] The decision was taken by Mr Madden not to place any further children at Bethcar 'at this stage'.[13]

There is no evidence that Community Services or the police took any further action at this time.

Detective Inspector Peter Yeomans' evidence

Detective Inspector Peter Yeomans is presently attached to the Child Abuse Squad in the NSW Police Force and is very experienced in investigating crimes associated with sexual abuse.[14]

Detective Inspector Yeomans gave evidence at the public hearing. He was an impressive witness and his evidence was not challenged.

Detective Inspector Yeomans had no involvement with any of the police investigations of Bethcar. He reviewed the available documents for the purpose of commenting to the Royal Commission on the police response to the allegations relating to Bethcar.[15] Detective Inspector Yeomans qualified the evidence that he gave about the police response to the complaints by stating that he had not had the opportunity to see all of the police records. Not all of those records are available.[16]

Detective Inspector Yeomans gave evidence (based on the material he had reviewed) that there were a number of areas in which it appeared that the police response in 1980 did not comply with the applicable procedures in place at the time:

a. There was a delay of about seven or eight days between the original report to the police on about 5 March 1980 and the interview with the residents from Bethcar. He said that that interview should have occurred immediately after the complaints were made.[17]

b. Once the complaints were made it may be that the residents should have been taken to an appropriate medical centre to see a doctor.[18]

c. The interviews were conducted with a number of relevant witnesses present.[19]

d. The police permitted Mr Gordon to be present during the interview, which is something that was 'a real problem' and which should not have happened.[20]

e. The residents were returned to Bethcar with Mr Gordon.[21]

Detective Inspector Yeomans said Mr Gordon's presence during the interview was a clear breach of the system in place in 1980.[22] Further, Detective Inspector Yeomans said that the children should not have been returned to Bethcar and he views that as the single biggest failing of the 1980 police response.[23]

Detective Inspector Yeomans also gave evidence about how a similar situation would be dealt with by the police now. Currently, if there is a complaint of child sexual abuse:

- Immediate contact would be made with the Child Protection Helpline.[24]
- The minors making the complaint would not be permitted to be returned to the care of the alleged perpetrators.
- The three agencies involved – the police, Community Services and the Department of Health – would adopt a coordinated approach.[25]

We accept Detective Inspector Yeomans' evidence identifying the failures of the police response to the complaints made in March 1980 to comply with the applicable police procedures in place at the time. Although his evidence was qualified because he did not have access to all of the documents, this did not detract from the force of his evidence. The failures are plainly established by the available documents and are very unlikely to be excused by any further documents or evidence, even if they were available.

There is no suggestion that any critical documents have gone missing. The police investigation in 2001 and 2002 (see section 3 below) did not reveal any suggestion that relevant documents were missing. The evidence of the former residents of Bethcar accords with the evidence of Detective Inspector Yeomans.

We are satisfied that these failures by the police seriously undermined the effective investigation of the children's complaints.

Mr Michael Coutts-Trotter's evidence

Mr Michael Coutts-Trotter is the current Secretary of the Department of Family and Community Services (formerly Community Services).

Mr Coutts-Trotter gave evidence at the public hearing. He was an impressive witness and his evidence was unchallenged.

Mr Coutts-Trotter accepted that, from at the latest March 1980[26] and then again in 1983 and 1984 (see section 2.2 below), Community Services had information suggesting that children were at risk

in Bethcar. He gave evidence that Community Services could have done more to protect the children at Bethcar once Community Services officers were aware of the risk.[27] We accept his evidence.

Mr Coutts-Trotter gave evidence that, whilst in 1980 Mr Madden from Community Services seemed uncomfortable about Mr Gibson being at Bethcar and had 'realised there was a problem', he did not implement responses or options that were available.[28] One of the flaws in Community Services' response at the time was to think that the only option available was to shut down Bethcar and remove the children. However, Mr Coutts-Trotter said that, for example, Community Services could have attached a condition to Bethcar's licence that Mr Gibson not return to Bethcar. He said that response was available to Community Services and it would have reduced the risk to the children at Bethcar.[29]

2.2 Events in 1983 and 1984

In 1983 and 1984, various employees of Community Services became aware of allegations by residents at Bethcar that they had been sexually abused.

Ms Leonie Knight's allegations

On 28 September 1983, the Community Services RDO stationed at Bourke, Mr Ian Robinson, prepared a memorandum recording that a Bethcar resident, Ms Knight, alleged she had been sexually abused by Mr Gordon.[30]

The police were notified but the matter did not progress, evidently because Ms Knight's parents did not wish to pursue the allegations against Mr Gordon.[31]

In an undated memorandum evidently prepared a short time after Mr Robinson's memorandum of 28 September 1983, the relieving RDO at Brewarrina, Ms Kathryn Fishburn, recorded that her investigation of Bethcar revealed that one of the residents, who was then aged about seven, appeared to share a bed with Mr Gordon.[32] Ms Fishburn also said that she was 'very concerned that the allegation of sexual abuse [made by Ms Knight] has not been followed up and more information gathered'.[33]

On 17 October 1983, Mr Bruce Foat, the Community Services Acting Operations Manager (Western Region) and another Community Services employee, Ms Anne Dimech, went to Bethcar.[34] Following their visit, they reported allegations by various residents, including that Mr Gordon had touched one of the resident's breasts, was in and out of her room 'all the time' and was 'doing the same to other girls at Bethcar'.[35]

Mr Foat and Ms Dimech considered what steps Community Services should take. Their conclusion was that 'not to investigate these allegations fully – even if there is no substance to them – is to

leave children at Bethcar in an unacceptable "at risk" situation'.[36] They resolved to put the available evidence in the hands of the police.

On 21 October 1983, Mr Foat discussed Ms Knight's allegations about Mr Gordon with the police. It was agreed that the evidence should be referred to a police officer (Sergeant Galvin) who was scheduled to visit the Community Services regional office at Brewarrina in December 1983.[37]

On 10 April 1984, the police wrote to Mr Wilson, the Acting RDO of the Western Regional Office of Community Services,[38] about Ms Knight's allegations to the police about Mr Gibson. The police said that, in the absence of a complaint that 'would substantiate court action', they believed that any further action would be unsuccessful and 'would only result in undermining the relationship that currently exists between Police and the Aboriginal community in this area'.[39]

There is no evidence that Community Services or the police took any further action

Ms Amelia Moore's allegations

On 9 April 1984, Ms Amelia Moore told a school liaison officer at her school that Mr Gordon had been abusive towards her.[40] Her allegations were passed on to Ms Dimech. Ms Dimech interviewed Ms Moore on the same day. Ms Moore told her that Mr Gordon had ridiculed her and called her a 'cock sucker'. Ms Moore was 15 years old at the time.

Community Services reviews of Bethcar

Community Services conducted two reviews of Bethcar in 1984 to consider whether it was appropriate for Bethcar to be moved from Brewarrina to Orange.[41] Community Services recommended that approval be given for the home to move to Orange.[42] Bethcar was moved to Orange in about 1984 and operated there until it was closed in 1989.[43]

Detective Inspector Yeomans' evidence

In addition to his evidence about the police response in 1980, Detective Inspector Yeomans gave evidence about the adequacy of the police response to the complaints in 1983 and 1984. Based on the available information, Detective Inspector Yeomans said that the police failed to comply with the systems in place at the time as follows:

a. The police should have interviewed Ms Knight.[44]

b. The police in 1984, when considering what action to take, should have had regard to all of the material they had, including the information in relation to the events of 1980.[45] It appeared that they failed to do so from the documents that were available.[46]

Detective Inspector Yeomans gave evidence about current police procedure in response to complaints of sexual abuse of minors. He said that, in a situation where a victim declines to give a statement to police but police believe the complaint needs to be investigated, Community Services and the police now can remove children. The children can also receive counselling and other assistance, including medical assistance, and this sometimes permits the children to make disclosures at a later time.[47]

We accept Detective Inspector Yeomans' evidence about the failures of the police in 1983 and 1984 to comply with the procedures in place at the time. There was no evidence that the police attended to these matters.

The investigation that the police in Bourke conducted when complaints were later made (see section 3 below) did not uncover any relevant evidence that the police attended to the matters that Detective Inspector Yeomans referred to. Detective Inspector Yeomans' evidence accords with the evidence of Ms Knight.

Mr Coutts-Trotter's evidence

Mr Coutts-Trotter accepted that in March 1980, and again in 1983 and 1984, Community Services had information suggesting that children were at risk in Bethcar. He gave evidence that Community Services could have done more to protect the children at Bethcar once its officers were aware of the risk.[48] We accept his evidence.

Despite the serious nature of the complaints, children were returned to and required to remain at Bethcar. We are satisfied that the actions of the police and Community Services placed the children at an unacceptable risk of harm at that time and that there was a failure by Community Services to adequately support those children who had made complaints.

3 Subsequent criminal investigations and proceedings

3.1 Further complaints to police and investigation – 1999 to 2004

In 1999, Ms Jodie Moore made a complaint to the police that she was sexually assaulted by Mr Gibson while she was living at Bethcar in 1987.[49] The police investigated the complaint, although from the available documents it is unclear what came of this investigation.

In 2002 the police spoke to Mr Graeme Eggins, who was employed by Community Services at Brewarrina in the late 1970s and 1980s. Mr Eggins told them about an allegation of sexual abuse against Mr Gordon by a resident of Bethcar.[50]

The police also interviewed Mr Madden, the Community Services officer who was present at the police interview with the Bethcar residents in March 1980. Mr Madden told the police that he 'believed that the children were telling the truth and that Colin Gibson was a risk'.[51]

The police also interviewed Mr John Hayes, a Community Services RDO in Bourke between 1982 and 1989, on 12 December 2002.[52] Mr Hayes recalled an investigation of complaints of sexual assault made by Ms Knight against Mr Gordon.

AIE, AII, AIO and AIH subsequently made complaints to the police about sexual abuse by Mr Gibson. Ms Biles made a complaint to police about abuse by Mr Gordon.

3.2 Mr Gibson is charged and convicted – 2004

In May 2004, Mr Gibson was charged with:

a. Five counts of sexual assault of Ms Jodie Moore between 1976 and 1983 when Ms Moore was aged between five and 13.

b. One count of sexual assault and one count of assault and indecency in relation to AIE between 1979 and 1980 when she was aged between seven and nine.

c. One count of assault and indecency in relation to AII in 1978 when she was aged between 10 and 11.

d. One count of sexual assault of AIO between 1976 and 1977 when she was aged between six and seven.

e. One count of assault and indecency in relation to AIH in 1980 when she was aged between 12 and 13.[53]

In October 2006, separate criminal trials were commenced against Mr Gibson concerning the charges in relation to AIO and the charges in relation to Ms Jodie Moore.

At the conclusion of each trial, Mr Gibson was found guilty.[54]

For offences against AIO, Mr Gibson was sentenced to 12 years' imprisonment. For the offences against Ms Jodie Moore, Mr Gibson was sentenced to a total of 18 years' imprisonment.[55]

A third criminal trial was listed in April 2007 concerning the charges in relation to AII. Mr Gibson pleaded guilty to the charges in relation to the offences against AII on or about 12 April 2007.[56]

In light of the plea in the AII trial, AIH and AIE indicated that they did not wish to proceed with their complaints. They had given evidence in the earlier trials.[57] As a consequence, the complaints of AIH and AIE were 'no-billed'.[58]

3.3 Police decide not to charge Mr Gordon

The police decided not to charge Mr Gordon in relation to the complaint by Ms Biles because of a lack of corroboration and because Mr Gordon was elderly, in poor health and unlikely to live to see the matters progress to trial. Mr Gordon died in 2006.[59]

Detective Senior Constable Peter Freer, who had been involved in the prosecution of Mr Gibson, said in a memorandum dated 20 February 2008 that:

> it is my view that Kathleen Biles' complaints are legitimate. There should not be a negative inference taken from the fact that Police were unable to prosecute in her specific case. Kathleen Biles presented as a person of excellent character and integrity. Further to this she showed a great deal of courage to travel from her home in North Queensland and give evidence in a tendency/witness capacity at the trials of Colin Gibson in Dubbo.[60]

4 The civil proceedings brought by the former Bethcar residents

4.1 AIL and Mr Douglas Biles commence proceedings – May 2008

In May 2008, two former residents of Bethcar, AIL and Mr Douglas Biles, commenced proceedings against the State in the District Court of New South Wales (the Douglas Biles proceedings). The plaintiffs alleged that they were abused while at Bethcar and that the State was liable for the abuse on the basis that:[61]

- They were sexually abused at Bethcar by Mr Gordon, Mr Gibson and another resident.
- the State was vicariously liable for the actions of Mr Gordon and Mr Gibson.
- The State was liable for Community Services' failures to act on the knowledge it had of the sexual abuse at Bethcar.

The solicitors for AIL and Mr Biles were Bell & Johnson Solicitors.

4.2 The Crown Solicitor's Office is instructed

In 2008, the Crown Solicitor's Office (CSO) was appointed to act for the State.

Mr Richard Kelly, Assistant Crown Solicitor Torts–Service/Regulatory, allocated the management of the proceedings to Mr Evangelos Manollaras – a solicitor then employed by the CSO. Mr Manollaras was supervised by Ms Helen Allison. At that time, Mr Manollaras was a grade I-III solicitor – the lowest grade available for a solicitor employed by the CSO. Ms Allison was a Senior Solicitor. The 'client' or agency providing instructions to the CSO was Community Services.

Although Mr Manollaras was only at grade I-III, he was a very experienced solicitor. He had been continuously employed by the CSO since 1987.[62] However, Mr Manollaras had never before acted in a case involving allegations of child sexual abuse. He was used to dealing with claims for other State agencies, mainly Corrective Services NSW.[63]

Mr Manollaras gave uncontested evidence that he raised his lack of experience in dealing with child sexual abuse claims with Mr Kelly, but Mr Kelly persuaded him to take the matter. Mr Kelly said that Mr Manollaras could brief experienced counsel and an experienced investigator and that he would be supervised.[64]

The CSO did retain experienced junior counsel, Mr Patrick Saidi, at an early stage. It also retained Mr Peter Maxwell, investigator, in about July 2008 to conduct a detailed investigation. The investigation involved Mr Maxwell taking steps to find all relevant people and relevant documents.[65] Mr Maxwell was experienced in conducting investigations for State bodies including Community Services in cases involving child sexual abuse, including cases where a limitation defence was raised.[66]

4.3 A further 13 former residents commence proceedings – July 2008

In July 2008, a statement of claim was filed on behalf of 13 plaintiffs who were former residents of Bethcar. The 13 plaintiffs brought their action against the State in one statement of claim.[67] The lead plaintiff was Ms Biles. The allegations made in these proceedings (the Kathleen Biles proceedings) were the same as in the Douglas Biles proceedings. In the statements of claim filed in both proceedings, the plaintiffs alleged that they were sexually abused by both Mr Gibson and Mr Gordon.

By the time the proceedings were commenced, Mr Gibson had been convicted by a jury of abusing Ms Jodie Moore and AIO and he had pleaded guilty to the abuse of AII. Mr Gordon was never charged, because he was elderly and in ill health. As noted above, Detective Senior Constable Freer, who had been involved in the prosecution of Mr Gibson, said in February 2008 that Ms Biles' complaints against Mr Gordon were legitimate.

The solicitor for the 13 plaintiffs was Ms Janet Loughman, the principal solicitor of the Women's Legal Services NSW (WLS). The WLS is a state-wide, government-funded, not-for-profit community legal centre established in 1982 to provide community legal services to women, particularly those who are disadvantaged in their access to justice.[68]

The CSO was also appointed to act for the State in the Kathleen Biles proceedings. The file was also allocated to Mr Manollaras.

4.4 The training given to Mr Manollaras and Ms Allison

Mr Manollaras had never received any training about any particular issues that arose in child sexual abuse cases, as compared with the issues he was used to dealing with in other personal injury litigation.[69] Ms Allison also could not recall receiving any such training.[70]

Mr Ian Knight, the Crown Solicitor, did not have any involvement with the day-to-day running of the litigation, although it was obvious when Mr Knight gave his evidence that he had familiarised himself with the details of the litigation for the purposes of giving evidence.

Mr Knight gave helpful and relevant evidence of the way that CSO allocated the files and on a number of other issues. There was no challenge to his evidence on any topic.

Mr Knight accepted that there were a number of important differences between standard personal injury litigation and litigation involving allegations of child sexual abuse.[71] He accepted that Mr Manollaras' and Ms Allison's evidence – that is, they could not recall any seminars or training programs or any particular tuition about the particular features of child sexual abuse litigation –

was correct. As a result of their evidence he was 'conscious that there are some features which are unique and which have to be made available to any officer now who is going to conduct such litigation' and that is a change that he had decided to make.[72]

Mr Knight also said that solicitors at the CSO should not be permitted to conduct litigation involving allegations of child sexual abuse unless they have been trained.[73]

Counsel Assisting submitted that it was open to the Royal Commission to find that the system that the CSO adopted in 2008 in allocating matters involving child sexual abuse to solicitors was deficient, in that those matters should only have been allocated to solicitors who had been given appropriate training.

The State submitted that that finding should not be made. Nevertheless, the State accepted that its handling of litigation involving child sexual abuse could be improved and that State agencies will now make training available to lawyers who deal with claims involving child sexual abuse.

We accept the submission made by Counsel Assisting. It clearly was a deficient system. The solicitors handling litigation of that type should have been and should now be trained.

4.5 The State's early attitude to the litigation

In June 2008, the CSO wrote to Bell & Johnson Solicitors in the Douglas Biles proceedings, suggesting that each action should be separately pleaded with its own statement of claim and statement of particulars. The CSO also stated that the claims were brought well outside of the limitation period and that:

> in the absence of any evidence to be produced by the plaintiff [sic] as to the circumstances and the dates on which the plaintiffs became aware of the possibility of making such a claim, I would advise the defendant to file a motion seeking dismissal of this action.[74]

On 25 July 2008, the Community Services officer responsible for providing instructions to the CSO informed the CSO that the police had produced Community Services' files to the District Court and that she had spoken to the police officer, Detective Senior Constable Freer, who informed her that:

- Mr Gibson was in jail until at least 2021.
- Detective Senior Constable Freer had interviewed the Community Services officers from the period when Mr Gibson was at Bethcar.
- All of those officers' details and records of interview were contained in the police brief, which had been produced.[75]

Community Services and the CSO knew from 25 July 2008 that there had been a police investigation of the allegations about Mr Gibson and that police had located and interviewed relevant officers from Community Services.

On 7 August 2008, the CSO issued a lengthy request for particulars to Bell & Johnson Solicitors in the Douglas Biles proceedings.[76] The particulars had been discussed between Mr Manollaras and Mr Saidi in conference.[77] Mr Manollaras had forwarded a draft request for particulars to Mr Saidi for Mr Saidi to settle,[78] which he did.[79]

The request for particulars included a number of questions about:

- Whether the plaintiffs were made wards of the State and, if so, on what dates (question 12).
- The number of times the plaintiffs had been removed from their families by the State (question 14).
- Whether the plaintiffs had been involved in any criminal acts or offences during any periods where the plaintiffs had absconded from the care of the State or any foster carer (question 17).
- Who from Community Services was responsible for the placement of the plaintiffs in the care and under the control of the Gordons (question 23).[80]

These questions sought information that the State already knew or had available to it.

Clause 3.2(a) of the New South Wales Model Litigant Policy for Civil Litigation (the Model Litigant Policy) provides as follows:

> 3.2 The obligation requires that the State and its agencies, act honestly and fairly in handling claims and litigation by: … (a) dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation …

Some of the witnesses called to give evidence during the Royal Commission hearing were asked about the request for particulars that the CSO issued.

Mr Knight accepted that by requesting particulars of matters within the State's knowledge the CSO was in breach of the Model Litigant Policy. He apologised to the plaintiffs for the part the CSO played in those questions being asked.[81]

Mr Coutts-Trotter also accepted that it was a breach by the State of the Model Litigant Policy to request particulars of matters that were within its knowledge.[82] With regard to the request about the history of any criminal offences of the plaintiffs (question 17), Mr Coutts-Trotter said that 'I am ashamed that we asked [this]'.[83]

Mr Manollaras said that he sought guidance from Mr Saidi about what particulars to request[84] and this is confirmed by the contemporaneous documents,[85] which indicate that Mr Manollaras produced a draft that was settled by Mr Saidi.[86]

Ms Allison was supervising Mr Manollaras at the time the request for particulars was issued, but she did not play a role in preparing it, reviewing it or settling it. Ms Allison said this in her oral evidence:

> Q: Surely it's incumbent on a model litigant to find out what its client already knows rather than start writing letters; isn't that right?
>
> A: No, I don't believe so, Your Honour.[87]

Ms Allison did not accept that, in seeking particulars of matters within the State's knowledge, the CSO and the State were in breach of the Model Litigant Policy.[88]

Mr Saidi gave evidence that he did not accept that it was inappropriate for the State to ask the plaintiffs for information the State could have found out for itself.[89] He could not see how seeking that information from the plaintiffs would cause a delay in the conduct of the proceedings.[90]

We accept the evidence of Mr Knight and Mr Coutts-Trotter. Asking the plaintiffs to provide information known to the State, in circumstances where it was likely that the plaintiffs would not have that information, did not accord with the obligations on the CSO and the State in the Model Litigant Policy to deal with the claims promptly and not cause unnecessary delay. Ms Allison's and Mr Saidi's approach to this issue is not acceptable.

4.6 The State takes procedural points

On 10 September 2008, the plaintiffs in the Kathleen Biles proceedings filed a motion that those proceedings be tried together with the Douglas Biles proceedings. The effect of such an order would be that the evidence in one matter would be evidence in the other.[91]

Both sets of proceedings were listed for directions on 11 September 2008. The Judicial Registrar of the District Court stated that she wanted to see a separate statement of claim for each of the 13 plaintiffs in the Kathleen Biles proceedings. Counsel for these plaintiffs noted that a motion had been filed seeking to 'amalgamate' these proceedings with the Douglas Biles proceedings into one statement of claim.[92]

The CSO, on behalf of the State, took the point that each plaintiff should be required to file a separate statement of claim and that each case should proceed individually and not be consolidated. The State opposed the motion filed by the plaintiffs in the Kathleen Biles proceedings.

By December 2008, the WLS was concerned about whether the plaintiffs in the Kathleen Biles proceedings would face a limitation defence and whether any of the allegations in the statement of claim would be admitted by the State. On 22 December 2008, the WLS wrote to the CSO asking the CSO to file defences as soon as possible:

> In any event, at this stage, having now had the opportunity to inspect a substantial amount of material which is being produced we ask that, for now, you advise:

- whether, in the circumstances, you intend to raise any limitation defence against the claim by the plaintiffs;
- which of the allegations in the statement of claim you are prepared to admit at this point.[93]

On 11 February 2009, the State filed a notice of motion in the Douglas Biles proceedings seeking orders that the statement of claim be struck out or the proceedings be dismissed.[94]

In February 2009, the WLS, concerned about whether the plaintiffs' claims were statute barred, filed a notice of motion seeking a declaration that at all material times each of the plaintiffs was under a 'disability' within the meaning of section 52 of the Limitation Act 1969 (NSW) (thereby suspending the running of time under that Act) and in the alternative that the limitation period be extended.[95]

The plaintiffs' motions seeking an amalgamation of both sets of proceedings were heard by Judge Knox on 1 and 8 May 2009.[96]

Judge Knox ordered that both sets of proceedings should be consolidated, with evidence in one being evidence in the other. His Honour also ordered the plaintiffs to provide particulars of the duty of care alleged and when that duty is said to have arisen; particulars of the dates, place and circumstance of each of the assaults when the plaintiffs were placed into care; and particulars on some other matters.[97]

In the course of the hearing on 1 and 8 May 2009, Judge Knox described the State's approach to the litigation as taking 'every root and branch objection'. He raised whether this conduct complied with the Model Litigant Policy.[98] Judge Knox later said that he had 'a fairly strong view about' the Model Litigant Policy issue.[99]

Mr Manollaras did not raise Judge Knox's comments with Ms Allison or anyone else at the CSO.[100] The CSO did not have a protocol in place which required a solicitor with the day-to-day carriage of a matter to report to a more senior solicitor an observation by a judge about whether the State or CSO was complying with the Model Litigant Policy.[101] The protocol was that solicitors were required to notify their supervisors of significant developments.[102]

On or about 10 June 2009, the plaintiffs provided particulars as ordered by Judge Knox.[103]

The State was unsuccessful in arguing that each plaintiff should file a separate statement of claim. As noted, Judge Knox raised a question about whether the State's conduct accorded with the Model Litigant Policy. Mr Paul Arblaster, junior counsel (admitted to the New South Wales Bar in 2006) who appeared on behalf of the State before Judge Knox, responded to Judge Knox's observations by saying that the State considered that the better and more efficient approach was for the plaintiffs to separately plead their causes of action in separate statements of claim.[104]

Mr Knight did not accept that, in requiring the plaintiffs to file separate statements of claim, the State and the CSO were in breach of the Model Litigant Policy. However, his evidence was that, in

taking that point, it was a breach of the Model Litigant Policy for the State and the CSO to fail to offer to put in place remedies such as offering to pay for any costs incurred by filing the additional statements of claim.[105]

Mr Coutts-Trotter accepted that it was a breach of clause 3.2(a) of the Model Litigant Policy for the State to seek to have the plaintiffs file separate statements of claim.[106]

Ms Allison did not accept that the State was in breach of the Model Litigant Policy by attempting to have the plaintiffs file separate statements of claim.[107]

Mr Saidi's view was also that the better course was for the plaintiffs to separately plead their causes of action.[108]

The position that the State adopted accorded with the view of the Judicial Registrar of the District Court, stated at the directions hearing in September 2008.[109] Further, the causes of action of each plaintiff, while containing obvious similarities and common facts and allegations, were different in a number of important respects. This included the periods during which the abuse was said to have occurred, which plainly was an important matter. These matters support the position adopted by the State.

Judge Knox dealt with the issue by ordering the provision of particulars by the plaintiffs, which is a practical and efficient way to approach the issue.

We accept the evidence of Mr Knight that it was a breach of the Model Litigant Policy for the State and the CSO, when taking the point about the pleadings, to fail to offer to put in place remedies such as offering to pay for any costs incurred by filing the additional statements of claim.

4.7 The conduct of the litigation between June 2009 and June 2010

Mr Manollaras wrote to counsel in June 2009 raising whether an early resolution of the proceedings should be explored.[110]

On 29 June 2009 Mr Saidi, Mr Arblaster, Mr Manollaras and the instructing officer from Community Services had a conference. The notes of the conference record no discussion of the prospect of early resolution.[111] Mr Saidi and Mr Manollaras could not recall any such discussion.[112]

On 30 September 2009, Mr Manollaras had a conference with Mr Saidi and Mr Arblaster. During that conference a telephone call was made to the instructing officer of Community Services. The instructing officer's file note of the conference records:

> We need to look at
>
> 1. If liability then what's reasonable settlement
> 2. If no liability, then what's reasonable economic settlement.
>
> Need to look at interlocutory matters – time bar, out of time/disability before we even get to the above matters.[113]

On 2 October 2009, Mr Manollaras wrote to Community Services, noting Judge Knox's decision in May 2009 to consolidate all 15 actions. He also referred to the fact that both counsel and the CSO had recommended that the decision be appealed. Community Services did not give instructions for any appeal to be lodged.[114] In Mr Manollaras' letter to Community Services, he said:

> it was not clear in those discussions [on 30 September 2009] whether I am instructed to defend the claim or attempt to resolve the claim. Could you please clarify this matter or let me know if further advice is required.[115]

On 8 October 2009, the instructing officer from Community Services instructed the CSO to pursue the interlocutory matters, including the issue in relation to the limitation defence, and said that:

> [At this time we do not have] sufficient information from the plaintiffs to be in a position to assess any liability on the part of the Department. As this case progresses I expect that this will change and your further advice may be required. Given the advice in your letter that some of the plaintiffs 'appear to have very little, if any, prospects of successfully obtaining a verdict in their favour' it would not be appropriate for us to make any offers to settle unless they were calculated on a purely economic basis so that we would not need to incur expense on behalf of the State pursuing the interlocutory proceedings. It seems unlikely that such an offer would be accepted by the plaintiffs at this stage.[116]

On 4 November 2009, Mr Manollaras wrote to Mr Saidi referring to a conference with Community Services scheduled for 12 November 2009.[117] The CSO noted that the instructing officer from Community Services 'would like the opportunity of this conference to discuss the options open to the Department in relation to resolving this claim (or claims)'.[118]

Mr Manollaras also stated that on a commercial basis, if the matter could be resolved for up to $400,000 plus costs, the State might be saved that amount in costs alone.[119] In the letter, reference was made to comments from Mr Saidi that:

> the junior counsel for the plaintiffs, Ms Wall, and the solicitor from the Women's Legal Services, are more motivated in pursuing this action than many of the plaintiffs themselves. Having had the opportunity to reflect on that, I would tend to agree with counsel that both the solicitors from Women's Legal Services and Ms Wall appear to be far more interested in pursuing the matters than Mr Catsanos [lead counsel for the plaintiffs] and I would assume also some, if not most, of the plaintiffs, judging on the reports served on behalf of those plaintiffs.[120]

Mr Knight commented upon this statement in his evidence. He said that there was no basis for Mr Saidi's and Mr Manollaras' observations.[121] There was no evidence before the Royal Commission which suggested that Mr Saidi and Mr Manollaras were entitled to make those comments.

In his letter to Mr Saidi, Mr Manollaras said that, if it was the case that Community Services or the Minister had any direct supervisory responsibility in relation to Bethcar and if it was established that Community Services took no steps to protect the plaintiffs, the court would be scathing in its criticism of Community Services[122] and:

> As counsel is aware, the defendant, as the model litigant, has an obligation to consider whether a matter may be resolved expeditiously by way of mediation. I would suggest that counsel give this aspect some thought, particularly in light of my comments above in relation to an offer to settle the matter.[123]

A suggestion was made that Mr Saidi might telephone the lead counsel for the plaintiffs, Mr John Catsanos, to discuss the question of settlement.[124]

Mr Saidi responded in writing on 10 November 2009.[125] He reported that he had a discussion with Ms Wall in which she had indicated that on a compromised basis each plaintiff was 'worth' $200,000 at a minimum.[126] In that letter, Mr Saidi reported as follows:

> I have suspected for some time now that the lawyers acting on behalf of the plaintiffs, at least in relation to some of the plaintiffs, are not receiving instructions from those plaintiffs in any meaningful manner.[127]

Mr Saidi also said that:

> It is my view that a number of the plaintiffs, if not a majority of them, are nowhere near as interested in the pursuit of these proceedings as their lawyers may be. One would suspect that some of the plaintiffs would accept any reasonable offer made in these proceedings. This would be especially so if such plaintiffs are as impecunious as has been made out to the Court in the past. One says this not to belittle any of the plaintiffs in any way, but more as a fact supporting the approach that a reasonable offer of settlement attractive to the plaintiffs should be made at a very early stage by way of offer of compromise.[128]

On 27 November 2009, the WLS wrote to the CSO to ask whether the State wished to participate in a 'formal mediation'. The WLS noted that 'the litigation would be complex, expensive, and for our clients, emotionally demanding'.[129]

Mr Manollaras wrote to Mr Saidi on 1 December 2009 and made the following observation on the WLS proposal for mediation:

> It seems to me that the request to consider mediation sooner rather than later may be on the basis of relieving the plaintiffs' lawyers from particularising their clients' claims. I may be wrong but I get the impression that the Women's Legal Services view of mediation is a

> situation where the defendant turns up with a cheque book and after some polite conversation with the plaintiffs' lawyers and several cups of coffee the plaintiff's [sic] walk off with damages in the order of what was discussed between Mr Catsanos, somewhere in the vicinity of $3M.[130]

Mr Manollaras also said that, whilst mediation may be an option, it could not be considered at this stage while the plaintiffs had not particularised their claims. He said that it might be possible to agree to a mediation in principle, subject to there being a timetable on particulars and service of medical evidence, and that this was an alternative to running the matter to trial. The CSO's estimate was that the matter would not be ready for trial for two or three years.[131] The CSO noted that they had not shared any of the views in the letter with Community Services and would await counsel's consideration.[132]

On 1 December 2009, the CSO wrote to Community Services about the WLS suggestion to mediate. It was suggested that it might be too early to mediate, although it would be possible to set up a timetable with a view to mediating the matter in 'say' 12 months' time 'rather than running it at trial in four or five years' time'.[133]

On 3 December 2009, Mr Saidi wrote to the CSO, saying that mediation was always a good option for a defendant. However, for it to be effective, it required the plaintiffs' lawyers to understand and appreciate the legal issues. Mr Saidi recorded his doubts as to whether the plaintiffs' legal advisors 'have even the most basic idea as to what the legal issues are, and what liability problems each plaintiff faces'.[134]

Mr Saidi expressed the view that an early mediation without 'any proper preparation taking place on behalf of the plaintiffs … would prove fruitless'.[135] Mr Saidi also recommended that 'at the very least' each of the plaintiffs should be medically examined. He noted that he made it clear on an earlier occasion the advantages of that course, which apparently included 'that it is going to be very difficult for the plaintiffs' legal advisors to arrange for the plaintiffs to be medically examined'.[136]

The CSO also proposed to use Sir Laurence Street as mediator. Mr Saidi's response to this was that, in mediations in the past with Sir Laurence as the mediator which 'involve[d] persons of indigenous background', he had been 'extremely sympathetic to the plight of such persons, even to the point of encouraging settlement of claims on terms which would appear to be favourable to the indigenous person(s)'.[137]

In answering questions about whether it was appropriate for the State as a model litigant to attempt to meet with the solicitors for the plaintiffs at the very beginning or very early on to talk about the case and work out a way forward, Ms Allison said that 'It's not done routinely, Your Honour'. When asked whether it should be done, she said 'I don't know, Your Honour' and that 'I don't have an opinion, Your Honour'.[138] There was also this exchange:

Q: You see, looking at this file – and you're familiar with it now – there appears to be possibly a reflection of a culture which infects many of our adversarial processes. People write letters, people bring motions, judges are required to resolve matters that could be, or should be, sorted out between practitioners. Do you understand what I am saying?

A: Yes, I understand what you're saying, your Honour.

Q: Do you think it's incumbent upon the Crown, as a model litigant, to do what it can to avoid those sorts of matters, those sorts of issues, troubling litigation?

A: No, I don't, your Honour. I think the Crown is entitled to maintain its position in an adversarial system.[139]

Ms Allison said that her understanding of the Crown's obligation as a model litigant set out above was consistent with the model litigant obligations.[140]

Rather than attend a mediation, the CSO continued to investigate the liability issues in the proceedings. In late March 2010, the CSO obtained a statement from Mr Madden.[141] Mr Madden was a key witness from Community Services on the adequacy of its response to the allegations of abuse at Bethcar in 1980. In that statement, Mr Madden said:

> In hindsight, I should not have been blinded by any belief system that the Aborigine community was different to the wider community. I should also have insisted that the three girls who made the allegations in March, 1980 go anywhere else other than to Bethcar after the allegations were made. That would have guaranteed the girls were not subjected to any pressure, intentional or otherwise, not to go ahead with their initial statements.[142]

Mr Madden also said that in listening to the girls who had made the complaint and 'based on my experience in sexual abuse investigations I formed the view that the girls were being honest in what they had said'.[143] The children he was referring to were Ms Jodie Moore, Ms Amelia Moore and another Bethcar child resident.[144]

4.8 The State files defences

On 11 June 2010, the State filed defences in the proceedings. Liability was denied. In relation to AII, Community Services did not admit the allegation that she had suffered injury at Bethcar when subjected to physical, mental, emotional and sexual abuse perpetrated by the Gordons and Mr Gibson.[145] The same non-admission was made in respect of Ms Jodie Moore[146] and AIO.[147]

The allegations of abuse were also not admitted for each of the other plaintiffs. The effect of a non-admission of the allegations of abuse under the *Uniform Civil Procedure Rules 2005* (NSW) was to require the plaintiffs to prove that the abuse occurred.

Clause 3.2(e)(i) of the Model Litigant Policy provides as follows:

> 3.2 The obligation requires that the State and its agencies, act honestly and fairly in handling claims and litigation by: … (e) where it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by: … (i) not requiring the other party to prove a matter which the State or an agency knows to be true; …

When the State filed its defences it knew that Mr Gibson had been convicted at two separate trials in respect of the allegations by two of the plaintiffs, Ms Jodie Moore and AIO,[148] and that he had pleaded guilty to the sexual abuse of All.[149] Further, the State knew that AIH and AIE gave evidence at the trials of Mr Gibson, which had resulted in convictions.[150]

Also, although Mr Gordon had not been prosecuted because of age and ill health, the State knew that Detective Senior Constable Freer, who had investigated the allegations, believed that Ms Biles' complaints about Mr Gordon were legitimate.[151]

Despite knowing of all of these matters, the State did not admit the allegations of abuse that the plaintiffs made against Mr Gibson and Mr Gordon, including the allegations made by Ms Jodie Moore, AIO and All.

Mr Knight accepted that there was a breach of the Model Litigant Policy in failing to admit that the acts alleged against Mr Gibson did occur. He apologised to the plaintiffs to the extent that the CSO contributed to that breach of the Model Litigant Policy.[152] Indeed, Mr Knight went further and said that, once the CSO was aware that Mr Gibson had been convicted or had pleaded guilty, the State was on notice that all of the abuse alleged against Mr Gibson probably occurred.[153]

Mr Knight accepted that there was also a breach of the Model Litigant Policy in not admitting Ms Biles' allegations in respect of Mr Gordon.[154]

Mr Coutts-Trotter accepted that the State breached clause 3.2(e)(i) of the Model Litigant Policy by requiring the plaintiffs who had made complaints that led to the convictions and guilty plea of Mr Gibson to prove the abuse. He said that 'we completely breached our obligation there'.[155] Mr Coutts-Trotter accepted that the actions of Community Services 'would have been baffling'[156] to the women involved, who had made complaints to the police and had given evidence resulting in the convictions and the guilty plea.

Ms Allison accepted that putting the plaintiffs to proof in matters where the plaintiffs had complained to the police about Mr Gibson and where there had been a conviction and/or a guilty plea involved a breach of clause 3.2(e)(i) of the Model Litigant Policy.[157]

Mr Saidi gave evidence that in his view there were no breaches of the Model Litigant Policy in putting the plaintiffs to proof of the allegations of sexual abuse – even those plaintiffs who had made complaints about Mr Gibson of which he was convicted or to which he pleaded guilty. He considered this to be appropriate conduct.[158] Mr Saidi's views were not shared by either Mr Knight or Mr Coutts-Trotter.

We are satisfied that there was a breach of the Model Litigant Policy in failing to admit that the acts alleged against Mr Gibson did occur and in not admitting Ms Biles' allegations against Mr Gordon. We reject the evidence of Mr Saidi.

4.9 The conduct of the litigation between June 2010 and August 2011

The proceedings were listed for directions on 21 June 2010. On that occasion, the Judicial Registrar raised the prospect that the matters might be resolved at mediation. Mr Manollaras reported to Community Services that he had instructed counsel appearing for Community Services, Mr Arblaster, that while there was a limitation issue:

> the State might not be interested in a mediation, particularly where, the defendant could not see that it could be held liable for the plaintiffs' injuries, even leaving the limitation question aside.[159]

The likely length of the hearing time required for the dispute was also discussed. An estimate was given that the limitation motion would take two to three weeks and the trial would take 'three months plus'.[160] The CSO estimated that by that stage the number of potential witness list for the State was 'over 70'.[161] Of course, these estimates were likely to cause concern to the plaintiffs. This concern about whether a 'tactical position' was being adopted is heightened by the fact that it is unclear at this stage whether the State had any favourable evidence that it was in a position to call at a trial.

The CSO obtained a statement from Ms Fishburn dated 30 June 2010.[162] Ms Fishburn had been employed by Community Services at time of the abuse. She relieved as the RDO at Brewarrina for six weeks during 1983.[163] Ms Fishburn said that she was 'taken aback' by the sleeping arrangement at Bethcar, where Mr Gordon slept with one of the boys.[164] She said in her statement:

> whilst I have real recollections that all the children at Bethcar, particularly [the boy whom Mr Gordon shared a room with] and AII, were at risk, I cannot now remember my exact actions upon departing Bethcar.[165]

On 6 July 2010, Mr Manollaras wrote to Mr Saidi commenting on Ms Fishburn's statement. Mr Manollaras also made comments about Ms Knight's allegations that Mr Gordon had 'comforted her by hugging her, kissing her and fondling her breasts'.[166] Mr Manollaras took it upon himself to express this opinion about Ms Knight's allegation:

> I am wondering whether a report by Leonie Knight either may have been an exaggeration or, if not an exaggeration, whether [Department officers] Eggins and Robinson had formed the wrong conclusion, by making a quantum leap between the child being comforted by Gordon on the one hand, all the way up to sexual interference by Gordon of Leonie Knight.

> For example, a distressed child could be comforted in the normal manner by a hug and a kiss. Granted I am having a problem with fondling of breasts, but I still think it is a quantum leap, even if there was some fondling of breasts, to conclude sexual interference.[167]

We find this latter statement extraordinary. The fondling of a teenager's breasts could only be described as a sexual act. At the time of the incident, Ms Knight was 14 years of age.[168]

The correspondence also emphasised that a statement by Mr Eggins, which was annexed to Ms Fishburn's statement, indicated that Community Services was on notice as at 23 March 1983 that Ms Knight may have been sexually abused and it appeared that Community Services took no steps between March 1983 and August 1983.[169]

Mr Manollaras also said that while the focus had been on whether the plaintiffs could establish a nexus between Bethcar and Community Services:

> I'm just thinking out loud now, but we seem to be on the track of denying the nexus between DoCS and Bethcar. I'm wondering whether we should spend some energy on whether there was any abuse to start with. Or at least that there may not have been in respect of all 15 claimants. Certainly, in the case of Leonie Knight there appears to be no evidence, unless it comes from the mouth of the claimant herself … So finally I come back to the point of commencement, as to whether the initial report of hugging, kissing and fondling really amounts to sexual abuse. If fondling is either an exaggeration or at worst, a fabrication then really I can't see how one can conclude that there has been sexual abuse by the mere hugging and kissing of an upset child to comfort her.[170]

In a report to Community Services, CSO noted that 'the plaintiffs would like to mediate – they have made noises that they might settle for an apology, some cash and costs'.[171] Mr Manollaras' reaction was unsympathetic. He felt that he was not in a position to recommend an apology and that 'there is in my view a big question mark whether anything really happened (despite the plaintiffs' allegations) meriting an apology'.[172]

On 12 May 2011, Mr Manollaras wrote to Mr Michael Cashion SC, the senior counsel retained to appear for Community Services on the limitation motion.[173] Mr Manollaras referred to a conversation between Mr Saidi and Mr Catsanos about the question of settlement. Mr Manollaras' understanding was that:

> all the plaintiffs have done is indicated that they want an acknowledgement and a modest amount of money. Pat Saidi seemed to feel that the defendant wouldn't have a problem with the non-pecuniary side of things, but I am not of the same view, and I suggested as much to him. As to the cash, as far as I can see, its [sic] for the plaintiff [sic] to come to us with an offer.[174]

Mr Manollaras expressed the view that an apology should not be made because:

> firstly, I don't ever recall the State apologising for anything, secondly, the investigations to date suggest, at least to me, that the plaintiffs are going to have a difficult time establishing liability (at least on a level playing field). I have a suspicion that very little if anything occurred. yes [sic] the kids were disciplined, but where do yuo [sic] draw the line between discipline and the physical abuse alleged by the plaintiffs. As to the sexual assaults, I have a very strong doubt that anything occurred at all, in most cases. I'm open on [AII], and one other whose name escapes me for the moment. In such circumstances, i [sic] could recommend a settlement on commercial grounds only, but certainly not an apology.[175]

On 4 August 2011, over three years after the proceedings were commenced, the CSO responded to the WLS on the question of mediation, saying that:

> [Community Services does not oppose mediating the dispute] at an appropriate time. That time has not yet arrived. The defendant has previously indicated – and the Court has acknowledged – that it will be premature to mediate prior to the hearing of the limitation applications, or at least one application.[176]

No mediation was arranged. As set out below, the State did not attend a mediation until December 2013.

4.10 The conduct of the Limitation Act and Batistatos motions

As set out above, the plaintiffs in the Kathleen Biles proceedings had filed a notice of motion in February 2009 seeking a declaration that at all material times each of the plaintiffs was under a disability within the meaning of section 52 of the *Limitation Act 1969.*

In early 2011, the CSO asked Mr Maxwell (the investigator it had retained at an early stage) to prepare an affidavit for the State to rely on in the plaintiffs' limitation motion. The evidence is unclear about the precise instructions Mr Maxwell had been given about what to include in that affidavit. He was not given a letter of instruction.[177] He knew the affidavit was to address the prejudice, if any, to the State in dealing with the claims by the plaintiffs.[178]

Mr Saidi, who was retained to advise in the case at the time Mr Maxwell was first retained (but who did not settle any of Mr Maxwell's affidavits), was uncertain as to what should be included in Mr Maxwell's evidence.[179] Mr Saidi and Mr Maxwell both gave evidence that Mr Saidi gave no advice or instruction to Mr Maxwell as to the content of the affidavit.[180]

By the time Mr Maxwell was asked to prepare this affidavit, he had located and obtained statements from a number of relevant witnesses who were employed by Community Services at the relevant times, including Mr Madden and Ms Fishburn. Mr Maxwell had provided those statements to the CSO.

By March 2011, Mr Maxwell had produced a draft affidavit.[181] In that affidavit, he said that he had identified a number of people who would have had knowledge relevant to the State's case but who were either deceased or alive but unavailable to give any relevant evidence.

His draft affidavit also included a heading 'Other witnesses'. He said in his evidence to the Royal Commission that one reason he included this heading was that he was unsure whether to include in the affidavit details of a number of other people he had identified who were available to give evidence and from whom he had obtained statements.[182] He 'wasn't sure which way counsel wanted – what he wanted to do'.[183] In other words, he was not sure whether counsel wanted him to disclose to the court the available witnesses or only give evidence about persons who for whatever reason could not give evidence.

When Mr Arblaster gave evidence, he initially said that he did not understand that he was retained to settle Mr Maxwell's affidavits,[184] but he corrected this in later evidence and accepted that he settled those affidavits.[185] He said that in the course of settling Mr Maxwell's first affidavit, he changed the 'Other witnesses' heading Mr Maxwell had included to 'Other issues'.[186] It is also clear that Mr Arblaster added the following words underneath that heading:

> Based on the information currently available to me, I am nearing completion of my inquiries aimed at identifying and locating witnesses and documents. However, it is likely that there will need to be further investigations which are not presently capable of being identified because as I identify, locate and speak with witnesses they often identify other witnesses who must be located and contacted. I estimate that I will require approximately 100 further hours to complete my inquiries into identifying, locating and speaking with witnesses.[187]

On 17 May 2011, Mr Maxwell swore the affidavit settled by Mr Arblaster. In the body of the sworn affidavit, Mr Maxwell identified witnesses who were dead and witnesses who were alive but could not give relevant evidence. He made no reference in the body of the affidavit to the people who he knew were available to give relevant evidence or to the fact that he had located any relevant witnesses.

Mr Arblaster was asked about the amendments he made to Mr Maxwell's affidavit and gave the following evidence:

> THE CHAIR: Q. Mr Arblaster, when you received a copy of the draft which had the heading 'Other witnesses' in it, you knew that Mr Maxwell had found other people who could give relevant evidence in the case which had not been referred to in the affidavit, didn't you?
>
> A. I think that's correct, yes, your Honour.
>
> Q. You knew that what Mr Maxwell was raising was what he should say about those other people, didn't you?

A. I disagree, your Honour. It was never even on the radar that those other people would be put in that section.

Q. Well, what's otherwise the reference to 'Other witnesses'?

A. Those who don't fit within parts (b) to (g).

Q. You heard Mr Maxwell's evidence, didn't you?

A. I was sitting here, I heard his evidence, with which I disagree.[188]

Mr Arblaster made the changes to Mr Maxwell's affidavit at a time when he was aware that Mr Maxwell had obtained statements from relevant witnesses. The paragraph that Mr Arblaster introduced was misleading with regard to the people who Mr Maxwell had located and who could give relevant evidence. Mr Maxwell's affidavit set out to address the prejudice to the State if the proceedings were allowed to be prosecuted, but the affidavit was silent on a critical part of his investigations – that part which had revealed the existence of relevant witnesses.

The proceedings were listed for directions before the court on 9 June 2011. On that occasion the State was ordered to complete service of its evidence on the limitation motion and the proceedings were stood over for further directions on 5 August 2011. In addition, the parties were directed to work out 'an expeditious manner to resolve the proceedings'.[189] By this time the estimate for the hearing of the limitation motion was the extraordinary period of six to nine weeks.[190]

Mr Maxwell swore a supplementary affidavit on 3 August 2011.[191] In that affidavit, he adopted the same approach as in his first affidavit – namely, in the body of the affidavit he referred only to the people and documents that were unavailable and not to people he had located who could give relevant evidence.

Mr Maxwell's affidavits contained annexures – PM1 and PM2 – which contained contemporaneous documents created by some of the Community Services officers who were alive and who could give relevant evidence. Annexures PM1 and PM2 did not contain the statements that Mr Maxwell obtained from those officers, which he had forwarded to the CSO.

Mr Maxwell's 17 May and 3 August 2011 affidavits were served by the CSO on behalf of Community Services. Mr Manollaras[192] and Mr Arblaster[193] understood that those affidavits went to the issue of the State's assertion on the plaintiffs' limitation motion that it had suffered irremediable prejudice to its ability to have a fair trial.

On 9 September 2011 the proceedings were listed for directions. Mr Cashion SC appeared for the State, leading Mr Arblaster.[194] The following relevant orders were made:

a. The limitation motion was fixed for hearing for three days on 20 February 2012.

b. Evidence in chief was to be adduced by affidavits and reports.

c. The evidence in chief of the applicant was limited to the affidavit of Ms Biles, the report of Dr Patricia Jungfer and reports of Ms Natalie Green dated 22 August 2007 and 27 June 2008.

d. The evidence of Community Services comprised the affidavits of Mr Maxwell sworn 17 May and 3 August 2011.[195]

By this time, the CSO had retained another barrister to assist in the conduct of the litigation – Mr Steven Woods. Mr Woods was a junior barrister, although he was senior to Mr Arblaster.

Mr Woods gave evidence that the CSO did not brief him to appear on the limitation motion,[196] give formal advice on the filing of the limitation motion[197] or settle Mr Maxwell's affidavits (and he did not in fact settle them).[198] Rather, Mr Woods said that he was briefed to provide ad hoc advice as and when requested about miscellaneous matters in the litigation[199] and to appear to lead Mr Arblaster at directions hearings if it was considered that counsel of greater seniority than Mr Arblaster was necessary.[200]

Mr Woods was not retained to appear at the limitation motion. However, he raised with Ms Jodi Vella, a paralegal from the CSO assisting Mr Manollaras, whether, apart from defending the plaintiffs' limitation motion, the State was proposing to advance an argument that a fair trial was not possible as a basis for a permanent stay of the proceedings, in accordance with the decision of the High Court of Australia in *Batistatos v Roads & Traffic Authority of NSW (2006) 226 CLR 256 (Batistatos).*[201] This was the first time this question had been raised.

On 27 September 2011 Ms Vella raised the *Batistatos* issue by email with Mr Arblaster. She wrote that 'I understand our evidence will be the same [as our evidence on the plaintiffs' limitation motion], namely, Peter Maxwell's affidavit'.[202]

On 11 January 2012, Mr Cashion SC sent an email to Ms Vella in which he referred to a discussion that he had had with Mr Arblaster just before Christmas the previous year. That discussion concerned, amongst other matters, the possibility of Community Services seeking a permanent stay. Mr Cashion SC said that:

> Our preliminary conclusion was that the evidence would be the same [as the evidence for the plaintiffs' limitation motion] and that it is worth running as a separate application on the first day set aside for the hearing commencing 20 February. We parted on the basis that we would both re-read the authorities, consider the evidence in that context and discuss the matter in detail when we are both back in the latter part of January. I will call you tomorrow morning to discuss.[203]

On 30 January 2012 Ms Vella spoke to Mr Arblaster. Evidently Mr Arblaster was to meet with Mr Cashion SC for a brief period later that day.[204]

One of the matters that Mr Arblaster and Ms Vella discussed was Mr Maxwell's affidavits. EitherMr Arblaster or Ms Vella (the evidence did not reveal which) said:

> One problem that raises itself is that amongst the documents in Peter Maxwell's Exhibit Bundles, there may be one witness that is deceased, but often there is someone else signing off who is available.[205]

Mr Arblaster advised that the State bore the onus to prove that a fair trial was not possible.[206]

On 1 February 2012, Mr Cashion SC and Mr Arblaster gave a joint written opinion in which they stated that the prospects of success of an application seeking a stay of all 15 claims were sufficiently high to have reasonable prospects of success. They recommended filing an application seeking a permanent stay returnable at the hearing of the limitation motion on 20 February 2012.[207]

In their joint advice, Mr Cashion SC and Mr Arblaster made reference to Mr Maxwell's affidavits and said:

> The rationale for such an application [a permanent stay application] is that the effluxion of time since the events giving rise to the plaintiffs' claims has resulted in the deterioration of evidence upon which the State would otherwise have relied in its defence of the substantive proceedings, with the consequence that a fair hearing is no longer possible.
>
> …
>
> The State's evidence on a stay or dismissal application would comprise Mr Maxwell's two affidavits and the exhibits thereto. In other words, the application would require no additional evidence to the material the State proposes to rely upon at the hearing of Ms Biles' limitation application.[208]

The advice proposed that the State should seek a permanent stay of the litigation based on the contention, relying on Mr Maxwell's affidavits, that it had suffered irremediable prejudice. As noted above, those affidavits did not reveal the true position about the State's prejudice.

The CSO notified the WLS of Community Services' intention to file an application. A motion was filed on 6 February 2012.[209] The WLS wrote to the CSO on 6 February 2012 foreshadowing an objection to the permanent stay motion being heard on 20 February 2012, because they needed time to make further investigations and preparations so that the plaintiffs would be in a position to meet it.[210]

On 10 February 2012, the solicitors for the plaintiffs in the Douglas Biles proceedings (Bell & Johnson) wrote to the CSO asking the CSO to particularise 'whether the defendant has information or evidence available from any other persons ("other witnesses") or any other source ("other evidence") in respect of each of the issues'.[211]

Shortly after receiving that letter, Mr Manollaras sent it by email to Mr Cashion SC, Mr Arblaster and Mr Woods. He included a proposed response. Mr Manollaras' proposed response was that 'the defendant does not have any other evidence'.[212] Obviously this was not true.

At 1.46 pm Mr Woods replied by email saying that Mr Manollaras had missed the point.[213] In an email to Mr Cashion SC and Mr Arblaster at 2:20 pm that day, he raised the possibility of responding to Bell & Johnson by saying, 'The defendant objects to providing any further response to this question'.[214]

Mr Woods noted his hesitation about the proposed response and said:

> It smacks of a defendant (the State, no less!) wanting it both ways – we are prejudiced, but we won't tell you if we have any good evidence/dirt. I think, tactically, cards on the table is better. We do not, on my understanding, have any good bits of secret knowledge, so let's say so. Paul, can you think about this and then we can discuss a better response.[215]

Mr Cashion SC responded at 2:21 pm saying, 'Have read emails, but will stay out of loop unless I can have some specific input'.[216]

Mr Woods responded to Mr Arblaster and Mr Cashion SC a few minutes later stating that Mr Cashion's input was needed on this matter but that he had asked Mr Arblaster to 'reflect on it first'.[217]

It is unclear what, if any, discussions took place on the proposed draft response after that, either between counsel or at all. Mr Arblaster said that he could not recall discussing the issue with Mr Cashion SC.[218] Mr Woods could not recall any discussions with Mr Arblaster or Mr Cashion SC.[219] Mr Woods gave evidence that he was of the view that the wording of the response came from Mr Cashion SC. The basis for his view was that they were not Mr Woods' words.[220] He also said that he held a firm view that the answer required the input of senior counsel.[221]

Mr Cashion SC had a recollection that 'at some point in time' he did have some involvement in the process of drafting the letter,[222] but he did not otherwise recall having a specific discussion with Mr Woods, Mr Arblaster or the CSO. However, he said that he suspects that he had a discussion with either Mr Woods or Mr Arblaster or both.[223]

CSO sent the following response:

> The defendant's evidence in relation to whether it is prejudiced/can obtain a fair trial is contained in the affidavits of Peter Maxwell (sworn 17 May and 3 August 2011) and in the bundles of documents served by the defendant in addition to the two affidavits. Further, to the extent to which your request seeks further information, the determination of a a [sic] proper answer involves the formation of an opinion and thus your request is not appropriate.[224]

This response did not answer the question that Bell & Johnson had posed: whether the State had information or evidence available from any people other than those referred to in Mr Maxwell's affidavits. The State did have information and evidence from such people but did not tell Bell & Johnson that in its response to that letter.

Upon the application of the plaintiffs' solicitors, the proceedings were listed before the list judge in the District Court, Judge Truss, on 14 February 2012. Mr Manollaras attended court instructing Mr Cashion SC, leading Mr Arblaster.[225] There is no evidence that the issue raised in the email communications of 10 February 2012 was discussed by anyone at court on this day.

At court on 14 February 2012 the following relevant events occurred before Judge Truss:

1. Counsel for the plaintiffs said that in light of the motion filed by Community Services seeking a permanent stay relying upon the decision in Batistatos, the plaintiffs had to consider their position in relation to adducing evidence 'to rebut this so-called prejudice'.[226] Counsel for the plaintiffs raised the fact that Community Services had been asked 'what evidence you do have because if you've got the evidence whether you can find there's other witnesses or not, there's no prejudice'.[227] Counsel for the plaintiffs said that the plaintiffs 'would need to put on evidence in relation to what is out there'.[228]

2. In response, Mr Cashion SC submitted that the issue raised by the Batistatos application was the same as the issue raised by the limitation motion.[229] He submitted that 'the evidence will be the same' on the limitation motion and the Batistatos motion.[230]

   Community Services' position was that the Batistatos motion should be heard with the limitation motion on 20 February 2012.[231] Community Services' position was that 'both our application and the plaintiffs' application can and should proceed together next week because the issue which our application raises is identical to one of the issues raised in the plaintiffs' application and the evidence is common and the quick, just, efficient resolution of the matter really compels the conclusion which we say should flow'.[232]

3. Mr Cashion SC stated that 'Our ideal position is that the two be heard together next week but if that is not going to happen for some reason well we would be prepared to continue with the limitation application hearing by itself next week'.[233]

Judge Truss rejected the arguments that Mr Cashion SC advanced on behalf of the State. Her Honour vacated the hearing date of the limitation motion, permitting the plaintiffs time to put on evidence in reply.[234] She ordered that the State pay the plaintiffs' costs.[235]

The effect of Mr Cashion SC's submission was that both motions should be heard on 20 February 2012 and the State's evidence on the Batistatos motion was 'the same' as its evidence on the limitation motion: that is, the affidavits of Mr Maxwell. Accordingly, the State's position on 14 February 2012 was that it would rely on Mr Maxwell's affidavits to assert that it had suffered irremediable prejudice in its ability to defend the proceedings. Those affidavits omitted key information about the State's prejudice – namely, that it had located relevant witnesses.

The evidence is unclear as to whether, on 14 February 2012, Mr Cashion SC had in his brief the statements from relevant witnesses that the CSO had obtained from Mr Maxwell, which Mr Maxwell had not referred to in his affidavits. However, Mr Cashion SC said in evidence that he was at least aware by 10 February 2012 that there was additional information that was available to Mr Maxwell that had not been included in Mr Maxwell's affidavits, although he was unaware of what it was or the form of it.[236]

Mr Cashion SC gave evidence that it did not occur to him to 'get to the bottom' of what this additional information was that he believed existed.[237] Mr Cashion SC conceded that it should have occurred to him[238] and it would have been appropriate to make inquiries about this additional information but that 'no bells rang, no lights flashed' – he was of the understanding that the evidence was on and he went down and told the court as much.[239]

By 14 February 2012, Mr Arblaster and Mr Manollaras were aware of the existence of the statements of relevant witnesses who could give relevant evidence and who Mr Maxwell had not referred to.[240]

On 23 May 2012, the plaintiffs served two affidavits in reply to the State's evidence.[241] Those affidavits referred to the existence of 10 witnesses who were available and who could give relevant evidence.

On 18 June 2012, the CSO sent the plaintiffs' evidence in reply to Mr Arblaster. He prepared a detailed memorandum in which he set out the steps to be taken. He did this after a discussion with Mr Cashion SC, in which they were obviously concerned that the evidence in Mr Maxwell's affidavit as filed was misleading. Mr Arblaster advised that Mr Maxwell's apparent lack of frankness, described as a suggestion that he had been selective, needed to be 'explained away'. Mr Arblaster raised the following matters:

a. Brief Mr Cashion SC with the statements taken by Mr Maxwell to date.

b. The plaintiffs' evidence referred to a number of witnesses – most of whom Community Services had statements from already.

c. Mr Maxwell should prepare an affidavit disclosing those witnesses referred to by the plaintiffs to whom he had spoken.

d. Mr Maxwell should also refer to witnesses to whom he had spoken but who the plaintiffs had not identified, and 'it may be that this material is not included in the settled affidavit but we would like to consider it in the draft'.

e. The suggestion Mr Maxwell had been selective needed to be 'explained away'.[242]

Mr Maxwell prepared an affidavit in reply on 20 September 2012.[243] In that affidavit he identified 10 people to whom he had spoken before preparing his first two affidavits and who the plaintiffs identified in their evidence. He identified an additional five people he had located before swearing his first two affidavits and who the plaintiffs had not identified. He identified a further 18 people he had spoken to after his affidavits were prepared.

The notices of motion came on for hearing in the District Court on 12 November 2012 and proceeded until 15 November 2012, when they were stood over part heard.[244] Judge Curtis heard the motions. It was the CSO's view that during the course of the hearing:

> it has become increasingly clear that His Honour [Judge Curtis] will find in favour of the plaintiff in relation to the limitation motion. As such, it may be prudent to remove this part of the defence so as to better refine the issues on which the remainder of the Hearing should focus.[245]

Instructions were sought to withdraw the limitation defence.[246]

A particular difficulty arose during the hearing because the plaintiffs called for the production by Mr Maxwell of documents, which comprised his instructions and investigations, disclosing what evidence he had been able to locate as opposed to the evidence that had been lost.[247] The State refused to provide those documents on the basis that they were privileged.[248]

After the motions were stood over part heard, the plaintiffs issued a subpoena for production seeking from Mr Maxwell the evidence that he had been able to obtain.[249] The State filed a motion seeking to set aside that subpoena.[250]

On 6 December 2012, Ms Mitchell, the officer from Community Services providing instructions to the CSO at this time, had a phone call with the CSO. During that call Ms Mitchell said:

> I raised my concerns … about the issue of privilege. I said I was concerned that the position the State might be taking was unreasonable and untenable, i.e. if through Mr Maxwell's affidavit the State has waived privilege, then shouldn't the State allow access to the documents.[251]

On 10 December 2012, Community Services instructed the CSO to withdraw the limitation defence.[252] The State filed an amended defence abandoning the limitation defence in the Kathleen Biles proceedings a short time later.[253]

On 13 December 2012, Judge Curtis dismissed the State's motion seeking to set aside the subpoena and ordered the State to pay the plaintiffs' costs of that motion.[254] Judge Curtis held that, by relying on Mr Maxwell's affidavits, the State had waived privilege over documents that recorded the investigations Mr Maxwell had not disclosed in his affidavits. Further, Judge Curtis found that the State had not established any grounds for its assertions that the documents sought would not materially assist the plaintiff and that the subpoena was too broad and oppressive.[255]

On the advice of the CSO, Community Services gave instructions to file an application for leave to appeal to the Court of Appeal against the decision of Judge Curtis.[256] A Notice of Intention to Appeal was filed on 20 December 2012.[257] As set out below, the State later abandoned that application.

The evidence firmly established the following relevant matters in respect of the State's conduct of the limitation/*Batistatos* applications:

1. The evidence that the State intended to rely on in the limitation and Batistatos applications was limited to Mr Maxwell's first two affidavits and the exhibits.[258]
2. The State, through that evidence, was asserting that it was prejudiced in its ability to have a fair trial by the unavailability of a number of witnesses, including a number of RDOs from the period 1980 to 1984.[259]
3. Mr Maxwell was advised to omit reference to relevant witnesses he had obtained statements from, including RDOs who gave directly relevant evidence in the period between 1980 and 1984.[260]
4. When the limitation application was fixed for hearing in September 2011, it was noted that the evidence on the motion would be limited to the first two affidavits of Mr Maxwell and the evidence then served by the plaintiffs, which did not identify any of the relevant witnesses who Mr Maxwell had located.[261]
5. When the proceedings were before the court on 14 February 2012, the State attempted to have both the Batistatos and limitation motions heard on 20 February 2012. The State's evidence on prejudice that would be before the court was limited to the evidence in Mr Maxwell's first two affidavits.[262]

Mr Knight said in his evidence that he had no doubt that the obligation of a litigant asserting prejudice in those circumstances was to tell the court the whole story. Relevantly in this case, that meant that the State was obliged to tell the court about both the witnesses it had managed to find and those it was unable to find.[263] Mr Knight said that it was a matter of being frank with the court.[264] Mr Knight accepted that, in the circumstances of this case, by relying on Mr Maxwell's first two affidavits 'the court doesn't have the full picture'.[265]

Mr Knight said this:

> Q: I won't tax you with your view as to the obligation to the court, but you accept that a solicitor has a duty of candour to the court?
>
> A: Well, solicitors are in fact officers of the court, and there is a complete duty of candour to the court. There can be no misleading of the court or allowing the court to fall into error.

Q: And that includes allowing the court to determine an issue when only part of the material relevant to that issue and known to the lawyer is presented?

A: If you know the piece of information, and you know the court doesn't know it, and that not knowing it has led the court to make an incorrect finding or conclusion, then I think a solicitor has a duty to disclose it.[266]

Mr Coutts-Trotter accepted that it was a breach of clause 3.1, and perhaps clause 3.2(f) and 3.2(a), of the Model Litigant Policy for Community Services to have attempted to run its permanent stay application on evidence it knew omitted matters relevant to the issues in dispute.[267]

It is plain that, in asserting that it suffered prejudice, the State was obliged to disclose to the court the witnesses it had managed to find along with those it could not find; and the result of not doing so was that the court did not have 'the full picture'.

Mr Arblaster submitted that contemporaneous documents prepared by officers of Community Services in annexures PM1 and PM2 revealed the existence of potential witnesses who were not referred to in the body of the affidavits as being unavailable. He submitted that the effect of this was that there was no assertion in the affidavits when read together with the annexures that all potential witnesses were unavailable.

We accept that Mr Maxwell's first two affidavits must be read together with exhibits PM1 and PM2. However, we do not accept that the fact that PM1 and PM2 contained contemporaneous documents prepared by officers of Community Services alerted the reader of the affidavits to the fact that the State had located witnesses who were capable of giving relevant evidence.

The evidence given in the body of the affidavits was misleading in that it referred only to the people and documents that were unavailable and did not refer to the people Mr Maxwell had located who could give relevant evidence. The information in PM1 and PM2 did not disclose the fact that Mr Maxwell had located witnesses who could give relevant evidence and was therefore not sufficient to put the reader of those affidavits on notice of that matter.

There is a question about the role of the solicitors and barristers for the State involved in the conduct of the limitation/*Batistatos* applications. A lawyer owes a duty of candour to the court. This duty derives both from relevant professional rules and from the common law: see rule 23 of the *Revised Professional Conduct and Practice Rules 1995*, in force in New South Wales until 1 January 2014, which applied to all solicitors and barristers engaged in advocacy; and rules 12, 26, 27 and 63 of the Barristers' Conduct Rules, which commenced on 8 August 2011 and were in force until 6 January 2014.

Counsel has a 'paramount duty to the court', including a duty not to mislead the court.[268] That duty can be enforced through the court's inherent disciplinary jurisdiction.[269] This duty of candour is owed by a legal practitioner 'when performing any act in the course of practising their profession,

not only when they are making oral submissions to the court'.[270] It has been breached through the preparation of a misleading affidavit.[271] The obligation, as with the professional rules, extends to requiring a lawyer to correct a misleading statement once he or she becomes aware it is misleading.[272]

Further, the court can be misled by an incomplete disclosure of facts if this gives an impression that is misleading overall, even if the facts that are disclosed are individually true. In In re Thom, Cullen CJ (Gordon and Ferguson JJ agreeing) said:

> It is of the greatest importance that any mere casuistry in the presentation of evidence should be strictly avoided by those entrusted with the responsible duties of a legal practitioner. It is perhaps easy by casuistical reasoning to reconcile one's mind to a statement that is in fact misleading by considering that the deponent is not under any obligation to make a complete disclosure. By this means a practitioner may be led into presenting a statement of fact which, although it may not be capable of being pronounced directly untrue in one particular or another, still presents a body of information that is misleading, and conceals from the mind of the tribunal the true state of facts which the deponent is professing to place before it. For that reason it is proper on such an occasion as this to express condemnation of any such casuistical paltering with the exact truth of the case.[273]

We are satisfied that Mr Arblaster and Mr Manollaras believed that the adversarial system permitted them and their client to conduct the limitation motion and Batistatos motion by relying on Mr Maxwell's first two affidavits and that no further disclosure was required. They were clearly wrong to hold that belief. They should have known that it was not open to the State to conduct the proceedings by relying only on Mr Maxwell's first two affidavits in the form sworn. The effect was to mislead the court by the omission of relevant information. To use the words of Cullen J in In re Thom, Mr Maxwell's first two affidavits presented 'a body of evidence that was misleading' and that concealed from the mind of the court 'the true state of facts which the deponent [was] professing to place before it'.[274]

Mr Arblaster was at court in September 2011 when the limitation motion was fixed for hearing and orders were made to the effect that the State's evidence was limited to the affidavits of Mr Maxwell. He jointly authored the advice on 1 February 2012 in which he and Mr Cashion SC stated that the permanent stay application should proceed with the State relying on Mr Maxwell's affidavits in support of its assertion of prejudice. Mr Arblaster was at court on 14 February 2012 when his leader, Mr Cashion SC, submitted that the motions should be heard on 20 February 2012 with the State's evidence limited to Mr Maxwell's affidavits. On each of these occasions, Mr Arblaster knew that the State possessed relevant information on the question of whether it was prejudiced and that that evidence was not referred to in the body of Mr Maxwell's affidavits. He therefore knew that the State's evidence on the motions presented a misleading body of information.

Senior counsel for Mr Arblaster submitted that this case is an example of the large consequences of apparently small steps in litigation, even if they are omissions committed in good faith.[275] Regardless

of whether the omissions were committed in good faith, in our opinion, if the adversarial system did permit a party to conduct applications such as the limitation and Batistatos applications by deliberately omitting evidence that is relevant to the determination of the applications then public confidence in the judicial system would be seriously diminished.

We find that the submissions that Mr Cashion SC made to the court on 14 February 2012 misled the court as to the true position. In making those submissions, at the hearing of the motions Mr Cashion SC intended to advance a case on behalf of the State that the State had suffered irremediable prejudice by relying on evidence which was misleading by omission. While it is unclear whether Mr Cashion SC knew of the existence of the statements that Mr Maxwell had obtained before making submissions to the court on 14 February 2012, he should have attempted to 'get to the bottom' of what information the State had in its possession.

4.11 The State agrees to mediate

As noted above, following the decision of Judge Curtis to refuse to set aside the plaintiffs' subpoena seeking production of documents by Mr Maxwell, the State filed an application for leave to appeal to the Court of Appeal of New South Wales. While that leave application was pending, on 9 July 2013 Community Services instructed the CSO to prepare an advice on settlement and quantum. It said that it wanted a telephone conference arranged to discuss the matter.[276]

That conference occurred on 15 July 2013. Community Services instructed the CSO to explore mediation and resolve the matter as expeditiously and cheaply as possible, particularly given the Court of Appeal hearing was listed in November 2013.[277] This was the first time in the proceedings that the State had indicated a willingness to attend a mediation. As set out above, the State had rejected the idea of a mediation when it was raised by the plaintiffs in November 2009, the court in June 2010 and the plaintiffs again in August 2011.

A mediation was scheduled to occur in December 2013. On 6 December 2013, Community Services gave instructions that it would bear the costs of the mediation.[278]

To assist in the mediation, the plaintiffs provided a schedule setting out their claims. Each of the 14 remaining plaintiffs sought a sum of $214,000.00 plus past out-of-pocket expenses and costs.[279]

The mediation took place on 17 December 2013. Ms Mary Walker, a very experienced mediator, was appointed. Apart from Community Services offering an apology, each of the proceedings was settled.[280] The terms were:

a. Verdict for each of the active plaintiffs in the sum of $107,142.85.[281]

b. The State to pay the plaintiffs' costs in the Kathleen Biles proceedings in the sum of $892,000.[282]

c. The State to pay the plaintiffs' costs in the Douglas Biles proceedings in the sum of $352,000.[283]

Clause 3.2(a) of the Model Litigant Policy is set out in section 4.5 above.

Clause 3.2 of the Model Litigant Policy relevantly provides:

> 3.2 The obligation requires that the State and its agencies, act honestly and fairly in handling claims and litigation by: … (b) paying legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid; …[and] (d) endeavouring to avoid litigation, wherever possible. In particular regard should be had to Premier's Memorandum 94-25 Use of Alternative Dispute Resolution Services by Government Agencies and Premier's Memorandum 97-26 Litigation Involving Government agencies;

By mid-2010 the State and the CSO knew that:

1. Mr Gibson had been found guilty in respect of complaints by three of the plaintiffs.
2. Detective Senior Constable Freer thought that Ms Biles' complaints about Mr Gordon were legitimate.
3. A number of Community Services employees had concerns about sexual abuse at Bethcar and there was little evidence of action taken by Community Services in response.
4. The complaints of abuse in some of the cases were horrific.
5. There was no credible evidence to call to contradict the allegations.
6. The plaintiffs had on several occasions asked the State to attend a mediation.
7. The CSO had given costs estimates to the State to defend the claim in the order of $600,000.[284]
8. The plaintiffs were impecunious.[285]

Mr Coutts-Trotter accepted in his evidence that the State breached the Model Litigant Policy in failing to agree to attend a mediation by, at the latest, the middle part of 2010.[286]

Ms Allison accepted in her oral evidence that the State should have gone to mediation by August 2010. Notwithstanding this concession, she did not accept that the failure to have done so was a breach of the Model Litigant Policy.[287]

Mr Manollaras accepted that he was now aware of the very great distress caused to the plaintiffs by the way in which the State conducted the litigation.[288] He offered an apology to all 15 plaintiffs for:

> … having taken such an adversarial approach to defending the claim brought by them against the Department. I can see now that, had I taken a more conciliatory approach to this litigation, that the litigation may have been resolved a lot earlier and they would have been spared some of the anguish they suffered having to re-tell their experiences so many times. I am sincerely sorry to you for having suffered in re-telling your experiences and for the length of time the litigation took to resolve.[289]

Mr Knight accepted that it was incumbent upon the CSO, if it was acting in accordance with its obligations under the Model Litigant Policy, to give very strong advice to its clients to go to a mediation by, at the latest, May or June 2011.[290] He apologised for that breach. We are satisfied that the State's failure to pursue mediation by at least mid-2011 was a serious failure of its obligations under the Model Litigant Policy, led to unnecessary costs being incurred by all parties and created additional stress and anguish for the plaintiffs.

At the mediation, an apology was delivered on behalf of Community Services.[291]

Clause 3.2(i) of the Model Litigant Policy provides as follows:

> 3.2 The obligation requires that the State and its agencies, act honestly and fairly in handling claims and litigation by: … (i) apologising where the State or an agency is aware that it or its lawyers have acted wrongfully or improperly.

The proceedings were commenced in mid-2008. For the reasons set out above, Community Services ought to have been aware by mid-2010 that it was likely that the plaintiffs had suffered the abuse that was alleged and that the State was likely to be culpable in respect of the abuse. The State did not offer an apology until December 2013 – about five and a half years after the proceedings were commenced. At least in part this appears to have been because Mr Manollaras was of the view that an apology should not be offered. He was not convinced that the abuse occurred and could not remember the State apologising for anything. He obviously believed that Community Services was unwilling to try and resolve the cases.

Mr Coutts-Trotter accepted that the delay in providing an apology involved a breach of clause 3.2(i) of the Model Litigant Policy.[292] This is plainly correct.

In her evidence Ms Allison said that she was not able to comment upon whether there was a breach by the State in failing to apologise for anything the State had done until the mediation.[293]

We find that, at least by the time that Community Services ought to have been prepared to attend a mediation, it was appropriate for Community Services to apologise to the plaintiffs.

Finally, we should draw attention to the fact that Mr Knight was also asked about differences between the Commonwealth Model Litigant Policy (contained in Appendix B of the Commonwealth Legal Services Directions 2005) and the New South Wales Model Litigant Policy. Clause 2(d) of the Commonwealth Model Litigant Policy provides that:

> the obligation that the Commonwealth and its agencies act honestly and fairly in handling claims and litigation brought by or against the Commonwealth or an agency by: … (d) endeavouring to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution before initiating legal proceedings and by participating in alternative dispute resolution processes where appropriate.

In comparing clause 3.2(d) of the New South Wales policy to the clause 2(d) of the Commonwealth policy, Mr Knight said that the Commonwealth policy 'certainly seems to be more comprehensive'.[294] He said that 'the Commonwealth one is better'.[295] We share that view.

4.12 Systemic failures at the Crown Solicitor's Office

Not providing early detailed advice

The CSO received instructions in mid-2008. It first delivered a comprehensive advice as to liability, damages and litigation strategy in April 2013. This was almost five years after receiving instructions. Before that, some ad hoc advices of one and two pages in length had been delivered from time to time, along with oral advice from time to time in conference with counsel.

Mr Manollaras said that his understanding of the system was that it was not necessary to deliver a comprehensive advice addressing liability, damages and strategy until the proceedings had been fixed for hearing.[296] That meant that in proceedings such as these, which were not allocated a hearing date in the five and a half years the CSO had been instructed, there was no system in place that required the CSO to deliver a comprehensive advice.

Ms Allison gave evidence that the provision of a detailed or comprehensive advice dealing with liability in a manner such as this was not always done, and 'it depends on the matter'.[297]

Mr Knight accepted that it was 'a problem' that no comprehensive advice was delivered on liability, damages and strategy until about April 2013.[298]

The system now in place is that there is a requirement for an advice within 28 days unless the client indicates otherwise.[299]

We are of the view that the proper management of complex litigation requires the early provision of detailed advice to the client. This permits the client to properly evaluate its exposure and requires the solicitors running the case to focus more properly on the real issues in the litigation.

Not having in place a proper system of supervision

The nature of Ms Allison's supervision of Mr Manollaras involved Ms Allison:

- Reviewing incoming correspondence, including advice from counsel.
- Being available to discuss any issues that Mr Manollaras raised.
- Attending some conferences.[300]

She would not look at outgoing correspondence unless Mr Manollaras asked her to do so[301] and there were no regular file reviews conducted between her and Mr Manollaras.[302]

The system of supervision did not involve Ms Allison necessarily being consulted about tactical decisions that were made.[303] Ms Allison did not think that the role of a supervising solicitor involved conducting an assessment shortly after instructions were received about what attitude might be adopted to the case, including whether it was sensible to try to settle the proceedings early.[304]

Mr Knight was asked about the need for file reviews in which a solicitor with day-to-day carriage of the matter sits down with their supervisor to discuss the matter.[305] He accepted that file reviews of that nature should be conducted twice a year as a minimum.[306] He accepted that the evidence in this case that there were no file reviews 'is a problem'.[307]

We find that the system of supervision in this case discloses failures on the part of the CSO. A solicitor with limited experience in dealing with child sexual abuse claims was left largely unsupervised, with no regular oversight. There were no regular file reviews of the nature identified by Mr Knight in his evidence and there ought to have been such file reviews.

4.13 Policy changes introduced by the State of New South Wales

On the final day of the public hearing the State produced a document entitled 'NSW Government Guiding Principles for Government Agencies Responding to Civil Claims for Child Sexual Abuse' (Guiding Principles).[308] The Guiding Principles apply to current and future claims and are intended to operate in conjunction with the Model Litigant Policy. They apply to all New South Wales Government agencies. Important features of the Guiding Principles include:

a. Agencies will regularly make training available to lawyers who deal with child sexual assault matters, and the training will address the effects of child sexual assault.

b. Agencies will consider any requests from victims for alternative forms of acknowledgement or redress.

c. Agencies will facilitate access to free counselling for victims.

d. Agencies should facilitate access to records relating to the claimants.

e. Agencies should consider facilitating an early settlement.

f. Agencies should not generally rely on the statutory limitation period as a defence other than in matters where there are other defendants.

g. Agencies who have said to resolve the majority of claims within two years.

h. Agencies will attempt to facilitate the agreement on the use of single experts where practicable.

i. Compliance with the guiding principles under the Model Litigant Policy would be overseen through annual reports to the Senior Managing Council or Social Policy Committee.

In his evidence, Mr Coutts-Trotter said that he had introduced a policy change whereby Community Services will now not rely upon a limitation defence unless Community Services is involved in any litigation where there are co-defendants.[309]

5 Systemic issues

This case study raised the systemic issues of civil litigation and redress. The Royal Commission's final report on redress and civil litigation is available on our website.

APPENDIX A: Terms of Reference

Letters Patent dated 11 January 2013

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Justice Peter David McClellan AM,
Mr Robert Atkinson,
The Honourable Justice Jennifer Ann Coate,
Mr Robert William Fitzgerald AM,
Dr Helen Mary Milroy, and
Mr Andrew James Marshall Murray

GREETING

WHEREAS all children deserve a safe and happy childhood.

AND Australia has undertaken international obligations to take all appropriate legislative, administrative, social and educational measures to protect children from sexual abuse and other forms of abuse, including measures for the prevention, identification, reporting, referral, investigation, treatment and follow up of incidents of child abuse.

AND all forms of child sexual abuse are a gross violation of a child's right to this protection and a crime under Australian law and may be accompanied by other unlawful or improper treatment of children, including physical assault, exploitation, deprivation and neglect.

AND child sexual abuse and other related unlawful or improper treatment of children have a long-term cost to individuals, the economy and society.

AND public and private institutions, including child-care, cultural, educational, religious, sporting and other institutions, provide important services and support for children and their families that are beneficial to children's development.

AND it is important that claims of systemic failures by institutions in relation to allegations and incidents of child sexual abuse and any related unlawful or improper treatment of children be fully explored, and that best practice is identified so that it may be followed in the future both to protect against the occurrence of child sexual abuse and to respond appropriately when any allegations and incidents of child sexual abuse occur, including holding perpetrators to account and providing justice to victims.

AND it is important that those sexually abused as a child in an Australian institution can share their experiences to assist with healing and to inform the development of strategies and reforms that your inquiry will seek to identify.

AND noting that, without diminishing its criminality or seriousness, your inquiry will not specifically examine the issue of child sexual abuse and related matters outside institutional contexts, but that any recommendations you make are likely to improve the response to all forms of child sexual abuse in all contexts.

AND all Australian Governments have expressed their support for, and undertaken to cooperate with, your inquiry.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, appoint you to be a Commission of inquiry, and require and authorise you, to inquire into institutional responses to allegations and incidents of child sexual abuse and related matters, and in particular, without limiting the scope of your inquiry, the following matters:

a. what institutions and governments should do to better protect children against child sexual abuse and related matters in institutional contexts in the future;

b. what institutions and governments should do to achieve best practice in encouraging the reporting of, and responding to reports or information about, allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;

c. what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and impediments to, reporting, investigating and responding to allegations and incidents of abuse;

d. what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution and support services.

AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate, including recommendations about any policy, legislative, administrative or structural reforms.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to have regard to the following matters:

e. the experience of people directly or indirectly affected by child sexual abuse and related matters in institutional contexts, and the provision of opportunities for

them to share their experiences in appropriate ways while recognising that many of them will be severely traumatised or will have special support needs;

f. the need to focus your inquiry and recommendations on systemic issues, recognising nevertheless that you will be informed by individual cases and may need to make referrals to appropriate authorities in individual cases;

g. the adequacy and appropriateness of the responses by institutions, and their officials, to reports and information about allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;

h. changes to laws, policies, practices and systems that have improved over time the ability of institutions and governments to better protect against and respond to child sexual abuse and related matters in institutional contexts.

AND We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to consider the following matters, and We authorise you to take (or refrain from taking) any action that you consider appropriate arising out of your consideration:

i. the need to establish mechanisms to facilitate the timely communication of information, or the furnishing of evidence, documents or things, in accordance with section 6P of the *Royal Commissions Act 1902* or any other relevant law, including, for example, for the purpose of enabling the timely investigation and prosecution of offences;

j. the need to establish investigation units to support your inquiry;

k. the need to ensure that evidence that may be received by you that identifies particular individuals as having been involved in child sexual abuse or related matters is dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries;

l. the need to establish appropriate arrangements in relation to current and previous inquiries, in Australia and elsewhere, for evidence and information to be shared with you in ways consistent with relevant obligations so that the work of those inquiries, including, with any necessary consents, the testimony of witnesses, can be taken into account by you in a way that avoids unnecessary duplication, improves efficiency and avoids unnecessary trauma to witnesses;

m. the need to ensure that institutions and other parties are given a sufficient opportunity to respond to requests and requirements for information, documents and things, including, for example, having regard to any need to obtain archived material.

AND We appoint you, the Honourable Justice Peter David McClellan AM, to be the Chair of the Commission.

AND We declare that you are a relevant Commission for the purposes of sections 4 and 5 of the *Royal Commissions Act 1902.*

AND We declare that you are authorised to conduct your inquiry into any matter under these Our Letters Patent in combination with any inquiry into the same matter, or a matter related to that matter, that you are directed or authorised to conduct by any Commission, or under any order or appointment, made by any of Our Governors of the States or by the Government of any of Our Territories.

AND We declare that in these Our Letters Patent:

child means a child within the meaning of the Convention on the Rights of the Child of 20 November 1989.

government means the Government of the Commonwealth or of a State or Territory, and includes any non-government institution that undertakes, or has undertaken, activities on behalf of a government.

institution means any public or private body, agency, association, club, institution, organisation or other entity or group of entities of any kind (whether incorporated or unincorporated), and however described, and:

i. includes, for example, an entity or group of entities (including an entity or group of entities that no longer exists) that provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children, including through their families; and

ii. does not include the family.

institutional context: child sexual abuse happens in an institutional context if, for example:

i. it happens on premises of an institution, where activities of an institution take place, or in connection with the activities of an institution; or

ii. it is engaged in by an official of an institution in circumstances (including circumstances involving settings not directly controlled by the institution) where you

consider that the institution has, or its activities have, created, facilitated, increased, or in any way contributed to, (whether by act or omission) the risk of child sexual abuse or the circumstances or conditions giving rise to that risk; or

iii. it happens in any other circumstances where you consider that an institution is, or should be treated as being, responsible for adults having contact with children.

law means a law of the Commonwealth or of a State or Territory.

official, of an institution, includes:

i. any representative (however described) of the institution or a related entity; and

ii. any member, officer, employee, associate, contractor or volunteer (however described) of the institution or a related entity; and

iii. any person, or any member, officer, employee, associate, contractor or volunteer (however described) of a body or other entity, who provides services to, or for, the institution or a related entity; and

iv. any other person who you consider is, or should be treated as if the person were, an official of the institution.

related matters means any unlawful or improper treatment of children that is, either generally or in any particular instance, connected or associated with child sexual abuse.

AND We:

n. require you to begin your inquiry as soon as practicable, and

o. require you to make your inquiry as expeditiously as possible; and

p. require you to submit to Our Governor-General:

i. first and as soon as possible, and in any event not later than 30 June 2014 (or such later date as Our Prime Minister may, by notice in the Gazette, fix on your recommendation), an initial report of the results of your inquiry, the recommendations for early consideration you may consider appropriate to make in this initial report, and your recommendation for the date, not later than 31 December 2015, to be fixed for the submission of your final report; and

ii. then and as soon as possible, and in any event not later than the date Our Prime Minister may, by notice in the Gazette, fix on your recommendation, your final report of the results of your inquiry and your recommendations; and

q. authorise you to submit to Our Governor-General any additional interim reports that you consider appropriate.

IN WITNESS, We have caused these Our Letters to be made Patent
WITNESS Quentin Bryce, Governor-General of the Commonwealth of Australia.

Dated 11th January 2013
Governor-General
By Her Excellency's Command
Prime Minister

Letters Patent dated 13 November 2014

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Justice Peter David McClellan AM,
Mr Robert Atkinson,
The Honourable Justice Jennifer Ann Coate,
Mr Robert William Fitzgerald AM,
Dr Helen Mary Milroy, and
Mr Andrew James Marshall Murray

GREETING

WHEREAS We, by Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia, appointed you to be a Commission of inquiry, required and authorised you to inquire into certain matters, and required you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 31 December 2015.

AND it is desired to amend Our Letters Patent to require you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 15 December 2017.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, amend the Letters Patent issued to you by omitting from subparagraph (p)(i) of the Letters Patent "31 December 2015" and substituting "15 December 2017".

IN WITNESS, We have caused these Our Letters to be made Patent.

WITNESS General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia.

Dated 13th November 2014
Governor-General
By Her Excellency's Command
Prime Minister

APPENDIX B: Public hearing

The Royal Commission	Justice Peter McClellan AM (Chair) Justice Jennifer Coate Mr Bob Atkinson AO APM Mr Robert Fitzgerald AM Professor Helen Milroy Mr Andrew Murray
Commissioners who presided	Justice Peter McClellan AM and Mr Robert Fitzgerald AM
Date of hearing	20 October 2014, 22–31 October 2014, 14 November 2014 and 18 December 2014
Legislation	*Royal Commissions Act 1902* (Cth) and *Royal Commissions Act 1923* (NSW)
Leave to appear	State of New South Wales, comprising State agencies including the Department of Justice, the NSW Police Force, the Crown Solicitor's Office and the Office of the Director of Public Prosecutions Department of Family and Community Services, NSW Janet Loughman Patrick Saidi Paul Arblaster Evangelos Manollaras Steven Woods

Legal representation	D Lloyd, Counsel Assisting the Royal Commission P Menzies QC and D Kell, instructed by Michael Greene of Henry Davis York, appearing for the State of New South Wales M England, instructed by Mark Henry of Maddocks Lawyers, appearing for the Department of Family and Community Services M Gerace, appearing for Janet Loughman M Windsor SC, instructed by Yeldham Price O'Brien Lusk, appearing for Evangelos Manollaras M J Neil RFD QC, instructed by K McGlinchey of McGlinchey Lawyers, appearing for Patrick Saidi P Wass SC, instructed by Moray & Agnew, appearing for Steven Woods B Walker SC and S Wells, appearing for Paul Arblaster
Pages of transcript	1069
Notices to Produce issued under the Royal *Commissions Act 1923* (NSW) and documents produced:	25 notices to produce issued under *Royal Commissions Act 1923* (NSW) producing 11,172 documents
Notices to produce documents issued under the *Royal Commissions Act 1902* (Cth) and documents produced:	3 notices to produce issued under *Royal Commissions Act 1902* (Cth) producing 385 documents
Number of exhibits	27 exhibits consisting of 514 documents tendered at the hearing

Witnesses	**Kathleen Biles** Former resident of Bethcar and plaintiff in the District Court civil proceedings **Jodie Moore** Former resident of Bethcar and plaintiff in the District Court civil proceedings **Amelia Moore** Former resident of Bethcar and plaintiff in the District Court civil proceedings **AIH** Former resident of Bethcar and plaintiff in the District Court civil proceedings **Janet Loughman** Principal Solicitor, Women's Legal Service **Helen Allison** Senior Solicitor, Crown Solicitor's Office **Michael Coutts-Trotter** Secretary of the Department of Family and Community Services, NSW **Evangelos Manollaras** Former Solicitor, Crown Solicitor's Office **Michael Cashion SC** Barrister **Paul Arblaster** Barrister **Andrew Cappie-Wood** Secretary of the Department of Justice **Peter Yeomans** Detective Inspector of the NSW Police Force **Patrick Saidi** Barrister **Peter Maxwell** Private Investigator **Ian Knight** (Former) Crown Solicitor for NSW, Crown Solicitor's Office **Steven Woods** Barrister

Endnotes

1 Exhibit 19-0002, Statement of Kathleen Biles, STAT.0381.001.0001.
2 Exhibit 19-0003, Statement of Jodie Moore, STAT.0344.001.0001.
3 Exhibit 19-0004, Statement of Amelia Moore, STAT.0346.001.0001.
4 Exhibit 19-0006, Statement of AIQ, STAT.0345.001.0001.
5 Exhibit 19-0005, Statement of AIH, STAT.0343.001.0001.
6 Exhibit 19-0007, Statement of Leonie Knight, STAT.0382.001.0001.
7 Exhibit 19-0012, Annexure MCT-6, STAT.0369.002.0029 at 0029.
8 Exhibit 19-0012, Annexure MCT-7, STAT.0369.002.0032.
9 Exhibit 19-0012, Annexure MCT-6, STAT.0369.002.0029.
10 Exhibit 19-0012, Annexure MCT-7, STAT.0369.002.0032.
11 Exhibit 19-0012, Annexure MCT-7, STAT.0369.002.0032.
12 Exhibit 19-0012, Annexure MCT-7, STAT.0369.002.0032 at 0033.
13 Exhibit 19-0012, Annexure MCT-7, STAT.0369.002.0032 at 0033.
14 Transcript of P Yeomans, T10528:43–46; T10529:10–12 (Day 100).
15 Transcript of P Yeomans, T10529:14–21 (Day 100).
16 Transcript of P Yeomans, T10529:23–27 (Day 100).
17 Transcript of P Yeomans, T10530:26–35 (Day 100).
18 Transcript of P Yeomans, T10530:37–44 (Day 100).
19 Transcript of P Yeomans, T10530:46–10531:26 (Day 100).
20 Transcript of P Yeomans, T10531:12–26 (Day 100).
21 Transcript of P Yeomans, T10531:41–10532:13, T10538:10–16 (Day 100).
22 Transcript of P Yeomans, T10531:22–26 (Day 100).
23 Transcript of P Yeomans, T10538:10–16; T10541:18–23 (Day 100).
24 Transcript of P Yeomans, T10531:35–39 (Day 100).
25 Transcript of P Yeomans, T10532:6–17 (Day 100).
26 Transcript of M P Coutts-Trotter, T10300:29–31; T10304:34–38 (Day 98).
27 Transcript of M P Coutts-Trotter, T10317:8–28; T10318:1–30 (Day 98).
28 Transcript of M P Coutts-Trotter, T10317:8–28 (Day 98).
29 Transcript of M P Coutts-Trotter, T10317:8–28 (Day 98).
30 Exhibit 19-0001, COMS.500.002.3424_R.
31 Exhibit 19-0001, COMS.500.002.3424_R.
32 Exhibit 19-0001, NSW.0033.008.0437_R.
33 Exhibit 19-0001, NSW.0033.008.0437_R.
34 Exhibit 19-0001, NPF.051.001.0230_R_E.
35 Exhibit 19-0001, NPF.051.001.0229_R_E.
36 Exhibit 19-0001, NPF.051.001.0229_R_E.
37 Exhibit 19-0001,NSW.2011.002.2444_R at 2445_R; see also Exhibit 19-0001, NPF.051.001.0230_R_E; Exhibit 19-0001, NPF.051.001.0229_R_E.
38 Exhibit 19-0001, COMS.500.002.3429.
39 Exhibit 19-0001, COMS.500.002.3429.
40 Exhibit 19-0001, NSW.2011.002.2781_R.
41 Exhibit 19-0001, NSW.2011.002.3017_R; Exhibit 19-0001, NPF.051.001.0210_R.
42 Exhibit 19-0001, NPF.051.001.0210_R at 0219_R.
43 Exhibit 19-0012, Statement of Michael Coutts-Trotter, STAT.0369.001.0001_R at [8], [80].
44 Transcript of P Yeomans, T10533:23–26 (Day 100).
45 Transcript of P Yeomans, T10534:7–12 (Day 100).
46 Transcript of P Yeomans, T10534:26–28 (Day 100).
47 Transcript of P Yeomans, T10535:3–33 (Day 100).
48 Transcript of M P Coutts-Trotter, T10318:7–30 (Day 98).
49 Exhibit 19-0001, NSW.2011.002.0444_R.
50 Exhibit 19-0001, NSW.0033.006.0393_R.
51 Exhibit 19-0001, NSW.0033.006.0396_R at 0397_R.
52 Exhibit 19-0001, NSW.0033.006.0398.
53 Exhibit 19-0001, NSW.0033.005.0494_R.

54 Exhibit 19-0001, NSW.0033.005.0032_R at 0033_R.
55 Exhibit 19-0001, NSW.0033.005.0032_R at 0034_R.
56 Exhibit 19-0001, NSW.0033.005.0032_R at 0034_R.
57 Exhibit 19-0001, NSW.0033.005.0032_R at 0034_R.
58 Exhibit 19-0001, NSW.0033.005.0032_R at 0034_R.
59 Exhibit 19-0001, NSW.2000.087.0125.
60 Exhibit 19-0001, NSW.2000.087.0125 at 0125.
61 Exhibit 19-0012, Annexure MCT-4, STAT.0369.002.0011.
62 Transcript of E Manollaras, T10335:2–3 (Day 99).
63 Transcript of E Manollaras, T10337:26–36 (Day 99).
64 Transcript of E Manollaras, T10337:41–T10338:2 (Day 99).
65 Transcript of P F Maxwell, T10607:28–32 (Day 101).
66 Transcript of P F Maxwell, T 10607:15–26 (Day 101).
67 Exhibit 19-0011, Annexure HA-11, STAT.0370.002.0148.
68 Exhibit 19-0008, Statement of Janet Loughman, STAT.0375.001.0001 at [4].
69 Transcript of E Manollaras, T10338:43–47 (Day 99).
70 Transcript of H Allison, T10184:18–38 (Day 97).
71 Transcript of I V Knight, T10622:37–10623:15 (Day 101).
72 Transcript of I V Knight, T10623:17–38 (Day 101).
73 Transcript of I V Knight, T10623:40–45 (Day 101).
74 Exhibit 19-0001, NSW.COMS.544.001.1238_R.
75 Exhibit 19-0001, NSW.COMS.544.001.0781_R.
76 Exhibit 19-0011, Annexure HA-16, STAT.0370.002.0330.
77 Transcript of E Manollaras, T10354:19–29 (Day 99).
78 Transcript of P J Saidi, T10572:3–10 (Day 101).
79 Transcript of P J Saidi, T10572:12–23 (Day 101).
80 Exhibit 19-0011, Annexure HA-16, STAT.0370.002.0330 at 0332.
81 Transcript of I V Knight T10648:13–16 (Day 101).
82 Transcript of M P Coutts-Trotter, T10325:9–13 (Day 98).
83 Transcript of M P Coutts-Trotter, T10325:15–19 (Day 98).
84 Transcript of E Manollaras, T10354:14–29 (Day 99); Transcript of P Saidi, T10571:41–T10572:20 (Day 101).
85 Exhibit 19-0011, Annexure HA-11, STAT.0370.002.0141_R at 0142_R.
86 Transcript of E Manollaras, T10354:14–29 (Day 99); Transcript of P Saidi, T10571:41–T10572:20 (Day 101).
87 Transcript of H Allison, T10197:32–35 (Day 97).
88 Transcript of H Allison, T10282:15–19 (Day 98).
89 Transcript of P J Saidi, T10573:23–27 (Day 101).
90 Transcript of P J Saidi, T10575:3–11 (Day 101).
91 Exhibit 19-0011, Annexure HA-19, STAT.0370.002.0364.
92 Exhibit 19-0011, Annexure HA-18, STAT.0370.002.0358_R.
93 Exhibit 19-0011, Annexure HA-20, STAT.0370.002.0371.
94 Exhibit 19-0011, Annexure HA-23, STAT.0370.002.0386_R at 0387_R.
95 Exhibit 19-0011, Annexure HA-22, STAT.0370.002.0376.
96 Exhibit 19-0011, Annexure HA-25, STAT.0370.002.0397_R.
97 Exhibit 19-0011, Annexure HA-25, STAT.0370.002.0397_R at 0408_R.
98 Exhibit 19-0009, NSW.2001.005.0003_R at 0013_R.
99 Exhibit 19-0009, NSW.2001.005.0003_R at 0048_R.
100 Transcript of E Manollaras, T10365:27–34 (Day 99).
101 Transcript of E Manollaras, T10365:36–41 (Day 99).
102 Transcript of I V Knight, T10649:5–11 (Day 101).
103 Exhibit 19-0011, Annexure HA-27, STAT.0370.003.0006.
104 Exhibit 19-0009, NSW.2001.005.0003_R at 0016_R [39]–[44].
105 Transcript of I V Knight, T10648:18–40 (Day 101).
106 Transcript of M P Coutts-Trotter, T10325:21–37 (Day 98).
107 Transcript of H Allison, T10282:24–27 (Day 98).

108 Transcript of P J Saidi, T10575:18–32 (Day 101).
109 Exhibit 19-0011, Annexure HA-18, STAT.0370.002.0358_R.
110 Exhibit 19-0011, Annexure HA-28, STAT.0370.003.0062 at 0063.
111 Exhibit 19-0001, NSW.COMS.544.001.1520.
112 Transcript of P J Saidi, T10577:30–39 (Day 101); Transcript of E Manollaras, T10370:11–37 (Day 99).
113 Exhibit 19-0001, NSW.COMS.544.001.1481.
114 Exhibit 19-0011, Annexure HA-29, STAT.0370.003.0069_R.
115 Exhibit 19-0011, Annexure HA-29, STAT.0370.003.0069_R.
116 Exhibit 19-0011, Annexure HA-30, STAT.0370.003.0072_R.
117 Exhibit 19-0001, NSW.2001.004.0255.
118 Exhibit 19-0001, NSW.2001.004.0255.
119 Exhibit 19-0001, NSW.2001.004.0255.
120 Exhibit 19-0001, NSW.2001.004.0255 at 0256.
121 Transcript of I V Knight, T10665:4–12 (Day 101).
122 Exhibit 19-0001, NSW.2001.004.0255 at 0256.
123 Exhibit 19-0001, NSW.2001.004.0255 at 0257.
124 Exhibit 19-0001, NSW.2001.004.0255 at 0257.
125 Exhibit 19-0011, Annexure HA-33, STAT.0370.003.0081_R.
126 Exhibit 19-0011, Annexure HA-33, STAT.0370.003.0081_R.
127 Exhibit 19-0011, Annexure HA-33, STAT.0370.003.0081_R.
128 Exhibit 19-0011, Annexure HA-33, STAT.0370.003.0081 at 0085_R.
129 Exhibit 19-0001, NSW.COMS.544.001.1812.
130 Exhibit 19-0011, Annexure HA-36, STAT.0370.003.0096.
131 Exhibit 19-0011, Annexure HA-36, STAT.0370.003.0096 at 0097.
132 Exhibit 19-0011, Annexure HA-36, STAT.0370.003.0096 at 0098.
133 Exhibit 19-0001, NSW.2001.001.0843_R at 0844_R.
134 Exhibit 19-0011, Annexure HA-37, STAT.0370.003.0100.
135 Exhibit 19-0011, Annexure HA-37, STAT.0370.003.0100 at 0101.
136 Exhibit 19-0011, Annexure HA-37, STAT.0370.003.0100 at 0101.
137 Exhibit 19-0011, Annexure HA-37, STAT.0370.003.0100 at 0101.
138 Transcript of H Allison, T10223:15–29 (Day 97).
139 Transcript of H Allison, T10223:31–44 (Day 97).
140 Transcript of H Allison, T10224:4–6 (Day 97).
141 Exhibit 19-0012, Annexure MCT-9, STAT.0369.002.0037_R.
142 Exhibit 19-0012, Annexure MCT-9, STAT.0369.002.0037_R at 0046_R.
143 Exhibit 19-0012, Annexure MCT-9, STAT.0369.002.0037_R at 0042_R.
144 Exhibit 19-0012, Annexure MCT-9, STAT.0369.002.0037_R at 0042_R.
145 Exhibit 19-0001, NSW.2000.038.0023_R at 0026_R.
146 Exhibit 19-0001, NSW.2000.001.0766_R.
147 Exhibit 19-0001, NSW.2000.001.0981_R.
148 Exhibit 19-0001, NSW.0033.005.0032_R at 0034_R; Transcript of H Allison, T10202:18–T10205:37, T10216:17–T10217:19 (Day 97); M P Coutts-Trotter, T10300:40–T10301:2 (Day 98); Transcript of E Manollaras, T10353:40–T10354:12, T10361:5–47, T10370:39–T10371:10, T10393:34–T10394:43 (Day 99).
149 Exhibit 19-0001, NSW.0033.005.0032_R at 0034_R; Transcript of H Allison, T10202:18–T10205:37, T10216:17–T10217:19 (Day 97); Transcript of M P Coutts-Trotter, T10300:40–T10301:2 (Day 98); Transcript of E Manollaras, T10353:40–T10354:12, T10361:5–47, T10370:39–T10371:10, T10393:34–T10394:43 (Day 99).
150 Exhibit 19-0001, NSW.0033.005.0032_R at 0034_R; Exhibit 19-0001, NSW.2001.004.1133_R; Transcript of I V Knight, T10634:39–T10635:42 (Day 101).
151 Exhibit 19-0001, NSW.2000.087.0125 at 0125.
152 Transcript of I V Knight, T10634:26–37 (Day 101).
153 Transcript of I V Knight, T10635:16–28 (Day 101).
154 Transcript of I V Knight, T10636:3–30 (Day 101).
155 Transcript M P Coutts-Trotter, T10323:10–23 (Day 98).
156 Transcript M P Coutts-Trotter, T10323:25–35 (Day 98).

157 Transcript of H Allison, T10280:14–24 (Day 98).
158 Transcript of P J Saidi, T10587:12–16; T10588:11–19 (Day 101).
159 Exhibit 19-0011, Annexure HA-44, STAT.0370.003.0137_R.
160 Exhibit 19-0011, Annexure HA-44, STAT.0370.003.0137_R.
161 Exhibit 19-0011, Annexure HA-44, STAT.0370.003.0137_R.
162 Exhibit 19-0001, NSW.COMS.544.001.2875_R.
163 Exhibit 19-0001, NSW.COMS.544.001.2875_R.
164 Exhibit 19-0001, NSW.COMS.544.001.2875_R at 2877_R.
165 Exhibit 19-0001, NSW.COMS.544.001.2875_R at 2877_R.
166 Exhibit 19-0001, NSW.2000.001.0639_R.
167 Exhibit 19-0001, NSW.2000.001.0639_R.
168 Exhibit 19-0012, Annexure MCT-1, STAT.0369.002.0052.
169 Exhibit 19-0001, NSW.2000.001.0639_R.
170 Exhibit 19-0001, NSW.2000.001.0639_R at 0640_R.
171 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0152_R.
172 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0152_R.
173 Exhibit 19-0001, NSW.2001.004.2254_R.
174 Exhibit 19-0001, NSW.2001.004.2254_R.
175 Exhibit 19-0001, NSW.2001.004.2254_R.
176 Exhibit 19-0001, NSW.2000.001.0049_R at 0062_R.
177 Transcript of P Maxwell, T10607:47–T10608:2 (Day 101).
178 Transcript of P Maxwell, T10607:42–45 (Day 101).
179 Transcript of P Saidi, T10559:6–10 (Day 101).
180 Transcript of P Saidi, T10560:33–43 (Day 101); Transcript of P F Maxwell, T10614:13–20 (Day 101), T10670:31–T10671:1 (Day 102).
181 Exhibit 19-0021, EXH.019.021.0001.
182 Transcript of P Maxwell, T10681:19–28 (Day 102).
183 Transcript of P Maxwell, T10680:41–43 (Day 102).
184 Transcript of P Arblaster, T10484:9–17 (Day 100).
185 Transcript of P Arblaster, T10719:1–45 (Day 102).
186 Transcript of P Arblaster, T10720:28–44 (Day 102).
187 Exhibit 19-0021, EXH.019.021.0091_R; EXH.019.021.0092_R at [51].
188 Transcript of P Arblaster, T10720:46–10721:17 (Day 102).
189 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0152_R.
190 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0152_R.
191 Exhibit 19-0012, Annexure to MCT-1, STAT.0369.002.0111_R.
192 Transcript of E Manollaras, T10420:27–38 (Day 99).
193 Transcript of P Arblaster, T10487:4–21 (Day 100).
194 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0165_R.
195 Exhibit 19-0001, NSW.2001.004.2796_R.
196 Transcript of S Woods, T10738:19–33 (Day 103).
197 Transcript of S Woods, T10739:27–33 (Day 103).
198 Transcript of S Woods, T10739:45–46 (Day 103).
199 Transcript of S Woods, T10737:40–42 (Day 103).
200 Transcript of S Woods, T10738:2–9 (Day 103).
201 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0167_R.
202 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0167_R.
203 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0169_R.
204 Exhibit 19-0001, NSW.2001.004.4662_R.
205 Exhibit 19-0001, NSW.2001.004.4662_R.
206 Exhibit 19-0001, NSW.2001.004.4662_R.
207 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0172_R at 0174_R.
208 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0172_R at 0173_R, 0174_R.
209 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0182_R.

210 Exhibit 19-0001, NSW.2001.004.5113_R at 5114_R.
211 Exhibit 19-0022, EXH.019.022.0001_R at 0004_R.
212 Exhibit 19-0022, EXH.019.022.0001_R at 0001_R.
213 Exhibit 19-0022, EXH.019.022.0001_R at 0006_R.
214 Exhibit 19-0022, EXH.019.022.0001_R at 0018_R.
215 Exhibit 19-0022, EXH.019.022.0001_R at 0013_R.
216 Exhibit 19-0022, EXH.019.022.0001_R at 0020_R.
217 Exhibit 19-0022, EXH.019.022.0001_R at 0023_R.
218 Transcript of P Arblaster, T10732:29–T10733:4 (Day 102).
219 Transcript of S Woods, T10752:27–35 (Day 103).
220 Transcript of S Woods, T10752:37–43 (Day 103).
221 Transcript of S Woods, T10752:45–T10753:11 (103).
222 Transcript of M Cashion SC, T10779:38–46 (Day 103).
223 Transcript of M Cashion SC, T10781:9–18 (Day 103).
224 Exhibit 19-0001, NSW.2001.004.5009_R at 5012_R.
225 Exhibit 19-0001, NSW.2001.004.4862_R at 4864_R-4865_R.
226 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0189_R at 0193_R:44–45.
227 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0189_R at 0194_R:14–16.
228 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0189_R at 0194_R:49–50.
229 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0189_R at 0195_R:24–27.
230 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0189_R at 0190_R:6–7.
231 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0189_R at 0190_R:15–16.
232 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0189_R at 0191_R:15–21.
233 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0189_R at 0198_R:36–40.
234 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0189_R at 0203_R:5–19.
235 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0189_R at 0203_R:16–19.
236 Transcript of M Cashion SC, T10781:20–30 (Day 103).
237 Transcript of M Cashion SC, T10781:44–T10782:1 (Day 103).
238 Transcript of M Cashion SC, T10782:3–5 (Day 103).
239 Transcript of M Cashion SC, T10782: 7–15 (Day 103).
240 Transcript of P Arblaster, T10486:27–T10490:43 (Day 100); Transcript of E Manollaras, T10703:16–45 (Day 102); Exhibit 19-0001, NSW.2001.004.4662_R.
241 Exhibit 19-0001, COMS.500.002.2863_R; NSW.2000.013.0078_R.
242 Exhibit 19-0001, NSW.2001.004.5957_R at 5959_R.
243 Exhibit 19-0012, Annexure to MCT-1, STAT.0369.002.0123_R.
244 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0270_R.
245 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0270_R at 0271_R.
246 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0270_R at 0272_R.
247 Transcript of P Arblaster, T10487:44–T10488:8; T10488:46–T10489:13 (Day 100); Exhibit 19-0001, NSW.2001.007.0154_R.
248 Transcript of P Arblaster, T10488:46–T10489:13 (Day 100); Transcript of M Cashion SC, T10467:44–T10468:31 (Day 100).
249 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0274.
250 Exhibit 19-0001, NSW.2000.007.0176.
251 Exhibit 19-0001, NSW.COMS.544.001.5581.
252 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0284.
253 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0288_R at 0293_R.
254 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0297_R at 0304_R.
255 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0297_R at 0304_R.
256 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0319_R at 0328_R.
257 Exhibit 19-0011, Annexure to HA-1, STAT.0370.004.0003_R.
258 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0167_R; Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0172_R at 0173_R at [6], 0174_R at [8]; Exhibit 19-0001, NSW.2001.004.5009_R at 5012_R.
259 Transcript of H Allison, T10229:44-T10230:5 (Day 97); Transcript of E Manollaras, T10700:8 (Day 102).

260 Transcript of P Arblaster, T 10511:18-10512:14 (Day 100); Transcript of E Manollaras, T10700:10-17 (Day 102).
261 Transcript of P Arblaster, T10491.15-19 (Day 100); Exhibit 19-0001, NSW.2001.004.2796_R.
262 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0189_R at 0190_R-0198_R.
263 Transcript of I V Knight, T10641:33–38 (Day 101).
264 Transcript of I V Knight, T10641:43–46 (Day 101).
265 Transcript of I V Knight, T10642:1–8 (Day 101).
266 Transcript of I V Knight, T10651:15–29 (Day 101).
267 Transcript of M P Coutts-Trotter, T10323:37–10324:18 (Day 98).
268 *Giannarelli v Wraith* (1988) 165 CLR 543, 556 (Mason CJ).
269 *Myers v Elman* [1940] AC 282, 302 (Lord Atkin).
270 *Kyle v Legal Practitioners' Complaints Committee (1999)* 21 WAR 56, 60 [13] (Ipp J, Steytler J agreeing).
271 *In re Thom* (1918) 18 SR (NSW) 70; *Myers v Elman* [1940] AC 282.
272 *Myers v Elman* [1940] AC 282, 293–4 (Viscount Maugham).
273 (1918) 18 SR (NSW) 70, 74–5.
274 (1918) 18 SR (NSW) 70, 74–5.
275 Transcript of B Walker SC, T11620:42–45 (Day 111).
276 Exhibit 19-0011, Annexure to HA-1, STAT.0370.004.0086_R.
277 Exhibit 19-0011, Annexure to HA-1, STAT.0370.004.0092_R.
278 Exhibit 19-0001, NSW.2001.004.7977_R.
279 Exhibit 19-0001, WLS.0001.001.0011_R; Exhibit 19-0001, WLS.0001.001.0012_R; Exhibit 19-0001, WLS.0001.001.0013_R; Exhibit 19-0001, WLS.0001.001.0014_R; Exhibit 19-0001, WLS.0001.001.0015_R; Exhibit 19-0001, WLS.0001.001.0016_R; Exhibit 19-0001, WLS.0001.001.0017_R; Exhibit 19-0001, WLS.0001.001.0018_R; Exhibit 19-0001, WLS.0001.001.0019_R; Exhibit 19-0001, WLS.0001.001.0020_R; Exhibit 19-0001, WLS.0001.001.0021_R; Exhibit 19-0001, WLS.0001.001.0022_R.
280 Exhibit 19-0001, NSW.COMS.544.001.6822.
281 Exhibit 19-0011, Annexure to HA-1, STAT.0370.004.0116_R.
282 Exhibit 19-0011, Annexure to HA-1, STAT.0370.004.0116_R at 0117_R.
283 Exhibit 19-0011, Annexure to HA-1, STAT.0370.004.0109_R.
284 Exhibit 19-0011, Annexure to HA-1, STAT.0370.003.0062 at .0063.
285 Exhibit 19-0011, Annexure HA-33, STAT.0370.003.0081_R at 0085_R; Transcript of H Allison, T10211:28–30 (Day 97), T10255:36–39 (Day 98); Transcript of E Manollaras, T10368:12–19 (Day 99); Transcript of I V Knight, T10627:6–22 (Day 101).
286 Transcript of M P Coutts-Trotter, T10324:20–29 (Day 98).
287 Transcript of H Allison, T10281:43–T10282:1 (Day 98).
288 Transcript of E Manollaras, T10717:37–42 (Day 102).
289 Transcript of E Manollaras, T10718:7–20 (Day 102).
290 Transcript of I V Knight, T10636:32–10637:16 (Day 101).
291 Exhibit 19-0001, NSW.COMS.544.001.6822.
292 Transcript of M P Coutts-Trotter, T10326:5–13 (Day 98).
293 Transcript of H Allison, T10283:36–43 (Day 98).
294 Transcript of I V Knight, T10652:33–40 (Day 101).
295 Transcript of I V Knight, T10653:1–2 (Day 101).
296 Transcript of E Manollaras, T10344:5–32 (Day 99).
297 Transcript of H Allison, T10215:35–39 (Day 97).
298 Transcript of I V Knight, T10625:25–10626:3 (Day 101).
299 Transcript of I V Knight, T10625:46–T10626:1 (Day 101).
300 Transcript of E Manollaras, T10348:1–13 (Day 99).
301 Transcript of H Allison, T10189:32–44 (Day 97).
302 Transcript of E Manollaras, T10381:13–31 (Day 99); see also Transcript of H Allison, T10279:6–11 (Day 98); Transcript of I V Knight, T10624:25–T10625:23 (Day 101).
303 Transcript of H Allison, T10190:9–11 (Day 97).
304 Transcript of H Allison, T10186:3–14 (Day 97).
305 Transcript of I V Knight, T10625:1–5 (Day 101).

306 Transcript of I V Knight, T10625:7–10 (Day 101).
307 Transcript of I V Knight, T10625:12–14 (Day 101).
308 Exhibit 19-0026, NSW.0044.001.0003.
309 Transcript of M P Coutts-Trotter, T10313:15–46

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