



REPORT OF CASE STUDY NO. 15

Response of swimming institutions,
the Queensland and NSW Offices
of the DPP and the Queensland
Commission for Children and
Young People and Child Guardian
to allegations of child sexual
abuse by swimming coaches

NOVEMBER 2015

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Response of swimming institutions, the Queensland and NSW
Offices of the DPP and the Queensland Commission for Children
and Young People and Child Guardian to allegations
of child sexual abuse by swimming coaches

November 2015

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COMMISSIONERS

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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 23 October 2015, the Royal Commission has held 4,269 private sessions and more than 1,526 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

The scope and purpose of the hearing was:

- The response of Swimming Australia Ltd to allegations of child sexual abuse against Terrence William Buck.
- The response of:
 - Swimming Australia
 - Swimming Queensland
 - Queensland Academy of Sportto allegations of child sexual abuse against Scott Volkens.
- The response of the Offices of the Director of Public Prosecutions in Queensland and New South Wales to allegations of child sexual abuse against Scott Volkens.
- The criteria by which Offices of the Director of Public Prosecutions determine whether to prosecute allegations of child sexual assault.
- The response of Scone Swimming Club to the convictions of Stephen John Roser for indecent assault and for committing acts of indecency against a child.
- The systems, policies and procedures of Swimming Australia and its member organisations for preventing, detecting and responding to sexual abuse and their implementation.
- The response of the Queensland Commissioner for Children and Young People and Child Guardian to an application by Scott Volkens for a 'blue card'.
- Training of legal staff, including prosecutors and liaison officers of the Offices of Director of Public Prosecution, in child sexual offending.
- Any related matters.

Executive summary

Scott Volk's prosecution

During the 1980s and 1990s, Mr Scott Volk's was a swimming coach at various local swimming clubs in Queensland.

In June 1997, Mr Volk's was appointed Swimming Head Coach at the Queensland Academy of Sport (the Academy). He continued in that position until December 2009.

From 1992 to 2004 Mr Volk's was regularly seconded to, or contracted by, Swimming Australia to attend international swimming meets.

Mr Volk's was appointed Swimming Queensland Head Coach in February 2010.

Mr Volk's continued to work at Swimming Queensland until early 2012. Mr Volk's now works as a swimming coach in Brazil.

In August 2001 the Queensland Police Service began an investigation of allegations that Mr Volk's had sexually abused some young female swimmers.

On 26 March 2002, Mr Volk's was arrested and charged with five counts of indecent treatment of a girl under 16 years of age in relation to two complainants: Ms Kylie Rogers and Ms Simone Boyce. His arrest received extensive media coverage.

In June 2002, Mr Volk's was charged with four additional counts of indecent treatment of a girl under 16 years of age in relation to a third complainant: Ms Julie Gilbert. The criminal proceedings against him have received considerable public attention. Their outcome has been controversial.

This report examines the decision-making processes within the Queensland and New South Wales offices of the Director of Public Prosecutions (ODPP) in determining whether to proceed with charges of child sexual abuse against Mr Volk's. It considers:

- The advice of Ms Margaret Cunneen, then a senior Crown Prosecutor with the New South Wales ODPP (now Ms Cunneen SC).
- The advice of Mr Nicholas Cowdery QC, who was the then New South Wales Director of Public Prosecutions (DPP).
- The decision-making process of the then Queensland DPP, Ms Leanne Clare (now Judge Clare).

It is not a function of this Royal Commission to determine whether Ms Clare, Ms Cunneen and Mr Cowdery QC reached the correct conclusion on the possible prosecution of Ms Rogers', Ms Boyce's and Ms Gilbert's complaints. However, it is necessary to understand the details of the advice that Ms Cunneen gave, Mr Cowdery QC's response to that advice and Ms Clare's decision-making process.

The Royal Commission is concerned to consider the way the criminal justice system responds to allegations of child sexual abuse.

The Royal Commission is undertaking significant work on the operation of the criminal justice system in Australia. This includes an examination of the workings of the ODPP in each state in terms of the process of decision making and for prosecuting complaints of child sexual assault. We are also considering oversight mechanisms that exist for each agency working in this area.

Allegations of child sexual abuse against Mr Volkers

Kylie Rogers

Mr Volkers coached Ms Rogers from about 1981 until January 1988.

Ms Rogers told us that she was sexually abused by Mr Volkers on a number of occasions. The abuse started in 1985, when she was around 13 or 14 years old, and continued until towards the end of 1987 or the start of 1988, when she turned 16.

The first time she said that Mr Volkers sexually abused her was at Mr Volkers' home.

In about September 1986, Mr Volkers drove Ms Rogers to swimming training. Ms Rogers had only been in the car for a short period of time when Mr Volkers started rubbing her right leg. She said that he then moved his hand towards her vagina, which he rubbed on the outside of her swimmers. Ms Rogers said Mr Volkers rubbed her in this way approximately once a week over the next one to two years.

Ms Rogers has had ongoing physical and mental health problems, including depression and anxiety. She has problems with relationships and employment in the past and presently and she expects to continue to experience these difficulties in the future.

Simone Boyce

Mr Volkers coached Ms Boyce from 1985 until about 1989.

Ms Boyce told us that she was sexually abused by Mr Volkers on one occasion in the summer of 1987–1988, when she was 12 years old.

Ms Boyce did not tell anyone about the abuse at the time. It was not until 1995 that she told her mother that Mr Volkers had sexually abused her. She told her general practitioner, Dr Margaret Cotter, at about the same time.

Ms Boyce told the Royal Commission that, given how well regarded Mr Volkers was in the swimming community, she believed that, if she was to have any future in competitive swimming, she could not complain and that no-one would believe her.

She said that as a result of the abuse she has suffered low self-esteem and depression and she has attempted to commit suicide on a number of occasions. She has also felt ashamed of her body. She said that the abuse has impacted upon her relationship with children and resulted in a history of bad relationships with men.

Julie Gilbert

Mr Volkers coached Ms Gilbert from about 1982 to 1986.

Ms Gilbert told the Royal Commission that between the ages of 13 and 14 she was sexually abused by Mr Volkers on a number of occasions. She gave evidence of the abuse occurring in a massage room and on another occasion in a caravan, where Mr Volkers lived.

In the caravan, Mr Volkers started massaging her back and legs, eventually moving up under her shorts, lifting her togs up and rubbing her vagina with his hands. She said that, although she did not understand the sensation at the time, when she was older she realised she believed she had experienced an orgasm from Mr Volkers rubbing her clitoris and vulva.

In 1996, when she was 25, Ms Gilbert attended a seminar about becoming a swimming coach. Mr Volkers presented at the seminar. She subsequently participated in one coaching accreditation session with Mr Volkers. Ms Gilbert explained that she decided to do the accreditation with Mr Volkers because she did not know any other coaches and because, at that stage, she believes she did not have a complete understanding of the effects of the sexual abuse on her. After one session, she was unable to continue and ceased contact with Mr Volkers.

As a result of the abuse, Ms Gilbert developed an eating disorder. In 2004, she received care from a psychiatrist.

Police investigation and Mr Volkers' arrest

The Queensland Police Service commenced an investigation of Mr Volkers in August 2001. He was arrested on 26 March 2002 over the allegations of sexual abuse against Ms Boyce and Ms Rogers and later against Ms Gilbert.

The committal hearing

A committal hearing was held in the Brisbane Magistrates Court on 25 July 2002. A committal hearing is a pre-trial process to determine if there is sufficient evidence for a person charged with a serious offence to be required to stand trial.

Ms Rogers, Ms Boyce and Ms Gilbert gave evidence at the committal hearing and their accounts of events were consistent with the evidence they gave to the Royal Commission. Mr Volkens did not give evidence at the committal hearing.

Mr Volkens was committed to stand trial on seven counts of indecent treatment of a girl under 16. He entered a plea of not guilty on all seven counts.

Queensland DPP decision to discontinue the proceedings

The then Queensland DPP, Ms Clare, discontinued the prosecution of Mr Volkens by deciding to enter a 'no true bill' on 18 September 2002. She did so after Mr Volkens' lawyers provided her with statements that supported Mr Volkens' denials. The discontinuance did not amount to an acquittal. Ms Clare has since been appointed a judge of the District Court.

No document signed by Ms Clare indicating her reasons for deciding to enter a no true bill was produced to the Royal Commission from the ODPP file. Various documents prepared after the decision had been made suggest reasons for discontinuing the prosecution.

The DPP's decision to drop the charges 'received extensive media coverage'. The Crime and Misconduct Commission (CMC) investigated the reasons for dropping them.

Crime and Misconduct Commission report on DPP's decision

The CMC published its report in March 2003 and was critical of the ODPP. It found that 'the process leading to the decision not to continue with the prosecution of any of the charges against Mr Volkens was unsatisfactory'. The CMC highlighted that 'this was reflected in the fact that there is room for doubt about the principal reasons that motivated the decision'.

The CMC said that Ms Clare 'was never consulted' about the charge discontinuance form and 'made no contribution to it, did not read it and did not sign it'. The CMC report stated that ordinarily the DPP would complete a second form recording the basis for the decision to discontinue the prosecution. The CMC said that in this case the second form was not completed.¹

The CMC also found that the decision to accept the statements from Mr Volkens' lawyers 'proffered with a view to persuading him that the charges could not be upheld, on the basis that use of the statements was restricted, was a mistake'.

The CMC was critical of the evidence that Ms Clare provided on some of the key issues of Ms Gilbert's case. The criticisms were mainly focused on inconsistencies between the evidence Ms Clare gave in her interview with the CMC and her written submission.

The CMC identified a number of other mistakes that the ODPP made that it described as being of 'lesser importance'. These all related to Ms Gilbert's allegations, which the CMC said were 'the most serious' of the three complaints. One of these mistakes was that the ODPP gave too little attention to the possibility that Ms Gilbert might simply be believed by a jury.

ODPP considers new evidence against Mr Volkens

In December 2002, the Queensland Police Service, of its own initiative, reopened investigations of the allegations against Mr Volkens. New evidence was obtained on each of the complainants.

The ODPP considered the new evidence.

ODPP seeks advice from Mr Cowdery QC

On 19 December 2003 Ms Clare, the Queensland DPP, wrote to Mr Nicholas Cowdery QC, the then New South Wales DPP, seeking his advice as to whether:

1. there was sufficient new evidence to justify recharging Mr Volkens on any of the original allegations
2. there were reasonable prospects of convictions for any new allegations.

The letter then set out the reasons for discontinuing the original charges in relation to the three complainants.

With regard to Ms Rogers' complaints, Ms Clare noted that, although a complaint was made within 'a limited time' of the incident and there was potential corroboration, Ms Rogers' longstanding psychiatric history 'presented a serious problem for her reliability if not her competency'. It would be necessary to also prove that Ms Rogers was under 16 years of age at the time or did not consent. Ms Clare stated that another swimmer alleged that she had been touched by Mr Volkens in his car in similar circumstances when she was over 16 years old. Ms Clare said this 'strengthened the possibility that the incident took place after [Ms Rogers] had turned 16'. Finally, she noted that Ms Rogers denied previous intimate contact when she spoke to the psychologist just after her 16th birthday.

With regard to Ms Boyce's complaints, Ms Clare noted that:

1. It was a single uncorroborated charge of low-level conduct.
2. Ms Boyce did not make a complaint until many years later.
3. The jury would be given a warning that it is necessary to scrutinise the complainant's evidence with great care given the extensive delay between the offence and the trial.
4. '[I]n the unlikely event of a conviction, the punishment would be nominal'.

With regard to Ms Gilbert's complaint, Ms Clare noted that the offence '[endured] for a substantial period of time' in an area that was 'accessible to anyone in the swimming complex'. She stated that these two features, coupled with the 'overly sexual nature of the allegation', created 'a serious question about the plausibility of the risk said to be undertaken by Mr Volkert'. She also noted the 'lengthy delay in complaint and the absence of any supportive evidence'. She also extracted part of the CMC report that criticised the close link that had been drawn between these issues of credibility and assessment of the charges relating to incidents in the caravan.

Mr Cowdery QC seeks advice from Ms Cunneen

In early 2004, Mr Cowdery QC, the then New South Wales DPP, asked Ms Cunneen (now Ms Cunneen SC), Deputy Senior Crown Prosecutor with the New South Wales ODPP, to advise him on the questions that Ms Clare, the Queensland DPP, posed in her letter.

This was the first occasion that Ms Clare had formally requested advice from Mr Cowdery QC or, indeed, from any DPP of another state or territory. Mr Cowdery QC confirmed that Ms Clare's request was unusual.

Judge Clare stated she 'anticipated an advice setting out reasons' and Mr Cowdery QC's conclusion.

Mr Cowdery QC understood Ms Cunneen's advice would use a degree of 'shorthand'. Although this concept was not explained, we were given the impression that it was not unusual for advices to the Director to employ 'some form of shorthand'. If this means that fundamental principles such as the burden and standard of proof will be assumed, we have no concerns. However, if it means that relevant evidence may not be identified and an opinion not offered as to the likely weight that evidence will have in the minds of the jury, there are some real difficulties. Considering the strengths and weaknesses of any matter is fundamental to providing advice, as Ms Cunneen acknowledged.

Ms Cunneen's advice

Ms Cunneen concluded 'that there is nothing which justifies the recharging of [Mr] Volkert in respect of the original allegations and no reasonable prospects of conviction in respect of any new allegations'.

Although she was not asked for this opinion, she also said that she was 'of the view that the decision of the DPP (Qld) not to proceed with the prosecution of [Mr] Volkens on any matter was a correct one'.

As Mr Cowdery QC and Ms Clare were unable to produce any written reasons for their decisions, the Royal Commission is necessarily limited to a discussion only of the evidence they gave the Royal Commission.

Ms Rogers' complaint

Ms Cunneen's opinion was that 'Ms Rogers' psychiatric history and false allegations about members of her family would be fatal to her credibility. These charges have no prospect of resulting in convictions'. The advice stated that '[Ms] Rogers' medical file contains material which is enormously damaging to her credibility'. The advice also stated a 'further difficulty' was that 'some evidence suggests that the incident in the car may well have occurred after [Ms] Rogers turned 16'.

The committing magistrate found Ms Rogers to be a sufficiently credible witness as to justify a decision to commit Mr Volkens for trial. He had the opportunity of observing Ms Rogers give evidence, including under cross-examination. Ms Cunneen stated in her advice that Mr Volkens had been committed to trial. She did not refer to the magistrate's assessment of Ms Rogers' credibility and the weight she gave to his assessment.

Ms Boyce's complaint

Ms Cunneen's conclusion was that there was no prospect of conviction in relation to Ms Boyce. Her reasons were:

largely due to the relative triviality of the offence alleged and the length of time (over 16 years) since it happened. It must be borne in mind also that Mr Volkens is in a position to call an endless parade of women who were coached by him at the same time who will say that he did not so behave towards them.

Ms Cunneen's advice referred to new evidence from Dr Cotter, Ms Boyce's general practitioner, and concluded:

Dr Margaret Cotter's new statement ventures the opinion that the major triggering factor for the major depression for which she has been treating Boyce since September 2001 was the inappropriate conduct of a sexual nature, towards her, by Scott Volkens ... Dr Cotter's hypothesis seems, in view of the trivial nature (relative to the nature and duration of most sexual assaults which come before the courts) of the allegation, almost fanciful. ...

Two months before her complaint to Police Ms Boyce commenced medical treatment for ‘major depression’... The illness and its alleged cause, would give rise to substantial attack on the credibility of [the complainant and her doctor] ...

It is difficult for us to accept that if other health professionals had been called they would not have confirmed Dr Cotter’s opinion. Dr Cotter’s opinion is common amongst health professionals who work with people who were sexually abused as children. In these circumstances, Dr Cotter’s professional opinion could not fairly be described as ‘almost fanciful’.

The committing magistrate found Ms Boyce to be a sufficiently credible witness as to justify a decision to commit Mr Volkens for trial. He had the opportunity of observing Ms Boyce give evidence, including under cross-examination. Ms Cunneen stated in her advice that Mr Volkens had been committed to trial. She did not refer to the magistrate’s assessment of Ms Boyce’s credibility or the weight to be given to his assessment.

Ms Cunneen did not record in her advice any strengths of the prosecution case.

Ms Gilbert’s complaint

Ms Cunneen concluded that Ms Gilbert’s complaints had no prospect of conviction. Her reasons included ‘the trivial nature’ of each of the allegations other than the caravan incident, ‘the inherent unlikelihood of the central feature’ of the caravan incident ‘and the damage to the credibility of the complainant by the witness [AEH] and her return to Mr Volkens at the age of 26 for coaching accreditation’.

In the advice Ms Cunneen wrote:

The trouble with Gilbert’s allegation (iii) is, as I see it, the unlikelihood that a 13 year-old girl would have experienced an orgasm while being indecently assaulted. Firstly, one must envisage that there would be sufficient manual leverage for Mr Volkens to manipulate the clitoris of a girl who had never before had an orgasm while she was wearing two pairs of tight nylon swimming costumes and a pair of shorts. Secondly, and this is quite unlike the situation that pertains when an adolescent male is assaulted and experiences orgasm as an involuntary (and momentarily pleasant) reflex, it is difficult to accept that Gilbert could have been feeling sufficiently relaxed for orgasm to ensue. Indeed, she says in the paragraph in which she makes the allegation in her statement of 30 April 2002: ‘I remember feeling scared’. This, it is submitted, is completely inconsistent with the mental amenability required for a female to achieve orgasm, particularly for the first time. (I interpolate that I have frequently seen occasions where male victims have had an orgasm while being sexually assaulted, and the best witnesses among them explain that, while the moment of orgasm was pleasurable, the sexual assaults and their contexts were ghastly). I have never before, in the many hundreds of sexual cases that have crossed my desk over

the last 18 years, seen a female complainant who experienced orgasm during the assault. ... Gilbert says: 'I couldn't explain what I felt, but now that I am an adult I experienced an orgasm'. This suggests that Gilbert did not realise what she felt until several, perhaps many years later. There is a connotation of reconstruction at a later time.

The paragraph of Ms Cunneen's advice extracted above was subsequently criticised in a written advice that Mr R V Hanson QC provided to Ms Gilbert. At that time Mr Hanson QC was advising Ms Gilbert about the prospects of successfully bringing a private prosecution.

Mr Hanson QC noted that he had not seen all of the evidence but said: 'what I can say is this. Personally, I am a great believer in using the jury system for determining cases.' He referred to the CMC's comment that the ODPP had given too little attention to the possibility that a jury may simply believe the complainant and said he 'could not agree more'.

Mr Hanson QC stated that he found the category of reasons based on non-legal considerations 'irrelevant, unprofessional and just plain silly'.

Ms Cunneen SC did not accept Mr Hanson QC's criticisms of her advice. She said that it seemed that Mr Hanson QC 'certainly doesn't have my advice, but he only has what he could glean from what Mrs Gilbert was told in her interview with Ms Clare'.

The paragraph of Ms Cunneen's advice referred to above was criticised in two affidavits – those of Dr Patricia Brennan and Associate Professor Warwick Middleton, which were prepared in support of Ms Gilbert's application for a private prosecution. For the purposes of preparing the affidavits both experts had read a copy of Ms Cunneen's advice.

Dr Brennan, Medical Director of the Liverpool/Fairfield/Bankstown/McArthur Sexual Assault Service, expressed the view that Ms Cunneen's advice shows 'a degree of ignorance' and that 'the talk of manual leverage is misleading'. Ms Cunneen SC said that Dr Brennan had 'not concerned herself with the evidence', which was that Ms Gilbert had complained that Mr Volkers had put his finger or hand on her clitoris to produce orgasm.

Associate Professor Middleton, a professor of psychiatry, expressed the view that involuntary sexual stimulation or orgasm is not dissimilar between the sexes. Ms Cunneen SC said that Associate Professor Middleton was 'undoubtedly' referring to child sexual abuse literature that concerns full, unclothed sexual intercourse. Ms Cunneen SC said: 'the cases where orgasm is experienced by victims are not typically like this – with clothes on, feeling scared, no experience of orgasm.'

Ms Cunneen SC also said that, on the basis of discussions she had previously had from time to time with doctors, she was 'unable to agree' with Dr Brennan's view that there was no 'contrast between the sexual response during sexual abuse between males and females'.

Ms Cunneen SC said that, if asked to advise on the question again, she would include a similar opinion in terms of her view 'of consistency of the mental state required for a female to achieve orgasm'.

Other matters

The decision to discontinue the prosecution was ultimately one for Ms Clare. Ms Cunneen was advising Mr Cowdery QC, who in turn was advising Ms Clare. However, there was no reference in Ms Cunneen's advice to the views of the complainants being a factor in deciding whether the prosecution could be discontinued. There was no reference in her advice to the fact that her assessment of the credibility of the complainants was not informed by any discussion with them.

Ms Cunneen SC's evidence was that return by a complainant to the company of the person by whom they were abused is 'one of the most fertile grounds of cross-examination'. She did not think that Associate Professor Middleton's opinion about a survivor of abuse having an unresolved need for a perpetrator's validation referred to this type of circumstance.

Under the heading 'Other factors affecting prospects of conviction re Gilbert' Ms Cunneen SC set out the second of the two matters that she said troubled her and which she was 'certain, would trouble a jury':

The other issue which strikes me as disturbing in relation to Ms Gilbert's credibility is that the overwhelming impression one gets from the hours of tapes she recorded for Australian Story is that it was ceasing swimming training which pained her far more than Mr Volk's approaches. ... In the context of Ms Gilbert's deteriorating performance due to ill-health in the months leading up to the allegations and the fact that she did not simply change coaches, she does come across as someone looking for someone to blame for not being a more successful swimmer.

When assessing whether there are reasonable prospects of conviction, we would expect a prosecutor to weigh the matters that favour conviction with those that may favour acquittal. We would also expect the prosecutor to assist the ultimate decision maker with a proper advice that would advert to 'both sides of the argument', including the impression that the complainant was likely to have on the jury.

Although Ms Cunneen suggests that because this was an 'internal advice' she used a form of shorthand, a discussion of the strengths of the prosecution case would be expected, consistent with the ODPP Director's Guidelines. This must be even more important when the advice is to go to the Queensland DPP to assist her to make decision about a matter of public controversy, when the CMC had previously criticised a DPP decision on that matter.

Under the heading ‘Similar fact or propensity evidence’ Ms Cunneen said in her advice that ‘Scott Volkens was a thoroughly disreputable man given to inappropriate touching and comments towards young swimmers in his charge’.

Ms Cunneen SC gave evidence that this opinion may have been one time when her ‘own views of him came out’. We note her evidence that her own views ‘are quite irrelevant and it would be unprofessional for me to express them’.

Ms Cunneen also said, ‘it is legitimate to consider whether 12 year-old swimmers even had breasts, but that is the allegation’. She said that her advice concentrated on the development of a young swimmer’s breasts because of a precedent that allowed defence counsel to argue that touching of undeveloped breasts was innocent and non-sexual. For this reason, Ms Cunneen SC described as ‘unhelpful’ Mr Hanson QC’s statement ‘do I really need to comment?’ in his written opinion. Her evidence was that this could ‘always be expected to be a feature of cross-examination’ where the complainant is between 10 and 12. She said that ‘if defence counsel could raise a doubt that there was any palpable breast tissue ... then you have lost the count, certainly in 2004’.

In her advice under the heading ‘Other factors affecting prospects of conviction re Gilbert’, Ms Cunneen said: ‘I also find it somewhat novel that no one alleges that Mr Volkens ever exposed himself or encouraged any touching of his genital area.’ Ms Cunneen SC gave evidence that this was ‘a global comment about all of the victims’ and an ‘observation’ directed to the prospects of conviction. She agreed it was ‘actually irrelevant’ to Ms Gilbert’s credibility; she said she identified it as an observation by putting it in brackets.

Ms Cunneen’s advice referred to the following discretionary factors to be considered when answering the question ‘Does the public interest require a prosecution’ of each of the three complaints:

- i. the offences alleged are, relative to the general run of sexual assault prosecutions, at a low level of seriousness. I interpolate that proceeding with these relatively trivial allegations, occurring so long ago, would tend to bring all sexual assault prosecutions into disrepute;
- ii. that [Mr] Volkens’ antecedents suggest that he is a person of good character and there would be an array of impressive witnesses to say so;
- iii. the offences are stale all having occurred between October 1984 and October 1987;
- iv. the likely outcome even if there was the prospect of conviction would be a non-custodial penalty;
- v. the effect of the publicity in this matter has already constituted a punishment upon [Mr] Volkens and, in addition, it is highly unlikely that he will misconduct himself in the future; and

- vi. the prosecution of these old matters, being so relatively minor, would, it is submitted, erode public confidence in the Courts and the criminal justice system.

Ms Cunneen SC agreed that her advice that ‘it was highly unlikely [Mr Volkens] will misconduct himself in the future’ was based on her ‘subjective view of his motives’. She said Mr Volkens would be a ‘damned fool to prove it all by doing it again, with the spotlight on him so squarely’.

Mr Cowdery QC’s advice to Ms Clare

By letter dated 29 March 2004, Mr Cowdery QC provided a copy of Ms Cunneen’s advice to Ms Clare, the Queensland DPP. It accompanied a brief letter in which he stated: ‘I agree with that advice.’ Mr Cowdery QC’s said that in his opinion:

There is not sufficient new evidence of such quality as to justify the recharging of Mr Volkens in respect of any of the original allegations and

There are no reasonable prospects for a conviction in respect of any new allegations.

Mr Cowdery QC’s recollection was that, after providing his first advice, Ms Clare called him to clarify the scope of the advice, ‘in effect’ to ask whether he agreed with Ms Cunneen’s opinion that ‘the decision of the DPP (Qld) not to proceed with the prosecution of Mr Volkens on any matter was a correct one’.

On 2 April 2004 Mr Cowdery QC stated to Ms Clare:

I confirm that in my view, on the basis of the admissible evidence now available and in accordance with the law and your Prosecution Guidelines, there is not sufficient evidence to support any of the suggested charges in relation to Mr Volkens’ conduct vis a vis [the three complainants]. Consideration of the discretionary factors applicable in each case serves to strengthen that view.

Mr Cowdery QC’s decision-making process

Mr Cowdery QC received the memorandum of advice from Ms Cunneen on or about 26 March 2004 and provided it to Ms Clare three days later.

Mr Cowdery QC told us that he ‘agreed with Ms Cunneen’s advice and the general basis expressed for it’. He thought it ‘addressed the issues on which advice had been sought’ and was ‘soundly based’.

Mr Cowdery QC made no record of his decision apart from the letter to Ms Clare and the passing on of Ms Cunneen’s advice with that letter. Mr Cowdery QC was clear that in a number of respects he did not agree with Ms Cunneen and continues to disagree with her.

Mr Cowdery QC agreed with Ms Cunneen's advice that Ms Rogers' medical history was damaging to her credit. He said that he did not agree with her opinion that the 'only serious dealing' alleged by any of the complainants was the caravan incident alleged by Ms Gilbert. The incident involving Ms Rogers in the car, he said, should be categorised as serious.

In relation to Ms Boyce, Mr Cowdery QC said that it was not appropriate for a prosecutor to do as Ms Cunneen did and describe a doctor's view as 'almost fanciful'. If he were critical of a doctor's views he would have described them as 'subject to challenge ... "arguable", words like that'. He said that he would not have used the word 'trivial' to describe Ms Boyce's allegations. He would have used an expression such as 'perhaps "less serious" or something of that kind'.

In relation to Ms Gilbert, Mr Cowdery QC said he had regard to matters other than those in Ms Cunneen's advice. However, he could not recall any of them. He did not share Ms Cunneen's view that manual leverage was a problem for the prosecution. Although he agreed that Ms Gilbert's change of evidence might justify an attack on her credibility, he did not agree with the weight or significance given to it by Ms Cunneen. The absence of genital exposure was not relevant to his decision.

Mr Cowdery QC stated that he did not understand Ms Cunneen's reference to the complication caused by other girls' 'fondness' for Mr Volkers. He said he could 'imagine circumstances where fondness of that kind might prevent complainants from coming forward, but that's not the situation here'.

He did not pay any regard to Ms Cunneen's opinion about breast development.

Mr Cowdery QC would not have described Ms Gilbert's allegations concerning each of the incidents in the massage room and the second incident alleged to have occurred in Mr Volkers' caravan as 'trivial'.

He stated that it was probably too broad a statement that prosecuting Ms Gilbert's most serious complaint would tend to bring all sexual assault prosecutions into disrepute.

He said it was a relevant factor but he would not give a lot of weight to the likelihood of Mr Volkers' misconducting himself in the future and was not of the view that the likelihood was 'high'. However, Mr Cowdery QC did state that he thought 'it was a legitimate view to form'.

When Mr Cowdery QC was asked whether Ms Cunneen's advice suggested that she would query whether it is in the public interest to proceed on all the allegations that fell short of penetration, he said: 'No, I think this is totally hypothetical and frankly I don't know why it's there.'

Communication of Ms Cunneen's advice to Ms Clare

The letter set out above contains the only reasons in writing of the then New South Wales DPP in relation to the initial request for advice. The only record Ms Clare had of Mr Cowdery QC's view in the matter was the letter. Ms Clare assumed Mr Cowdery QC agreed with Ms Cunneen's advice.

Mr Cowdery QC agreed that, in retrospect, he should not have attached Ms Cunneen's advice to the letter to Ms Clare without some qualification.

Mr Cowdery QC's evidence made plain that he did not agree with some propositions in Ms Cunneen's advice or the weight Ms Cunneen gave to some matters. However, he did not tell Ms Clare of his view of those various matters. He agreed that he did not tell Ms Clare what his reasons were 'at all'.

Because Ms Clare was not told that Mr Cowdery QC did not accept all of the reasons in Ms Cunneen's advice for not bringing prosecutions and was not told of Mr Cowdery QC's own reasons, Ms Clare lost the benefit of a reasoned advice from the New South Wales DPP on whether or not to bring further prosecutions.

Ms Clare's decision-making process

Judge Clare gave evidence that she agreed with the conclusion in Ms Cunneen's advice 'that there is nothing which justifies the recharging of Mr Volkens in respect of the original allegations and no reasonable prospects of conviction in respect of any new allegation'. However, she agreed that the reasons in Ms Cunneen's advice were not her reasons and in some respects she did not agree with or attach weight to them, including 'the emphasis given to particular points and particular language used'.

Judge Clare said that she did not pay regard to Ms Cunneen's advice about the impact of Dr Cotter's opinion on Ms Boyce's credibility. She did not see Dr Cotter's evidence as giving rise to a substantial attack on Ms Boyce's credibility.

Judge Clare did not agree that Ms Gilbert's change of evidence was a substantial matter. In relation to Ms Cunneen's opinion that this would be a 'fertile ground for a savage attack', Judge Clare said she 'wouldn't describe it as inviting a savage attack' but 'would expect that it would be the subject of cross-examination and that it would receive attention in the course of a trial'. Judge Clare agreed that 'you may in fact turn a jury against you by attacking that sort of evidence'. She said 'strategically there's a risk in the style of cross-examination'.

Judge Clare did not pay a great deal of attention to Ms Cunneen's opinion that Ms Gilbert was looking for someone to blame.

Judge Clare understood Ms Cunneen's opinion on an absence of genital exposure or touching to be an expression of Ms Cunneen's own view 'from her experience'. It did not occur to her as something that was 'particularly unusual'.

Judge Clare did not have regard to Ms Cunneen's opinion about breast development.

Judge Clare did not agree with or take into account the discretionary considerations mentioned by Ms Cunneen, namely that:

- i. Proceeding with these relatively trivial allegations, occurring so long ago, would tend to bring all sexual assault prosecutions into disrepute; ...
- v. The effect of the publicity in this matter has already constituted a punishment upon [Mr] Volkens and, in addition, it is highly unlikely that he will misconduct himself in the future;
- vi. Prosecution of these old matters, being so relatively minor, would ... erode public confidence in the Courts and the criminal justice system.

Ms Cunneen's opinion that prosecution may well be in the public interest if there was a further allegation of penetration did not 'play on' her mind. Judge Clare gave evidence that she 'thought that was a reference to a jurisdictional difference' between what a New South Wales prosecutor and a Queensland prosecutor might look for in prosecuting an historical case.

Judge Clare did not agree that 'it was highly unlikely that [Mr] Volkens would misconduct himself in future'. Judge Clare said she did not agree with that opinion because she 'didn't have any information on which to make that conclusion'.

Judge Clare did not think that the prosecution of these matters would erode public confidence in the courts and the criminal justice system 'if there was sufficient evidence' to prosecute.

The second decision not to prosecute

The Royal Commission was not provided with any written record of Ms Clare's second decision not to prosecute or her reasons. Judge Clare told us that she had made a written record of her reasons for deciding not to recharge Mr Volkens; however, no such record was produced.

Judge Clare accepted that it would be important to have an accurate record of her reasons.

At the very least we would expect there to be a record of the decision and a memorandum that identifies the reasons of any significance that motivated that decision.

We are satisfied that a written record should have been made of the reasons for Ms Clare's decision not to recharge Mr Volkens. As stated above, none was produced. The fact that Judge Clare said she did not accept all of the reasons that Ms Cunneen discussed in her advice underlines the significance of there being a record of Ms Clare's reasons for not commencing fresh prosecutions. We note that there is no statutory obligation to do so. We discuss this further below.

Notifying the complainants

Ms Rogers, Ms Boyce and Ms Gilbert first heard that there would be no prosecution from the Police Commissioner. We note that this is contrary to Guideline 18 of the Queensland Director's Guidelines, which stated:

The views of the victim must be recorded and properly considered prior to any final decisions, but those views alone are not determinative. It is the public, not any individual interest that must be served (see Guideline 4).

This lack of consultation is surprising given that the CMC report had suggested the DPP consider reviewing the effectiveness and adequacy of the ODPP's communication with complainants.

Ms Gilbert requested a meeting with Ms Clare. They met on 11 May 2004. During that meeting Ms Clare showed Ms Gilbert a copy of Ms Cunneen's advice. When asked if it was 'right to leave Ms Gilbert with the impression that you accepted the reasoning of Ms Cunneen in that advice', Judge Clare said, 'No, I shouldn't have done that'.

Judge Clare stated that, on reflection, 'it was not appropriate to show Ms Gilbert a copy of Ms Cunneen's advice and I regret that it occurred and was a source of distress and anxiety to Ms Gilbert'. She gave evidence that:

it was a mistake. There is no other way of saying it. I should never have shown her the advice. It was wrong, and it clearly has caused a lot of distress.

We accept Judge Clare's submission that there was no established process for the recording of reasons for her second decision and this was a flaw in the DPP's processes.

We are satisfied that the process Ms Clare adopted in advising Ms Gilbert of the second decision was flawed.

Ms Gilbert seeks leave to bring a private prosecution

In November 2004, Ms Gilbert unsuccessfully sought leave to commence a private prosecution against Mr Volkens in the Supreme Court of Queensland at Brisbane.

Justice Holmes considered there were a number of factors militating against a grant of leave, including the 19- to 20-year delay in proceeding and the deference to be paid to the DPP's decision not to proceed. Her Honour considered the combination of the publicity around the case and the risk of the trial being perceived as a personal contest between the Ms Gilbert and Mr Volkens to be the most persuasive primary factors militating against leave.

Conclusions on systemic issues

The inadequacies identified above in the processes for recording the New South Wales and Queensland ODPPs' reasons not to proceed raise issues of significance to the internal decision making of all DPPs.

Independence of DPPs

Any body that is given statutory independence and that cannot be subject to any external reviews is at risk of failure in its decision-making processes. When the decisions being made are critical to the lives of the individuals involved, be they the complainant or accused, and are being made on behalf of the entire community it is relevant to ask whether the current structure, where there is absolute immunity from review of any decision, is appropriate. Experience suggests that an absence of review increases the risk of administrative failure.

The Royal Commission will consider whether there should be any process of oversight or review of ODPPs with respect to their administration and decision-making processes. The Royal Commission will consult widely on this issue and will report as part of its work on criminal justice issues.

Scott Volkens – Working with children

Mr Volkens was arrested on 26 March 2002 in relation to two complainants: Ms Rogers and Ms Boyce. The arrest received extensive media coverage.

At the time the sexual abuse took place, Mr Volkens was a swimming coach at a local swimming club.

Mr Volkens was employed as Head Swimming Coach by the Queensland Academy of Sport (the Academy) at the time of his arrest and during the committal hearing. In this position, Mr Volkens' role was to coordinate the Academy's swimming program and mentor coaches. Mr Volkens was not directly responsible for coaching a swimming squad. Mr Volkens was a 'coaches' coach'.

Response of the Academy

Mr Alex Baumann had been in the position of Director of the Academy for approximately two months when Mr Volkers was arrested. On 27 March 2002, Mr Volkers advised Mr Baumann by facsimile that he been charged.

Mr Volkers was directed not to have any contact with Academy athletes and to focus on those aspects of his role that related to 'the management and administration of the swimming program at QAS'.

There is no evidence of any formal monitoring system being in place.

We accept that Mr Volkers' contact with children in the course of his employment at the time of the arrest was limited and that he did not have direct individual access to minors. However, we do not accept that Mr Volkers' contact with and access to children was 'supervised'. The evidence is that Mr Volkers' access to and contact with children was in the presence of other adults by virtue of his role as a 'coaches' coach'. This is not the same as 'supervision'. The grooming of children can occur, and in our experience frequently does occur, in the presence of others.

We do not accept Mr Baumann's characterisation of Mr Volkers' role as 'largely administrative'. Mr Volkers held the role of Head Swimming Coach. This was not a merely administrative role. The role is likely to have been accompanied by significant status and prestige within the institution. Mr Volkers occupied a position of authority.

We accept that with the benefit of hindsight it is often easy to see what would have been a better or more appropriate course of action. We also accept that Mr Baumann was not equipped with the Royal Commission's depth of knowledge and learnings in relation to child safety matters. However, Mr Baumann appeared reluctant, even with the benefit of hindsight, to concede that his approach might have been flawed or that he ought to have done more than simply rely on advice he was given by others.

We are satisfied that Mr Volkers came into contact with and had access to children in the course of his employment as Head Swimming Coach at the Academy before and after his arrest in 2002. That role involved him working with children, even though he was a 'coaches' coach' and did not directly coach athletes.

On the same day that a determination was made that the charges against Mr Volkers would not proceed, Mr Volkers was reinstated to full duties.

After the charges were discontinued, the Academy did not take any active steps to determine whether or not Mr Volkers had breached the code of conduct. When asked what steps were taken, Mr Baumann replied: 'in terms of ... the job description, he did not have direct contact with athletes and he did not coach athletes.' When questioned about whether Mr Volkers' alleged conduct would have been a breach of the code of conduct, Mr Baumann conceded that it would have been a breach.

Mr Baumann also conceded that the Department of Innovation and Information Economy, Sport and Recreation Queensland (the Department) and Legal and Administrative Review Services (Legal Services) should have advised the Academy to keep Mr Volkens on restricted duties for a longer period of time until a more detailed review was carried out of the nature of the alleged offences and the reasons for the discontinuance of the prosecution. With the benefit of hindsight, Mr Baumann conceded that he could have actively involved himself in such a review and submitted that that is the course he would take today if confronted with a similar situation.

We accept that Mr Baumann is not legally trained and that he did not clearly distinguish between the discontinuance of the prosecution by the DPP and resolution by the court. We accept that, as a layperson, he viewed the discontinuance by the DPP as equivalent to the matter being closed. However, Legal Services, on whose advice Mr Baumann says he was relying, must have known that the dropping of the charges against Mr Volkens by the DPP was not equivalent to a court making a determination and that the question of Mr Volkens' innocence or guilt remained at large.

In our view, the Academy did not have sufficient information to form the view that it was safe to reinstate Mr Volkens to full duties. The very factors that had led to his role being curtailed in the first place were still in play. An organisation in the position of the Academy should err on the side of caution before reinstating a person who is the subject of serious allegations of child sexual abuse to a role that entails any contact with children. At the very least, the Academy should have conducted a detailed investigation of the nature of the alleged offences and the reasons for the discontinuance of the prosecution. Only then would it be armed with sufficient information to make an informed assessment about the level of risk posed by Mr Volkens and it should have kept Mr Volkens on restricted duties until it had that information.

We are satisfied that on 18 September 2002, when the Academy reinstated Mr Volkens to full duties, the Academy:

- knew Mr Volkens was the subject of serious allegations of child sexual abuse amounting to criminal conduct
- did not know and did not take any steps to find out the details of those allegations
- knew that the DPP had decided not to pursue the charges against Mr Volkens but did not know the reasons for that decision
- knew there could be a number of reasons that the DPP may have chosen not to pursue the charges against Mr Volkens
- knew that Mr Volkens might have engaged in conduct that made him inappropriate to work with children but that fell short of being criminal conduct
- knew that Mr Volkens could come into contact with and have access to children in the course of his employment.

Mr Volkers is seconded to Swimming Australia in November 2002

On 17 September 2002, while the charges against Mr Volkers were still pending, Mr Glen Tasker, the Chief Executive Officer (CEO) of Australian Swimming Incorporated (ASI) / Swimming Australia from December 2001 to June 2008, received an application from Mr Volkers for the position of National Women's Head Coach.

The following day, the charges against Mr Volkers were dropped. Mr Tasker sought legal advice and was told that this meant Swimming Australia could accept Mr Volkers' application. His application was successful and he was appointed Head Women's Coach.

The Swimming Australia Member Protection Policy came into effect on 1 June 2002, before Mr Volkers applied for and was appointed to the position of Head Women's Coach.

The Member Protection Policy stated that 'screening' was mandatory for 'coaches who are appointed or seeking appointment' to Swimming Australia.

In addition, the Member Protection Policy provided that screening was highly recommended but not mandatory where a person was seeking appointment to Swimming Australia in a role where that person was likely to have contact with competitors under 18 years of age but where such contact was supervised at all times by another adult.

Mr Tasker gave evidence that the interview panel asked Mr Volkers about the charges. Mr Volkers told the panel 'that the charges were false and he was going to defend his reputation at all costs'. Mr Tasker conceded that they did not ask him about the details of the allegations and did not invite him to tell the panel what the allegations against him were. When asked how the panel could have made an assessment about Mr Volkers' suitability to work with children without knowing the details of the allegations, Mr Tasker replied:

Again in hindsight, I think most of us on the committee believed that Mr Volkers would be working with the national team, that there would be the potential for athletes under the age of 18 on the team, but that somewhere between 85 and 95 per cent of the team would be adults. We did not ask him about that, and so I can only say that we were taking the assumption that he would be working with adults.

Regardless of whether screening was mandatory or highly recommended, no screening was conducted or even considered.

Public concerns – October 2002 and January 2003

On 21 October 2002, Swimming Australia received a letter from Ms Hetty Johnston of Bravehearts – an advocacy organisation for victims of child sexual abuse – that raised concerns about Mr Volkers.

After Swimming Australia received that letter, it held no discussions about whether there should be an internal investigation.

On 22 January 2003, Ms Johnston wrote to the then Minister for Sport about Bravehearts' ongoing concerns about the allegations against Mr Volkers and his ongoing employment with the Academy. In particular, Bravehearts was concerned that Mr Volkers did not hold a 'blue card' – that is, a suitability notice stating whether or not an employee was suitable for child-related employment – under the *Commission for Children and Young People and Child Guardian Act 2000* (Qld) (the Children and Young People Act) because he had started work before 1 May 2001 and the Children and Young People Act did not apply to appointments made before that time.

The Academy sought a determination from the Queensland Commission for Children and Young People and Child Guardian (CCYPCG) about the Department's obligations under the Children and Young People Act.

Mr Tasker accepted that, even if an allegation of child sexual abuse is not taken to police or ultimately the police do not pursue it, an organisation 'has a responsibility to investigate and make determinations in relation to the person against who the allegation is made'. Mr Tasker accepted that Swimming Australia should have followed the process that is now set out in its current Child Welfare Policy – that is, where there is an allegation of a serious or criminal nature, regardless of the findings of the police and/or child protection agency investigations, Swimming Australia should carry out its own internal investigation and should apply the balance of probabilities as the standard of proof.

When the CMC report was released, Mr Tasker read the executive summary of the report and 'understood the conclusion to be that the DPP should not have been so quick to drop the charges against Mr Volkers'. He was left with 'a feeling of disquiet'.

In December 2004, Mr Volkers signed a new employment agreement with the Academy as Head Coach Swimming for the period from 1 January 2005 to 31 December 2008. The agreement contemplated Mr Volkers undertaking coaching duties that could involve him having contact with athletes under 18 years of age.

In February 2005, AEE, a former swimmer at the Academy, made a complaint to the Queensland Anti-Discrimination Commission that she had been sexually harassed and assaulted by Mr Volkers at his home between 1997 and March 1999. At the time of the alleged assaults, she was 16 years old. Mr Volkers was an employee of the Academy and Swimming Australia and was also her swimming coach.

The State of Queensland, Swimming Australia and Mr Volkers each submitted to the Anti-Discrimination Commission that the complaint should be rejected because the complaint was outside the statutory time frame (within 12 months of the alleged incident).

The State of Queensland also submitted to the Anti-Discrimination Commission that the Department had conducted ‘extensive investigations’ but had been ‘unable to ascertain, with any certainty, whether or not the alleged incident of sexual harassment occurred in 1997, 1998, 1999 or at all’.

Mr Volkers applied for Crown indemnity and legal representation in relation to AEE’s complaint. Mr Baumann wrote a letter in support of Mr Volkers’ application, stating that ‘Mr Volkers has consistently acted diligently and conscientiously in the performance of his duties’.

The Anti-Discrimination Commission accepted the submissions and rejected the complaint on that basis.

Mr Baumann should have sought out all details of the complaint. We find it remarkable that the head of an organisation would not take steps to inform himself about the details of a serious allegation of child sexual abuse made against a current staff member whose role involves contact with children – even if that contact is limited. Mr Baumann had a responsibility to at least read the whole of the complaint. He should also have interviewed Mr Volkers, in conjunction with Legal Services within the Department, about the allegations.

Mr Baumann was unable to say what steps, if any, the Academy took to investigate the complaint once it was dismissed by the Anti-Discrimination Commission as being outside its jurisdiction. He said that he relied on Crown Law and Legal Services within the Department to provide him with suitable advice. Mr Baumann accepted that the conduct alleged in AEE’s complaint would have amounted to a breach of the *Public Service Act 1996* (Qld). He does not recall receiving advice that there should be any disciplinary proceedings over the allegations or that Mr Volkers’ role should change.

The Academy did not make any contact with AEE about the complaint. Mr Baumann could not recall whether she was offered counselling or any other form of support but said that he thought she was not a scholarship holder at the time.

We are satisfied that the Academy was instructing its legal representatives and must have agreed to pursue a technical legal defence. Further, once the ‘legal’ aspect of the proceedings was resolved (by the success of that technical defence) there remained a live issue as to the truth of the allegations and the appropriateness of Mr Volkers continuing in his role.

We do not accept that it was not ‘appropriate’ for the Academy to undertake a further investigation of the allegations in circumstances where Crown Law and Legal Services were ‘handling the matter’. The ‘matter’ that Crown Law and Legal Services were ‘handling’ was a complaint before the Anti-Discrimination Commission. Once the Anti-Discrimination Commission determined that it had no jurisdiction to hear the complaint and dismissed the matter, an internal investigation of the allegations by the Academy was critical. It is evident that no internal investigation occurred given that neither AEE nor Mr Volkers were ever interviewed about the allegations.

Mr Baumann conceded that he could have been ‘better informed’ about the details of the allegations against Mr Volkens.

Given that Mr Baumann became aware of the details of those serious allegations for the first time during the Royal Commission’s public hearing, we consider this to be a significant understatement.

Mr Baumann had a responsibility as head of the Academy to make sure that he was fully acquainted with all of the details of the allegations and to oversee an appropriate response to those allegations by the Academy. Naturally, he was entitled to seek and rely on legal advice. However, it was not appropriate for him to abdicate responsibility for the matter to the Academy’s lawyers, which is what he appears to us to have done.

Mr Baumann conceded that in retrospect an appropriate course of action ‘could have been’ to place Mr Volkens on restricted duties when the Academy became aware of AEE’s allegations, pending an investigation. We consider that this would, rather than could, have been the appropriate response.

Mr Baumann also conceded that, depending on the outcome of that investigation, it may have been appropriate to modify Mr Volkens’ position to remove contact with children or to terminate his employment. However, Mr Baumann submits that there is no evidence of advice to this effect being given to him. In our view, if Mr Baumann had taken steps to fully inform himself of the serious nature of the allegations, it is likely he would have sought such advice.

We are satisfied that, in February 2005, when the AEE named the Academy as a respondent to a complaint to the Anti-Discrimination Commission, Mr Baumann should have obtained and read the police statements attached to AEE’s complaint in circumstances where:

- Mr Baumann was the Director of the Academy
- he knew that AEE’s allegations were serious allegations of child sexual abuse
- he knew the alleged abuse took place while AEE was an athlete sponsored by the Academy and Mr Volkens was her swimming coach
- Mr Volkens was employed by the Academy at that time
- Mr Volkens had contact with athletes under the age of 18 in the course of his employment
- Mr Baumann knew there had been previous complaints about Mr Volkens.

We are satisfied that the Academy did not investigate AEE’s allegations other than for the purpose of establishing a technical legal defence to AEE’s complaint to the Anti-Discrimination Commission. After the Anti-Discrimination Commission dismissed the complaint, the Academy did not take any further steps to investigate the allegations. It did not interview Mr Volkens or AEE about the allegations.

In these circumstances, the Academy did not have sufficient information to form an assessment of Mr Volkens’ suitability to continue in the role of Head Swimming Coach and did not take any action to restrict his access to children.

Response of Swimming Australia

In 2005, Swimming Australia became aware of AEE's complaint to the Anti-Discrimination Commission against Mr Volkens. Swimming Australia received legal advice on the complaint. The advice instructed Swimming Australia 'to take a technical legal defence and object to the application on the basis that it was out of time'.

After the Anti-Discrimination Commission dismissed the complaint as being out of time, Mr Tasker could not recall having any in-depth discussion about what further action Swimming Australia should take in relation to AEE's allegation. Swimming Australia did not discuss setting up any investigation of its own. Mr Tasker explained this by saying they were following legal advice.

Swimming Australia did not consider contacting AEE and offering her counselling. Mr Tasker gave evidence that, to his knowledge, Swimming Australia had never contacted AEE.

Mr Tasker agreed that the response to AEE's allegation was outside the spirit of Swimming Australia's Member Protection Policy (the policy did not apply because the complaint concerned conduct that occurred before 2002). Mr Tasker accepted that Swimming Australia should have been more vigorous in investigating and responding to the allegations. If it happened again, Mr Tasker said he would conduct an investigation and try to support the athlete.

In about February 2005, Mr Tasker told Swimming Australia's high performance manager not to use Mr Volkens again. Mr Tasker's evidence was that he made this decision after he became aware of AEE's allegations against Mr Volkens.

First application for a blue card – June 2008

On 17 June 2008, the Academy applied to the CCYPCG on behalf of Mr Volkens for a blue card (a suitability notice for child-related employment) as a paid employee of the Academy.

Mr Volkens' application initially returned a positive result on the criminal history check and was therefore singled out for particular attention. The criminal record concerned the charges brought against Mr Volkens in 2002. The CCYPCG reviewed Mr Volkens' criminal record and obtained copies of the court briefs, the transcript of the police record of interview with Mr Volkens and 27 witness statements from 20 witnesses, including complainants, police, children and parents of children who were coached by Mr Volkens. The CCYPCG also considered the first CMC report.

On 10 October 2008, the CCYPCG advised Mr Volkens that it had concerns about his suitability to work with children based on the material referred to above. The CCYPCG gave Mr Volkens an opportunity to respond by making a submission and providing references and other relevant information to support his application.

On 21 October 2008, Mr Volk's solicitors responded to the CCYPCG on his behalf. They provided a statement by Mr Volk's together with a number of character references and a copy of the decision of Justice Holmes in the Queensland Supreme Court.

On 16 February 2009, the Commissioner of the CCYPCG wrote to the Academy seeking 'to clarify whether in fact an exemption from blue card screening requirements may exist' for employees of the Academy.

Ms Michelle Miller, the former Director of the CCYPCG, now Director of Blue Card Services at the Public Safety Business Agency, gave evidence that the CCYPCG had formed the preliminary view that Mr Volk's should be issued with a negative notice but that before doing so it realised that the Academy came within the exemption for government entities.

The CCYPCG formed the view that it was legally not able to issue Mr Volk's with a negative notice and was not able to use the information it had about Mr Volk's, including the information that CCYPCG had received from the DPP and the Queensland Police Service, for any other purpose. Ms Miller gave evidence that the CCYPCG had 'serious concerns about the matter' and accepted that Mr Volk's was an inappropriate person to be involved with organisations that work with children, but she said that confidentiality provisions prevented the CCYPCG from sharing that information with the Academy. She also said that the Academy, through the Department, could have done its own screening, which would have allowed it to take into account recorded and unrecorded convictions, charges, and investigations.

From July 2008, Mr Volk's was the only coach employed by the Academy who did not have a blue card.

In 2008, Swimming Queensland inducted Mr Volk's into its Hall of Fame in recognition of his outstanding contribution to the sport of swimming.

Second application for a blue card – March 2009

On 5 March 2009, while Mr Volk's was still employed at the Academy, Swimming Queensland applied for a blue card on his behalf. At that time, Mr Volk's was about to commence employment with Swimming Queensland. Swimming Queensland submitted that this application was lodged because Mr Volk's would no longer be covered by the exemption for government employees once he commenced as an employee at Swimming Queensland. Swimming Queensland was also unsure whether Mr Volk's would need a blue card in his role as 'mentor coach'.

On 3 April 2009, the CCYPCG wrote to Mr Volk's and advised him that it had received information – the same information that had been provided to him in respect of his first application – that raised concerns about his eligibility to hold a blue card. The CCYPCG invited him to respond to this information.

Mr Volkers responded that he did not wish to provide any further submissions and requested that the application be assessed on the basis of the material already provided to the CCYPCG in support of his first application.

On 29 May 2009, the CCYPCG decided to issue a negative notice to Mr Volkers.

Despite the issuing of a negative notice, the Academy continued to employ Mr Volkers until February 2010, when he was appointed Swimming Queensland Head Coach.

We are satisfied that the Academy should not have continued to employ Mr Volkers in the role of Head Swimming Coach after the CCYPCG had determined that he was not a suitable person to work with children.

We are satisfied that, during the period of Mr Volkers' employment, the Academy did not have and still does not have a child protection policy that deals with:

- sexual abuse of an athlete sponsored by the Academy
- complaints by athletes sponsored by the Academy
- mitigating the risks of overnight travel.

Swimming Queensland employs Mr Volkers despite negative notice

On 17 February 2010, the Academy terminated Mr Volkers' employment, effective 12 February 2010. On 12 February 2010, Mr Volkers was appointed Swimming Queensland Head Coach.

In its submissions, Swimming Queensland sought to characterise Mr Volkers' role as one involving 'ostensibly supervised access to children'. We do not understand what 'ostensible supervision' is. In any event, we reject the submission that Mr Volkers' access to children in the course of his employment with Swimming Queensland was supervised. There is no evidence of any formal or structured supervision of Mr Volkers. The fact that others were present when Mr Volkers was in the company of children does not amount to 'supervision'.

The submissions for Swimming Queensland also emphasise that the contract between Swimming Queensland and Mr Volkers was negotiated and entered into before Queensland Civil and Administrative Tribunal affirmed the decision of the CCYPCG that Mr Volkers was not a suitable person to be working with children (this is discussed further below). We do not consider this to be of any weight. At the time of his recruitment to Swimming Queensland, the CCYPCG had already determined that Mr Volkers was not a suitable person to work with children. That decision was ultimately affirmed by the Tribunal.

We are satisfied that, between 12 February 2010 and 14 September 2010, Mr Volkers came into contact with and had access to children in the course of his employment as Head Coach at Swimming Queensland. That role involved him working with children, even though he was a 'coaches' coach' and did not directly coach athletes.

We are satisfied it was artificial of Swimming Queensland to try to tailor the role of Head Coach to prevent Mr Volkens having ‘impermissible’ contact with children, in circumstances where the CCYPCG and the Tribunal had formed the view that Mr Volkens was not a suitable person to work with children.

Appeal to the Queensland Children’s Services Tribunal in 2009

On 25 June 2009, Mr Volkens applied to the then Queensland Children’s Services Tribunal to review the decision of the CCYPCG to issue him with a negative notice. The functions of this tribunal were transferred to the Queensland Civil and Administrative Tribunal (the Tribunal) on 1 December 2009.

On 19 April 2010, the Tribunal heard Mr Volkens’ application for review of the CCYPCG’s decision to issue him with a negative notice. On 31 May 2010, the Tribunal refused his appeal and confirmed the CCYPCG’s decision.

Mr Kevin Hasemann, the current CEO of Swimming Queensland, accepted that he held Mr Volkens out to the world as a good coach in Swimming Queensland’s annual report in 2011–12. He now accepts this was wrong. He accepts that Mr Volkens should not be included in Swimming Queensland’s annual report as a life member or in its Hall of Fame and that he will take this matter to the Board.

Further interaction between the CCYPCG and Swimming Queensland in 2010

On 6 July 2010, the Commissioner of the CCYPCG wrote to Swimming Queensland advising that it had received two separate anonymous complaints alleging that Mr Volkens continued to be involved with and coach children. The complaints concerned Mr Volkens’ involvement in program visits and overseas visits.

In September 2010, Swimming Queensland sought advice from the CCYPCG about whether certain activities being undertaken by Mr Volkens – as a negative notice holder – would be considered to fall within the scope of ‘regulated employment’ under the Children and Young People Act.

On 14 September 2010, the Commissioner of the CCYPCG advised that, in its view, the program visits and overseas visits constituted regulated employment and could not be undertaken by a negative notice holder.

Ms Miller agreed that ‘it’s obvious that people still do not have a good understanding of what is required of them’ in relation to what is and what is not child-related employment. Ms Miller said that, in retrospect, it would have been useful if Swimming Queensland had approached the CCYPCG to discuss the role before Mr Volkens started. She was concerned that Swimming Queensland was intent on keeping Mr Volkens in the position, but she said it did not change the way the CCYPCG dealt with the organisation.

We find that it was artificial of Swimming Queensland to try to tailor the role of Head Coach to prevent Mr Volkens having ‘impermissible’ contact with children, in circumstances where the CCYPCG and Tribunal had formed the view that Mr Volkens was not a suitable person to work with children. In our view, given that Mr Volkens had been found to be an inappropriate person to work with children, he should not have been working with children at all.

Terrence Buck

Mr Terrence Buck was an Olympic swimming coach who trained at Clovelly Surf Life Saving Club (Clovelly Surf Club) as a teenager during the 1950s and 1960s.

During the period 1956 to 1968 whilst training at Clovelly Surf Club, AEA was subject to, and witnessed, a number of sexual assaults by Buck, including abuse of his brothers. While the abuse eventually stopped, Buck continued to express interest in maintaining sexual relations with AEA.

In 2000, a complaint was made to NSW Police on behalf of AEA and his brother. The police established a taskforce – Strike Force Solano – to investigate the allegations against Buck. The taskforce concluded approximately five weeks later because of:

- the age of the evidence
- inconsistencies in the evidence
- the failure of other victims to come forward.

Swimming Australia first became aware of allegations against Buck in 2009, when a newspaper article was published about Strike Force Solano. Swimming Australia responded by launching an investigation of allegations against Buck. It also called for victims of child sexual abuse within the swimming community to come forward.

As a result of that public call, Swimming Australia received eight complaints, four of which concerned child sexual abuse. Swimming Australia handled the complaints in collaboration with its solicitors. A barrister was appointed to undertake the wider investigation.

None of the complainants were provided with any form of compensation and only one of the complainants who came forward was offered counselling at the time.

We are satisfied that Swimming Australia did not conduct an internal investigation of allegations of child sexual abuse made against Mr Buck, as required by Swimming Australia’s Child Welfare Policy.

AEA gave evidence that Swimming Australia has never contacted him about the abuse or offered him counselling or support. As a result of the abuse, the police investigation and the publicity, AEA has suffered from hypertension. He received counselling in 2001 and 2013. AEA’s coaching career has been ‘irretrievably damaged’ and he has found it difficult to secure employment in swimming.

Stephen Roser

Scone Swimming Club is a local swimming club run by volunteers in Scone, New South Wales. Mr Stephen Roser was a coach at the club from 1985 to 1986. During summer of 1985–1986, AEB was sexually abused by Mr Roser. AEB was 13 years old at the time the abuse started.

Mr Roser left Scone Swimming Club sometime in 1986 or 1987. Some years later, AEB reported the abuse to the police and Mr Roser was charged in July 1994. Mr Roser plead guilty and was convicted in December 1994 of indecent assault on a child under 16 years in relation to AEB and one other complainant.

AEB contacted the club on 17 February 2014. AEB told the club that Mr Roser had been convicted of child sexual abuse offences and requested that Scone Swimming Club remove Mr Roser's name from the list of club champions, all other publications and any associated champion boards, as well as from the Stephen Roser Breaststroke Award and connected trophies if they were still being awarded.

After contact from AEB, the committee of the Scone Swimming Club met on 4 March 2014 and agreed to remove Mr Roser's name from the Stephen Roser Breaststroke Award, the list of club champions in the club book and 'all other club materials from now and in the future unanimously'.

After AEB told Scone Swimming Club about Mr Roser's conviction, the club's committee did not communicate with Swimming NSW or Swimming Australia about Mr Roser's conviction and did not consider notifying former club members about the conviction.

AEB contacted Swimming Australia in 2014 to enquire about the child welfare policies in existence in the 1980s and was told that the Child Welfare Policy was not introduced until 2002.

1 Scott Volkers' prosecution

1.1 Introduction

During the 1980s and 1990s, Mr Scott Volkers was a swimming coach at various local swimming clubs in Queensland.

From 1992 to 2004, Mr Volkers was regularly seconded to, or contracted by, Swimming Australia to attend international swimming meets.²

In June 1997, Mr Volkers was appointed Swimming Head Coach at the Queensland Academy of Sport (the Academy).³ He continued as a coach at the Academy until February 2010.⁴

Between 1997 and 2001, Mr Volkers trained the Academy's elite swimming squad, which included, amongst others, Samantha Riley and Susie O'Neill.⁵ He also coordinated the training of five decentralised high-performance swimming squads that were sponsored by the Academy.⁶

After the 2000 Sydney Olympics, Mr Volkers' main swimmer, Susie O'Neill, retired and Mr Volkers' duties changed.⁷ From 2001, although he continued as Swimming Head Coach for the Academy, Mr Volkers was not directly responsible for coaching a swimming squad.⁸ He was responsible for 'coaching the coaches' of targeted swimmers, organising the target squad to compete at international events and managing the Academy's budget.⁹

In September 2002, Mr Volkers was appointed as National Women's Head Coach and was seconded from the Academy to Swimming Australia.¹⁰ Mr Volkers' last appointment to a role within Swimming Australia was in June 2004.¹¹

In 2008, Swimming Queensland entered into discussions with the Academy about transferring Mr Volkers' employment to Swimming Queensland. This would involve Mr Volkers performing the role of mentor coach, which was similar to the position he had held at the Academy.¹²

Mr Volkers was appointed Swimming Queensland Head Coach in February 2010.¹³

Mr Volkers continued to work at Swimming Queensland until early 2012. Mr Volkers now works as a swimming coach in Brazil.¹⁴

In August 2001, the police began an investigation of allegations that Mr Volkers had sexually abused some young female swimmers.¹⁵

On 26 March 2002, Mr Volkers was arrested and charged with five counts of indecent treatment of a girl under 16 years of age in relation to two complainants: Ms Kylie Rogers and Ms Simone Boyce. His arrest received extensive media coverage.¹⁶

In June 2002, Mr Volkers was charged with four additional counts of indecent treatment of a girl under 16 years of age in relation to a third complainant: Ms Julie Gilbert. The criminal proceedings against him have received considerable public attention. Their outcome has been controversial.

This part of the report will examine the decision-making processes within the Queensland and New South Wales Offices of the Director of Public Prosecutions (ODPP) in determining whether to proceed with charges of child sexual abuse against Mr Volkens. It will consider:

- the advice of Ms Margaret Cunneen, then a senior Crown Prosecutor with the New South Wales ODPP
- the advice of Mr Nicholas Cowdery QC, who was then the New South Wales Director of Public Prosecutions (DPP)
- the decision-making process of the then Queensland DPP, Ms Leanne Clare.

It is not a function of this Royal Commission to determine whether Ms Clare, Ms Cunneen and Mr Cowdery QC reached the correct conclusion on the possible prosecution of Ms Rogers', Ms Boyce's and Ms Gilbert's complaints. However, it is necessary to understand the details of Ms Cunneen's advice, Mr Cowdery QC's response to that advice and Ms Clare's decision-making process.

The Royal Commission is concerned to consider the way the criminal justice system responds to allegations of child sexual abuse. We are undertaking significant work on the operation of the criminal justice system in Australia. This includes an examination of the workings of the ODPP in each state in terms of the processes they use to make decisions and prosecute complaints of child sexual assault. We are also considering oversight mechanisms that exist for each agency that works in this area.

1.2 Allegations of child sexual abuse against Mr Volkens

Ms Kylie Rogers

Mr Volkens coached Ms Rogers from about 1981 until January 1988.¹⁷

Ms Rogers told us that she was sexually abused by Mr Volkens on a number of occasions. The abuse started in 1985, when she was around 13 or 14 years old, and continued until towards the end of 1987 or the start of 1988, when she turned 16.¹⁸

Ms Rogers told the Royal Commission that she was a serious competitive swimmer during this period, training up to 25 hours per week.¹⁹ Ms Rogers said that she probably spent more time with Mr Volkens than with her parents during these years.²⁰ She trained with Mr Volkens at a number of swimming centres in and around Brisbane in Queensland, including Foster's pool until about 1985, then in 'Volkens Squad' at St Paul's School in Bald Hills,²¹ and later at John Rigby's Swim School at Everton Park.²²

The first time she said that Mr Volkens sexually abused her was at Mr Volkens' home in 1985. Ms Rogers had competed in a swimming carnival that day, which her parents were unable to attend.

After the carnival finished, Mr Volkers drove Ms Rogers back to his house. She told us that Mr Volkers started massaging her, starting with her shoulders. He then suggested she lie down on her stomach on the floor so he could massage her back. She told the Royal Commission that, when Mr Volkers was massaging her back, he began to massage her buttocks. He then massaged the insides of her upper legs, at first on the outside of her shorts and then underneath her underwear. Mr Volkers stopped when his wife came home.²³

In about September 1986,²⁴ Mr Volkers drove Ms Rogers to swimming training. Ms Rogers recalled in her statement to police that it was early in the morning. She had only been in the car for a short period of time when Mr Volkers started rubbing her right leg. She said that he then moved his hand towards her vagina, which he rubbed on the outside of her swimmers.²⁵ Ms Rogers said Mr Volkers rubbed her in this way approximately once a week over the next one to two years.²⁶

Ms Rogers told us that Mr Volkers would also say sexually suggestive things to her during this period, including referring to her as 'Hot Pants' and saying 'you've got hot buns' and 'you will lose your virginity before you turn 17'. Ms Rogers recalled that, on one occasion, Mr Volkers said something to the effect that, if he was reincarnated, he would come back as her 'pool buoy'. Ms Rogers said that this was a reference to the floatation device that swimmers used between their legs during training.²⁷ She said that Mr Volkers would also pull her close and lick or stick his tongue in her ear.²⁸

Ms Rogers told the Royal Commission that at the time this was occurring she felt very uncomfortable and now recognises that she was in a state of constant anxiety. She hoped that her mother would realise something was wrong and ask her. Ms Rogers was afraid to tell her parents because she was worried that they would not believe her.²⁹ She stopped swimming with Mr Volkers in January 1988.³⁰

In about April 1988, Ms Rogers' mother arranged a referral to a mental health facility. Ms Rogers was diagnosed with anorexia nervosa and commenced counselling, which continued for some years.³¹ At an early session, she did not tell the psychologist at the hospital, Ms Sue Osgarby, about what Mr Volkers had done to her but talked about feeling uncomfortable around him, the massages and the sexually suggestive comments.³²

Ms Rogers recalls telling her mother about the abuse in around 1988 or 1989, around the time she was referred for counselling.³³ She eventually disclosed the sexual abuse to her counsellor at the time, Ms Lyndal Jones.³⁴

Ms Rogers has had ongoing physical and psychological problems, including depression and anxiety, as a result of the sexual abuse by Mr Volkers.³⁵ Ms Rogers told the Royal Commission:

I have also had a difficult relationship with my family since the abuse. My parents are estranged from one of my brothers, who blames them for not protecting me from the abuse. I have been involved in a number of violent domestic relationships. I had problems in my sexual relationship with my former husband ...

The trauma I have suffered as a result of the abuse has affected my employment history and prospects, past and present and I expect will continue to do so in the future. I have lived my life trying to avoid standing out, to avoid being noticed and violated again.

... Due to strong medication I have been prescribed over the years for my mental health condition, my white blood cell count and my immune and endocrine system have been affected.³⁶

Ms Rogers said that she feels the damage caused by the sexual abuse was compounded by the way that the criminal justice system treated her.³⁷

Ms Simone Boyce

Mr Volkens coached Ms Boyce from 1985 until about 1989.³⁸

Ms Boyce told us that she was sexually abused by Mr Volkens on one occasion in the summer of 1987–1988, when she was 12 years old.³⁹

Ms Boyce told the Royal Commission that she first met Mr Volkens when she was about 10 years old. Ms Boyce recalled that Mr Volkens was in his mid to late twenties when she met him. He became a brother/father figure in her life and she idolised and looked up to him.⁴⁰

Mr Volkens first coached her for a short period at Foster's pool in 1985 before she moved with the Volkens Squad to St Paul's School. She followed him in 1986 to John Rigby's Swim School, where the club was called the Northern District Swimming Club.⁴¹ In late 1987, Ms Boyce represented Brisbane North in the state titles and was selected for the Queensland team.⁴² Ms Boyce trained five days a week⁴³ and often spent more time with Mr Volkens than with her own family.⁴⁴

Before the Queensland state titles in January 1987, when she was 12 years old, Mr Volkens asked her to babysit his one-year-old daughter. AEG, who also trained with Mr Volkens, accompanied her to Mr Volkens' house.⁴⁵

Ms Boyce recalled that, even though they were at Mr Volkens' house to babysit, he never left. Ms Rogers, AEG and Mr Volkens' daughter went swimming. When they went inside, AEG went to another room at the other end of the house to sleep. Ms Boyce watched television in her swimming togs, with her shoulder straps pulled down to below her armpits because they were tight.⁴⁶ Mr Volkens walked into the room and sat behind her on the lounge, with his legs either side of her. Mr Volkens suggested that he give her a massage. Ms Boyce told Mr Volkens that she did not want a massage. However, he did not listen and started massaging her. She said that, when he was massaging her neck, arms and back, he stuck his tongue in her right ear and caressed her stomach. He then caressed her breasts and nipples for about 20 to 30 seconds.⁴⁷ Ms Boyce said that during the massage her hands were firmly covering her vagina.⁴⁸

Ms Boyce said that, after Mr Volkers stopped touching her, she put her t-shirt back on. AEG woke up and came back into the lounge room.⁴⁹

After this, she avoided situations where Mr Volkers could access her alone.⁵⁰

Ms Boyce told the Royal Commission that Mr Volkers often made comments about her body and referred to her in inappropriate ways.⁵¹ On one occasion, she saw Mr Volkers stick his tongue in Ms Rogers' ear and observed Mr Volkers being very 'touchy-feely' with her. She also noticed that Mr Volkers demonstrated the same behaviour with AEG. Ms Boyce said that she did not speak to Ms Rogers about it at the time because Ms Boyce did not want anyone to know what was happening to her. She did notice that Ms Rogers was losing weight and was not performing as well.⁵²

In 1988, Ms Boyce moved to the Commercial Swimming Club at the Valley Pool and Mr Volkers continued to train her.⁵³ Ms Boyce stopped swimming in 1989 because she found herself arguing with Mr Volkers and had lost the desire to keep swimming.⁵⁴

Ms Boyce did not tell anyone about the abuse at the time. It was not until 1995 that she told her mother that Mr Volkers had sexually abused her. She told her general practitioner, Dr Margaret Cotter, at about the same time.⁵⁵

Ms Boyce told the Royal Commission that, given how well regarded Mr Volkers was in the swimming community, she believed that if she was to have any future in competitive swimming she could not complain and that no-one would believe her.⁵⁶

As a result of the abuse, Ms Boyce has suffered from depression and attempted to commit suicide on a number of occasions.⁵⁷ She recalled:

... when I was 15 years old and staying with my father in New Zealand, that one night everything came flooding back to me. I was, at that point, in a very dark place and felt extremely alone. I attempted unsuccessfully to cut myself that night. It was a very poor attempt with a razor. No one knew of this.

I did not understand for a long time why, after Scott's abuse, I could never bring myself to watch the swimming on television. I wanted to, but it made me feel angry and sick. I know now that I was feeling angry and sick about Scott and what he had done to me.⁵⁸

In her late twenties, Ms Boyce attempted to commit suicide on two more occasions by overdosing on prescription medication. Ms Boyce also suffers from long-term depression.⁵⁹

Ms Boyce also told the Royal Commission that she has suffered from low self-esteem as a result of the sexual abuse and she has also felt ashamed of her body. The abuse has damaged her relationship with her children and resulted in a history of bad relationships with men.⁶⁰

With the benefit of hindsight, Ms Boyce stated that she would not have complained to police if she had known what the process was going to be like. She found the criminal justice process stressful and humiliating and it compounded the harm that Mr Volkers had done to her.⁶¹

Ms Julie Gilbert

Mr Volkers coached Ms Gilbert from about 1982 to 1986.⁶²

Ms Gilbert told the Royal Commission that between the ages of 13 and 14 she was sexually abused by Mr Volkers on a number of occasions. She gave evidence that the abuse occurred in a massage room and on another occasion in a caravan, where Mr Volkers lived.⁶³

Mr Volkers was Ms Gilbert's swimming coach at Foster's pool until about 1985.⁶⁴ As a member of the Volkers Squad, Ms Gilbert trained six days a week and would spend other time with him when competing at swimming meets.⁶⁵

By the time she was 13 years old, she was competing at Queensland state swimming meets and was one of the fastest swimmers in Queensland in her age group.⁶⁶ She described Mr Volkers as an enormous part of her life for many years.⁶⁷

In 1984, Ms Gilbert suffered a knee injury and underwent an operation. As part of her rehabilitation, she was allowed to continue swimming.⁶⁸ About three weeks after her operation, Mr Volkers approached her during an evening training session and asked her to go to the pool's sauna. Once she was in the sauna, Mr Volkers came in to check on her. He asked her to go to the massage room and to lie on her back. Ms Gilbert said that Mr Volkers started massaging her shoulders, moving his hands down to massage her breasts. She was not fully developed but had started wearing 'training bras'. Mr Volkers made the comment to her that she was 'fridgit' and 'stiff' and 'the other girls don't mind doing this'.⁶⁹ Ms Gilbert said she froze when he was touching her, as she had never experienced another person touching her breasts before.⁷⁰

About one week later, Mr Volkers approached her at an evening training session and asked her to go to the sauna.⁷¹ Again, Mr Volkers came into the sauna and asked her to go to the massage room. This time he asked her to lie on her front and then asked her to pull down her togs to the waist. She said that, as was her custom during training, she was wearing two pairs of togs. She did this because the fabric would gradually perish and become see-through.⁷² Ms Gilbert said that Mr Volkers massaged her back. He then asked to lie on her back and he caressed her breasts.⁷³ Ms Gilbert said she felt uncomfortable. Once he had finished, she pulled her togs back up and returned to training.

On another occasion before the start of a training session in January 1985, Mr Volkers asked her to meet him at his caravan. Again, she was wearing two pairs of togs, with a pair of shorts over the top.⁷⁴ Mr Volkers told her to get onto the bed so he could give her massage. Ms Gilbert lay on her stomach and Mr Volkers started massaging her back and legs. He eventually moved up under her shorts, lifting her togs up and rubbing her vagina with his hands. She said that, although she did

not understand the sensation at the time, when she was older she realised she believed she had experienced an orgasm from Mr Volkers rubbing her clitoris and vulva.⁷⁵

Ms Gilbert told the Royal Commission that about two days later she again went to Mr Volkers' caravan before training. Mr Volkers asked her to take her shirt off and lie down on her stomach. He massaged her back and legs and then moved his hands between her legs and under her shorts. On this occasion Ms Gilbert said she told him 'No' and left the caravan to start training.⁷⁶

After this incident, Mr Volkers stopped asking Ms Gilbert to the sauna and massage room. The only other person she saw go in there with Mr Volkers was AEH, another swimmer.⁷⁷ Ms Gilbert never told anyone about the abuse at the time because she thought that it was part of training. Mr Volkers also told her that the other girls did the same thing.⁷⁸

In 1985, Ms Gilbert moved with Mr Volkers to St Paul's School. She remained training with him until the end of 1986, when she stopped swimming with private squads.⁷⁹ After Ms Gilbert stopped training with Mr Volkers, the only time she swam was for her school.⁸⁰

Ms Gilbert first disclosed the abuse in 1993 to her husband before their wedding. Some years later – in 1996, when she was 25 – Ms Gilbert attended a seminar about becoming a swimming coach, at which Mr Volkers presented.⁸¹ She subsequently participated in one coaching accreditation session with Mr Volkers.⁸² Ms Gilbert explained that she decided to do the accreditation with Mr Volkers because she did not know any other coaches and she believed that, at that stage, she did not have a complete understanding of the effects of the sexual abuse on her. After one session, she was unable to continue and ceased contact with Mr Volkers.⁸³

As a result of the abuse, Ms Gilbert developed an eating disorder. In 2004, she received care from a psychiatrist.⁸⁴ Ms Gilbert gave evidence that her coping mechanisms for dealing with the sexual abuse 'were not right and the result of it was my bulimia, which has troubled me for many, many years after the abuse'.⁸⁵

Ms Gilbert also told the Royal Commission:

Scott Volkers was an enormous part of my life for many years while I was a child. He abused our relationship for an entirely wrong purpose. I believe that the abuse I suffered while being coached by Scott Volkers is as much about his abuse of our relationship as it is about his abuse of me physically.⁸⁶

Ms Gilbert found that the criminal justice process was isolating and she was removed from the process.⁸⁷ Ms Gilbert gave evidence that:

... having a voice is the most powerful thing you can have to recover. And I think if victims are continually silenced or people don't listen to what you have to say, or they don't want

to give you the time, which was shown to me, then you never recover from it ... I don't think people really understand how important that voice really happens to be. So any opportunity that we can have too that helps victims survive.⁸⁸

Meeting between Ms Rogers and Ms Boyce in 1997

In 1997, Ms Rogers and Ms Boyce saw each other at the Boondall Entertainment Centre in Brisbane, where Ms Rogers was working at the time. They each told the other that Mr Volkers had abused them.⁸⁹ Ms Rogers recalled the meeting as follows:

I coincidentally ran into Simone Boyce at the Boondall Entertainment Centre where I was working at the time. It was a Disney ice-skating show which I remember being called 'Aladdin on Ice' ... We had a conversation about Scott [Volkers] and disclosed to each other that he had interfered with each of us ... I don't now remember the words actually used, but I knew (and believe Simone knew) that we were each saying we had been sexually abused by Scott. I think there might have been a further telephone conversation or two between us that year, but we haven't spoken in detail since then ...⁹⁰

Ms Boyce recalled:

I went with my daughters to ... see an ice-skating show, which I told the police was called 'Aladdin on Ice'. I saw Kylie Rogers working there. Kylie came over to me and we spoke to each other. Scott [Volkers] came up in the conversation. We only spoke briefly but in the conversation with communicated that he had sexually interfered with each of us. We also spoke about what we should do with these experiences. We both agreed that no one would believe us and we eventually lost touch with each other.⁹¹

1.3 Police investigation and Mr Volk's arrest

The Queensland Police Service commenced an investigation of Mr Volk's on 4 August 2001 after receiving information from Ms Rogers and her parents.⁹² Ms Rogers gave the police information about Ms Boyce, who she said was treated in the same way by Mr Volk's.

Ms Rogers told the Royal Commission that she found a calling card on her front door from the police on 26 November 2001 and provided a statement the following day.⁹³ Ms Rogers told the Royal Commission that she was pleased to have been given the opportunity to tell her story to police.⁹⁴

On 27 November 2001, 6 December 2001 and 21 January 2002, Ms Rogers participated in covert police-recorded telephone conversations with Mr Volk's.⁹⁵ On 17 December 2001, Ms Rogers met Mr Volk's wearing a listening device.⁹⁶ Ms Rogers made further statements to the police on 9 May 2002,⁹⁷ 24 July 2002,⁹⁸ 7 April 2003⁹⁹ and 10 April 2003.¹⁰⁰

On 26 March 2002, Mr Volkens was arrested in relation to the allegations of sexual abuse against Ms Boyce and Ms Rogers.¹⁰¹

Ms Gilbert learned through media reports in 2001 and 2002 that a police investigation was underway in relation to allegations of sexual abuse against Mr Volkens. The Queensland Police Service approached her in 2002 in relation to the investigation. She made statements to the police¹⁰² on 30 April 2002¹⁰³ and 4 July 2002.¹⁰⁴

1.4 The first decision to discontinue proceedings

Committal hearing

On 25 July 2002, after Mr Volkens' arrest, a committal hearing was held in the Brisbane Magistrates Court.¹⁰⁵ A committal hearing is a pre-trial process to determine if there is sufficient evidence for a person charged with a serious offence to be required to stand trial.

Initially, the proceedings concerned nine counts of indecent dealings with a child under 16: three in respect of Ms Rogers, two in respect of Ms Boyce and four in respect of Ms Gilbert.

During the course of the proceedings, one of the counts in respect of Ms Rogers and one of the counts in respect of Ms Boyce were discontinued.¹⁰⁶

Detective Senior Constable Lee Jonathon Shepherd, the senior investigating officer of the Queensland Police Service, provided a statement and was cross-examined at the committal hearing on his knowledge of the psychiatric treatment that Ms Rogers had undertaken and the covertly recorded 'pretext conversations' between Ms Rogers and Mr Volkens.¹⁰⁷

Ms Rogers, Ms Boyce and Ms Gilbert gave evidence at the committal hearing. Their account of events was consistent with the evidence they gave to the Royal Commission. Mr Volkens did not give evidence at the committal hearing.

Defence counsel did not make any submissions about five of the counts. Magistrate Taylor was satisfied that the evidence on these counts was sufficient to proceed to trial.¹⁰⁸

Defence counsel submitted that two of the counts that concerned Mr Volkens massaging Ms Rogers and Ms Gilbert (Count 1 and Count 7) could not be considered indecent dealings in the context of the tutorage relationship between Mr Volkens and the complainants.¹⁰⁹ Magistrate Taylor noted that the jury would have to consider the offences in the context of the relationship between Mr Volkens as coach and the complainants as children. Magistrate Taylor stated that a jury could find that Mr Volkens had a legitimate reason to be massaging certain parts of the complainants' bodies. Nonetheless, he determined that, on the evidence available, a properly instructed jury could find the two counts proved.¹¹⁰

Mr Volkens was committed to stand trial on seven counts of indecent treatment of a girl under 16. He entered a plea of not guilty on all seven counts.

Queensland DPP decision to discontinue the proceedings

On 6 September 2002, a meeting was held between Mr Volkens' lawyers and Mr Paul Rutledge, the Deputy DPP. Mr Volkens' lawyers urged that the proceedings be terminated. The lawyers presented a written submission that argued that consideration be given to discontinuing the prosecution.¹¹¹ The lawyers later gave Mr Rutledge 20 statements from persons they alleged could give evidence that supported Mr Volkens.

Those statements were given subject to Mr Rutledge giving an undertaking as to how they could be used.¹¹² In particular, Mr Rutledge undertook not to provide a copy of the statements to the Queensland Police Service.¹¹³ Given their purpose and potential significance, this was, to say the least, unusual.

On 18 September 2002, the then Queensland DPP, Ms Leanne Clare, decided to enter a 'no true bill'. This had the effect of discontinuing the prosecution of Mr Volkens.¹¹⁴ It does not amount to an acquittal. Ms Clare has since been appointed a judge of the District Court.

On 18 September 2002, Mr Jason Davies, the case officer from the ODPP, and Detective Sergeant Geoff Marsh from the Queensland Police Service informed Ms Rogers, Ms Boyce and Ms Gilbert that the charges would be discontinued.¹¹⁵

The following day, Ms Boyce met with Mr Rutledge, at her request, to discuss the reasons for discontinuing the charges.¹¹⁶ Ms Boyce requested a written explanation of these reasons on 24 September 2002.¹¹⁷ Mr Rutledge replied on 27 September 2002.¹¹⁸ The contents of this letter are set out in the next section of this report.

On 24 September 2002 Mr Davies completed a charge discontinuance form.

On 25 September 2002, Ms Gilbert also met with Mr Rutledge, at her request, to discuss the reasons for discontinuing the charges.¹¹⁹ The reasons that Mr Rutledge gave on behalf of the ODPP are also set out in the next section of this report.

Reasons for the decision to discontinue the charges

No document signed by Ms Clare indicating her reasons for deciding to enter a no true bill was produced to the Royal Commission from the ODPP file.

Various documents prepared after the decision had been made suggest reasons for discontinuing the prosecution. They are:

- Ms Boyce's notes of her meeting with Mr Rutledge on 19 September 2002¹²⁰
- the charge discontinuance form, dated 24 September 2002, prepared by Mr Davies of the ODPP¹²¹
- the notes of interview between Mr Rutledge, Ms Gilbert, her then husband Mr Shayne Gilbert and Mr Simon Tolhurst, Ms Gilbert's solicitor, on 25 September 2002 (recorded by Ms Sonia Muller, Victim Liaison Officer, ODPP)¹²²
- Mr Rutledge's letter to Ms Boyce on 27 September 2002.¹²³

We will consider each of these documents in turn.

Ms Boyce's notes of her meeting with Mr Rutledge

Ms Boyce's notes record that she was told that the onus was on the prosecution to prove the offence and that the 'case could not be proven to jury (beyond reasonable doubt)'.¹²⁴ The notes also record that she was told that the 'defence could say [Ms Rogers] and [Ms Boyce] made [the allegations] up because [they] saw each other at Aladdin on Ice'.¹²⁵

Charge discontinuance form

The charge discontinuance form, dated 24 September 2002, included a memorandum setting out the strengths and weaknesses of the Crown case.¹²⁶ This memorandum makes repeated reference to the submission and 20 statements that Mr Volkers' lawyers provided to Mr Rutledge on 6 September 2002.

The memorandum then set out a record of discussions and further investigations that Mr Davies and Detective Sergeant Marsh had undertaken. It also recorded the views that the Deputy DPP had reached, which the DPP accepted, on the possible prosecution of the complaints made by the three women. The form was signed by Mr Davies. There are no signatures from the DPP or Deputy DPP.

In his assessment of the Crown case with regard to Ms Rogers' complaints:

- Mr Davies noted that the complaint was uncorroborated. He pointed out the fact that Ms Rogers and Ms Boyce admitted to meeting in 1997. Because they both mistakenly referred to 'Aladdin on Ice' rather than 'Disney on Ice' in their initial statements, the defence would be able to raise the issue of concoction.¹²⁷
- Mr Davies was of the view that Ms Rogers' complaint was not sufficiently particularised and that Mr Volkers' taped admissions 'may only be taken as so-called "guilty passion" evidence, and may well be excluded'.¹²⁸
- Mr Davies noted disparaging comments made about Ms Rogers in the statements that Mr Volkers' lawyers provided and that Ms Rogers 'has a significant psychiatric history that damages her credibility'.¹²⁹ He stated that there is a 'real risk' that Ms Rogers' version of

what occurred between her and Mr Volkens has ‘transmogrified’ in the retelling to various counsellors.¹³⁰ Putting aside Ms Rogers’ covert phone calls with Mr Volkens, Mr Davies mentioned that a note made by Ms Osgarby, the psychologist who saw Ms Rogers a couple of times in 1988, recorded ‘no significant sexual behaviour other than [Mr Volkens’] comments and touches (not intimate)’.¹³¹ Mr Davies suggested that the note could be the “‘best” record of the actions of the accused toward the complainant’.¹³²

Mr Davies concluded that ‘there is no reasonable prospect of a successful prosecution of the accused in relation to this complaint’.¹³³

In his assessment of the Crown case on Ms Boyce’s complaints:

- Mr Davies again noted that the complaint was uncorroborated and that the defence could raise the issue of concoction with regard to the ‘Aladdin on Ice’ mistake.¹³⁴ He also details the process used to obtain a statement from AEG, another swimmer that Ms Boyce had said was at Mr Volkens’ house at the time of the offence.¹³⁵
- Mr Davies concluded that this statement did not impeach Ms Boyce’s version of events. He also concluded that the other statements that Mr Volkens’ lawyers provided did not damage Ms Boyce’s credibility.¹³⁶

He wrote that ‘the only issue that remained’ was whether the offence was ‘serious enough to warrant a trial or whether it should be dealt with in another manner by being discontinued or referred to mediation’.¹³⁷

In his assessment of the Crown case on Ms Gilbert’s complaints:

- Mr Davies again noted that the complaint was uncorroborated. He recognised that these allegations ‘are the most serious in nature out of all the allegations’.¹³⁸
- Mr Davies recorded that the submission from Mr Volkens’ lawyers asserted that the incidents involving massages during training sessions could not have happened because of:
 - the length of time Mr Volkens was allegedly absent from the pool
 - the fact that Mr Volkens did not use a blackboard to give instructions to his swimmers but, rather, gave them verbally, and as a result the sessions would have become chaotic if he was absent for 15–30 minutes
 - the presence of parents and others during training sessions.¹³⁹

The submission was allegedly supported by the 20 statements provided.

- Mr Davies also noted that the defence provided a statement from AEH, who denied she had gone into the sauna room with Mr Volkens, as Ms Gilbert said in her statement.¹⁴⁰

The memorandum concluded:

[The defence statements] may well ruin any prospects for a conviction in relation to the offences in the sauna room (particularly [AEH]). If that is the case then the Crown will not have any prospects of success in relation to the counts involving the accused's caravan.¹⁴¹

The charge discontinuance form contains a record of a meeting on 13 September 2002 between the DPP, the Deputy DPP and the Crown Prosecutor who appeared at the committal hearing. At this meeting, Ms Clare said that the issue of concoction between Ms Rogers and Ms Boyce 'could be easily explained by the fact that the theme of that particular Disney on Ice production was "Aladdin on Ice"'.¹⁴² A plan for further investigations to verify the submission and statements from Mr Volk's lawyers was also made.

Following this meeting, Detective Sergeant Marsh and Mr Davies spoke to Ms Gilbert about how Mr Volk's conducted training sessions. Ms Gilbert said that there were numerous occasions during training where Mr Volk's and other swimmers left the pool area for lengthy periods of time. When told about AEH's statement, Ms Gilbert is said to have changed her original statement to say that she saw AEH walk towards and return from the sauna area with Mr Volk's – she had merely assumed that they had entered the sauna area together.¹⁴³

Mr Davies' record of further investigations also referred to an interview with another swimmer who said Mr Volk's had touched her in his car when she was 18. It states, 'she was ruled out as being relevant'.¹⁴⁴

Mr Davies and Detective Sergeant Marsh also conducted investigations in Mr Volk's former residence – in particular, the floor covering in the lounge room. It was established that when Mr Volk's lived at the residence there was grey carpet on the floor, which had subsequently been taken up to expose the floor boards.¹⁴⁵ This was said to be consistent with Ms Boyce's evidence but potentially inconsistent with Ms Rogers' evidence, depending on whether she had been at the residence before or after the carpet was laid.¹⁴⁶

Mr Davies and Detective Sergeant Marsh also visited Ms Osgarby. She had no independent recollection about Ms Rogers' complaint and was unable to clarify the meaning of 'not intimate' in her notes from 1988.¹⁴⁷

In relation to Ms Rogers' complaints, the charge discontinuance form records that, after reviewing the material in the form, Ms Clare accepted Mr Rutledge's view that:

[The prosecution of the complaints by Ms Rogers] had no reasonable prospects of success because of the complainant's lengthy psychiatric history, and the inconsistency in the accounts she had provided initially to [Ms] Osgarby [sic] and then to subsequent therapists and police. Her evidence appears to have transmogrified and could not be said to be reliable.

The DPP formed the view that the admission made by the accused (in pretext conversation) would have been sufficient to particularise an offence upon which the Crown could prosecute BUT FOR the fact that it would have been impossible to confirm the alleged time frame of the offence with sufficient particularity to rule out the possibility that the offence happened after the complainants' 16th birthday.¹⁴⁸

In relation to Ms Boyce's complaints, the charge discontinuance form records that Ms Clare accepted Mr Rutledge's view that:

[The prosecution of the complaints made by Ms Boyce] should not proceed on the basis that its true criminality was of a lower magnitude (being a single incident of rubbing on the breast), that it was a very stale incident (15 years old), that the prospects of success in this matter were also significantly reduced as a 'flow-on' effect of the purported 'character' witness evidence, and there was no prospect of any significant punishment in the unlikely event of a conviction which would justify proceeding to trial.¹⁴⁹

In relation to Ms Gilbert's complaints, the charge discontinuance form records that Ms Clare accepted Mr Rutledge's view that:

[The prosecution of the complaints made by Ms Gilbert] had no reasonable prospects of success because of the effect of the 'alibi' statements provided by defence AND the complainant had changed her story slightly after being questioned further in relation to the denial supplied by [AEH]. The D/DPP said that the complaints had a 'smell' about them and his own experience of taking children to swimming training did not support the complainant's version.¹⁵⁰

The notes of interview between Mr Rutledge and Ms Gilbert

The notes of Mr Rutledge's interview with Ms Gilbert recorded Mr Rutledge saying that 'the Crown looked at everything we thought should be looked at and thought no prospects of convicting Mr Volkers'.¹⁵¹ The notes record that '[Mr Rutledge] advised that the Director had input into the decision [to discontinue proceedings]'.¹⁵²

The notes of Mr Rutledge's interview with Ms Gilbert refer to 'age of allegation [18 years ago]', 'no recent complaint' and 'no corroboration'.¹⁵³

Mr Rutledge is recorded as saying 'In reality there is approx 1000 girls (children) he has trained for 2 decades'.¹⁵⁴ The statements provided by Mr Volkers' lawyers are mentioned, along with the fact that the ODPP agreed that the police would not interview those who made the statements. Mr Rutledge said that if the defence knowingly provided fraudulent statements 'they would be in strife'. He explained that some of the statements were from people who had known Mr Volkers for 20 years 'who hadn't heard anything re inappropriate conduct'.¹⁵⁵

With respect to the counts involving Ms Gilbert, the notes state that AEH was prepared to say that she was not in the room at the time of the alleged abuse and that AEH's account is 'significant'.¹⁵⁶ The notes record Mr Rutledge explaining that, if the ODPP did not know about AEH, these counts would have proceeded because Ms Gilbert came across 'very well' at the committal hearing. Ms Gilbert said that what she said in her statement about AEH was not what she meant.¹⁵⁷

The notes also record Mr Rutledge saying 'no one is saying that it isn't possible that [Ms Gilbert] was in the room with Mr Volkers' and 'anyone could have walked in. Risk Mr Volkers was taking in middle of training session'.¹⁵⁸ Finally, the notes state that the ODPP 'couldn't divorce caravan & sauna incidents'.¹⁵⁹

With respect to the counts involving Ms Rogers, the notes state that the police should have obtained Ms Rogers' psychiatric records and that, if they had, Mr Volkers would never have been charged. They go on to record that '[Ms Rogers]' allegations get more extreme over time' and that '[Ms Rogers] isn't a witness you could rely on'.¹⁶⁰ In response to a question from Ms Gilbert about what would have happened if the ODPP had not received the statements from Mr Volkers' legal representatives, Mr Rutledge replied 'the case re [Ms Rogers] would have been discontinued & couldn't say re others'.¹⁶¹

Mr Rutledge's letter to Ms Boyce

Mr Rutledge wrote to Ms Boyce on 27 September 2002. In that letter he stated that 'there were a number of factors involved in the decision'. These included:

- The offence was a single incident involving touching alleged to have occurred about 15 years ago.
- There was no corroboration of Ms Boyce's account or complaint shortly after the touching.
- Both Ms Boyce and Ms Rogers referred in their initial statements to meeting at Aladdin on Ice in 1997 rather than Disney on Ice (the 'common misdescription'), which did not assist.
- Mr Volkers trained in excess of 1,000 young female swimmers over many years without any complaint to police until recent times.¹⁶²

He concluded that 'having regard to the nature of the offence alleged and the strength of the evidence it was considered not appropriate to present an indictment'.¹⁶³

1.5 Crime and Misconduct Commission investigates decision to discontinue proceedings

The DPP's decision to drop the charges 'received extensive media coverage'.¹⁶⁴ The level of controversy increased quickly. In a television interview on 19 September 2002, the then Premier, the Hon. Peter Beattie, expressed the view that the Crime and Misconduct Commission (CMC) should look at the matter.¹⁶⁵

On 27 September 2002, shortly after Mr Beattie's comments, the CMC announced that it would examine the circumstances surrounding Mr Volk's arrest and the subsequent discontinuance of proceedings 'to determine whether there was sufficient evidence of official misconduct or police misconduct to recommend disciplinary or other action'.¹⁶⁶

On 10 October 2002, after assessing all the material that it had access to, the CMC determined that there was sufficient material to warrant an investigation.¹⁶⁷

The CMC also announced that it would be conducting public hearings on the procedural issues raised by the matter – in particular, 'the way the criminal justice system handles sexual misconduct matters'.¹⁶⁸ These hearings were held on 20–21 November 2002.

Central to the criticisms of the DPP's decision to discontinue criminal proceedings against Mr Volk were the issues of:

- the appropriateness of an undertaking that the Deputy DPP gave to Mr Volk's lawyers concerning the use of written material that Mr Volk's lawyers provided to the ODPP
- the basis on which the DPP made the decision to discontinue criminal proceedings.¹⁶⁹

The scope of the Crime and Misconduct Commission investigation

The CMC made it very clear that it had no authority to disturb or confirm the DPP's decision to discontinue proceedings against Mr Volk. It did not consider whether or not the decision was actually correct.¹⁷⁰ The aspects of the matter considered were:

1. Whether there was sufficient evidence of official misconduct or police misconduct in the initial investigation by the Queensland Police Service to warrant the CMC recommending disciplinary or other action.
2. Whether there was sufficient evidence of official misconduct by officers of the ODPP in their handling of the matter, both in terms of the committal proceedings and the subsequent decision to discontinue prosecution of the charges, to warrant the CMC recommending disciplinary or other action.
3. Whether there had been any political interference in the decision not to proceed with the charges.¹⁷¹

The CMC noted that the basis on which Ms Clare came to the conclusion to discontinue was relevant to the deliberations of the CMC. This was because it was relevant to the question of whether there was any evidence of official misconduct by any officer from the ODPP.¹⁷²

The investigation involved:

- reviewing the relevant files from the ODPP, the Queensland Police Service and Mr Volk's lawyers

- interviews with the complainants, officers from the Queensland Police Service, officers from the ODPP, Mr Volk's lawyers, potential witnesses in the case against Mr Volk's, the Queensland Attorney-General and media persons.¹⁷³

The Queensland Police Service conducted a post-operational assessment of the extent and quality of the police investigation of the allegations against Mr Volk's and also of allegations of improper release of information to the media before Mr Volk's arrest. The assessment and investigation reports were provided to the CMC for its information.¹⁷⁴

Crime and Misconduct Commission findings

The CMC published its report in March 2003. It concluded that there was no evidence of official misconduct on the part of any officer of the Queensland Police Service or the ODPP.¹⁷⁵

In relation to the Queensland Police Service, the CMC made some observations about the arrest process and the concerns raised in the post-operational assessment conducted by the police.¹⁷⁶

The CMC was critical of the ODPP. It found that 'the process leading to the decision not to continue with the prosecution of any of the charges against Mr Volk's was unsatisfactory'.¹⁷⁷ The CMC highlighted that 'this was reflected in the fact that there is room for doubt about the principal reasons that motivated the decision'.¹⁷⁸

The CMC examined the reasons for discontinuing the prosecution against Mr Volk's, including 'whether the Defence statements were of any relevance to the DPP's consideration of the merits of the prosecution case'.¹⁷⁹

The CMC said that Ms Clare 'was never consulted about' the charge discontinuance form and 'made no contribution to it, did not read it and did not sign it'.¹⁸⁰ The CMC report stated that ordinarily the DPP would complete a second form that records the basis for the decision to discontinue the prosecution. The CMC said that in this case the second form was not completed because '[Ms Clare] was in the process of going on holidays and there was some confusion with Mr Rutledge over who was going to complete the second form'.¹⁸¹

It is not surprising that the CMC also found that Mr Rutledge's decision to accept the statements from Mr Volk's lawyers 'proffered with a view to persuading him that the charges could not be upheld, on the basis that use of the statements was restricted, was a mistake'.¹⁸² The CMC said:

There are obvious dangers in permitting lawyers to submit statements to the prosecution in this way. Here the situation was aggravated by the circumstances that disagreement quickly arose as to the basis on which the statements were to be used; this led to a threat of litigation by the lawyers for Mr Volk's, which undoubtedly put pressure on the officers of the ODPP. Although there is evidence from the DPP and Mr Rutledge that the content of the statements had very little to do with the ultimate decision, it is hard to accept that the statements did not influence the decision.¹⁸³

Consequently, the CMC concluded ‘there is room for doubt about the principal reasons that motivated the decision’.¹⁸⁴

Reasons given by the DPP to the Crime and Misconduct Commission for discontinuing the prosecution

In relation to Ms Rogers, Ms Clare told the CMC:

- She was worried about the witness’s competence in giving evidence and her history of making ‘preposterous allegations against various people’. Ms Clare noted that the use of the word ‘preposterous’ was taken from a doctor’s note and did not reflect her personal judgment.¹⁸⁵
- The date of the alleged offence (that is, the allegation that Mr Volkens attempted to ‘finger’ Ms Rogers in his car) needed to be established to prove Ms Rogers’ age at the time. If she was over 16, the Crown also had to prove the absence of the consent. This could only be established by Ms Rogers. Ms Clare queried whether Ms Rogers was competent to give evidence.¹⁸⁶
- The evidence from another witness who said Mr Volkens had touched her in the car was considered because it may have constituted similar fact evidence to the allegation by Ms Rogers discussed above. However, she later found it ‘was not of any assistance’ because the witness was over 16 at the time.¹⁸⁷

In her written submission, she said that she was ‘originally reluctant to discontinue’ because Ms Rogers’ complaint was ‘the only one with evidence of a complaint made within a limited time of the last episode. It was also the only case with potential corroboration’.¹⁸⁸ However, ‘Sadly, the complainant’s longstanding psychiatric history presented a serious problem for her reliability, if not her competency’.¹⁸⁹ While Ms Clare noted that this psychiatric history may have related to the abuse that Mr Volkens perpetrated, she ‘formed the view that it would be unsafe to rely upon this witness’.¹⁹⁰

In relation to Ms Boyce, Ms Clare concluded that there was a ‘prima facie case’; however, the evidence related to ‘a single episode that was uncorroborated and was not of a serious nature’.¹⁹¹ Ms Clare rejected the assertion about the evidence of concoction between Ms Rogers and Ms Boyce on the name of the Disney show, stating that this did not weigh ‘greatly on her mind when reaching her decision’.¹⁹²

She gave her reasons in a written submission to the CMC, stating that ‘this was not a matter which would warrant a prosecution on its own’:

- It was a single charge of low-level conduct.
- A complaint was not made until many years later.
- The complaint was uncorroborated.

- A warning would be given to the jury that it is necessary to scrutinise the complainant's evidence with great care given the extensive delay between the offence and the trial (a Longman warning).
- In the unlikely event of a conviction, the punishment would be nominal.¹⁹³

In relation to Ms Gilbert, Ms Clare told the CMC 'that two issues ultimately weighed on her mind in considering whether to continue the prosecution of [Ms Gilbert's] complaint'. Those issues were:

- the improbability of the offence occurring where there were parents present and Mr Volkrs would have had to have been absent for some time
- Ms Gilbert's apparent willingness to change her evidence when told about the evidence of AEH.¹⁹⁴

On the first issue, Ms Clare stated that 'There is still the question of the burden of proof on us and that idea of improbability or implausibility had to be figured into the equation'.¹⁹⁵

On the second issue, Ms Clare was concerned that Ms Gilbert 'backtracked' when told of AEH's evidence that she did not 'on any occasion remember going into the massage room' with Mr Volkrs.¹⁹⁶ In her interview with the CMC, Ms Clare said that it was her view that Ms Gilbert would not be a good or particularly strong witness and she would essentially be 'torn to shreds' in the witness box.¹⁹⁷

In her written submission to the CMC, Ms Clare said that she recognised that Ms Gilbert's change of evidence in relation to AEH 'was another factor that could be used to discredit her'. She did not think it made 'prosecution impossible'. She recalled that 'Mr Rutledge had a different view' and there was 'some force' in this, but ultimately she thought it was a matter for the jury. Her submission stated that she changed her mind when she 'came to understand' that in relation to at least one of the offences:

1. the offence was one that lasted for a substantial period of time; and
2. [the offence] took place in an area accessible to anyone at the swimming complex, and where swimmers visited frequently.

These two features combined with the overtly sexual nature of the allegations (with the complainant half naked and exposed) to create a serious question about the plausibility of the risk said to be undertaken by Mr Volkrs.¹⁹⁸

Ms Clare also highlighted in her written submission that Mr Rutledge had pointed out the practical difficulties of a swimming coach being absent for extended periods of time. In her written submission to the CMC Ms Clare concluded that:

when the improbability of the risk allegedly undertaken was combined with other weaknesses, particularly the lengthy delay in complaint and the absence of any supportive evidence, the matter was deprived of any reasonable prospect of a conviction.¹⁹⁹

Criticisms made by the Crime and Misconduct Commission

The CMC was critical of the evidence that Ms Clare provided about some of the key issues of Ms Gilbert's case. The criticisms were mainly focused on inconsistencies between the evidence given in her interview with the CMC and her written submission. For example, on her comment that Ms Gilbert would be 'torn to shreds', Ms Clare said in her written submission that, while the change in evidence would be used to discredit Ms Gilbert, she did not think the prosecution impossible.²⁰⁰

The CMC identified a number of other mistakes made by the ODPP that it described as being of 'lesser importance'. These all related to the allegations made by Ms Gilbert, which the CMC said were 'the most serious' of the three complaints.²⁰¹

Firstly, the DPP was under a misapprehension about the length of time Ms Gilbert said that Mr Volkers was away from the pool.²⁰² In summary, the evidence on this point from Ms Gilbert was that she was in the sauna for approximately 15 to 20 minutes and then went to the massage room. Ms Gilbert did not say how long she was in the massage room.²⁰³ The CMC concluded that 'since the committal proceedings there have been misunderstandings about the time in which the offences were allegedly committed by Mr Volkers in the massage room'.²⁰⁴

Secondly, too much attention to the damage supposedly done to Ms Gilbert's credibility by remarks attributed to the witness, referred to as AEH during the public hearing.²⁰⁵ In her statement to the police, Ms Gilbert said that AEH was the only other person 'she saw go into the sauna and massage room with Mr Volkers'.²⁰⁶ AEH was being interviewed by Mr Peter Shields, who was Mr Volkers' lawyer, when she apparently said, 'I did not on any occasion remember going into the massage room with Scott as contained in the statement of [Ms Gilbert]'.²⁰⁷ When told of AEH's statement, Ms Gilbert said 'that she recalled [AEH] getting out of the pool and walking towards the sauna and then seeing her walk back with Mr Volkers, but she did not know if they actually went into the sauna'.²⁰⁸

This has been used to suggest that Ms Gilbert had a preparedness to change her account of the events, and that that damaged her credit.

Thirdly, there was insufficient analysis of the prospects of a successful conviction of the offences Ms Gilbert said occurred in the caravan, including not considering whether to proceed on these allegations alone.²⁰⁹ The CMC highlighted that there was no reference to the caravan allegations in the charge discontinuance form. The CMC was also of the opinion that the offences that were said to have occurred in the caravan were very different from those in the massage room and it appeared that the ODPP had confused the two during its deliberations.²¹⁰

Lastly, too little attention was given to the possibility that Ms Gilbert might simply be believed by a jury.²¹¹

The CMC concluded:

there were more defects than one would normally expect to find in an examination of a matter of this kind. However, it appears clear that although Mr Rutledge, and to a lesser extent the DPP, can be justly criticised for the way in which they went about their task, the case falls far short of official misconduct.²¹²

The CMC suggested that:

1. The DPP consider developing guidelines on giving and recording undertakings to ensure that the situation that occurred in the Volkens matter did not happen again.
2. The DPP consider reviewing the effectiveness and also the adequacy of the ODPP's communication with complainants. This was because the complainants in the Volkens matter had expressed concerns over 'what they perceived to be a lack of communication on the part of the ODPP'.²¹³

1.6 Police reopen investigation of Mr Volkens

In December 2002, the Queensland Police Service, of its own initiative, reopened investigations of the allegations against Mr Volkens.²¹⁴

The police gave the DPP three volumes of material on Mr Volkens. Ms Clare referred this material to Mr Rutledge for his consideration with a request that he report to her. Mr Rutledge reviewed the material and subsequently made requests to the police for additional information.²¹⁵

On 5 August 2003, Queensland Police Legal Officer Mr Paxton Booth gave the ODPP a summary of the evidence available in the brief (referred to as the Booth memorandum).²¹⁶ The Booth memorandum summarised the original and new evidence contained in the brief, provided the Queensland Police Service view of the relevance of the new material, and set out proposed new charges.

Mr Rutledge met with Mr Booth on 10 December 2003 to discuss the case to ensure that he had, among other things, a clear understanding of the new material from the perspective of the police.²¹⁷

On 16 December 2003, Mr Rutledge prepared a memorandum for Ms Clare that analysed the evidence in the new brief in light of the original evidence (referred to as the Rutledge memorandum).²¹⁸

The Booth memorandum and the Rutledge memorandum are discussed in further detail below.

Queensland police summary of new evidence

An email was sent to the police, presumably from the ODPP, requesting information on:

- what new material was included in the brief
- the relevance of each item of new material from the perspective of the Queensland Police Service.

The email contained a specific request to identify whether any of the new material in the brief fell under the category of:

- similar fact evidence
- corroboration
- recent complaint
- further complainants or complaints.²¹⁹

A memorandum was prepared by the police setting out the evidence obtained. That memo, referred to as the Booth memorandum, is the subject of a Direction not to Publish and therefore the contents will not be revealed in this report.

The Rutledge memorandum

The Rutledge memorandum to Ms Clare draws attention to ‘a number of matters that strike me as possibly requiring consideration by whoever considers the brief’.²²⁰ Accompanying the memorandum was the following materials:

- one volume of evidence in relation to each complainant, provided by the police
- one volume of material, with the new material provided by the police at the request of Mr Rutledge and relevant correspondence on further investigations that police undertook at the direction of Mr Rutledge
- the Booth memorandum
- a folder of material and correspondence that contained the new material obtained at Mr Rutledge’s request.²²¹

Mr Rutledge commented in the memorandum to Ms Clare that the new material addressed ‘matters of detail that were not addressed in the original brief and seeks to clarify earlier statements by the complainants’.²²² With reference to the Booth memorandum, Mr Rutledge noted that the brief included statements that the police ‘advance as new “Possible similar fact / Propensity evidence / Rebuttal evidence”’.²²³

Ms Rogers

The Rutledge memorandum stated:

[The new evidence in relation to Ms Rogers goes] essentially to matters of detail e.g. narrowing the alleged dates of offences, clarifying the Rogers' account of events, providing descriptions by others of the house where the first offence is alleged to have been committed (in order to substantiate Ms Rogers description) and providing what is claimed to be possible relationship/similar fact/propensity/rebuttal evidence.²²⁴

Mr Rutledge stated that the further investigation has 'confirmed the major problems flowing from the mental state of Ms Rogers',²²⁵ referring to hospital notes of Ms Rogers' admission to hospital in November 2001 and notes made by Ms Osgarby in 1988.

With reference to the Booth memorandum, Mr Rutledge stated that 'Documents found on Rogers medical file are of concern', raising 'issues as to Rogers' credibility and capacity'.²²⁶ He also provided examples of Ms Rogers providing false statements, including that she was sexually abused by her swimming coach, that she believed her parents knew and condoned the incidents and that Ms Rogers believed her mother was having an affair with Mr Volkers.²²⁷

He concluded 'it is clear from the new material that there is much evidence of Ms Rogers acting irrationally, erratically and having difficulty in separating fantasy from reality'.²²⁸

Ms Boyce

The Rutledge memorandum summarised the new evidence in relation to Ms Boyce as containing:

- evidence that supported the proposition that on occasion Ms Boyce went to Mr Volkers' house and some supporting the proposition that on occasion Ms Boyce was at Mr Volkers' house with AEG
- evidence on the type of floor in the house (which related to Ms Boyce's description of the floor at the time of the alleged incident)
- clarification by Ms Boyce of the events
- evidence from Dr Cotter on her treatment of Ms Boyce for major depression
- evidence from Mr Volkers' step-brother on Mr Volkers' contact with young girls.²²⁹

In the memorandum Mr Rutledge provided an analysis of the new evidence from Mr Volkers' step-brother and Dr Cotter.

In relation to the new evidence from Mr Volkers' step-brother, he said:

[The new evidence] clearly supports the proposition that Mr Volkers had girls visit him in his caravan and at home and that he massaged girls in his house. Whether it goes any

further than that and is capable of corroborating the allegation of inappropriate touching will need to be considered.²³⁰

In Ms Boyce's first police statement, dated 22 November 2001, she refers to Dr Cotter as a person she spoke to about Mr Volkers touching her.²³¹

The new material raised 'an issue in relation to the accuracy' of Ms Boyce's earlier police statement.²³² In a later statement to police, dated 4 July 2002, Ms Boyce stated that she had 'never ... received any counselling for the matters that are now before the court'.²³³ The memorandum highlighted that this conflicted with the evidence from Dr Cotter that Ms Boyce received treatment 'including counselling for her major depression' on 11 occasions between 3 September 2001 and 8 May 2002.²³⁴

Ms Gilbert

The Rutledge memorandum described the new evidence in relation to Ms Gilbert as:

- addressing 'Mr Volkers' training methods (particularly whether he used a blackboard and left the pool deck on occasion during training), [and] further details re the layout of the pool complex'
- clarifying Ms Gilbert's account
- particularising dates of offences
- providing 'some material which is advanced as possible similar fact / propensity evidence'.²³⁵

The memorandum referred to and extracted excerpts from Ms Gilbert's accounts to the police and the media and stated it was 'obviously necessary to consider whether her various accounts are consistent'.²³⁶

The memorandum also set out a 'detailed analysis of events surrounding' AEI's statement,²³⁷ suggesting that the DPP would need to consider the value of that evidence and the implications for Ms Gilbert's credibility (AEI's statement reported that Mr Volkers had moved his hands around her breasts during a massage).²³⁸

The Rutledge memorandum stated that Ms Gilbert did not mention AEI as a person of interest in her first statement. In her seventh statement she recalled 'suspicions that something may have occurred between [AEI] and Scott Volkers' and Mr Volkers saying to her 'you wouldn't show me your breasts but [AEI] would'.²³⁹

Mr Rutledge observed that Ms Gilbert's 'non-disclosure' of the information about AEI 'occurs against the background of what is obviously an intense interest in the progression of the case by Ms Gilbert who has clearly demonstrated that she is not the type of person to "keep quiet" about any information that might advance the case ...'.²⁴⁰ The memorandum stated that the DPP may

have to consider whether it is reasonably possible to accept Ms Gilbert's claim as to why she did not disclose Mr Volk's comment about AEI. Ms Gilbert had claimed that she did not think it was relevant at the time, and that she assumed by mentioning her name that AEI would tell police if anything had happened to her.²⁴¹

Mr Rutledge then set out the various accounts that Ms Gilbert gave about the four charges and incidents involving other children.

1.7 Queensland DPP refers the matter to the New South Wales DPP

Ms Clare asks Mr Cowdery QC for advice

On 19 December 2003 Ms Clare, the then Queensland DPP, wrote to Mr Cowdery QC, then the New South Wales DPP, seeking his advice as to whether:

- there was sufficient new evidence to justify recharging Mr Volk's in relation to any of the original allegations
- there were reasonable prospects of convictions in respect of any new allegations.²⁴²

The letter provided a brief chronology on the matter to date, including the decision not to prosecute in September 2002, the CMC report of March 2003 and the additional material received from the Queensland Police Service in May 2003.

In her letter Ms Clare extracted parts of the guidelines that the Queensland DPP had adopted. All ODPPs in Australia have adopted guidelines that are intended to assist in providing integrity in the decision-making process within the office. Guideline 16(v), 'Termination of a Prosecution by ODPP', is set out later in this report, as is Guideline 4, 'The Decision to Prosecute'.

The letter then set out the reasons for discontinuing the original charges in relation to the three complainants.

Ms Rogers

Ms Clare noted that, although a complaint was made within 'a limited time' of the incident and there was potential corroboration, Ms Rogers' longstanding psychiatric history 'presented a serious problem for her reliability if not her competency'.

She stated that the covertly recorded conversations contained, at best, admissions of sexual contact. It would be necessary to also prove that Ms Rogers was under 16 years of age at the time or did not consent. Ms Clare stated that the experience of the other swimmer who alleged that she had been touched by Mr Volk's in his car in similar circumstances when she was over 16 years old 'strengthened the possibility that the incident took place after [Ms Rogers] had turned 16'.²⁴³

She also noted that Ms Rogers denied previous intimate contact when she spoke to the psychologist just after her 16th birthday.²⁴⁴

Ms Boyce

Ms Clare noted:

- Ms Boyce's complaint was a single uncorroborated charge of low-level conduct
- the complaint was not made until many years later
- the jury would be given a warning that it is necessary to scrutinise the complainant's evidence with great care given the extensive delay between the offence and the trial
- 'in the unlikely event of a conviction, the punishment would be nominal'.²⁴⁵

Ms Gilbert

Ms Clare noted that the offence against Ms Gilbert '[endured] for a substantial period of time' in an area 'accessible to anyone in the swimming complex'. She stated that these two features, coupled with the 'overly sexual nature of the allegation', created 'a serious question about the plausibility of the risk said to be undertaken by Mr Volkert'. She noted the 'lengthy delay in complaint and the absence of any supportive evidence'. She also extracted part of the CMC report that criticised the close link that was drawn between these issues of credibility and assessment of the charges concerning incidents in the caravan.²⁴⁶

Material provided to Mr Cowdery QC

In her letter, Ms Clare also set out the law on joinder of charges in Queensland.

The letter suggested that Ms Clare provided Mr Cowdery QC with the 'final briefs', the Booth memorandum, the Rutledge memorandum and a web link to the CMC report.

The Royal Commission has not been able to identify whether we have received the complete material briefed to Mr Cowdery QC. However, the material we did receive included:

- the three volumes of police material
- the depositions and transcripts of the committal proceedings
- the complainants' statements
- the transcripts of an interview Ms Gilbert gave to the ABC program Australian Story
- the CMC report
- the Booth memorandum²⁴⁷
- the Rutledge memorandum.²⁴⁸

The context in which the advice was requested and provided

Before Ms Clare sent this letter, she telephoned Mr Cowdery QC to ask whether his office would be prepared to review the matter.²⁴⁹ Neither Judge Clare nor Mr Cowdery QC could recall the details of the conversation.²⁵⁰ Mr Cowdery QC thought it likely that he discussed with Ms Clare the assistance she wanted and how it would be addressed, consistent with her letter of 19 December 2003.²⁵¹

Ms Clare, the Queensland DPP, knew that her decision whether or not to recharge Mr Volkens would attract considerable public attention given the CMC's criticisms of her first decision.²⁵²

In light of the CMC report and what she described as the matter's 'extraordinary history and intense media coverage',²⁵³ she thought 'the most prudent course' was to seek independent advice.²⁵⁴

This was the first occasion Ms Clare had formally requested advice from Mr Cowdery QC or, indeed, from any DPP of another state or territory.²⁵⁵

Judge Clare recognised that this was an unusual and unique request.²⁵⁶ She said that she sought Mr Cowdery QC's advice because of his prosecutorial experience.²⁵⁷

Mr Cowdery QC confirmed that Ms Clare's request was unusual.²⁵⁸ He said that he had discussed matters informally with Ms Clare from time to time.²⁵⁹

Mr Cowdery QC also understood that any decision by Ms Clare to either recharge or not recharge Mr Volkens was likely to be subject to public scrutiny.²⁶⁰ Again, this was not at all surprising. He told us that he appreciated that, for this reason, Ms Clare wanted an 'independent and expert view'.²⁶¹

Ms Cunneen SC also told us that Ms Clare's request for the advice was unusual.²⁶² Ms Cunneen had never before been asked to advise on the prospect of conviction in a matter from a state outside New South Wales.²⁶³ She has never been asked to do so again.²⁶⁴ She understood that Ms Clare required 'something independent because of some criticism by the [CMC]'.²⁶⁵ She was not aware, and it 'wasn't obvious' to her from the CMC report, of the extent to which the decision was a matter of public controversy.²⁶⁶ Her evidence was that she 'wasn't aware of any public furore ... it wasn't a matter of great note in New South Wales'.²⁶⁷

1.8 Mr Cowdery QC asks Ms Cunneen for advice

In early 2004, Mr Cowdery QC asked Ms Cunneen (now Ms Cunneen SC)²⁶⁸ to advise him on the questions that Ms Clare posed in her letter.²⁶⁹ At that time, Ms Cunneen was a Deputy Senior Crown Prosecutor in the New South Wales ODPP. She was appointed to that position on 2 September 2002. She had been a Crown Prosecutor from November 1990 until that time.²⁷⁰

Before her appointment as a Crown Prosecutor, Ms Cunneen was the Senior Principal Solicitor in charge of the Child Sexual Assault Unit of the Office of the Solicitor for Public Prosecutions and Clerk of the Peace – a role that involved appearing in committal proceedings for child sexual assault cases, membership of multi-disciplinary committees on child sexual assault and attendance at related conferences.²⁷¹

At the time Mr Cowdery QC asked her to prepare the advice, Ms Cunneen had prosecuted a large number of sexual and indecent assault cases, many of which involved children,²⁷² and mostly at what she described as the ‘more serious’ end of the spectrum.²⁷³ She said that she had prosecuted ‘huge numbers’ of historical sexual assault cases (we assume she was referring to the prosecution of offences which were alleged to have been committed some years before charges were laid) in which the accused was well known to the complainant²⁷⁴ – mostly where the perpetrator and victim were related (although many involved perpetrators in a position of trust or authority to the victim).²⁷⁵ Ms Cunneen said she had lectured on the subject ‘Family and Child Welfare’ in the Faculty of Social Work at the University of New South Wales, focusing on the evidence of victims and social workers in the court system, and presented conference papers about the difficulties of prosecuting child sex offences.²⁷⁶

Ms Cunneen provides her advice to Mr Cowdery QC

Ms Cunneen’s advice is dated 26 March 2004 and is addressed to the Director of Public Prosecutions. It is entitled ‘Scott Alexander Volkens: Request by Queensland DPP for advice re Further Proceedings’. Ms Cunneen’s advice is annexed to this report at Appendix B.

The formal decision-making framework

Both Ms Cunneen SC and Mr Cowdery QC accepted that the task involved the application of the relevant law and the Queensland ODPP Director’s Guidelines.²⁷⁷

The request for advice that Ms Clare sent to Mr Cowdery QC set out, in terms, two of the relevant prosecutorial guidelines: Guideline 16(v) and Guideline 4.

Guideline 16(v), ‘Termination of a Prosecution by ODPP’, which contained the test for reversing a determination to discontinue a prosecution, was referred to in full. It provides:

Once a determination has been made to discontinue a prosecution, the decision will not be reversed unless:

1. significant fresh evidence has been produced that was not previously available for consideration or the decision was obtained by fraud; and
2. in all the circumstances, it is in the interests of justice that the matter be reviewed.²⁷⁸

Guideline 4, 'The Decision to Prosecute' was a two-tiered test:

- I. is there sufficient evidence?; and
- II. does the public interest require a prosecution?

Guideline 4 went on to give content to these two tiers. It provided:

(i) Sufficient evidence

- 1. A prima facie case is necessary but not enough.
- 2. A prosecution should not proceed if there is no reasonable prospect of conviction before a reasonable jury (or Magistrate).

A decision by a Magistrate to commit a defendant for trial does not absolve the prosecution from its responsibility to independently evaluate the evidence. The test for the Magistrate is limited to whether there is a bare prima facie case. The prosecutor must go further to assess the quality and persuasive strength of the evidence as it is likely to be at trial.

The following matters need to be carefully considered bearing in mind that guilt has to be established beyond reasonable doubt

- 1. the availability, competence and compellability of witnesses and their likely impression on the Court;
- 2. any conflicting statements by a material witness;
- 3. the admissibility of evidence, including any alleged confession;
- 4. any lines of defence which are plainly open; and
- 5. any other factors relevant to the merits of the Crown case.

(ii) Public Interest Criteria

If there is sufficient reliable evidence of an offence, the issue is whether discretionary factors nevertheless dictate that the matter should not proceed in the public interest.

Discretionary factors may include

- 1. the level of seriousness or triviality of the alleged offence, or whether or not it is of a 'technical' nature only;
- 2. the existence of any mitigating or aggravating circumstances;
- 3. the youth, age, physical or mental health or special infirmity of the alleged offender or a necessary witness;
- 4. the alleged offender's antecedents and background, including culture and ability to understand the English language;
- 5. the staleness of the alleged offence;

6. the degree of culpability of the alleged offender in connection with the offence;
7. whether or not the prosecution would be perceived as counter-productive to the interests of justice;
8. the availability and efficacy of any alternatives to prosecution;
9. the prevalence of the alleged offence and the need for deterrence, either personal or general;
10. whether or not the alleged offence is of minimal public concern;
11. any entitlement or liability of a victim or other person to criminal compensation, reparation or forfeiture if prosecution action is taken;
12. the attitude of the victim of the alleged offence to a prosecution;
13. the likely length and expense of a trial;
14. whether or not the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so;
15. the likely outcome in the event of a conviction considering the sentencing options available to the Court;
16. whether the alleged offender elected to be tried on indictment rather than be dealt with summarily;
17. whether or not a sentence has already been imposed on the offender which adequately reflects the criminality of the episode;
18. whether or not the alleged offender has already been sentenced for a series of other offences and what likelihood there is of an additional penalty, having regard to the totality principle;
19. the necessity to maintain public confidence in the Parliament and the Courts; and
20. the effect on public order and morale.

The relevance of discretionary factors will depend upon the individual circumstances of each case.

The more serious the offence, the more likely that the public interest will require a prosecution.

Indeed, the proper decision in most cases will be to proceed with the prosecution if there is sufficient evidence. Mitigating factors can then be put to the Court at sentence.²⁷⁹

A number of other guidelines were also relevant to the process of deciding whether or not to reopen the prosecution of Mr Volkens. These included:

18. CONSULTATION WITH VICTIMS

The relevant case lawyer or prosecutor must also seek the views of any victim whenever serious consideration is given to discontinuing a prosecution for violence or sexual offences.

The views of the victim must be recorded and properly considered prior to any final decision, but those views alone are not determinative. It is the public, not any individual interest that must be served.

19. REASONS FOR DECISIONS

- i. Reasons for decisions made in the course of prosecutions may be disclosed by the Director to persons outside of the ODPP.
- ii. This disclosure of reasons is generally consistent with the open and accountable operations of the ODPP.
- iii. But reasons will only be given when the inquirer has a legitimate interest in the matter and it is otherwise appropriate to do so.
 - 1. Reasons for not prosecuting must be given to the victims of crime;
 - 2. A legitimate interest includes the interest of the media in the open dispensing of justice where previous proceedings have been public.
- (iv) Where a decision has been made not to prosecute prior to any public proceeding, reasons may be given by the Director. However, where it would mean publishing material too weak to justify a prosecution, any explanation should be brief.
- (v) Reasons will not be given in any case where to do so would cause unjustifiable harm to a victim, a witness or an accused or would significantly prejudice the administration of justice.²⁸⁰

Guideline 5(iv) provided that, in relation to sexual offences, where there was sufficient evidence to prove the offence 'there will seldom be any doubt the prosecution is in the public interest'.²⁸¹

Expectations of the advice

Judge Clare stated she 'anticipated an advice setting out reasons' and Mr Cowdery QC's conclusion.²⁸² Judge Clare told us that she 'suppose[d]' she expected to receive Mr Cowdery QC's personal reasons but she 'would have understood' that he might seek the advice or reasons from someone else within his office.²⁸³

It is apparent that Ms Clare intended to place significant weight on Mr Cowdery QC's advice.²⁸⁴ Had Mr Cowdery QC's advice been to prosecute, she said that she intended to prosecute without reviewing the material herself, to avoid a public perception of bias.²⁸⁵ If the advice was not to prosecute, she said that she intended to consider (and in this case, did consider) the material for herself.²⁸⁶

Mr Cowdery QC said²⁸⁷ he understood his role to be assisting or advising Ms Clare on her decision rather than making an independent decision himself.²⁸⁸

Mr Cowdery QC said the request for advice from Ms Clare was ‘a more informal process, in a sense, than the preparation of a matter for prosecution in court in New South Wales’.²⁸⁹ Mr Cowdery QC stated that, with respect to Ms Cunneen’s advice, he could not ‘recollect any other [advice] that had similar features’ in terms of the modes of expression.²⁹⁰ He stated that, at the time, it stood out in the way it was expressed.

Mr Cowdery QC anticipated that Ms Cunneen would provide her advice in the form of an internal memorandum to assist him to form his own view and express his own advice on the matter.²⁹¹ He expected it would contain Ms Cunneen’s ‘reasoning process’ having regard to the factual material she had identified.²⁹² Mr Cowdery QC expected the advice to be in the same format in which Ms Cunneen would ordinarily provide a memorandum of advice to him or for another internal or police use.²⁹³

Mr Cowdery QC expected Ms Cunneen’s advice to ‘be based on the assumption’ that he would ‘have access to the same information that she had access to, so there was no need to repeat material that was in the evidence’.²⁹⁴

Mr Cowdery QC understood the advice would use a degree of ‘shorthand’.²⁹⁵ Although this concept was not explained, we were given the impression that it was not unusual for advices to the DPP to employ ‘some form of shorthand’. If this means that fundamental principles such as the burden and standard of proof will be assumed, we have no concerns. However, if it means that relevant evidence may not be identified and an opinion not offered as to its likely weight in the minds of the jury, there are some real difficulties. A consideration of the strengths and weaknesses of any matter is fundamental to providing advice, as Ms Cunneen SC acknowledged.

Ms Cunneen SC agreed that ‘the job’ was to ‘look at the strengths and weaknesses in the case and to, on balance, advise whether or not there was either sufficient new evidence or any new allegation’.²⁹⁶ She also agreed that her expectation was that the advice ‘would be the detailed analysis of the things [she was] being asked to consider’.²⁹⁷

Ms Cunneen SC said she ‘did not know’ whether Mr Cowdery QC would forward her advice to Ms Clare or write his own advice.²⁹⁸ However, she also said that she was ‘rather surprised’ that he sent it directly to Ms Clare.²⁹⁹ She ‘did not know how important [her] advice would be in the ultimate determination of the matter’. She did not know ‘whether Ms Clare had asked every DPP in Australia or any other lawyer in Queensland for advice’.³⁰⁰

However, she also said that she wrote an advice that she felt ‘confident’ Ms Clare could act upon.³⁰¹

Ms Cunneen's advice

The paragraphs that follow discuss the advice that Ms Cunneen provided and the evidence she gave the Royal Commission about its content. These paragraphs contain significant detail. However, in order to fully understand the decision-making processes of Mr Cowdery QC and Ms Clare, it is necessary to understand the extent to which they agreed with Ms Cunneen on the matters discussed in her advice.

In accordance with its Terms of Reference, the Royal Commission is considering the processes for the prosecution of child sexual abuse offences. Reasons for decision making are an integral part of the processes of any administrative decision maker. Ms Clare was relying on Mr Cowdery QC for independent advice about whether or not to pursue the prosecution of Mr Volkens. Therefore, the way that Mr Cowdery QC communicated to Ms Clare the reasons for his decision was significant. The extent of that significance can only be assessed through a comparison between the evidence Mr Cowdery QC gave of his assessment of each of the matters that Ms Cunneen raised in her advice and what Mr Cowdery QC subsequently communicated to Ms Clare.

As Mr Cowdery QC and Ms Clare were unable to produce any written reasons for their decisions, the Royal Commission is necessarily limited to a discussion only of the evidence they gave the Royal Commission.

Ms Cunneen's advice sets out the background to the matter, including the decision to discontinue proceedings in 2002, the criticism contained in the CMC report and the reopening of the investigation by the Queensland Police Service. It goes on to detail the offences that each of the complainants alleged, the new material available on each complainant and any other factors affecting the prospects of conviction.

Ms Cunneen had no contact with anyone in the Queensland ODPP or with Mr Cowdery QC while preparing the advice. However, she said that, if she had felt it necessary, she could have contacted either for clarification.³⁰² She did not speak with any of the complainants. More will be said about this later in the report.

In her advice Ms Cunneen concluded 'that there is nothing which justifies the recharging of [Mr] Volkens in respect of the original allegations and no reasonable prospects of conviction in respect of any new allegations'.³⁰³ Although she was not asked for this opinion, she also said that she was 'of the view that the decision of the DPP (Qld) not to proceed with the prosecution of [Mr] Volkens on any matter was a correct one'.³⁰⁴

Ms Rogers' complaint

Ms Cunneen's opinion was that 'Ms Rogers' psychiatric history and false allegations about members of her family would be fatal to her credibility. These charges have no prospect of resulting in convictions'.³⁰⁵ Her advice stated that '[Ms] Rogers' medical file contains material which is

enormously damaging to her credibility'. Her advice also stated that a 'further difficulty' was that 'some evidence suggests that the incident in the car may well have occurred after [Ms] Rogers turned 16'.³⁰⁶

Ms Cunneen SC said that her reference to 'credibility' was shorthand for her assessment of a complainant's credibility in the eyes of a properly instructed jury after cross-examination by competent defence counsel.³⁰⁷

Ms Cunneen SC said she did not have a complete medical record for Ms Rogers and had read this information in Ms Osgarby's report or in some other material that she did not recall.³⁰⁸ Ms Cunneen SC agreed that 'obviously if someone has suffered from psychiatric damage as a result of sexual abuse, then that doesn't mean they're not telling the truth about the abuse'.³⁰⁹ She said that in Ms Rogers' case:

it's not just the fact of the mental health issues but the way they manifested themselves. It was the false accusations that were the worst thing for [Ms Rogers'] credit.³¹⁰

When asked during the public hearing if it was incumbent upon her to explore properly whether these matters could be 'countered in some way by the prosecution', Ms Cunneen SC said:

there is not much you could do to counter false accusations made about people, because unfortunately a jury is going to give the benefit of the doubt to the defence, because the person's credibility has been damaged.³¹¹

Ms Cunneen SC was asked about her knowledge of complainants' reporting of sexual abuse. She said that she was familiar with the dynamics of late reporting of child sexual abuse. Ms Cunneen SC believes that a victim is less likely to report child sexual abuse when the abuser is a person known to them.³¹² Ms Cunneen SC said that Ms Rogers' case was 'significantly different' because she had previously denied to Ms Osgarby that Mr Volkers' touches were intimate³¹³ and this point would be 'a very live issue in cross-examination'. She said this was a much greater problem for credibility than a simple lack of disclosure.³¹⁴ When asked whether she took into account the new evidence dealing with Ms Rogers' disclosure to another psychologist, she said that if she had had the material she 'would have included it'.³¹⁵

The committing magistrate found Ms Rogers to be a sufficiently credible witness as to justify a decision to commit Mr Volkers for trial. He had the opportunity of observing Ms Rogers give evidence, including under cross-examination. Ms Cunneen stated in her advice that Mr Volkers had been committed to trial. She did not refer to the magistrate's assessment of Ms Rogers' credibility and the weight she gave to his assessment.

Ms Boyce's complaint

Ms Cunneen's conclusion was that there was no prospect of conviction in relation to Ms Boyce. Her reasons were that:

[This is] largely due to the relative triviality of the offence alleged and the length of time (over 16 years) since it happened. It must be borne in mind also that Mr Volkers is in a position to call an endless parade of women who were coached by him at the same time who will say that he did not so behave towards them.³¹⁶

Ms Cunneen's advice referred to new evidence from Dr Cotter, Ms Boyce's general practitioner, and concluded:

Dr Margaret Cotter's new statement ventures the opinion that the major triggering factor for the major depression for which she has been treating Boyce since September 2001 was the inappropriate conduct of a sexual nature, towards her, by Scott Volkers ... Dr Cotter's hypothesis seems, in view of the trivial nature (relative to the nature and duration of most sexual assaults which come before the courts) of the allegation, almost fanciful.³¹⁷

...

Two months before her complaint to Police Ms Boyce commenced medical treatment for 'major depression' ... The illness and its alleged cause, would give rise to substantial attack on the credibility of [the complainant and her doctor] ...³¹⁸

Ms Cunneen SC told us that her opinion that 'Dr Cotter's hypothesis seems ... almost fanciful' was not her 'own opinion' or her 'personal belief'; rather, it was her opinion as to the response of a jury.³¹⁹ She explained her position by indicating that she was asking the Royal Commission to read into her advice, after the words 'seems almost fanciful', the additional words 'or would seem to a reasonable jury to be almost fanciful'.³²⁰ She said she did not include those words because 'that's the nature of the shorthand' and Mr Cowdery QC 'would have known' she was not talking about her 'personal views'.³²¹ She said that it was her 'opinion of the view a jury would form, given the usual robust submissions by defence counsel'.³²²

She said that her 'considered view' based on her experience, was that 'a jury would not have regarded this single complaint, being so aged and being so relatively minor, as being sufficient to cause such a massive mental health sequelae'.³²³ Ms Cunneen SC said defence counsel would cross-examine Dr Cotter 'to draw out from her different and more serious offences ... and ... what was the effect with those victims' and would call evidence that 'would tend to negative' Dr Cotter's evidence.³²⁴

However, notwithstanding this evidence, she also agreed that Dr Cotter's opinion was 'consistent with the material' she had read previously about the effects of child sexual abuse.³²⁵ She agreed that sexual abuse can have serious physical, mental and social consequences.³²⁶ She was aware that

mental health problems such as depression and eating disorders are correlated with reported sexual abuse.³²⁷

In light of Ms Cunneen's evidence it is difficult for us to accept that if other health professionals had been called they would not have confirmed Dr Cotter's opinion. Dr Cotter's opinion is one commonly seen amongst health professionals who work with people who were sexually abused as children.

In these circumstances, Dr Cotter's professional opinion could not fairly be described as 'almost fanciful'.

Ms Cunneen said that the fact that Ms Boyce had commenced treatment for depression two months before making her complaint to police would harm her credibility, because defence counsel could argue she was trying 'to blame' her depression on Mr Volkers.³²⁸

She said that she would expect this to be 'a very serious attack on Ms Boyce's credibility'.³²⁹ Ms Cunneen SC also said that a jury might think Ms Boyce was being 'pushed into' making the complaint by her doctor. She said that these points could be enough to raise 'reasonable doubt'.³³⁰

Ms Cunneen SC said that, in the case of complainants who have suffered mental illness, it is 'legitimate to consider whether it is in the public interest for them to risk further harm to their mental health' if the trial results in an acquittal.³³¹

The committing magistrate found Ms Boyce to be a sufficiently credible witness as to justify a decision to commit Mr Volkers for trial. He had the opportunity of observing Ms Boyce give evidence, including under cross-examination. Ms Cunneen stated in her advice that Mr Volkers had been committed to trial. She did not refer to the magistrate's assessment of Ms Boyce's credibility or the weight to be given to his assessment.

As set out above, Ms Cunneen SC agreed that 'the job' was to 'look at the strengths and weaknesses in the case and to, on balance, advise whether or not there was either sufficient new evidence or any new allegation'.³³²

Ms Cunneen did not record in her advice any strengths of the prosecution in Ms Boyce's complaint.

Ms Gilbert's complaint

Ms Cunneen concluded that Ms Gilbert's complaints had no prospect of conviction. Her reasons included 'the trivial nature' of each of the allegations other than the caravan incident, 'the inherent unlikelihood of the central feature' of the caravan incident, 'and the damage to the credibility of the complainant by the witness [AEH] and her return to Mr Volkers at the age of 26 for coaching accreditation'.³³³

With respect to the new evidence, which tended to confirm the dates of Ms Gilbert's alleged abuse, Ms Cunneen stated that the evidence lent 'no support to the allegations themselves'.³³⁴

As Ms Cunneen SC agreed, the evidence would tend to confirm that Ms Gilbert was where she said she was at the time of the alleged abuse. Ms Cunneen accepted it would bolster Ms Gilbert's credibility on that issue, although it would not be corroborative of the allegations themselves.³³⁵

In her advice, under the heading 'Other factors affecting prospects of conviction re Gilbert', Ms Cunneen proffered a view on caravan incident. In discussing these issues, Ms Cunneen expressly identifies them to be 'matters which trouble me and which, I am certain, would trouble a jury'.³³⁶ She wrote in these terms:

The trouble with Gilbert's allegation (iii) is, as I see it, the unlikelihood that a 13 year-old girl would have experienced an orgasm while being indecently assaulted. Firstly, one must envisage that there would be sufficient manual leverage for Mr Volkens to manipulate the clitoris of a girl who had never before had an orgasm while she was wearing two pairs of tight nylon swimming costumes and a pair of shorts. Secondly, and this is quite unlike the situation that pertains when an adolescent male is assaulted and experiences orgasm as an involuntary (and momentarily pleasant) reflex, it is difficult to accept that Gilbert could have been feeling sufficiently relaxed for orgasm to ensue. Indeed, she says in the paragraph in which she makes the allegation in her statement of 30 April 2002: 'I remember feeling scared'. This, it is submitted, is completely inconsistent with the mental amenability required for a female to achieve orgasm, particularly for the first time. (I interpolate that I have frequently seen occasions where male victims have had an orgasm while being sexually assaulted, and the best witnesses among them explain that, while the moment of orgasm was pleasurable, the sexual assaults and their contexts were ghastly). I have never before, in the many hundreds of sexual cases that have crossed my desk over the last 18 years, seen a female complainant who experienced orgasm during the assault. ... Gilbert says: 'I couldn't explain what I felt, but now that I am an adult I experienced an orgasm'. This suggests that Gilbert did not realise what she felt until several, perhaps many years later. There is a connotation of reconstruction at a later time.³³⁷

Notwithstanding the language Ms Cunneen used, she said this matter did not trouble her 'personally' but troubled her 'because of the capacity to trouble a jury'. She said that her own views 'are quite irrelevant and it would be unprofessional for me to express them'.³³⁸

When asked if 'as I see it' was a reference to her opinion, Ms Cunneen SC said 'perhaps' she was 'qualifying it there'.³³⁹ When asked if the 'trouble' she referred to was the trouble 'that you yourself had with it', she said, 'Well, I've got to see it as a lawyer in order to make these submissions'.³⁴⁰ She agreed that, 'as a matter of law, the jury would not have to be satisfied beyond reasonable doubt that an orgasm happened to be satisfied that the offence undoubtedly occurred'.³⁴¹ In Ms Cunneen SC's 'professional opinion', the question of orgasm 'was so intrinsic to it [the allegation] ... that if the jury didn't accept that, they wouldn't accept that the event took place'.³⁴²

Ms Cunneen SC also said that she ‘would never be so ignorant as to say that it was not possible for a 13-year-old girl to experience an orgasm. No one would’ and that ‘Never, never am I suggesting the preposterous idea that it is impossible for a 13-year-old to experience orgasm’. Rather, Ms Cunneen SC said that she was ‘not talking about the possibility’ and that ‘it’s the unlikelihood ... we’re dealing with juries, not possibilities’.³⁴³

When asked about her opinion on ‘manual leverage’, Ms Cunneen SC said that she foresaw cross-examination that would cast doubt on how Mr Volkers could have ‘manipulate[d] his hand into that region of tight clothing, for the amount of time that would be required to bring about the result’.³⁴⁴ When asked if her opinion was based on any study or training, Ms Cunneen SC said, ‘it’s not a medical question. It’s a physical question, just like any other crime’.³⁴⁵ She said her opinion was based on ‘a common understanding of what physically could be accomplished’ and said it was ‘within every person’s knowledge of sexual matters’.³⁴⁶ Notwithstanding these statements, she agreed there was nothing in Ms Gilbert’s evidence that indicated that her swimmers were tight.³⁴⁷ Ms Cunneen stated that she ‘got that from Ms Boyce’s statement, who said that all the girls wore them tight’.³⁴⁸

Ms Cunneen SC gave evidence that she had distinguished between the response of males and females to sexual assault on the advice of at least one doctor in the 1990s that ‘a male orgasm is a more reflex action than female’.³⁴⁹ She said that doctors were also her source of information on the converse proposition about females.³⁵⁰

The paragraph of Ms Cunneen’s advice extracted above was subsequently criticised in a written advice that Mr R V Hanson QC provided to Ms Gilbert in the context of Mr Hanson QC advising Ms Gilbert about the prospects of successfully bringing a private prosecution. This is discussed further below.

In his advice, Mr Hanson QC observed that the reasons for not proceeding with the prosecution of Mr Volkers appeared to fall into two categories:

- (a) legal considerations involving an examination of suggested discrepancies and inconsistencies in the prosecution evidence, including the evidence of Ms Gilbert herself and
- (b) arguments going to the improbability of Ms Gilbert’s story being true, which seem to be based on the author’s perception of such matters as anatomy, physics, and human sexual behaviour and responses.³⁵¹

In respect of the first category, Mr Hanson QC noted that he had not seen all of the evidence but said, ‘what I can say is this. Personally, I am a great believer in using the jury system for determining cases’.³⁵² He referred to the CMC’s comment that the ODPP had given too little attention to the possibility that a jury may simply believe the complainant and said he ‘could not agree more’ with the CMC’s comment.³⁵³

Mr Hanson QC stated that he found the second category of reasons based on non-legal considerations ‘irrelevant, unprofessional and just plain silly’.³⁵⁴

Ms Cunneen SC was provided with Mr Hanson QC’s advice to Ms Gilbert during the public hearing. Ms Cunneen SC had not seen the advice before.³⁵⁵ Ms Cunneen SC did not accept Mr Hanson QC’s criticisms of her advice. She said that it seemed that Mr Hanson QC ‘certainly doesn’t have my advice, but he only has what he could glean from what Mrs Gilbert was told in her interview with Ms Clare’.³⁵⁶

Mr Hanson QC questioned whether Ms Cunneen’s opinion on ‘manual leverage’ was ‘based on the evidence in the case, or has there been a measure of surmise’.³⁵⁷ Ms Cunneen SC said that ‘it’s based on the direct evidence in the case about the physical means of performing this assault’.³⁵⁸ She said that ‘the other evidence available in the brief from Ms Boyce is that all the girls wore very tight swimmers’ and this would be a source of ‘conflict in the evidence’.³⁵⁹ Ms Cunneen SC said that Mr Hanson QC’s criticisms took her advice ‘out of context’. She said her advice was not ‘based on uninformed speculation’, as suggested by Mr Hanson QC, but ‘on a number of other conditions that were in place when the conduct took place’.³⁶⁰

The paragraph of Ms Cunneen’s advice quoted above was criticised in two affidavits prepared in support of Ms Gilbert’s application for a private prosecution. Dr Patricia Brennan, Medical Director of the Liverpool/Fairfield/Bankstown/Macarthur Sexual Assault Service, expressed the view that Ms Cunneen’s advice implied ‘that the clitoris itself has to be manipulated directly in order to produce arousal’. Dr Brennan said that shows ‘a degree of ignorance’ and that ‘the talk of manual leverage is misleading’.³⁶¹ Ms Cunneen SC said that Dr Brennan was ‘clearly talking about what is required in general terms in order to stimulate a female person to orgasm’³⁶² and she had ‘not concerned herself with the evidence’, which was that Ms Gilbert had complained that Mr Volkers had put his finger or hand on her clitoris to produce orgasm.³⁶³

Associate Professor Warwick Middleton, a professor of psychiatry, expressed the view that involuntary sexual stimulation or orgasm is not dissimilar between the sexes.³⁶⁴ Ms Cunneen SC said that Associate Professor Middleton was ‘undoubtedly’ referring to child sexual abuse literature that concerns full, unclothed sexual intercourse. Ms Cunneen SC said, ‘the cases where orgasm is experienced by victims are not typically like this – with clothes on, feeling scared, no experience of orgasm’.³⁶⁵

When Dr Brennan’s opinion that the erotic stimulation of a child can involve pleasurable sensations simultaneously with threat and distress was put to Ms Cunneen SC, she said ‘It’s possible’, although she again added her qualification that ‘juries don’t deal in possibilities’.³⁶⁶ Ms Cunneen SC also said that, on the basis of discussions she had previously had from time to time with doctors, she was ‘unable to agree’ with Dr Brennan’s view that there was no ‘contrast between the sexual response during sexual abuse between males and females’.³⁶⁷

When it was suggested to Ms Cunneen SC that she should have researched the matter to ensure what she said was medically correct, she said that there was ‘no literature about it’ at the time,

her opinion was ‘in the nature of obiter dicta’ and that ‘it wasn’t a medical question’.³⁶⁸ In her view it was likely ‘to be well known among adult people of normal experience’³⁶⁹ and was a ‘common-sense issue’.³⁷⁰

Ms Cunneen SC said that, if she was asked to advise on the question again, she would include a similar opinion in terms of her view ‘of consistency of the mental state required for a female to achieve orgasm’.³⁷¹

As part of its Criminal Justice Project, the Royal Commission is considering the admissibility and use of expert evidence in child sexual abuse prosecutions.

Ms Cunneen SC told us that her opinion in that paragraph about the ‘connotation of reconstruction’ was ‘shorthand’ for what she expected to be ‘fertile ground for cross-examination’.³⁷²

Ms Cunneen SC was asked about the balance in her advice on this point and whether there was any ‘weighing up of considerations’.³⁷³ She said she was ‘just suggesting that, in [her] experience, there would be a great deal of cross-examination about what it was that was felt at the time’.³⁷⁴ She said she thought ‘there is a weighing up of considerations’ in her advice and ‘unfortunately when you talk about balance, it’s not a civil case. We have to get it really right. The jury has to be convinced to such a high degree’.³⁷⁵ However, Ms Cunneen SC did agree that:

a Crown Prosecutor advising on whether or not a prosecution should be maintained, before forming views about the credibility of a complainant, should fairly give that complainant an opportunity to answer the sorts of concerns [raised in Ms Cunneen’s advice].³⁷⁶

We note that the CMC report was critical of the Queensland DPP for not considering whether a jury would believe Ms Gilbert.

In relation to ‘the damage to the credibility of the complainant by the witness [AEH]’,³⁷⁷ Ms Cunneen said in her advice that ‘one of the major matters which troubled the DPP (Qld) in relation to Gilbert’s credibility was her willingness to change her evidence when confronted with a contrary account by another witness [AEH]’.³⁷⁸ Ms Cunneen’s advice was that this was ‘fertile ground for a savage attack’ on Ms Gilbert’s credibility.³⁷⁹

Ms Cunneen SC was asked how the word ‘savage’ should be understood in that context. She said:

there is nothing that I have seen more savage than attacks by defence counsel on people who allege sexual or indecent assault against their clients. It’s more savage than cross-examination in other areas, probably because sexual assaults are harder to prove than murders, robberies, because it so often comes down to one word against another.³⁸⁰

Ms Cunneen dealt with the issue of Ms Gilbert’s return to Mr Volkens for coaching accreditation in her advice under the heading ‘Other factors affecting prospects of conviction re Gilbert’.

Ms Cunneen’s advice said:

Also of concern as it affects credibility is the fact that Ms Gilbert returned to Mr Volkers in 1997, when already a physical education teacher, to gain accreditation with him as a swimming coach.³⁸¹

Ms Cunneen SC's evidence was that a complainant's return to the company of the person they were abused by is 'one of the most fertile grounds of cross-examination'.³⁸² She did not think that Associate Professor Middleton's opinion about a survivor of abuse having an unresolved need for a perpetrator's validation referred to this type of circumstance.³⁸³

Ms Cunneen SC was aware, in 2004, of the 'complex relationship' between abusers and victims when the abuser is in a position of power. Ms Cunneen SC agreed that it is the role of a prosecutor to inform the jury about the complex dynamics of a case in which the perpetrator is known to the victim.³⁸⁴ Asked if it would be available to the prosecution to put a powerful argument on this point, Ms Cunneen SC said she did not think it 'would be very applicable in these particular circumstances and not powerful at all'.³⁸⁵

Ms Cunneen SC said that Ms Gilbert's case was 'a bit' out of the common experience because she had 'separated herself from Mr Volkers for a number of years, so to go back, when there was no longer any such supporting relationship, takes it out of the theory'.³⁸⁶ She said this 'would be massively explored by defence counsel in a criminal trial'.³⁸⁷

Under the heading 'Other factors affecting prospects of conviction re Gilbert', Ms Cunneen SC set out the second of the two matters that she said troubled her and that she was 'certain, would trouble a jury'.³⁸⁸

The other issue which strikes me as disturbing in relation to Ms Gilbert's credibility is that the overwhelming impression one gets from the hours of tapes she recorded for Australian Story is that it was ceasing swimming training which pained her far more than Mr Volkers' approaches. ... In the context of Ms Gilbert's deteriorating performance due to ill-health in the months leading up to the allegations and the fact that she did not simply change coaches, she does come across as someone looking for someone to blame for not being a more successful swimmer.³⁸⁹

Ms Cunneen SC gave evidence that this issue 'disturbed' her 'in terms of the chances of conviction when Ms Gilbert would inevitably be cross-examined about whether she entertained any negative feelings, vindictive feelings, towards Mr Volkers'.³⁹⁰ She said this was not her 'personal view'.³⁹¹

Ms Cunneen SC was asked why she did not set out the prosecutor's side of this argument as well as the defence's. She responded that her duty as a barrister was to 'draw attention to the difficulties in the case'.³⁹² She said that in her 'mental consideration of it' she 'did the balancing act and came out on the side that it would cause more harm than good'.³⁹³ When asked if she 'only wrote about the defence side', she said 'yes ... well, not really the defence side but just the difficulties that may arise in credibility ... and that was what I was asked to do really – prospects of conviction'.³⁹⁴

When assessing whether there are reasonable prospects of conviction, we would expect a prosecutor to weigh the matters that favour conviction with those that may favour acquittal. We would also expect the prosecutor to assist the ultimate decision maker with a proper advice that would advert to ‘both sides of the argument’, including the impression that the complainant was likely to have on the jury. Although Ms Cunneen suggests that because this was an ‘internal advice’ she used a form of shorthand, a discussion of the strengths of the prosecution case would be expected, consistent with the ODPP Director’s Guidelines. This discussion was not in the advice. This must be even more the case when the advice is to go to the Queensland DPP, Ms Clare, in order to assist her decision about a matter of public controversy, in circumstances where Ms Clare’s previous decision had been criticised by the CMC.

Separate trials

Ms Cunneen advised ‘[t]here is nothing to justify the prosecution of the several complainants’ allegations in a single trial. Separate trials would be inevitable’.³⁹⁵ She said that this was because there was not sufficient similarity in the allegations to permit joinder or the admission of propensity evidence in the case of Ms Gilbert. She agreed that there was material that could give ‘rise to a proper belief that concoction could be established’ between Ms Boyce and Ms Rogers.³⁹⁶ Ms Cunneen SC thought it was ‘immaterial about what the show [Disney on Ice] was called. The trouble was the talk between the two women about what had happened’.³⁹⁷

Similar fact / propensity evidence and other opinions

Under the heading ‘Similar fact or propensity evidence’, Ms Cunneen said in her advice that ‘Scott Volkens was a thoroughly disreputable man given to inappropriate touching and comments towards young swimmers in his charge’.³⁹⁸ She advised, ‘clearly [Mr] Volkens crossed the appropriate boundaries when it came to the girls under his charge but the situation is complicated by the fondness of many of them for him’.³⁹⁹ Ms Cunneen stated that it was ‘significant that there is now much greater awareness of inappropriate touching and greater observation of the requisite standards today than there was 16–19 years ago’.⁴⁰⁰ Ms Cunneen was here referring to when the alleged events occurred. However, she was advising in 2004 – 10 years before she gave evidence to the Royal Commission, not 16 or 19 years before.

Ms Cunneen SC gave evidence that her opinion that Mr Volkens was a ‘thoroughly disreputable man’ may have been one time when her ‘own views of him came out’.⁴⁰¹ We note her evidence that her own views ‘are quite irrelevant and it would be unprofessional for me to express them’.⁴⁰²

In her advice under the heading ‘Similar fact or propensity evidence’, Ms Cunneen also said ‘it is legitimate to consider whether 12 year-old swimmers even had breasts, but that is the allegation’.⁴⁰³ She said that her advice concentrated on the development of a young swimmer’s breasts because of precedent allowing defence counsel to argue that touching of undeveloped breasts was innocent and non-sexual.⁴⁰⁴ For this reason, Ms Cunneen SC described Mr Hanson QC’s statement in his

written opinion ‘do I really need to comment?’ as ‘unhelpful’.⁴⁰⁵ Her evidence was that this could ‘always be expected to be a feature of cross-examination’ where the complainant is between 10 and 12.⁴⁰⁶ She said that ‘if defence counsel could raise a doubt that there was any palpable breast tissue ... then you have lost the count, certainly in 2004’.⁴⁰⁷

Other factors

In her advice, under the heading ‘Other factors affecting prospects of conviction re Gilbert’, Ms Cunneen said, ‘I also find it somewhat novel that no one alleges that Mr Volkers ever exposed himself or encouraged any touching of his genital area’.⁴⁰⁸ Ms Cunneen SC gave evidence that this was ‘a global comment about all of the victims’ and an ‘observation’ directed to the prospects of conviction.⁴⁰⁹ She agreed it was ‘actually irrelevant’ to Ms Gilbert’s credibility and identified it as an observation by putting it in brackets.⁴¹⁰ Ms Cunneen SC said that ‘it is an advice to another prosecutor, who would understand what I’m getting at there, that [Mr] Volkers had not yet, with these particular complainants, progressed to that stage’.⁴¹¹

Ms Cunneen SC said this lack of progression was novel in her ‘experience’ in dealing with allegations of child sexual assault by a person who is in a position of trust or authority.⁴¹² In her experience, ‘paedophiles tend[ed] to progress in the sexualisation of their victims’⁴¹³ from minor touching to genital exposure or pressing an erection against the girl.⁴¹⁴ She agreed with Associate Professor Middleton’s opinion that ‘it is common for a paedophilic abuser who was very well known to his victim to progressively sexualise the contacts’.⁴¹⁵

When asked about the question that Mr Hanson QC posed in his opinion, ‘what on earth is the relevance of this?’, Ms Cunneen SC said that the question ‘betray[ed]’ his ‘ignorance’ about the theory that perpetrators progress their assaults on victims to the stage that ‘the activity has advanced on to the sexual gratification of the offender in that fashion’.⁴¹⁶ Ms Cunneen SC said this assists the proof of the offence because it negatives the suggestion that the touching was ‘innocent inadvertent touching during sport, play, or medical treatment’.⁴¹⁷ Ms Cunneen SC agreed that, by the time a perpetrator had progressed to this point, the likelihood was that indecent treatment would have already occurred.⁴¹⁸ She agreed that it would always be the case that the prosecution will be assisted if an accused acts in a more criminal manner than a less criminal manner.⁴¹⁹

Discretionary factors

Ms Cunneen’s advice referred to the following discretionary factors to be considered in answering the question ‘does the public interest require a prosecution’ in relation to each of the three complainants:

- i. the offences alleged are, relative to the general run of sexual assault prosecutions, at a low level of seriousness. I interpolate that proceeding with these relatively trivial allegations, occurring so long ago, would tend to bring all sexual assault prosecutions into disrepute;

- ii. that [Mr] Volkers' antecedents suggest that he is a person of good character and there would be an array of impressive witnesses to say so;
- iii. the offences are stale all having occurred between October 1984 and October 1987;
- iv. the likely outcome even if there was the prospect of conviction would be a non-custodial penalty;
- v. the effect of the publicity in this matter has already constituted a punishment upon [Mr] Volkers and, in addition, it is highly unlikely that he will misconduct himself in the future;
- vi. the prosecution of these old matters, being so relatively minor, would, it is submitted, erode public confidence in the Courts and the criminal justice system.⁴²⁰

Ms Cunneen SC's evidence was that these were relevant factors to all of the potential charges.⁴²¹

In relation to discretionary factor (i), Ms Cunneen said in her advice that Ms Boyce's allegation was of a 'trivial nature (relative to the nature and duration of most sexual assaults which come before the courts)'.⁴²² She advised that Ms Gilbert's allegations, other than the caravan incident, were of a 'trivial nature'.⁴²³ The advice stated that the caravan incident 'was by far the most serious'⁴²⁴ and 'the only serious indecent dealing alleged by Gilbert (or by any of them)'.⁴²⁵ Ms Cunneen also stated in her advice that 'were there to have been allegations of sexual penetration by a credible witness, it may well have been in the public interest to proceed'.⁴²⁶

Ms Cunneen SC's evidence was that 'trivial' 'is not a word that should be used on its own' and that in her advice she 'almost always qualified it with "trivial compared to other forms of sexual assault"'.⁴²⁷ Ms Cunneen SC agreed that, by referring to the offences as 'relative to the general run of sexual assault prosecutions, at a low level of seriousness', she meant 'in relation to primarily a lack of penetration'.⁴²⁸ When she said in her advice 'the general run of sexual assault prosecutions', she was drawing from her 'own experience' in handling more serious cases in her role with the ODPP. She said that in New South Wales 'if it was only indecent assault, it probably would have been summarily dealt with'.⁴²⁹ However, she agreed that sexual offences upon children should always be regarded seriously.⁴³⁰

When asked about the opinion that Mr Hanson QC expressed that 'most people in Queensland would be outraged if an adult swim coach in a position of trust took a 13-year-old girl away from swimming class and massaged her genitals until she had an orgasm', Ms Cunneen SC said that her opinions about triviality 'were always qualified as a comparative concept'.⁴³¹ She said she considered the caravan incident to be the most serious because 'it alleges direct genital contact ... there's no clothing and it's on the vaginal area'.⁴³² She said she did not consider this allegation to be trivial.⁴³³ She said that 'all of the other offences are, in legal terms, less serious than that offence'.⁴³⁴ In her evidence to the Royal Commission, Ms Cunneen SC ultimately said that her 'comments about "trivial" – and they were always qualified as a comparative concept – were about the other offences'.⁴³⁵

Ms Cunneen SC's evidence was that proceeding to prosecute these offences would 'tend to bring all sexual assault prosecutions into disrepute' because:

if he was prosecuted and found not guilty, that would tend to work against the progress, in sexual assault cases, of acceptance in the community that when these cases are prosecuted it is a big deal; there is good evidence; they are very serious ... it had the flavour, to me, of going off a little bit too early.⁴³⁶

When asked why she recorded her reasons in the advice as 'relatively trivial ... so long ago', Ms Cunneen SC said, 'the community might think ... "another sexual assault allegation against someone well known ... all they had were these really old allegations of a very legally trivial nature"... It wasn't a winner'.⁴³⁷

In relation to discretionary factor (ii), Ms Cunneen SC was asked what material was the basis for her opinion, earlier in her advice, that Mr Volkens was in a position to call 'an endless parade of women' as witnesses. She said she had not seen the defence statements,⁴³⁸ but she 'had the impression that they were character witnesses or that some large number of swimmers who had been coached by him were prepared to say that not only had he not done these things to them but they had heard nothing about it'.⁴³⁹ She was 'fairly certain' that someone told her 'of the existence of those statements' or that she 'read it somewhere in the material'.⁴⁴⁰ Her evidence was that:

Someone – somewhere in the material which was before me, somewhere there, there was reference to many, many character witnesses, or something like that – and this is really from memory, but it was a double thing. They said not only that it hadn't happened to them but that they knew – they had heard nothing about it, something like that.⁴⁴¹

As part of its Criminal Justice Project, the Royal Commission is considering the admissibility and use of character evidence for the accused.

In relation to discretionary factor (iii), Ms Cunneen SC gave evidence that the length of time between the offences and prosecution was 'very relevant'.⁴⁴² She said a Longman direction (that 'it is dangerous to convict on these allegations that are so old') would 'inevitably have been given'.⁴⁴³ She said that she knew from her experience that survivors of child sexual abuse may take decades to report the abuse.⁴⁴⁴

As part of its Criminal Justice Project, the Royal Commission is investigating the treatment of historical and non-historical complaints of child sexual abuse within the criminal justice system, including in relation to prosecution rates and trial outcomes. The Royal Commission is also considering the directions and warnings given to juries in child sexual abuse trials.

In relation to discretionary factor (iv), Ms Cunneen SC gave evidence that, if Mr Volkens had been convicted, the court 'almost certainly' would have given him a non-custodial sentence because of the time lapse and nature of the offences.⁴⁴⁵ Ms Cunneen SC gave evidence that the law and sentencing regimes of the time when the offence took place are applicable; therefore, the regime

of the 1980s would have applied to Mr Volk's sentencing if he were convicted.⁴⁴⁶ Ms Cunneen SC said that she had read the entirety of the ODPP Director's Guidelines, including Guideline 5(iv) in relation to the prosecution of child sex offences, and looked at 'statistics or cases' about offences that took place in the 1980s, to inform herself on the likely sentencing outcome for Mr Volk's.⁴⁴⁷

As part of its Criminal Justice Project, the Royal Commission is considering how offenders are sentenced for historical child sexual abuse offences.

In relation to discretionary factor (v), Ms Cunneen SC agreed that her advice, that 'it was highly unlikely [Mr Volk's] will misconduct himself in the future', was based on her 'subjective view of his motives'.⁴⁴⁸ She said Mr Volk's would be a 'damned fool to prove it all by doing it again, with the spotlight on him so squarely'.⁴⁴⁹ She did not give reasons for this conclusion in her advice because she 'thought it was obvious'.⁴⁵⁰ She agreed with Associate Professor Middleton's opinion that the 'central question is not whether they will do it again but rather why wouldn't they'. She said the answer in this case is 'because he has been found out; everyone is on the lookout for him ... and he would be crazy to do it again'.⁴⁵¹ The evidence that he has changed his behaviour, said Ms Cunneen SC, is 'a lack of complaint since he was found out and publicly humiliated'.⁴⁵²

In relation to discretionary factor (vi), Ms Cunneen SC gave evidence that proceeding with the charges would 'erode public confidence in the Courts and criminal justice system' because in 2004 there was 'a lot of scepticism' about child sexual abuse cases.⁴⁵³ She said that 'it was important, especially in those days, when trying to get the message across about this type of behaviour, that it didn't come across as zealous prosecutors putting up very old, relatively minor cases'.⁴⁵⁴ Today she would expect people on juries who 'know more about the dynamics of sexual abuse'.⁴⁵⁵

Ms Cunneen did not think at the time that the case was 'sufficiently credible to run at that stage'.⁴⁵⁶ Ms Cunneen SC gave evidence that 'the way that this decision should have been explained' to the complainants was that:

if this went to trial just with this, and then there is an acquittal, that's the end of the line for those victims ... there's still hope for prosecution, as long as acquittal hasn't taken place, if more evidence, good evidence, perhaps from other victims, comes in.⁴⁵⁷

She said she was 'very, very concerned that that would have been the inevitable result of any trials'.⁴⁵⁸ Ms Cunneen SC did not accept that she had never before given that explanation. She said she adverted to this concern in her statement to the Royal Commission.⁴⁵⁹ She said she also referred to it in her advice by saying it would have been in the public interest to proceed if there were further allegations.⁴⁶⁰ When asked whether her advice would in fact 'serve as a justification ... to increase the bar against a further prosecution', Ms Cunneen SC said that if Ms Clare had received a further complaint of the same type 'then obviously she would know, I would know and everyone who had worked in any prosecution service for any time at all would know that the whole thing can be reopened and that there can be an attempt to join that evidence'.⁴⁶¹

As part of its Criminal Justice Project, the Royal Commission is considering the rules on the admissibility and use of similar fact or tendency and coincidence evidence and on when joint trials should be allowed.

Opinion on initial decision not to prosecute

Although Ms Cunneen was not asked to advise on the question, she stated, 'I am of the view that the decision of the DPP (Qld) not to proceed with the prosecution of Mr Volkens on any matter was a correct one'.⁴⁶²

Ms Cunneen SC agreed that her advice was 'largely' covering whether or not there should have been an original prosecution.⁴⁶³ She stated that this point was 'so tied to whether there is sufficient evidence pursuant to Guideline 4' that she thought she 'should give the recipient of this advice the benefit of any of [her] considerations on that first decision'.⁴⁶⁴ She gave evidence that 'the bar was a lot higher to reopen ... so it seemed to me that perhaps it was useful to cover the first principles'.⁴⁶⁵ She agreed that it was necessary to have regard to the initial evidence in order to form a view about the fresh evidence in the context of the totality of the evidence.⁴⁶⁶ Ms Cunneen SC agreed that in her advice she did not give any reasons for her conclusion about the initial decision,⁴⁶⁷ but she explained that 'what preceded that in the 62 previous paragraphs all tended towards ... that opinion'.⁴⁶⁸ She agreed that paragraphs 68 to 73 of her advice concerned the original decision.⁴⁶⁹

1.9 Mr Cowdery QC provides Ms Cunneen's advice to Ms Clare

By letter dated 29 March 2004, Mr Cowdery QC provided a copy of Ms Cunneen's advice to Ms Clare. It accompanied a brief letter in which he stated, 'I agree with that advice'.⁴⁷⁰ Mr Cowdery QC said that, in his opinion:

1. There is not sufficient new evidence of such quality as to justify the recharging of Mr Volkens in respect of any of the original allegations and
2. There are no reasonable prospects for a conviction in respect of any new allegations.⁴⁷¹

Judge Clare could not recall speaking with Mr Cowdery QC in the period between requesting and receiving the advice or at the time Mr Cowdery QC provided the advice.⁴⁷² Mr Cowdery QC could not recall any discussions in this period with Ms Clare, other than a possible inquiry as to when the advice might be received.⁴⁷³

At some point after receiving Mr Cowdery QC's letter of 29 March 2004, Ms Clare spoke with Mr Cowdery QC. There is no written record of this conversation.

Judge Clare recalled asking Mr Cowdery QC to clarify whether he agreed with Ms Cunneen's view that there was insufficient evidence to prosecute at all.⁴⁷⁴ Judge Clare does not have any 'specific memory' of such a conversation but presumes from the correspondence this is what happened.⁴⁷⁵

Mr Cowdery QC's recollection was that, after providing his first advice, Ms Clare called him to clarify the scope of the advice, 'in effect' to ask whether he agreed with Ms Cunneen's opinion that 'the decision of the DPP (Qld) not to proceed with the prosecution of Mr Volkers on any matter was a correct one'.⁴⁷⁶

On 2 April 2004, Mr Cowdery QC wrote to Ms Clare.⁴⁷⁷ In the letter he referred to her 'request on 1 April 2004 for further clarification of the scope of [the advice provided on 29 March 2004]'. The letter then said:

I confirm that in my view, on the basis of the admissible evidence now available and in accordance with the law and your Prosecution Guidelines, there is not sufficient evidence to support any of the suggested charges in relation to Mr Volkers' conduct vis a vis [the three complainants]. Consideration of the discretionary factors applicable in each case serves to strengthen that view.⁴⁷⁸

Mr Cowdery QC's decision making process

Mr Cowdery QC received the memorandum of advice from Ms Cunneen on or about 26 March 2004.⁴⁷⁹ He provided it to Ms Clare on 29 March 2004.⁴⁸⁰

Mr Cowdery QC said that when he received Ms Cunneen's advice he read it and then re-read the brief.⁴⁸¹ When asked if Ms Cunneen's advice was 'too shorthand' for his purposes, he said it was not, because he had the whole brief of material to refer to.⁴⁸²

Mr Cowdery QC said that, if he had had to supplement his own knowledge by reference to the original material, he might have made a record of it in his own notes but would not have made a formal record of it.⁴⁸³

Mr Cowdery QC told us that he 'agreed with Ms Cunneen's advice and the general basis expressed for it'.⁴⁸⁴ He thought it 'addressed the issues on which advice had been sought' and was 'soundly based'.⁴⁸⁵ He said:

[I was not] in the position of assessing her opinion and making some kind of judgment about that. I was in the position of seeking assistance in forming my own view and expressing my own advice on the matter.⁴⁸⁶

He said that he 'never, in 16 and a half years as DPP, simply accepted advice from any prosecutor and acted on it automatically'.⁴⁸⁷ In forming his view, he said he had regard to 'decades of case law and other materials relevant to the making of the decision to prosecute in such circumstances' and his 'own experience including (at that time) almost 10 years as DPP'.⁴⁸⁸

In his statement to the Royal Commission, Mr Cowdery QC spoke about the role of the prosecutor when making a decision whether or not to prosecute. His evidence was that, under the 'reasonable

prospects’ test, the prosecutor must consider ‘how the case is likely to run and how all the players (defence representative, jury, judge, witnesses) are likely to respond to it’. He said:

[This includes] any legal issues that might arise (including the admissibility of evidence and directions to a jury) and the way in which they might be resolved in all the circumstances of the case; the available admissible evidence and the weight that a tribunal of fact might give to it in finding facts and making its decision; any inconsistencies in the evidence of a witness or between sources of evidence; any internal or external conflicts, implausibilities, improbabilities and any other faults; any relevant history or personal characteristics of witnesses that may have some bearing on the acceptance of their evidence by the tribunal of fact.⁴⁸⁹

Mr Cowdery QC made no record of his decision beyond the letter to Ms Clare and the passing on of Ms Cunneen’s advice with that letter. Mr Cowdery QC was clear that in a number of respects, which we discuss below, he did not agree with Ms Cunneen and continues to disagree with her.

Ms Rogers

Mr Cowdery QC agreed with Ms Cunneen’s advice that Ms Rogers’ medical history was damaging to her credit.⁴⁹⁰ He said that he did not agree with her opinion that the ‘only serious dealing’⁴⁹¹ alleged by any of the complainants was the caravan incident alleged by Ms Gilbert. He said that the incident involving Ms Rogers in the car should be categorised as serious.⁴⁹²

Ms Boyce

In Ms Boyce’s case, Mr Cowdery QC said the factors that were relevant to his decision were the relative triviality, the length of time since the incident was alleged to have occurred and the evidence of good character that apparently Mr Volkens was in a position to present.⁴⁹³

Concerning Dr Cotter’s evidence, he made his own assessment of it but does not now recall it⁴⁹⁴ and no note of it was produced. Mr Cowdery QC said that it was not appropriate for a prosecutor to do as Ms Cunneen did and describe a doctor’s view as ‘almost fanciful’.⁴⁹⁵ If he were critical of a doctor’s views he would have described it as ‘subject to challenge ... “arguable”, words like that’.⁴⁹⁶

Mr Cowdery QC’s evidence was that, although it would be unsurprising for major depression to occur concurrently with or proximate to the time at which a complainant first discloses child sexual abuse, defence counsel could still use it to impeach the complainant’s and doctor’s credibility.⁴⁹⁷ He held the view that:

the defence might well attack on that basis and then it would depend on how successful that attack was whether or not a jury would have any doubts about the issue or have any views about the issue. I certainly didn’t jump to concluding how a jury would necessarily view the matter.⁴⁹⁸

He said that he would not have used the word ‘trivial’ to describe Ms Boyce’s allegations. He would have used an expression such as ‘perhaps “less serious” or something of that kind’.⁴⁹⁹

Ms Gilbert

In Ms Gilbert’s case, Mr Cowdery QC said he had regard to matters other than those in Ms Cunneen’s advice. However, he could not recall any of them.⁵⁰⁰

Mr Cowdery agreed with Ms Cunneen that Ms Gilbert’s return to Mr Volkers for coaching accreditation was a legitimate issue.⁵⁰¹

He thought that her opinion that Ms Gilbert would come across as looking for someone to blame was also a legitimate issue to take into account.⁵⁰²

He said that the question of the likelihood of orgasm was not a matter that he had or has any ‘particular knowledge or expertise’ on⁵⁰³ and he did not think it was a matter on which he needed to form ‘a concluded view about the detail’.⁵⁰⁴

He did not share Ms Cunneen’s view that manual leverage was a problem for the prosecution.⁵⁰⁵

He did not agree with the weight or significance given to the ‘savage’ attack by the defence in relation to Ms Gilbert’s change of evidence, although he said it might justify an attack.⁵⁰⁶

The absence of genital exposure was not relevant to his decision.⁵⁰⁷

Similar fact / propensity evidence and other opinions

Mr Cowdery QC stated that he did not understand Ms Cunneen’s reference to the complication caused by other girls’ ‘fondness’ for Mr Volkers.⁵⁰⁸ He said he could ‘imagine circumstances where fondness of that kind might prevent complainants from coming forward, but that’s not the situation here’.⁵⁰⁹

He did not pay any regard to Ms Cunneen’s opinion about breast development.⁵¹⁰

Separate trials

Mr Cowdery QC agreed that separate trials would be inevitable.⁵¹¹

Discretionary factors

Mr Cowdery QC would not have described Ms Gilbert's allegations concerning each of the incidents in the massage room and the second incident alleged to have occurred in Mr Volkers caravan as 'trivial'.⁵¹²

He stated that it was probably too broad a statement that prosecuting Ms Gilbert's most serious complaint would tend to bring all sexual assault prosecutions into disrepute.⁵¹³

He said it was a relevant factor, but he would not give a lot of weight to the likelihood of Mr Volkers misconducting himself in the future and was not of the view that the likelihood was 'high'.⁵¹⁴ However, Mr Cowdery QC did state that he thought 'it was a legitimate view to form'.⁵¹⁵

When asked whether Ms Cunneen's advice suggested that she would query whether it is in the public interest to proceed in all the allegations that fell short of penetration, he said 'No, I think this is totally hypothetical and frankly I don't know why it's there'.⁵¹⁶

Mr Cowdery QC agreed that the discretionary factors numbered (iii) (age of allegation),⁵¹⁷ (iv) (likely sentence)⁵¹⁸ and (v) (future offending)⁵¹⁹ were relevant factors for consideration.

He said that Ms Cunneen's advice about whether the initial decision was correct was of assistance to him.⁵²⁰

Communication of the advice to Ms Clare

As previously noted, Mr Cowdery QC provided a copy of Ms Cunneen's advice to Ms Clare by letter dated 29 March 2004.

That letter, set out above, contains the only reasons in writing of the then New South Wales DPP in relation to the initial request for advice. The only record Ms Clare had of Mr Cowdery QC's view in the matter was the letter.⁵²¹ Ms Clare assumed Mr Cowdery agreed with Ms Cunneen's advice.⁵²²

Mr Cowdery QC understood that Ms Clare expected, and needed, to receive both his conclusions and his reasoning process.⁵²³ He understood that to include identifying possible issues that defence counsel could raise and possible matters that might affect the jury.⁵²⁴ He thought the 'easiest and most expeditious way of doing that' would be to include Ms Cunneen's advice.⁵²⁵

Mr Cowdery QC said his statement 'I agree with that advice' should be understood as stating that he agreed with the advice itself.⁵²⁶ He said:

the memorandum of advice contains the advice. It also contains a lot of other material, and I don't agree that that indicate[d] that I agreed with absolutely everything that Ms Cunneen included in her memorandum of advice. It was the advice that I was agreeing with.⁵²⁷

Mr Cowdery QC agreed that Ms Clare might have read his letter as indicating he agreed with the entirety of Ms Cunneen's advice, acknowledging that 'it could be read that way'.⁵²⁸ When asked if there were parts of Ms Cunneen's advice that he did not agree with, he said, 'there were a couple of parts of it that I didn't have to agree or disagree with'.⁵²⁹ Mr Cowdery QC agreed that, in retrospect, he should not have attached Ms Cunneen's advice to the letter to Ms Clare without some qualification.⁵³⁰

Mr Cowdery QC said that his letter in response to Ms Clare's request for clarification of the scope of the advice was directed at the first and second limbs of the guidelines test – namely, whether there was sufficient evidence and whether prosecution was in the public interest having regard to the discretionary factors.⁵³¹ The discretionary factors he took into account were those referred to in Ms Cunneen's advice and set out above.⁵³² It follows that he did not consider those discretionary factors that were not included in Ms Cunneen's advice.

Asked if the New South Wales ODPP was 'in a position' to express the view that the decision to discontinue the prosecution was correct, having regard to the fact that they 'had not spoken to a complainant or witnessed the giving of their evidence', Mr Cowdery QC said that 'on the basis of the information supplied, that view could be expressed'.⁵³³ He said his office was not the decision maker, so it would not have been appropriate for him or Ms Cunneen to confer with a witness themselves.⁵³⁴ Mr Cowdery QC's evidence was that, where a witness's credit is in issue, it 'would be good practice to confer with the witness' before deciding whether or not to proceed with a matter after committal.⁵³⁵ He said in his statement that 'if the decision-making prosecutor is to conduct the prosecution, however, then it will always be necessary for the prosecutor to confer with the witness'.⁵³⁶

Mr Cowdery QC's evidence made plain that he did not agree with some propositions in Ms Cunneen's advice or the weight Ms Cunneen gave to some matters. However, he did not tell Ms Clare of his view of those various matters. He agreed that he did not tell Ms Clare what his reasons were 'at all'.⁵³⁷

Mr Cowdery QC agreed that he did not disclose his reasoning process to Ms Clare. He believed that Ms Clare would understand that in reaching his conclusion he had relied on Ms Cunneen's advice.⁵³⁸ Having regard to the respects in which Ms Clare did not agree with Ms Cunneen's reasons, the lack of reasons from Mr Cowdery QC left her at a significant disadvantage.

Because Ms Clare was not told that Mr Cowdery QC did not accept all of the reasons in Ms Cunneen's advice for not bringing prosecutions and was not told of Mr Cowdery QC's own reasons, Ms Clare lost the benefit of a reasoned advice from the New South Wales DPP as to whether or not to bring further prosecutions.

1.10 Ms Clare's decision-making process

Judge Clare gave evidence that at some point, whether before or after the second letter from Mr Cowdery QC, she reviewed Mr Cowdery QC's advice, Ms Cunneen's advice and the brief of evidence.⁵³⁹ She agreed with the conclusion in Ms Cunneen's advice 'that there is nothing which justifies the recharging of Mr Volkens in respect of the original allegations and no reasonable prospects of conviction in respect of any new allegation'.⁵⁴⁰ However, she agreed that the reasons in Ms Cunneen's advice were not her reasons and in some respects she did not agree with or attach weight to them.⁵⁴¹ This included 'the emphasis given to particular points and particular language used'.⁵⁴²

Ms Rogers

Judge Clare said that she agreed with Ms Cunneen's opinion that Ms Rogers' medical file contained material that was 'enormously damaging to her credibility'. She agreed that there was a 'further difficulty' in proving that Ms Rogers was either under 16 or did not consent and she believed that her psychiatric history would be 'fatal' to her credibility.⁵⁴³ Judge Clare said these were the same reasons as those she had set out in her letter to Mr Cowdery QC in relation to her first decision.⁵⁴⁴

Ms Boyce

Judge Clare gave evidence that in her opinion there was no new evidence that caused her to 'sway from' her original opinion not to prosecute in relation to Ms Boyce.⁵⁴⁵

Judge Clare said that she did not pay regard to Ms Cunneen's advice about the impact of Dr Cotter's opinion on Ms Boyce's credibility.⁵⁴⁶ She did not see Dr Cotter's evidence as giving rise to a substantial attack on Ms Boyce's credibility.⁵⁴⁷

Ms Gilbert

In relation to Ms Gilbert's complaints, 'the delay in the prosecution',⁵⁴⁸ the absence of corroboration⁵⁴⁹ and 'the issue of high-risk behaviour ... in relation to the allegations in the massage room'⁵⁵⁰ informed Judge Clare's conclusion that there was no reasonable prospect of conviction. They were fundamental to the reasons for Judge Clare's first decision not to prosecute.

Judge Clare said that after reading Ms Cunneen's advice she 'put more weight on' the issue of the likelihood of orgasm. This was because it confirmed for her that it was 'a very unusual feature' and, in light of that, it would cause 'some concern' or 'disquiet' for women on the jury.⁵⁵¹ Judge Clare said

she understood Ms Cunneen to be referring to it as a central feature of the allegation.⁵⁵² She thought it was ‘a significant feature’ of the allegation because, being ‘clear and specific’, if it were challenged it would go to the ‘plausibility of the allegation itself’.⁵⁵³ Judge Clare had not read any professional literature on the question.⁵⁵⁴ Judge Clare saw the question of ‘manual leverage’ as ‘part and parcel of the unusual feature’.⁵⁵⁵

Judge Clare did not agree that Ms Gilbert’s change of evidence was a substantial matter.⁵⁵⁶ In relation to Ms Cunneen’s opinion that this would be a ‘fertile ground for a savage attack’, Judge Clare said she ‘wouldn’t describe it as inviting a savage attack’ but ‘would expect that it would be the subject of cross-examination and that it would receive attention in the course of a trial’.⁵⁵⁷ Judge Clare agreed that ‘you may in fact turn a jury against you by attacking that sort of evidence’. She said ‘strategically there’s a risk in the style of cross-examination’.⁵⁵⁸

Judge Clare did not pay a great deal of attention to Ms Cunneen’s opinion that Ms Gilbert was looking for someone to blame.⁵⁵⁹

Judge Clare understood Ms Cunneen’s opinion on an absence of genital exposure or touching to be an expression of Ms Cunneen’s own view ‘from her experience’. It did not occur to her as something that was ‘particularly unusual’.⁵⁶⁰

Similar fact / propensity evidence and other opinions

Judge Clare did not have regard to Ms Cunneen’s opinion about breast development.⁵⁶¹

Discretionary factors

Judge Clare’s evidence was that she took into account discretionary ‘public interest factors’ only in relation to Ms Boyce. She said that she did not take into account any discretionary factors in relation to Ms Rogers or Ms Gilbert because she did not think there was sufficient evidence to prosecute those matters.⁵⁶²

Judge Clare said Mr Volk’s antecedents were a relevant factor in relation to Ms Boyce.⁵⁶³ She gave evidence that:

a lot of people who are convicted of these sorts of offences don’t have any criminal history. I suppose Volk’s had the potential to be one step above that because he was a person who was being supported publicly by well-known swimmers and he had a public profile.⁵⁶⁴

She did not remember whether it was common to lead character evidence in such trials at the time but said that it is not common now.⁵⁶⁵ She had not taken into account the defence statements in support of Mr Volk’s.⁵⁶⁶ Regarding the length of time between complaint and prosecution, Judge Clare gave evidence in relation to Ms Boyce’s complaint that ‘the public interest did fall against a prosecution’, in part because ‘it was committed a fairly long time ago’.⁵⁶⁷

Judge Clare took into account that it would be unlikely that a sentence of real significance would be imposed in relation to Ms Boyce's allegations.⁵⁶⁸ She said that '[g]iven the delay, there would also be, one might think, considerations that would mitigate the sentence'.⁵⁶⁹ Judge Clare's evidence was that, although she did not take it into account, she would have expected there to be a term of imprisonment in relation to Ms Gilbert's allegation.⁵⁷⁰

Judge Clare did not take into account the discretionary considerations Ms Cunneen referred to at paragraph 72(i), (v) and (vi) of her advice, namely that:

- (i) ... proceeding with these relatively trivial allegations, occurring so long ago, would tend to bring all sexual assault prosecutions into disrepute;
- (v) the effect of the publicity in this matter has already constituted a punishment upon [Mr] Volkens and, in addition, it is highly unlikely that he will misconduct himself in the future;
- (vi) prosecution of these old matters, being so relatively minor, would ... erode public confidence in the Courts and the criminal justice system.⁵⁷¹

Ms Cunneen's opinion that prosecution may well be in the public interest if there was a further allegation of penetration did not 'play on' her mind'.⁵⁷² Judge Clare gave evidence that she 'thought that was a reference to a jurisdictional difference' between what a New South Wales prosecutor and a Queensland prosecutor might look for in prosecuting an historical case.⁵⁷³

Judge Clare did not agree that 'it was highly unlikely that Volkens would misconduct himself in future'. Judge Clare said she did not agree with that opinion because she 'didn't have any information on which to make that conclusion'.⁵⁷⁴

Judge Clare did not think that the prosecution of these matters would erode public confidence in the courts and the criminal justice system 'if there was sufficient evidence' to prosecute.⁵⁷⁵

Judge Clare's evidence was that, if she had concluded that it would have been in the interests of justice to recharge Mr Volkens notwithstanding the Director's Guideline limitations, she would have reopened the prosecution.⁵⁷⁶ She agreed that her written requests to Mr Cowdery QC did not address the possibility of proceeding other than in accordance with the Director's Guidelines and there was nothing in Mr Cowdery QC's advice or Ms Cunneen's advice to suggest they had considered this a possibility.⁵⁷⁷

It was put to Judge Clare that there was 'no value' to her in Mr Cowdery QC's advice and Ms Cunneen's advice 'given the concessions' she made about the matters she 'did not agree with'. Judge Clare did not accept this. Her evidence was:

It was an advice from a very experienced prosecutor, with what I thought was the support of the Director of Public Prosecutions, whose experience is beyond question ... the global value of that advice was, to me, that professional judgment and experience from those two

people concluded that there were no reasonable prospects of success on the evidence, and that was consistent with the conclusion – well, with the earlier conclusion, at least, of myself and the Director of Public Prosecutions, although there is different emphasis and different considerations.⁵⁷⁸

1.11 The second decision not to prosecute

The Royal Commission was not provided with any written record of Ms Clare's second decision not to prosecute or her reasons. Ms Clare told us that she made a written record of her reasons for deciding not to recharge Mr Volkens; however, this record was not produced.⁵⁷⁹

Judge Clare accepted that it would be important to have an accurate record of her reasons.⁵⁸⁰ She agreed that the reasons in Ms Cunneen's advice were not her reasons and in some respects she did not agree with or attach weight to them.⁵⁸¹ This included 'the emphasis given to particular points and particular language used'.⁵⁸²

Judge Clare accepted that 'it would be better to have put a full account in writing'.⁵⁸³ She agreed that all DPPs should adopt a practice of recording their decisions and reasons for decisions in writing.⁵⁸⁴ She added a 'caveat' about 'how far one ought reasonably go' in writing 'a comprehensive advice that covered every possibility in the working environments of an office'.⁵⁸⁵ At the very least we would expect there to be a record of the decision and a memorandum that identifies the reasons of any significance that motivated the decision.

We are satisfied that a written record should have been made of the reasons for Ms Clare's decision not to recharge Mr Volkens. As stated above, no record was produced. The significance of there being a record of Ms Clare's reasons for not commencing fresh prosecutions is underlined by the fact that Judge Clare said she did not accept all of the reasons that Ms Cunneen discussed in her advice. We note that there is no statutory obligation to do so. This is discussed further below.

1.12 Notifying the complainants

Ms Clare wrote to the Commissioner of the Queensland Police Service on 14 April 2004 setting out Mr Cowdery's advice and the 'principal reasons' for his advice.

The Commissioner wrote to Ms Rogers, Ms Boyce and Ms Gilbert the following day. He stated⁵⁸⁶ that he had received correspondence from the Queensland DPP and included a copy of Mr Cowdery QC's advice. The letters stated that Mr Cowdery QC advised that:

1. The original decision to discontinue the prosecution of earlier charges was correct and that no fresh prosecution was appropriate;
2. The new evidence does not justify re-charging Mr Volkens in respect of any of the original allegations;

3. There are no reasonable prospects for a conviction in respect of any new allegations; and
4. There are no reasonable prospects for a conviction in respect of any offence.⁵⁸⁷

Ms Rogers requested written reasons for the decision from the ODPP Victim Liaison Officer.⁵⁸⁸ She received in reply a letter from Ms Clare dated 17 June 2004 explaining that the brief had been sent to the New South Wales DPP and attaching the Queensland ODPP Director's Guidelines.⁵⁸⁹

Ms Boyce did not request written reasons or a meeting with anyone from the ODPP.

Ms Gilbert requested a meeting with Ms Clare. They met on 11 May 2004.⁵⁹⁰ Ms Gilbert was permitted to tape the interview and the transcript of that interview was produced to the Royal Commission.

During the meeting with Ms Gilbert, Ms Clare discussed her reasons for discontinuing the prosecution. She explained that she had sent the entire brief to the New South Wales DPP for advice, to get 'fresh eyes on it', and that she had been 'prepared to accept whatever that decision was'.⁵⁹¹ She said her decision not to prosecute was 'a combination, you can't look at one thing in isolation but it's the combined force of things'.⁵⁹² She said delay was 'a factor'⁵⁹³ and 'there were other aspects in relation to credibility'.⁵⁹⁴

The transcript of the meeting records that Ms Clare told Ms Gilbert that Mr Cowdery QC had 'endorsed' Ms Cunneen's advice.⁵⁹⁵ Extracts from Ms Cunneen's advice were read out and Ms Gilbert was allowed to read the entirety of the advice.⁵⁹⁶

Before they received the letter from the Commissioner of the Queensland Police Service, none of the victims were contacted by the ODPP or Queensland police to seek their views before a decision was made. We note that this is contrary to Guideline 18 of the Queensland Director's Guidelines, which stated:

The views of the victim must be recorded and properly considered prior to any final decisions, but those views alone are not determinative. It is the public, not any individual interest that must be served (see Guideline 4).⁵⁹⁷

This lack of consultation is surprising given the CMC report had suggested the DPP consider reviewing the effectiveness and adequacy of the ODPP's communication with complainants. This is discussed below.

Judge Clare's evidence was that, in the interview, she told Ms Gilbert that she was making the decision on the basis of an independent decision of the New South Wales DPP because she wanted to reassure Ms Gilbert that she was not reviewing her own decision.⁵⁹⁸ Judge Clare said she was not 'as direct' as she 'might have been' about her own reasons because she did not want to cause Ms Gilbert further distress and she wanted to reassure Ms Gilbert that the decision not to prosecute was not the result of a 'cover-up' in Queensland.⁵⁹⁹ Judge Clare agreed that she did not speak to

Ms Gilbert ‘in terms of the reasons’ she gave to the Royal Commission. She said, ‘I didn’t go beyond the reasonable prospects ... I think it’s fair to say that I didn’t discuss with her the detail, the reasons for that’.⁶⁰⁰

She agreed that ‘in terms of the detail’, what she did give Ms Gilbert was ‘access to Ms Cunneen’s advice’.⁶⁰¹ Judge Clare said she sees now but it ‘didn’t occur to [her] at the time’ that Ms Gilbert would have understood that her ‘consideration of the matter was consistent with Ms Cunneen’s advice’.⁶⁰² Judge Clare said she could ‘see now how [Ms Gilbert] would draw that conclusion. It’s a reasonable conclusion to draw’.⁶⁰³ When asked if this meant Judge Clare did not disclose to Ms Gilbert her true reasons for the decision, Judge Clare replied:

I told her it was an assessment of the sufficiency of the evidence and I spoke in general terms about those things. I don’t recall going into the specific detail of those matters ... my own recollection is that I did not want to descend into the specific detail.⁶⁰⁴

When asked if it was ‘right to leave Ms Gilbert with the impression that you accepted the reasoning of Ms Cunneen in that advice’, Judge Clare said ‘No, I shouldn’t have done that’.⁶⁰⁵

Judge Clare said that, of the ‘hundreds of meetings in relation to discontinuance, reduction, or variation of charges’ she has held, this was ‘the most difficult’ meeting she can recall. She said that, during the meeting, an ODPP officer handed her the advice and this ‘intensified the request to see the advice and I gave into that’.⁶⁰⁶ Judge Clare stated that, on reflection, ‘it was not appropriate to show Ms Gilbert a copy of Ms Cunneen’s advice and I regret that it occurred and was a source of distress and anxiety to Ms Gilbert’.⁶⁰⁷ She gave evidence that ‘it was a mistake. There is no other way of saying it. I should never have shown her the advice. It was wrong, and it clearly has caused her a lot of distress’.⁶⁰⁸

Ms Cunneen SC said she ‘never’ considered that, in light of the fact that the CMC report had published the Queensland ODPP’s reasons, ‘her advice would likely receive the same treatment’.⁶⁰⁹ Ms Cunneen SC said that it never crossed her mind that her advice would end up in the hands of the complainants and she ‘very much regret[s]’ the distress caused to them.⁶¹⁰

We accept Judge Clare’s submission that there was no established process for the recording of reasons for her second decision and this was a flaw in the DPP’s processes.

We are satisfied that the process that Ms Clare adopted in advising Ms Gilbert of the second decision was flawed.

1.13 Ms Gilbert seeks leave to bring a private prosecution

After her interview with Ms Clare, Ms Gilbert engaged Mr Hanson QC, from the Queensland Bar, to advise her on the reasons for the Queensland DPP’s decision not to recharge Mr Volkars. Mr Hanson QC had provided Ms Gilbert with advice on 20 February 2003.⁶¹¹

On 26 May 2004, Ms Gilbert obtained further written advice from Mr Hanson QC.⁶¹² Mr Hanson QC was provided with a transcript of those parts of Ms Gilbert's interview with Ms Clare where Ms Cunneen's advice was explained to Ms Gilbert.⁶¹³

On 20 July 2004, Ms Gilbert received further advice that her prospects in respect of application for leave and prosecution itself were good.⁶¹⁴ In November 2004, Ms Gilbert sought leave to commence a private prosecution against Mr Volkers in the Supreme Court of Queensland at Brisbane⁶¹⁵ Justice Holmes heard the application.

Counsel for Ms Gilbert read two affidavits in support of the application – one by Associate Professor Middleton and one by Dr Brennan. Associate Professor Middleton criticised a number of the opinions expressed in Ms Cunneen's advice as being 'particularly uninformed by the large scientific child sexual abuse literature'.⁶¹⁶ Dr Brennan criticised a number of the opinions expressed in Ms Cunneen's advice as being 'misinformed medically'.⁶¹⁷

Associate Professor Middleton's affidavit included the following opinions:

6. It is common for a paedophilic abuser who was very well known to his victim to progressively sexualise the contacts, such that over time the extent and duration of sexually abusive behaviours escalated as he grooms his victim. The fact that a perpetrator may not have been seen to sexually stimulate himself on the first occasion that the abuse had escalated to digital penetration would hardly be an issue that in itself would cast doubt on a victim's account.⁶¹⁸

...

7. For female victims of such abuse to have involuntarily experienced sexual stimulation/orgasm in the context of such abuse is in psychological terms not at all dissimilar to male victims experiencing sexual stimulation/orgasm in the context of their sexual abuse.⁶¹⁹

...

14. The nature of paedophiles is that almost inevitably there will be multiple victims. Having crossed the boundary that allows for the sexual abuse of a child the central question is not whether they will do it again but rather why wouldn't they. Thus it is particularly ominous regarding an individual if allegations of sexually abusive behaviour by one complainant is accompanied by evidence of sexually abusive behaviour towards other individuals, even if they had not yet progressed as far down the path of being groomed, or if they had definitively repulsed attempts at less extreme abuse. If Scott Volkers had sexually abused a number of girls in his charge around 1984, it is difficult to find a rationale for Miss Cunneen's opinion that 'it is highly unlikely that he will misconduct himself in the future.' What would be the evidence that he has taken responsibility for his actions and meaningfully worked towards changing himself? (Such a prognostication is particularly

curious given Miss Cunneen's own assessment that Volkers 'as a whole' was 'a thoroughly disreputable man given to inappropriate touching and comments towards young swimmers in his charge.')

⁶²⁰

Dr Brennan's report stated that the inference that Ms Gilbert's credibility was considered doubtful by the New South Wales DPP was misinformed medically.⁶²¹ Her affidavit included the following opinions:

8. It is a feature of child and adolescent sexual abuse (as well as of the rape of an adult) that erotic stimulation, albeit legally abuse, can involve pleasurable sensations in the midst of threat and distress.⁶²²

...

10. There is an implication that the clitoris itself has to be manipulated directly in order to produce arousal. This shows a degree of ignorance about the nature of female anatomy and arousal which is of concern. Indeed the talk of manual leverage is misleading.⁶²³

...

11. This statement would appear to be ignorant of sexual physiology, since a wide variety of different experiences mark the onset of sexual feeling in puberty and the relationship of conscious thought to what is reflexive, not calculated. The notion that a given mental capacity is a prerequisite for orgasm is well outside common experience and medical knowledge.⁶²⁴

...

13. A 12-year-old girl can certainly have breasts even if there is minimal glandular breast tissue present. Sexual abusers commonly fondle and stimulate children's breasts and/or nipples, simulating adult sex.⁶²⁵

As part of its Criminal Justice Project, the Royal Commission is considering the admissibility and use of expert evidence in child sexual abuse prosecutions.

Justice Holmes found that, while she did not have all the material that was before the DPP, on the material before her there was a prima facie case on all four charges. Her Honour concluded:

There is no obvious cloud on the applicant's credibility such as to render convictions unattainable; the difficulties seem limited to those inevitable in any case in which recall of events many years ago is required.⁶²⁶

Her Honour identified a number of factors that pointed to a grant of leave, including that:

From a wider perspective, the charges themselves are serious, in that if made out they involve egregious breaches of trust, in both the literal and legal senses; although the allegations are not, in physical terms, at the grosser end of the spectrum of child sexual abuse.⁶²⁷

Ultimately, Her Honour decided not to give leave for the prosecution to proceed. Her Honour considered there were a number of factors militating against a grant of leave, including the 19- to 20-year delay in proceeding and the deference to be paid to the DPP's decision not to proceed. Her Honour considered the combination of the publicity around the case and the risk of the trial being perceived as a personal contest between the Ms Gilbert and Mr Volkens to be the most persuasive primary factors militating against leave.⁶²⁸

1.14 Conclusions – systemic issues

Reasons for decision making

The Royal Commission is required to inquire into the processes for prosecution of child sexual abuse offences in relation to ensuring justice for victims.⁶²⁹

The inadequacies identified above in the processes for the recording of reasons for decisions by the New South Wales and Queensland ODPPs raised issues of significance to the internal decision making of all DPPs.

Both the New South Wales and Queensland Director's Guidelines state that generally disclosure of reasons is consistent with the open and accountable operations of the ODPP.

The *Director of Public Prosecutions Act 1986* (NSW) (the New South Wales Act) does not impose any obligation on the New South Wales DPP or an officer or employee of the ODPP to give reasons for decisions they make. However, Guideline 12 of the current New South Wales Prosecution Guidelines provides:

Reasons for decisions made in the course of prosecutions or of giving advice, in appropriate circumstances, may be disclosed by the Director to persons outside the ODPP. Reasons will not be given in any case, however, where to do so may cause serious undue harm to a victim, a witness or an accused person, or could significantly prejudice the administration of justice.

Generally the disclosure of reasons for prosecution decisions is consistent with the open and accountable operations of the ODPP; however, the terms of advice given to or by the

Director may be subject to legal professional privilege and privacy considerations may arise. Reasons will only be given to an inquirer with a legitimate interest in the matter and where it is otherwise appropriate to do so. A legitimate interest includes the interest of the media in reporting the open dispensing of justice where previous proceedings have been public.⁶³⁰

Similarly, the *Director of Public Prosecutions Act 1984* (Qld) (the Queensland Act) does not create any obligation on the Queensland DPP or an officer or employee of the ODPP to give reasons for decisions made. However, the current Queensland Director's Guidelines include Guideline 23, 'Reasons for Decision':

- i. Reasons for decisions made in the course of prosecutions may be disclosed by the Director to persons outside of the ODPP.
- ii. The disclosure of reasons is generally consistent with the open and accountable operations of the ODPP.
- iii. But reasons will only be given when the inquirer has a legitimate interest in the matter and it is otherwise appropriate to do so.
 - 1. Reasons for not prosecuting must be given to the victims of crime;
 - 2. A legitimate interest includes the interest of the media in the open dispensing of justice where previous proceedings have been public.
- iv. Where a decision has been made not to prosecute prior to any public proceeding, reasons may be given by the Director. However, where it would mean publishing material too weak to justify a prosecution, any explanation should be brief.
- v. (v) Reasons will not be given in any case where to do so would cause unjustifiable harm to a victim, a witness or an accused or would significantly prejudice the administration of justice.⁶³¹

It is obvious, and indeed could hardly be otherwise, that the assumption in the Director's Guidelines is that decisions on prosecutions must be based upon cogent reasons.

The recording of reasons for decision making is sound administrative practice. Recording reasons encourages a careful examination of the relevant issues, the elimination of extraneous considerations and consistency in decision making. In *Public Services Board of NSW v Osmond* Deane J stated 'the exercise of a decision-making power in a way which adversely affects others is less likely to be, or to appear to be, arbitrary if the decision-maker formulates and provides reasons for his decisions'.⁶³² Gibbs CJ approved the statement of Professor Wade that '[t]he giving of reasons is required by the ordinary man's sense of justice and is also a healthy discipline for all who exercise power over others'.⁶³³

Apart from it being fundamental to good decision making and administrative practice, if reasons are to be effectively communicated to others, there should be a written record of them. It is fundamental to the integrity of any administrative or other decision-making process that reasons for the decision are identified and a record is made of them. When the decision maker is independent and not amenable to any form of review, the integrity of its internal processes must be maintained at the highest level. It is apparent that this was not the case in the present matters.

Further, if reasons are not recorded, there is a risk that, when a decision maker is later asked to recall them, the recollection may not be complete or accurate.

In the present case it is plain that the appropriate administrative processes were not followed. Mr Cowdery QC gave evidence that he ‘agreed with Ms Cunneen’s advice and the general basis expressed for it’.⁶³⁴ He said that he thought Ms Cunneen’s advice ‘addressed the issues on which advice had been sought’ and was ‘soundly based’.⁶³⁵ He said he agreed with Ms Cunneen on a number of matters, set out in full above. They included:

- He agreed with Ms Cunneen’s advice that Ms Rogers’ medical history was damaging to her credit.⁶³⁶
- He agreed with Ms Cunneen that Ms Gilbert’s return to Mr Volkens for coaching accreditation was a legitimate issue.⁶³⁷
- He thought that Ms Cunneen’s opinion that Ms Gilbert would come across as looking for someone to blame was also a legitimate issue to take into account.⁶³⁸
- He agreed that separate trials would be inevitable.⁶³⁹
- He agreed that the discretionary factors numbered (iii) (age of allegation),⁶⁴⁰ (iv) (likely sentence)⁶⁴¹ and (v) (future offending)⁶⁴² were relevant factors for consideration.
- He said that Ms Cunneen’s advice about whether the initial decision was correct was of assistance to him.⁶⁴³

Notwithstanding this evidence, it is clear from the material discussed above that he did not agree with a number of significant matters contained in Ms Cunneen’s advice.

In summary, Mr Cowdery QC’s evidence was that:

1. He did not agree with Ms Cunneen’s opinion that the only serious dealing alleged by any of the complainants was the caravan incident alleged by Ms Gilbert. He said that the incident involving Ms Rogers in the car should be categorised as serious.⁶⁴⁴
2. He made his own assessment of Dr Cotter’s evidence on Ms Boyce but does not now recall it and no note of it was produced.⁶⁴⁵
3. It was not appropriate for a prosecutor to do as Ms Cunneen did and describe a doctor’s view as ‘almost fanciful’.⁶⁴⁶ If he were critical of a doctor’s views, he would have described it as ‘subject to challenge ... “arguable”, words like that’.⁶⁴⁷
4. He would not have used the word ‘trivial’ to describe Ms Boyce’s allegations. He would have used an expression such as ‘perhaps “less serious” or something of that kind’.⁶⁴⁸
5. In relation to Ms Gilbert, he had regard to matters other than those in Ms Cunneen’s advice. However, he could not recall any of them.⁶⁴⁹

6. The question of the likelihood of orgasm was not a matter that he had or has any 'particular knowledge or expertise' on⁶⁵⁰ and he did not think it was a matter on which he needed to form 'a concluded view about the detail'.⁶⁵¹
7. He did not share Ms Cunneen's view that manual leverage was a problem for the prosecution.⁶⁵²
8. He did not agree with the weight or significance given to the 'savage' attack by the defence in relation to Ms Gilbert's change of evidence, although he said it might justify an attack.⁶⁵³
9. The absence of genital exposure was not relevant to his decision.⁶⁵⁴
10. He did not understand Ms Cunneen's reference to the complication caused by other girls' 'fondness' for Mr Volkers.⁶⁵⁵ He said he could 'imagine circumstances where fondness of that kind might prevent complainants from coming forward, but that's not the situation here'.⁶⁵⁶
11. He did not pay any regard to Ms Cunneen's opinion about breast development.⁶⁵⁷
12. He would not have described Ms Gilbert's allegations concerning each of the incidents in the massage room and the second incident alleged to have occurred in Mr Volkers' caravan as 'trivial'.⁶⁵⁸
13. He said it was a relevant factor but would not give a lot of weight to the likelihood of Mr Volkers misconducting himself in the future and was not of the view that the likelihood was 'high'.⁶⁵⁹ However, Mr Cowdery QC did state that he thought 'it was a legitimate view to form'.⁶⁶⁰
14. When asked whether Ms Cunneen's advice suggested that she would query whether it is in the public interest to proceed on all the allegations that fell short of penetration, he said 'No, I think this is totally hypothetical and frankly I don't know why it's there'.⁶⁶¹

In our view not only are these issues significant but also the failure to inform Ms Clare of Mr Cowdery QC's own reasoning process deprived her of the advice that she was entitled to expect when seeking the assistance from the New South Wales DPP. In our opinion the matters upon which Mr Cowdery QC differed from Ms Cunneen were individually significant, but their collective force required consideration if Ms Clare was to make an appropriately informed decision.

Judge Clare gave evidence that she agreed with the conclusion in Ms Cunneen's advice 'that there is nothing which justifies the recharging of Mr Volkers in respect of the original allegations and no reasonable prospects of conviction in respect of any new allegation'.⁶⁶²

In her evidence Judge Clare also indicated that she agreed with Ms Cunneen's advice on a number of matters. Those matters are set out in detail above and include the following:

1. She agreed that Ms Rogers' medical file contained material which was 'enormously damaging to her credibility'. She agreed with the assessment that with respect to Ms Rogers' credibility her psychiatric history would be 'fatal'.⁶⁶³
2. She agreed that there was a 'further difficulty' in proving Ms Rogers was either under 16 or did not consent.⁶⁶⁴
3. After reading Ms Cunneen's advice she 'put more weight on' the issue of the likelihood of orgasm.⁶⁶⁵ She thought it was a 'significant' and 'very unusual feature'.⁶⁶⁶

4. She saw the question of 'manual leverage' as 'part and parcel of the unusual feature'.⁶⁶⁷
5. She took into account that it would be unlikely that a sentence of real significance would be imposed in relation to Ms Boyce's allegations.⁶⁶⁸
6. She did not think there was sufficient evidence to prosecute Ms Rogers' and Ms Gilbert's matters.⁶⁶⁹

However, it is significant that Judge Clare agreed that the reasons in Ms Cunneen's advice were not her reasons and in some respects she did not agree with or attach weight to them,⁶⁷⁰ including 'the emphasis given to particular points and particular language used'.⁶⁷¹

The areas in which Judge Clare did not agree with Ms Cunneen are discussed in full above. In summary they are:

1. She did not pay regard to Ms Cunneen's advice about the impact of Dr Cotter's opinion on Ms Boyce's credibility.⁶⁷²
2. She did not see Dr Cotter's evidence as giving rise to a substantial attack on the credibility of Ms Boyce.⁶⁷³
3. She did not agree that Ms Gilbert's change of evidence was a substantial matter.⁶⁷⁴ She said she 'wouldn't describe it as inviting a savage attack' but 'would expect that it would be the subject of cross-examination and that it would receive attention in the course of a trial'.⁶⁷⁵
4. She did not pay a great deal of attention to Ms Cunneen's opinion that Ms Gilbert was looking for someone to blame.⁶⁷⁶
5. She understood Ms Cunneen's opinion on an absence of genital exposure or touching to be an expression of Ms Cunneen's own view 'from her experience'. It did not occur to her as something that was 'particularly unusual'.⁶⁷⁷
6. She did not have regard to Ms Cunneen's opinion about breast development.⁶⁷⁸
7. She did not take into account the discretionary considerations Ms Cunneen referred to at paragraph 72(i), (v), and (vi).⁶⁷⁹
8. She stated that, although she did not take it into account, she would have expected there to be a term of imprisonment in relation to Ms Gilbert's allegation.⁶⁸⁰
9. She did not agree that 'it was highly unlikely that Volkens would misconduct himself in future', as she 'didn't have any information on which to make that conclusion'.⁶⁸¹
10. She did not think that the prosecution of these matters would erode public confidence in the courts and the criminal justice system 'if there was sufficient evidence' to prosecute.⁶⁸²

As we have already remarked, the Queensland ODP produced no record of Ms Clare's decision. It is now impossible to identify a document that can be used to analyse Ms Clare's reasoning process. This is an obvious and significant failure. Judge Clare acknowledged that there was no established process for the recording of reasons for the second decision and that this was a flaw in the DPP's processes.

We agree with Judge Clare.

Independence of DPPs

Any body that is given statutory independence and that cannot be subject to any external reviews is at risk of failure in its decision-making processes. When the decisions being made are critical to the lives of the individuals involved, be they the complainant or accused, and are being made on behalf of the entire community it is relevant to ask whether the current structure, with absolute immunity from review of any decision, is appropriate. Experience suggests that an absence of review increases the risk of administrative failure.

The legislation that provides for the ODPP ensures its independence. The New South Wales Act (section 4(3)) provides:

The Director is responsible to the Attorney General for the due exercise of the Director's functions, but nothing in this subsection affects or derogates from the authority of the Director in respect of the preparation, institution and conduct of any proceedings.

Guideline 1 of the New South Wales Prosecution Guidelines also provides:

The Director prosecutes on behalf of the Crown (that is, the community) under the *Director of Public Prosecutions Act 1986*. He or she is responsible to the Attorney General for the due exercise of the functions of the office, but acts independently of the government and of political influence. The Director also acts independently of inappropriate individual or sectional interests in the community and of inappropriate influence by the media ... The Director's functions are carried out independently of the courts.⁶⁸³

Similarly, the Queensland Act provides (section 10(3)):

In the discharge of his or her functions the director shall be responsible to the Minister but nothing in this section shall derogate from or limit the authority of the director in respect of the preparation, institution and conduct of proceedings.

Section 7(2) of the *Attorney-General Act 1999* (Qld) provides that 'the Attorney-General may not direct or instruct the Director of Public Prosecutions to present an indictment or enter a nolle prosequi', although under section 7(1) the Attorney-General can present an indictment or enter a nolle prosequi himself or herself.

Nothing in the New South Wales Act or the Queensland Act addresses potential judicial review of prosecutorial decisions, such as by providing a privative clause.

The insusceptibility of most prosecutorial decisions to judicial review comes from the common law. The most frequently cited statement is that of Gaudron and Gummow JJ in *Maxwell v The Queen*:

It ought now be accepted, in our view, that certain decisions involved in the prosecution process are, of their nature, insusceptible of judicial review. They include decisions whether

or not to prosecute, to enter a *nolle prosequi*, to proceed *ex officio*, whether or not to present evidence and, which is usually an aspect of one or other of those decisions, decisions as to the particular charge to be laid or prosecuted. The integrity of the judicial process – particularly, its independence and impartiality and the public perception thereof – would be compromised if the courts were to decide or were to be in any way concerned with decisions as to who is to be prosecuted and for what.⁶⁸⁴

This is at odds with the statutory position in England. In recent years in England and Wales formal oversight and accountability processes have been created for the Crown Prosecution Service (CPS). The first is a review process for individual decisions. The second is a form of oversight of the CPS.

The UK Victims Right to Review scheme commenced in 2013. The scheme gives victims the right to request a review of a CPS decision not to prosecute or to terminate criminal proceedings.⁶⁸⁵ A ‘victim’ is defined as a person who has suffered harm (physical, mental or emotional harm or economic loss) that was caused by criminal conduct. The first stage of review (local resolution) involves the decision being reviewed by a prosecutor from the CPS area responsible for the decision who has had no previous dealings with the case. If local resolution does not resolve the issue to the satisfaction of the victim, the decision can be reviewed by the Appeals and Review Unit or a Chief Crown Prosecutor. The victim is notified of the outcome of the review and provided with a full explanation of the reason for the ultimate decision.

By the Crown Prosecution Service Inspectorate Act 2000 (UK), c 10, the parliament created the Crown Prosecution Service Inspectorate. The statutory duties of the Chief Inspector are⁶⁸⁶ to, firstly, inspect or arrange for the inspection of the operation of the CPS generally. The Chief Inspector is also required to report to the Attorney General on matters connected with the operation of the CPS that the Attorney General has referred to the Chief Inspector for inspection. The Chief Inspector must submit an annual report to the Attorney General on the operation of the CPS. The methods of inspection include analysing documentation, examining and evaluating case files, conducting interviews with staff and observing the work practices of the CPS both in their offices and in court.⁶⁸⁷

Decisions made by the CPS, including the decision not to prosecute, are also amenable to judicial review.⁶⁸⁸ However, the power to judicially review prosecutorial decisions is exercised sparingly.

The Royal Commission will consider whether there should be any process of oversight or review of ODPPs in their administration and decision-making processes. The Royal Commission will consult widely on this issue and will report as part of its work on criminal justice issues.

2 Scott Volkers – Working with children

2.1 Introduction

This section of the report concerns the response of the Academy, Swimming Australia and Swimming Queensland to allegations of child sexual abuse against Mr Volkers. Each of those institutions engaged, or continued to engage, Mr Volkers in a role where he had contact with children after he had been charged with child sexual assault offences.

It also examines the response of the Queensland Commission for Children and Young People and Child Guardian (CCYPCG) to the allegations of child sexual abuse against Mr Volkers. At the time of the relevant events, the CCYPCG was an independent statutory authority which was responsible for administering the system of Working With Children Checks that operated in Queensland, known as the 'blue card' system.

2.2 Background to Mr Volkers' employment

Organisation and structure of Queensland Academy of Sport

The Academy is an initiative of the Queensland Government aimed at supporting the state's elite and identified developing athletes. It provides scholarships to targeted athletes. At the relevant time, it ran 26 training programs across 23 different sports.⁶⁸⁹

The Academy has been administered by a variety of government departments since it was created in 1991. At the time of Mr Volkers' arrest in March 2002, the Academy was administered by the Department of Innovation and Information Economy, Sport and Recreation Queensland (the Department).⁶⁹⁰ For some of the time that Mr Volkers was employed by the Academy, it was administered by the Department of Communities.⁶⁹¹ The Academy is currently under the portfolio of the Minister for Agriculture and Fisheries and the Minister for Sport and Racing. A Board of former athletes and leaders in the Queensland sporting community is responsible to the Minister for developing policy and overseeing the direction of the Academy.⁶⁹²

Mr Alex Baumann was the Executive Director of the Academy from 2002 to September 2006.⁶⁹³ Mr Volkers was already employed at the Academy when Mr Baumann commenced in the role.⁶⁹⁴ Before his role as Executive Director of the Academy, Mr Baumann was Program Manager for Sports Programs at the Academy from 1996 to 1998. Mr Baumann left the Academy from 1998 to 2000 to take up the position of Chief Executive Officer (CEO) at Swimming Queensland.⁶⁹⁵

Mr Bennett King was appointed as the Executive Director of the Academy in June 2007 and remains in that position.⁶⁹⁶

Organisation and structure of Swimming Australia

Swimming Australia is the peak body for the sport of swimming in Australia.⁶⁹⁷ It is responsible for the administration of the Australian Swim Team, which comprises the swimmers who represent Australia at the international level, including at Commonwealth Games, Olympic Games and FINA World Championships.⁶⁹⁸

It is also responsible for the advancement of swimming as a sport within Australia, including through junior swimming. This is generally achieved through affiliated local clubs, which support swimmers through squad-based training and by running national programs at their clubs.⁶⁹⁹

While we refer to 'Swimming Australia' throughout this report, we note that during the period examined by the Royal Commission in the public hearing, there were three entities:

1. Amateur Swimming Union of Australia (1909–1985)
2. Australian Swimming Incorporated (1985–2004)
3. Swimming Australia Ltd (10 October 2004 to present).⁷⁰⁰

Swimming Australia's member associations include the peak bodies for each Australian territory and state, including Swimming Queensland.

Mr Glen Tasker was the CEO of Australian Swimming Incorporated (ASI) / Swimming Australia from December 2001 to June 2008.⁷⁰¹

Organisation and structure of Swimming Queensland

Swimming Queensland is the peak body for swimming in Queensland and a member association of Swimming Australia. The objects of the organisation include to 'conduct, encourage, promote, advance, control and administer swimming activities in and throughout Queensland'.⁷⁰²

Local swimming clubs are affiliated with their respective state or territory member association. To be affiliated with a state association such as Swimming Queensland, local swimming clubs must agree to be bound by Swimming Australia's policies and procedures.⁷⁰³

Mr Kevin Hasemann is the current CEO of Swimming Queensland. He was appointed to the role in August 2002.⁷⁰⁴

Blue card system

In 2000, the Queensland Government enacted the *Commission for Children and Young People and Child Guardian Act 2000* (the Children and Young People Act).

The Children and Young People Act created a system of employment screening for child-related employment, which commenced on 1 May 2001.⁷⁰⁵ The purpose of this system was to improve employment screening to 'ensure that only suitable persons were employed in certain child-related employment'.⁷⁰⁶

The system enabled certain employers in certain fields of employment to, prior to engaging an employee, apply to the CCYPCG for a suitability notice stating whether or not that employee was suitable for child-related employment.⁷⁰⁷

While the Children and Young People Act did not require employers to apply to the CCYPCG for a suitability notice prior to engaging an employee, it made it an offence for employers to continue engaging employees in child-related employment unless the employer applied for a suitability notice about the employee.⁷⁰⁸

If the CCYPCG determined that the employee was suitable for child-related employment, that person was issued with a 'positive notice', known as a 'blue card'. If the employee was not considered suitable for child-related employment, that person was issued with a 'negative notice'.⁷⁰⁹

The system only applied to certain types of employment referred to as 'regulated employment'.⁷¹⁰ Churches, clubs and associations providing services mainly towards children were included, such as sporting clubs which provided coaching services to children, so long as the employer was not a government entity.⁷¹¹

If the employer was a government entity (which included a department or part of a department) it did not need to apply for suitability notices for its employees.⁷¹² This was because, at the time, government departments undertook their own screenings of government employees, which was equivalent to the blue card system.⁷¹³

The exemption for government entities was subsequently removed from the Children and Young People Act on 1 April 2010.⁷¹⁴

On 1 July 2014, the Children and Young People Act became the *Working with Children (Risk Management and Screening) Act 2000* (Qld).⁷¹⁵ As part of this change, the CCYPCG's responsibilities for employment screening passed to the chief executive of the Public Safety Business Agency.⁷¹⁶

Ms Michelle Miller was the Director of Employment Screening Services, CCYPCG, from 2001 to June 2014. From 1 July 2014, her position transferred to the Public Safety Business Agency. Ms Miller is currently still responsible for the administration and management of the blue card system in this new agency.⁷¹⁷

2.3 Mr Volkers' arrest, committal and DPP's decision to discontinue – 2002

As discussed in chapter 1 of this report, Mr Volkers was arrested on 26 March 2002 in relation to two complainants – Ms Rogers and Ms Boyce.⁷¹⁸ The arrest received extensive media coverage.⁷¹⁹

At the time the sexual abuse took place, Mr Volkers was a swimming coach at a local swimming club.⁷²⁰

Mr Volkers was employed as Swimming Head Coach by the Academy at the time of his arrest and during the committal hearing. In his position as Swimming Head Coach, Mr Volkers' role was to coordinate the Academy's swimming program and mentor coaches. Mr Volkers was not directly responsible for coaching a swimming squad. Mr Volkers was a 'coaches' coach'.⁷²¹

Response of the Academy

Mr Baumann had been in the position of Executive Director of the Academy for approximately two months when Mr Volkers was arrested.⁷²² On 27 March 2002, Mr Volkers advised Mr Baumann by facsimile that he been charged with criminal offences.⁷²³

No prior notification had been made about any concerns or allegations of sexual abuse concerning Mr Volkers.⁷²⁴ Mr Baumann said that he first learnt of the charges against Mr Volkers through the media.⁷²⁵ Mr Baumann knew through the media that the charges related to young girls whom Mr Volkers coached, but he could not recall whether he was aware of any other details at the time.⁷²⁶

Mr Baumann gave evidence at the public hearing that, on learning of the allegations, he had a discussion with Mr Kevin Yearbury, the Director-General of the Department.⁷²⁷ He also sought legal advice from Legal and Administration Review Services (Legal Services) within the Department,⁷²⁸ which included consideration of whether disciplinary action should be taken under the *Public Service Act 1996* (Qld).⁷²⁹

Mr Baumann told the Royal Commission that Mr Volkers had signed a coach's code of conduct in March 2000; however, the Academy did not have in place any specific policy at the time of the arrest to deal with 'what transpired'.⁷³⁰

A letter, dated 11 April 2002, from Mr Yearbury to Mr Volkers advised Mr Volkers of the working arrangements that would apply 'until the current charges against you have been heard and determined by a court'. Mr Volkers was directed not to have any contact with Academy athletes and to focus on those aspects of his role that related to 'the management and administration of the swimming program at QAS'.⁷³¹

The letter noted that Mr Volkers currently worked from home on many aspects of his role and indicated this could continue. He was also provided with an office at the Department and instructed that, should he need to visit the premises of the Academy to liaise with administrative staff, this should only occur through prior arrangement and approval of the Director of the Academy. Mr Yearbury also requested that Mr Volkers not participate or represent the interests of the Academy at conferences, events and or other functions.⁷³²

In determining whether or not Mr Volkers was complying with the conditions set out in the letter from Mr Yearbury, Mr Baumann told the Royal Commission that the Academy relied on self-reporting by Mr Volkers and monitoring by other coaches and staff members.⁷³³ There is no evidence of any formal monitoring system being in place. Mr Baumann's evidence was that Mr Volkers would need to ask permission from him to visit the Academy. Also, coaches within the programs at the Academy would tell him 'whether he had any visitation to the swimming pools'.⁷³⁴

Even though at the time Mr Volkers was arrested he was not directly coaching athletes,⁷³⁵ the Academy curtailed Mr Volkers' role because there was 'a need to ensure that the welfare and safety of athletes was also taken into account' and to mitigate the risk.⁷³⁶ Mr Baumann told the Royal Commission that the athletes on scholarships with the Academy at the relevant time ranged in age, but there would have been swimmers under the age of 18.⁷³⁷ Mr Baumann understood that these conditions were to be in place until the court had made a determination on the charges against Mr Volkers.⁷³⁸

At some stage after Mr Volkers was arrested, the Academy considered notifying athletes and their parents about the charges against Mr Volkers. Mr Baumann told the Royal Commission that a decision was made not to notify them because the information was 'well and truly in the public domain'.⁷³⁹

On 18 September 2002, Mr Baumann was advised by Legal Services (within the Department) that the charges against Mr Volkers had been dropped. Mr Baumann understood this to mean that the court had determined that no further action should be taken and it had resolved the matter.⁷⁴⁰ Mr Baumann told the Royal Commission that he 'understood ... that the DPP had dropped the ... charges but that Scott Volkers was not found innocent'.⁷⁴¹

On the same day that a determination was made that the charges against Mr Volkers would not proceed, Mr Volkers was reinstated to full duties. This meant that Mr Volkers was able to attend the Academy and go onto the pool deck. Mr Baumann sent an email to all Academy staff stating:

I am pleased to announce that the Director of Public Prosecutions has dropped all charges against Scott Volkers and has discontinued the court case. This outcome is a great relief for Scott and the Academy looks forward to welcoming him back to his normal duties.⁷⁴²

Mr Baumann said that, after the charges against Mr Volkers had been withdrawn, the Academy concluded that Mr Volkers was a safe person to work with children and should continue in the

role.⁷⁴³ He said he made that decision in good faith. Mr Baumann also submitted that he made the decision to reinstate Mr Volkens to full duties on advice from Legal Services and he was entitled to assume that Legal Services would give that advice on the basis of sufficient information.⁷⁴⁴

It was considered ‘unnecessary’ to notify parents and athletes that Mr Volkens had been returned to full duties after the DPP made the decision to discontinue the proceedings.⁷⁴⁵

Mr Baumann gave evidence that senior managers within the Academy ‘discussed extensively’ the issue of whether Mr Volkens should continue in his role.⁷⁴⁶ Mr Baumann did not know the specific details of the allegations but knew that the charges related to sexual assault.⁷⁴⁷

Mr Baumann knew that there could be a number of reasons why a DPP may not pursue charges against a person.⁷⁴⁸ He also understood that a person might pose a danger in organisations even though they had not been convicted of a relevant criminal offence.⁷⁴⁹ However, in Mr Volkens’ case, Mr Baumann considered that ‘the danger did not exist’.⁷⁵⁰ This was because his role was as the ‘coaches’ coach’, which meant that he did not directly coach athletes. Mr Baumann told the Royal Commission: ‘He did come into contact with coaches and would be on deck occasionally, but that’s to coach the coaches.’⁷⁵¹

We accept that Mr Volkens’ contact with children in the course of his employment at the time of the arrest was limited and that he did not have direct individual access to minors.

However, we do not accept the submission from Mr Baumann that Mr Volkens’ contact with and access to children was ‘supervised’.⁷⁵² The evidence is that Mr Volkens had access to and contact with children in the presence of other adults by virtue of his role as ‘coaches’ coach’. This is not the same as ‘supervision’. The grooming of children can occur, and in our experience frequently does occur, in the presence of others.

Mr Baumann submitted that we should exercise restraint in any criticism of him about the decisions he made on the Academy’s response to, and after, Mr Volkens’ arrest because:

- Those decisions were made in good faith and on advice of Crown Law⁷⁵³ and Legal Services within the Department and under the supervision of the Department.
- At all relevant times Mr Baumann was accountable to the Director-General of the Department.
- The Royal Commission did not explore the details of the advice provided to Mr Baumann at the relevant times; and Mr Baumann’s recollections of obtaining the advice were general given the significant passage of time since the events took place.
- There is no suggestion that Mr Baumann failed to seek, or ignored, advice or that he wilfully shut his eyes to risks associated with employing Mr Volkens.⁷⁵⁴

Mr Baumann also submitted that we should place significant weight on the fact that Mr Volkens’ job was ‘largely an administrative role’ and that the limited nature of Mr Volkens’ role should be recognised when assessing Mr Baumann’s approach.⁷⁵⁵

We do not accept Mr Baumann's characterisation of Mr Volkers' role as 'largely administrative'. Mr Volkers held the role of Swimming Head Coach. This was not a merely administrative role. It was one that is likely to have been accompanied by significant status and prestige within the institution. Mr Volkers occupied a position of authority.

The characterisation of his role as 'largely administrative' suggests someone working behind the scenes in an office. It does not reflect the true nature of Mr Volkers' position or the power imbalance that would have existed between him and young athletes within the Academy by virtue of his seniority and high profile within the sport. Those matters are of importance when assessing the true level of risk involved in his 'incidental' contact with underage swimmers.

Mr Baumann also submitted there is no evidence that Mr Volkers gained unsupervised access to, or acted in an inappropriate way towards, any child in his capacity during his employment as Swimming Head Coach. He further submitted that this provides a basis to accept that the limited nature of Mr Volkers' role did significantly mitigate any risks.⁷⁵⁶ We do not find this submission persuasive given what we know about the reluctance of victims of child sexual abuse to come forward.

We accept that with the benefit of hindsight it is often easy to see what would have been a better or more appropriate course of action. We also accept that Mr Baumann was not equipped with the Royal Commission's depth of knowledge and learning in relation to child safety matters. However, Mr Baumann appeared reluctant, even with the benefit of hindsight, to concede that his approach might have been flawed or that he ought to have done more than simply rely on advice he was given by others.

We are satisfied that Mr Volkers came into contact with and had access to children in the course of his employment as Swimming Head Coach at the Academy before and after his arrest in 2002. That role involved him working with children, even though he was a 'coaches' coach' and did not directly coach athletes.

After the charges were discontinued, the Academy did not take any active steps to determine whether or not Mr Volkers had breached the code of conduct. When asked what steps were taken, Mr Baumann replied, 'in terms of ... the job description, he did not have direct contact with athletes and he did not coach athletes'.⁷⁵⁷ When questioned about whether Mr Volkers' alleged conduct would have been a breach of the code of conduct, Mr Baumann conceded that it would have been a breach.⁷⁵⁸

Mr Baumann also conceded that the Department and Legal Services should have advised the Academy to keep Mr Volkers on restricted duties for longer period of time until a more detailed review was carried out on the nature of the alleged offences and the reasons for the discontinuance of the prosecution.⁷⁵⁹ With the benefit of hindsight, Mr Baumann conceded that he could have actively involved himself in such a review and submitted that that is the course he would take today if confronted with a similar situation.⁷⁶⁰

We accept Mr Baumann's submission that he is not legally trained and that he did not clearly distinguish between the discontinuance of the prosecution by the DPP and resolution by the court.⁷⁶¹ We accept that, as a layperson, he viewed the discontinuance by the DPP as equivalent to the matter being closed. However, Legal Services, on whose advice Mr Baumann says he was relying, must have known that the dropping of the charges against Mr Volkens by the DPP was not equivalent to a court making a determination and that the question of Mr Volkens' innocence or guilt remained at large.

After the DPP discontinued the charges against Mr Volkens, Ms Gilbert's then husband, Mr Shane Gilbert, rang the Academy on 24 September 2002 and spoke with Ms Mara Johnston, the Executive Coordinator. Mr Gilbert requested an appointment with Mr Baumann to discuss Mr Volkens 'prior to any consideration of his reinstatement at the Queensland Academy of Sport'.⁷⁶²

After conferring with Mr Baumann, Ms Johnston contacted Mr Gilbert and advised him that all charges against Mr Volkens had been discontinued and, as a result, Mr Volkens had been reinstated to full duties. Consequently, no meeting would be scheduled to discuss the issue.⁷⁶³ Mr Baumann gave evidence that he did not think a meeting would be beneficial or that there was any point to a meeting because the decision to reinstate Mr Volkens had already been made.⁷⁶⁴

In our view, the Academy did not have sufficient information to form the view that it was safe to reinstate Mr Volkens to full duties. The very factors that had led to his role being curtailed in the first place were still in play. An organisation in the position of the Academy should err on the side of caution before reinstating a person who is the subject of serious allegations of child sexual abuse to a role that entails any contact with children. At the very least, the Academy should have conducted a detailed investigation of the nature of the alleged offences and the reasons for the discontinuance of the prosecution. Only then would it be armed with sufficient information to make an informed assessment about the level of risk that Mr Volkens posed and it should have kept Mr Volkens on restricted duties until it had that information.

We are satisfied that on 18 September 2002, when the Academy reinstated Mr Volkens to full duties, the Academy:

- knew Mr Volkens was the subject of serious allegations of child sexual abuse amounting to criminal conduct
- did not know and did not take any steps to find out the details of those allegations
- knew that the DPP had decided not to pursue the charges against Mr Volkens but did not know the reasons for that
- knew there could be a number of reasons that the DPP may have chosen not to pursue the charges against Mr Volkens
- knew that Mr Volkens might have engaged in conduct that made him inappropriate to work with children but that fell short of being criminal conduct
- knew that Mr Volkens could come into contact with and have access to children in the course of his employment.

2.4 Mr Volkers is seconded to Swimming Australia – November 2002

Appointment as Women's Head Coach at Swimming Australia

In January 2002, before Mr Volkers' arrest, the High Performance Committee of Swimming Australia considered creating two new positions for the national swimming team: a Men's Head Coach and a Women's Head Coach. This was instead of having a single head coach, as had been the case for many years.⁷⁶⁵

At that time, Mr Tasker, then CEO of Swimming Australia, considered that Mr Volkers was the sort of coach who would be good for that role because of his experience and the fact that he was not coaching a swimming squad at the time.⁷⁶⁶ Mr Tasker said:

Scott Volkers was held in fairly high regard by a lot of people within the sport. I'm not sure this position was created for him but I do believe there were a lot of people within the organisation that wanted to use his expertise.⁷⁶⁷

Mr Tasker first became aware of the allegations against Mr Volkers at the time of his arrest. Mr Tasker made enquiries with Swimming Australia's solicitors, who advised him not to do anything that would compromise the police investigation and to 'keep an eye on the matter as it unfolded and act when it became appropriate to do so'.⁷⁶⁸ Mr Tasker informed Swimming Australia's solicitors that Mr Volkers had not been on the Australian Swim Team since 2000.⁷⁶⁹

Mr Tasker requested that Swimming Australia's solicitors keep a watching brief on the police investigation and provide him with updates.⁷⁷⁰

In early September 2002, Swimming Australia advertised for the two new positions of Men's Head Coach and Women's Head Coach.⁷⁷¹

On 17 September 2002, while the charges against Mr Volkers were still pending, Mr Tasker received an application from Mr Volkers for the position of Women's Head Coach.⁷⁷² Mr Tasker told the Royal Commission that he was not sure what to do with the Mr Volkers' application and his 'gut feeling was that I didn't want him around'.⁷⁷³ Mr Tasker gave evidence that:

Part of me wanted to throw [Mr Volkers' application] in the bin, but there was, you know, a panel set up to review the applications and so it was sent to the high performance committee for processing. We didn't have a lot of applicants for the role.⁷⁷⁴

The following day, the charges against Mr Volkers were dropped. Mr Tasker sought legal advice and was told that this meant Swimming Australia could accept Mr Volkers' application.⁷⁷⁵ Mr Tasker told the Royal Commission:

I think the advice was that the charges had been dropped and that two bodies – the Queensland Police and the DPP – had decided not to go ahead with it, and so the advice was that we could accept his application.⁷⁷⁶

Mr Tasker said that his understanding of charges being dropped was that there was insufficient evidence to take the case forward.⁷⁷⁷ Mr Tasker agreed with the proposition that:

whilst there might be insufficient evidence to meet the criminal standard of proof in relation to criminal conduct, a person might have been engaged in a series of conduct, such as sexual commentary with swimmers, which makes it inappropriate to work with children, but falls short of criminal conduct.⁷⁷⁸

Mr Tasker stated that he was aware of this as a general proposition at the time;⁷⁷⁹ however, he said that ‘we had no ways of investigating what was tendered as evidence’.⁷⁸⁰ When questioned why he had not sought out the complainants and spoken to them, Mr Tasker said:

I actually didn’t know I could do that ... I thought the names had been suppressed because of the ages that the alleged crimes happened, but, to be honest, I really didn’t know I could do that.⁷⁸¹

Interviews for the position of Women’s Head Coach were conducted on 2 October 2002 by a five-person interview panel.⁷⁸² Mr Volkens was interviewed along with two other candidates.⁷⁸³ Mr Tasker said Mr Volkens ‘was clearly the best candidate in terms of coaching ability’.⁷⁸⁴

The interview panel decided unanimously to appoint Mr Volkens to the position.⁷⁸⁵ Mr Tasker told the Royal Commission:

The attitude of the interview panel was, I think, that if the experts couldn’t find evidence to proceed against him, then we had to give him the benefit of the doubt.⁷⁸⁶

In his statement to the Royal Commission, Mr Tasker set out his thinking during the six months after Mr Volkens was charged as follows:

- a. Scott Volkens was a ‘hot topic’ of conversation within the swimming community.
- b. No-one else came forward with any complaints about sexual abuse by him, or any complaints at all. I did think that, if there was a latent problem of the kind which he was charged with, that it would have been ‘flushed out’ by the publicity generated by him being charged.
- c. Others came out very strongly in support of Scott Volkens. I remember that Susie O’Neill spoke highly of him. Susie O’Neill had a lot of credibility in my eyes. Samantha Riley also came out in Scott Volkens’ defence, and Samantha Riley was also very highly regarded by me and the swimming community. Don Talbot, former national team head coach, spoke in favour of Scott Volkens.

- d. I had spent plenty of time at events at which Scott Volkens was coaching and had never seen him engage in any inappropriate behaviour.
- e. I didn't like the guy, myself, but he had been the subject of close scrutiny by the police and the DPP and they had dropped the matter.⁷⁸⁷

Mr Tasker also said that the following two matters were significant in his consideration of whether to select Mr Volkens for the position:

- A swimmer on the interview panel (presumably Mr Kieran Perkins) said he had been in teams that Mr Volkens had been on and had never seen Mr Volkens do anything that would suggest any sort of bad behaviour.⁷⁸⁸
- No adverse report had been made about Mr Volkens in team debriefs after the many trips that Mr Volkens had gone on with Swimming Australia since the 1990s. While Mr Tasker understood in a broad sense that victims may have great difficulty reporting abuse, Mr Tasker said he found that national athletes tended to be very strong characters who tended to offer opinions.⁷⁸⁹

Swimming Australia Member Protection Policy

The Swimming Australia Member Protection Policy came into effect on 1 June 2002,⁷⁹⁰ before Mr Volkens applied for and was appointed to the position of Women's Head Coach.

The Member Protection Policy stated that 'screening' was mandatory for 'coaches who are appointed or seeking appointment' by Swimming Australia.⁷⁹¹ Clause 6.4 stated that screening for the purposes of the Member Protection Policy includes:

Interviewing the Preferred Applicant as to their suitability for the proposed role and their suitability for involvement with children under 18 years of age.⁷⁹²

In addition, the Member Protection Policy provided that screening was highly recommended but not mandatory where a person was seeking appointment by Swimming Australia to a role in which that person was likely to have contact with competitors under 18 years of age but where that contact was supervised at all times by another adult.⁷⁹³

Mr Tasker was questioned about the application of the Member Protection Policy to the screening of Mr Volkens for the position of Women's Head Coach.⁷⁹⁴

Mr Tasker told the Royal Commission that the interview panel did not meet to discuss application of the Member Protection Policy and 'how they were going to deal with that issue in relation to Mr Volkens prior to interviewing him'.⁷⁹⁵ Also, the panel did not make any reference to clause 6.4 of the Member Protection Policy in its discussions about whether to appoint Mr Volkens.⁷⁹⁶ No-one on the panel had any specific training in how to interview a person about their suitability for involvement with children under 18 years of age.⁷⁹⁷ When asked whether the panel asked

Mr Volkers any questions to test his attitude towards maintaining appropriate boundaries with athletes under 18, Mr Tasker said ‘it might have been said to him that he needs to be very careful about his behaviour when on teams, but I’m not sure if that is the case’.⁷⁹⁸

Mr Tasker gave evidence that the panel asked Mr Volkers about the charges. Mr Volkers told the panel ‘that the charges were false and he was going to defend his reputation at all costs’.⁷⁹⁹ Mr Tasker conceded that they did not ask him about the details of the allegations and did not invite him to tell the panel what the allegations against him were.⁸⁰⁰ When asked how the panel could have made an assessment about Mr Volkers’ suitability to work with children without knowing the details of the allegations, Mr Tasker replied:

Again in hindsight, I think most of us on the committee believed that Mr Volkers would be working with the national team, that there would be the potential for athletes under the age of 18 on the team, but that somewhere between 85 and 95 per cent of the team would be adults. We did not ask him about that, and so I can only say that we were taking the assumption that he would be working with adults.⁸⁰¹

Mr Tasker said that, while the decision of the police and the DPP ‘should give us guidance’, he acknowledged that Swimming Australia ‘could have done our own investigations and maybe done something different’.⁸⁰²

Swimming Australia submitted that Mr Volkers was not paid by Swimming Australia because he was on secondment from the Academy and that the role of Women’s Head Coach did not involve acting as a swimming coach as such; rather, it involved ‘planning, administrative, organisational, mentoring other coaches and technical expertise’. It was also submitted that the chance of Mr Volkers ‘finding himself alone with a swimmer were “practically nil”’.⁸⁰³

Swimming Australia submitted that, for those reasons, the screening of Mr Volkers was more likely to fall within the highly recommended category than the mandatory category.⁸⁰⁴

We find it difficult to accept the submission that a person recruited to the role of Women’s Head Coach is not a swimming coach within the meaning of the policy, but we accept Swimming Australia’s concession that the difference probably does not matter in this case.⁸⁰⁵ Regardless of whether screening was mandatory or highly recommended, no screening was conducted or even considered.

2.5 Public concerns – October 2002 and January 2003

Bravehearts raises concerns with Swimming Australia

On 21 October 2002, Swimming Australia received a letter from Ms Hetty Johnston of Bravehearts – an advocacy organisation for victims of child sexual abuse – that raised concerns about Mr Volkers.⁸⁰⁶ The letter stated:

- The mere fact that a person made a serious complaint should be a matter of utmost concern for Swimming Australia and that they should automatically investigate the matter further. Swimming Australia should, at the very least, require the CCYPCG to reassess Mr Volk's eligibility to hold a blue card. This would then require Queensland Police Service to make a recommendation on the suitability of Mr Volk's to work with children and indicate any risks that Swimming Australia should be aware of.
- The original charges against Mr Volk's were strong enough to be supported by the DPP and followed a six-month investigation.
- It has not been proven that the incidents did or did not occur.
- The alleged actions of Mr Volk's represent a 'potentially disturbing risk' and therefore the risk should be properly assessed.⁸⁰⁷

Mr Tasker provided this letter to Swimming Australia's solicitors and asked them to draft a response.⁸⁰⁸ On 18 November 2002, the solicitors responded to Mr Tasker attaching a draft response on behalf of Swimming Australia.⁸⁰⁹ Mr Tasker told the Royal Commission that he sent the draft letter to Ms Johnston.⁸¹⁰ It stated:

[Swimming Australia] has been advised that this matter was legally challenged and that all charges against Mr Volk's were dropped by the Queensland Department of Public Prosecutions.

As you are no doubt aware, all persons involved with [Swimming Australia] are subject to the Member Protection Policy and in the event of future allegations of this nature will be dealt with under the terms of the Policy.⁸¹¹

Mr Tasker told the Royal Commission that, after receiving this letter from Ms Johnston, no discussions were held within Swimming Australia about whether there should be an internal investigation. Mr Tasker agreed with the proposition that any complaint of historical abuse would be dealt with by the Swimming Australia Constitution; however, no consideration was given to whether any action should be taken in this case.⁸¹²

Bravehearts raises concerns with the Academy

On 22 January 2003, Ms Johnston wrote to the then Minister for Sport about Bravehearts' ongoing concerns about the allegations against Mr Volk's and his ongoing employment with the Academy.⁸¹³

Ms Johnston expressed concern that Mr Volk's did not hold a blue card under the Children and Young People Act because he had started work before 1 May 2001.⁸¹⁴ She noted that the Children and Young People Act provided that employees 'who have been charged and escaped conviction' may be deemed as 'unsuitable' to work with children. She stated:

This provision was in recognition of the difficulty, due to the nature of the crime, in obtaining a conviction and the need for Police to still be provided an opportunity to put forward their recommendation with respect to the applicants' suitability to work with children.⁸¹⁵

Ms Johnston highlighted that the employer had a discretion to direct Mr Volkers to apply for a blue card. Ms Johnston noted that, although charges against Mr Volkers had been dropped, there had been no determination of his guilt or innocence. She urged the Academy to investigate the allegations against Mr Volkers and to direct that Mr Volkers apply for a blue card.⁸¹⁶ This process 'would be in the best interests of the child and, in our view, would go to satisfy the [Academy's] duty of care obligations'.⁸¹⁷

Mr Baumann gave evidence that the letter from Bravehearts did not cause him to consider whether the Academy should investigate the allegations against Mr Volkers⁸¹⁸ and it did not cause him concern about whether or not Mr Volkers was a suitable person to work with children. This was because Mr Volkers was 'the coordinator of the program'.⁸¹⁹ Mr Baumann agreed with the proposition that:

[O]n the basis that you believed his role didn't involve child-related employment, you weren't concerned about whether or not he was a suitable person to work with children.⁸²⁰

Consequently, Mr Baumann did not consider having Mr Volkers undergo any screening to determine his suitability to work with children.⁸²¹ Mr Baumann told the Royal Commission that, at the time of the secondment, there was 'some discussion' about whether Mr Volkers should hold a blue card, but a determination was made that government employees were not required to hold a blue card under the Children and Young People Act.⁸²²

On 29 January 2003, Mr Tristan Barnes of Legal Services prepared a memorandum for Mr Baumann about the letter from Bravehearts.⁸²³ The memorandum explained the blue card system as it applied to Mr Volkers' situation, noting in particular that:

- An employer may apply to the CCYPCG for a suitability check of an employee who commenced employment before 1 May 2001 if the employer becomes aware that the employee has a criminal history that may render him or her unsuitable for child-related employment.⁸²⁴
- The blue card system only applies to certain types of employment and contains an exemption for employers that are government entities. Nonetheless, Mr Volkers' employment with the Academy could fall within the scope of the legislation.⁸²⁵
- The system is 'relatively new and untested'.⁸²⁶

In light of these complexities and the 'sensitivity of the situation', Legal Services advised that the Academy formally seek a determination from the CCYPCG about the Department's obligations under the Children and Young People Act.⁸²⁷

On 3 February 2003, Mr Scott Flavell, the Director-General of the Department, wrote to Ms Johnston.⁸²⁸ In the letter, he stated that he agreed that ‘this is a serious matter and the protection of children is a matter of great importance.’ He advised:

I have decided to further investigate the matter, including the Department’s obligations under the Act, in order to ensure that the Department complies with its legal obligations.⁸²⁹

The response to Ms Johnston reflected the Department’s regard to the sensitivity of the situation and ‘the difficulty in forming a precise conclusion, the particular questions raised by this situation ... and the requirement to act cautiously’.⁸³⁰

The letter did not make any reference to Mr Baumann’s view that the role Mr Volkers held as a ‘mentor coach’ meant that he was not working directly with children. Mr Baumann was not able to offer an explanation to the Royal Commission as to why the letter did not refer to that matter.⁸³¹

Mr Baumann was questioned about what further steps the Department took to investigate the matter, as referred to in the letter from the Director-General to Ms Johnston.⁸³² He did not know what steps the investigation involved and he could not recall the outcomes of the investigation.⁸³³

Mr Baumann’s opinion was that, regardless of the government exemption, Mr Volkers did not need a blue card because, in his view, Mr Volkers’ role did not involve direct contact with children.⁸³⁴ Mr Baumann also considered that the Academy’s criminal history check and recruitment processes were appropriate screening procedures.⁸³⁵ Those procedures did not require the Academy to take any steps where a person is charged with a relevant offence but not convicted.

It was put to Mr Baumann that the Academy did not undertake with any rigour an examination of Mr Volkers’ conduct. Mr Baumann rejected that proposition and said that there were annual performance appraisals that considered Mr Volkers’ ‘conduct’ and ‘behaviour’.⁸³⁶ Mr Baumann conceded that the Academy did not consider the charges against Mr Volkers as part of his performance appraisals.⁸³⁷

On the same day that the Department responded to Ms Johnston, Legal Services requested urgent legal advice from Crown Law on the application of the Children and Young People Act to the Department’s employment of Mr Volkers.

Ms Katharine Ghiadella, Acting Executive Legal Consultant for Crown Solicitor, Crown Law, provided advice by letter dated 5 February 2003.⁸³⁸

Ms Ghiadella advised the Department that Mr Volkers did not need a blue card because his employment by the Academy was outside the scope of the Children and Young People Act. She also advised that the Department was a ‘government service provider’ and therefore it was not open to the Department/Academy to apply for a suitability notice for Mr Volkers in his capacity as Swimming Head Coach with the Academy.⁸³⁹

Ms Ghiadella also advised:

It may be helpful to seek the views of the Commissioner in this instance, if for no other purpose than to clarify the Commissioner's approach to the granting of suitability notices to employees of government service providers. However, I would not anticipate, on my interpretation of the clear wording of the Act, that the Commissioner would take a different view of the matter.⁸⁴⁰

The only avenue available to the Department to take potential action against Mr Volkers in relation to the charges was under the Conditions of Employment contract. Ms Ghiadella noted that the *Public Service Act 1996* applied to Mr Volkers as a coach, 'especially in respect of any behaviour that is grounds for disciplinary action as defined in the Act', which may be grounds for termination of Mr Volkers' contract.⁸⁴¹

Media attention

On 12 February 2003, Mr Tasker participated in a media interview with ABC Radio in response to an Australian Story episode about Ms Gilbert and comments made by Ms Johnston from Bravehearts.⁸⁴²

Mr Tasker received the following legal advice in preparation for the interview:

In responding you should state the facts:

1. ASI [Swimming Australia] treat the safety of children and indeed all its members with the highest priority;
2. ASI's has a Member Protection Policy ('MPP') in place;
3. That no complaint was lodged with ASI under the MPP;
4. That the process under the MPP mirrors the process followed in the Mr Volkers Case;
5. The authority which initially received the complaint was the Police (Qld);
6. Had the complaint been lodged under the MPP, ASI would have immediately referred the matter to the police;
7. It is then for the Police and in turn the DPP to decide whether the matter should be taken any further.

... ASI believes in the presumption of a person being innocent until proven guilty and that it is not for ASI to act as a quasi-judiciary over and above that which applies under the law of the land. Matters of this nature are not simply breaches of an internal set of rules but represent possible serious breaches of the criminal law. The MPP is aimed to deal with these allegations with a response that equally protects the rights of all the parties and the ASI.⁸⁴³

During the interview, Mr Tasker said that Swimming Australia did not need to review Mr Volkers' position at that point in time.⁸⁴⁴ Following legal advice,⁸⁴⁵ Mr Tasker said Mr Volkers was the subject of accusations only and that Swimming Australia was 'happy enough to go along with the decisions of [the police and the DPP] at this stage' but, if the charges were reinstated, Swimming Australia would reconsider Mr Volkers' position.⁸⁴⁶

Mr Tasker also gave evidence to the Royal Commission that, at the time, he believed that Swimming Australia did not have the expertise or the resources to investigate.⁸⁴⁷ When questioned whether criminal responsibility, or the ability to establish the case beyond reasonable doubt, was the threshold that Swimming Australia should apply when protecting its athletes, Mr Tasker said 'probably not'.⁸⁴⁸ Mr Tasker concluded:

I've thought about this whole period in my career, and I've got to say that I was never, ever comfortable with taking, you know, the legal option. I think that we have an absolute obligation to protect our athletes, no matter what age they are, and, in reality, we probably should have been doing more to make sure that that happened⁸⁴⁹ ... we could have done our own investigations and maybe done something different.⁸⁵⁰

Mr Tasker also accepted that, even if an allegation of child sexual abuse is not taken to police or not ultimately pursued by the police, an organisation 'has a responsibility to investigate and make determinations in relation to the person against who the allegation is made'.⁸⁵¹ Mr Tasker accepted that Swimming Australia should have followed the process that is now set out in its current Child Welfare Policy – that is, where there is an allegation of a serious or criminal nature, regardless of the findings of the police and/or child protection agency investigations, Swimming Australia should carry out its own internal investigation and should apply the balance of probabilities as the standard of proof.⁸⁵²

2.6 Crime and Misconduct Commission report published – March 2003

Approximately a month after the interview with ABC Radio, Mr Tasker wrote to Swimming Australia's solicitors seeking advice about a 'contingency plan'. Mr Tasker had developed a plan 'should the Scott Volkers matter' come to a head in the following weeks.⁸⁵³ This was in anticipation of the Crime and Misconduct Commission (CMC) finalising its inquiry into the DPP's and Queensland Police Service's handling of allegations against Mr Volkers.

Mr Tasker noted in the email that the Director of the Academy had informed him that, if the CMC report resulted in charges being reinstated against Mr Volkers, the Academy would stand him down from all duties. If this was the case, Swimming Australia would also 'relieve Scott of his duties' as Women's Head Coach.⁸⁵⁴ As discussed above, at the time, Mr Volkers was seconded from the Academy to Swimming Australia as Women's Head Coach.

The CMC published its report on the first decision to discontinue proceedings in late March 2003. The findings of the CMC report are explored in further detail in chapter 1 of this report. Mr Baumann did not read the report.⁸⁵⁵ Mr Baumann told the Royal Commission that it was his understanding that the report was about whether or not there was any official misconduct by the DPP. He was aware that the CMC report criticised aspects of the DPP's decision to drop the charges against Mr Volkers.⁸⁵⁶

These criticisms did not cause Mr Baumann concern because Mr Volkers' role was as 'coach of the coaches', because of the way that Mr Volkers had conducted himself to Mr Baumann's observation and because of the fact that Mr Volkers was well respected and, in terms of his job and role, 'he obviously did all the things that he needed to do'.⁸⁵⁷

When the CMC report was released, Mr Tasker read the executive summary of the report and 'understood the conclusion to be that the DPP should not have been so quick to drop the charges against Mr Volkers'. He was left with 'a feeling of disquiet'.⁸⁵⁸

2.7 Mr Volkers returns to the Academy – 2004

Mr Tasker told the Royal Commission that 'the period from the end of 2002 to late 2003 had been quite disturbing for the national program' and by the end of 2003 the national team had become unstable.⁸⁵⁹

On 23 January 2004, the board of Swimming Australia decided to cancel the positions of Women's Head Coach and Men's Head Coach and return to the old model of a single head coach.⁸⁶⁰ Mr Leigh Nugent was appointed to that position. Swimming Australia terminated Mr Volkers' secondment as Women's Head Coach on 23 January 2004.⁸⁶¹

On 21 April 2004, Swimming Australia appointed Mr Volkers as Head Coach to the Australian Swim Team competing in Europe.⁸⁶² That appointment ended on 13 June 2004.

This was the last time that Mr Volkers was appointed to any role within Swimming Australia.⁸⁶³ Mr Tasker gave evidence that he had been reluctant to send Mr Volkers to the meet⁸⁶⁴ and had told Mr Nugent, the then national coach, in 'colourful' language that Swimming Australia should not be using Mr Volkers.⁸⁶⁵

In December 2004, Mr Volkers signed a new employment agreement with the Academy as Head Coach Swimming for the period from 1 January 2005 to 31 December 2008.⁸⁶⁶

A schedule to the employment agreement detailed the duties and responsibilities of a coach of the Academy. These duties included:

Undertake National and State coaching duties if appointment is approved by the Manager, Sport programs.⁸⁶⁷

Mr Baumann told the Royal Commission that he was unsure whether Mr Volkers received approval to undertake such duties during his period of employment. However, he accepted that the employment contract contemplated Mr Volkers undertaking coaching duties that could involve him having contact with athletes under 18 years of age.⁸⁶⁸ Mr Baumann said:

But I don't think he would take coaching duties. It would be other specific duties in terms of how coaches get selected for teams, they have to have swimmers, and it's done on times and it's done on placings.⁸⁶⁹

The employment agreement also included the following clauses:

- a. If at any time during the term of this agreement, the [Children and Young People Act] is amended so as to require a person such as the Coach to obtain a suitability notice pursuant to that Act, the Coach acknowledges and agrees that the Academy may apply to the Commissioner for a suitability notice stating whether the Coach is a suitable person for child-related employment.⁸⁷⁰
- b. If the coach ... is issued with a 'negative notice' under s 102(1)(b) of the [Children and Young People Act], the Coach acknowledges that the [Academy] may terminate this agreement immediately.⁸⁷¹
- c. If the agreement is terminated under the relevant clause of this agreement, the Coach acknowledges that there is no right of compensation.⁸⁷²

Mr Baumann could not recall why that clause was included in Mr Volkers' employment agreement. He thought it might have been included in all employment agreements with the Academy at that time, but he was not sure.⁸⁷³

2.8 A further allegation is made against Mr Volkers – February 2005

AEE's complaint

In February 2005, AEE, a former swimmer at the Academy, made a complaint to the Queensland Anti-Discrimination Commission that she had been sexually harassed and assaulted by Mr Volkers at his home between 1997 and March 1999.⁸⁷⁴ At the time of the alleged assaults, she was 16 years old. Mr Volkers was an employee of the Academy and Swimming Australia and was also her swimming coach.⁸⁷⁵

The complaint consisted of a complaint form⁸⁷⁶ and three police statements made by AEE dated 1 July 2004,⁸⁷⁷ 19 August 2004⁸⁷⁸ and 21 October 2004.⁸⁷⁹ The complaint form stated:

From April or May 1996, Mr Volkers was my swimming coach.

I was contracted to and paid by Queensland Academy of Sport and Swimming Australia Ltd as a swimmer.

Mr Volkers was contracted to and paid by Queensland Academy of Sport and Swimming Australia Ltd as a swimming coach.

Mr Volkers sexually assaulted me on a date of which I am uncertain but between 1997 and 1998. The details of the complaint are in the attached police reports.⁸⁸⁰

The allegations were set out in detail in the police statements annexed to her complaint form. AEE said she was at Mr Volkers' home and he offered to give her a massage. AEE undressed and lay on her back on a massage table, covering herself with a towel. Mr Volkers started massaging AEE's shoulders and her upper breast using massage oil. He then began massaging her breasts. Mr Volkers produced a vibrating tool and placed it on AEE's clitoris, and recommenced massaging her breasts. AEE said she experienced 'stimulating feelings' as a result.⁸⁸¹

AEE stated that Mr Volkers would also say things to her 'in a sexual way'. She recalled: 'He would talk to me about my sex life. He would say to me "Don't you think it's okay for a swimmer and a coach to have a relationship"'?⁸⁸²

The complaint named Swimming Australia and the State of Queensland (on behalf of the Academy) as the second and third respondents. The Anti-Discrimination Commission notified both respondents of the complaint on 11 May 2005.⁸⁸³

The State of Queensland, Swimming Australia and Mr Volkers each submitted to the Anti-Discrimination Commission that the complaint should be rejected because the complaint was outside the statutory time frame (within 12 months of the alleged incident).⁸⁸⁴

The State of Queensland also submitted to the Anti-Discrimination Commission that the Department had conducted 'extensive investigations' but had been 'unable to ascertain, with any certainty, whether or not the alleged incident of sexual harassment occurred in 1997, 1998, 1999 or at all'.⁸⁸⁵

Mr Volkers applied for Crown indemnity and legal representation in relation to AEE's complaint.⁸⁸⁶ Mr Baumann wrote a letter in support of Mr Volkers' application, stating that 'Mr Volkers has consistently acted diligently and conscientiously in the performance of his duties'.⁸⁸⁷

The Anti-Discrimination Commission accepted the submissions and rejected the complaint on that basis that the application was out of time.⁸⁸⁸

Response of the Academy

Mr Baumann read AEE's complaint form, but he did not receive or read the three police statements that were attached to it.⁸⁸⁹ Consequently, he was not aware of the details of AEE's allegations until they were read to him during the Royal Commission's public hearing.⁸⁹⁰ Mr Baumann told the Royal Commission that Crown Law and Legal Services dealt with the Academy's response to AEE's complaint. Mr Baumann said that the Academy provided 'a large amount of information in relation' to the complaint.⁸⁹¹

Mr Baumann told the Royal Commission that he asked the legal advisers what the nature of the allegations were, but he did not receive a detailed response. He knew that they were serious allegations.⁸⁹² He did not know that they were similar to the complaints of Ms Rogers, Ms Boyce and Ms Gilbert.⁸⁹³ Mr Baumann did not discuss the allegations with Mr Volkers or ask him for an account of what had occurred.⁸⁹⁴

Counsel for Mr Baumann argued in their submissions to the Royal Commission that it was reasonable for Mr Baumann as a non-lawyer to rely on his legal advisers to brief him on the content and specific details contained in the complaint.⁸⁹⁵ Therefore, no finding should be made that states that Mr Baumann should have obtained and read the police statements attached to AEE's complaint, as suggested by Counsel Assisting the Royal Commission.⁸⁹⁶

We do not agree with this submission. While it appears reasonable to receive a briefing in the first instance, once the seriousness of the allegations were understood, Mr Baumann should have sought out all details of the complaint. We find it remarkable that the head of an organisation would not take steps to inform himself about the details of a serious allegation of child sexual abuse made against a current staff member whose role involves contact with children – even if that contact is limited. Mr Baumann had a responsibility to at least read the whole of the complaint. In conjunction with Legal Services, he should also have interviewed Mr Volkers about the allegations.

Mr Baumann could not recall whether he discussed with Mr Volkers the letter he wrote to support Mr Volkers' application for Crown indemnity and legal representation in relation to AEE's complaint.⁸⁹⁷ Mr Baumann gave evidence to the Royal Commission that, notwithstanding AEE's complaint, he would stand by the fact that Mr Volkers acted diligently and conscientiously in the performance of his duties.⁸⁹⁸

Mr Baumann gave evidence that Crown Law and Legal Services had conducted an investigation, but he could not recall what it involved.⁸⁹⁹ He understood the outcome of the 'investigation' to be that 'the outcome was not – not going to go ahead, because it was out of time in terms of the claim'.⁹⁰⁰ Mr Baumann thought there were discussions about whether the question of Mr Volkers holding a blue card should be revisited in light of AEE's allegations, but he was advised by Crown Law and Legal Services that Mr Volkers could continue in his current role without a blue card.⁹⁰¹

Mr Baumann was unable to say what steps, if any, the Academy took to investigate the complaint once it was dismissed by the Anti-Discrimination Commission as being outside its jurisdiction.⁹⁰²

He said that he relied on Crown Law and Legal Services to provide him with suitable advice. Mr Baumann accepted that the conduct alleged in AEE's complaint would have amounted to a breach of the Public Service Act.⁹⁰³ He does not recall receiving advice that there should be any disciplinary proceedings in relation to the allegations or that Mr Volkers' role should change.⁹⁰⁴

The Academy did not make any contact with AEE about the complaint.⁹⁰⁵ Mr Baumann could not recall whether she was offered counselling or any other form of support but said that he thought she was not a scholarship holder at the time.⁹⁰⁶

Counsel Assisting submitted that we should find:

The Academy did not investigate the allegations made by AEE other than for the purpose of establishing a technical legal defence to the complaint made to the Anti-Discrimination Commission, the Academy did not take any further steps to investigate the allegations. It did not interview Mr Volkers or AEE in relation to the allegations.⁹⁰⁷

Counsel for Mr Baumann submitted that Mr Baumann does not accept that the Academy only investigated the incident for the purpose of establishing its 'technical legal defence'. Mr Baumann submitted that, as a non-lawyer, it is unlikely that he conceived of, or pressed for, a technical legal response to the allegations.⁹⁰⁸ However, it is conceivable that legal officers within Crown Law or Legal Services developed the legal response and Mr Baumann accepted advice that this was the proper course to take. We agree that the pursuit of a technical legal defence is unlikely to have originated with Mr Baumann, who is not a lawyer.

However, the Academy was instructing its legal representatives and must have agreed to the pursuit of a technical legal defence. Further, once the 'legal' aspect of the proceedings was resolved (by the success of that technical defence) there remained a live issue as to the truth of the allegations and the appropriateness of Mr Volkers continuing in his role.

We do not accept Mr Baumann's submission that it was not 'appropriate' for the Academy to undertake a further investigation of the allegations in circumstances where Crown Law and Legal Services were 'handling the matter'.⁹⁰⁹ The 'matter' that Crown Law and Legal Services were 'handling' was a complaint before the Anti-Discrimination Commission. Once the Anti-Discrimination Commission determined that it had no jurisdiction to hear the complaint and dismissed the matter, an internal investigation of the allegations by the Academy was critical. It is evident that no internal investigation occurred given that neither AEE nor Mr Volkers were ever interviewed about the allegations.

Mr Baumann conceded that he could have been 'better informed' about the details of the allegations against Mr Volkers.⁹¹⁰

Given that Mr Baumann became aware of the details of those serious allegations for the first time during the public hearing, we consider this to be a significant understatement. Mr Baumann submitted that it should be recognised that he acted in good faith and on advice from Crown Law,

Legal Services and the Department. Mr Baumann submitted that in the normal course it would be a fair expectation that legal or departmental staff would brief him with relevant information. That this does not seem to have occurred should not reflect negatively on Mr Baumann personally.⁹¹¹

We do not agree. Mr Baumann had a responsibility as head of the Academy to make sure that he was fully acquainted with all of the details of the allegations and to oversee an appropriate response to those allegations by the Academy. Naturally, he was entitled to seek and rely on legal advice. However, it was not appropriate for him to abdicate responsibility for the matter to the Academy's lawyers, which is what he appears to us to have done.

Mr Baumann conceded that, in retrospect, an appropriate course of action 'could have been' to place Mr Volkers on restricted duties when the Academy became aware of AEE's allegations pending an investigation.⁹¹² We consider that this would, rather than could, have been the appropriate response.

Mr Baumann also conceded that, depending on the outcome of that investigation, it may have been appropriate to modify Mr Volkers' position to remove contact with children or to terminate his employment. However, Mr Baumann submits that there is no evidence of advice to this effect being given to him.⁹¹³ In our view, if Mr Baumann had taken steps to fully inform himself of the serious nature of the allegations, it is likely he would have sought such advice.

We are satisfied that in February 2005, when the Academy was named as a respondent to AEE's complaint to the Anti-Discrimination Commission, Mr Baumann should have obtained and read the police statements attached to AEE's complaint in circumstances where:

- Mr Baumann was the Director of the Academy
- he knew the allegations that AEE made were serious allegations of child sexual abuse
- he knew the alleged abuse took place while AEE was an athlete sponsored by the Academy and Mr Volkers was her swimming coach
- Mr Volkers was currently employed by the Academy
- Mr Volkers had contact with athletes under the age of 18 in the course of his employment
- Mr Baumann knew there had been previous complaints about Mr Volkers concerning child sexual abuse.

We are satisfied that the Academy did not investigate AEE's allegations other than for the purpose of establishing a technical legal defence to the complaint made to the Anti-Discrimination Commission. After the Anti-Discrimination Commission dismissed the complaint, the Academy did not take any further steps to investigate the allegations. It did not interview Mr Volkers or AEE about the allegations.

In these circumstances, the Academy did not have sufficient information to form an assessment of Mr Volkers' suitability to continue in the role of Head Swimming Coach and did not take any action to restrict his access to children.

Response of Swimming Australia

In 2005, Swimming Australia became aware of the allegations against Mr Volkens that AEE made to the Anti-Discrimination Commission. When Mr Tasker read AEE's allegations he was 'horrified'.⁹¹⁴ Mr Tasker was aware of the similarities between AEE's complaint and the complaints of Ms Gilbert, Ms Rogers and Ms Boyce.⁹¹⁵

Swimming Australia received legal advice on the complaint, which instructed Swimming Australia 'to take a technical legal defence and object to the application on the basis that it was out of time'.⁹¹⁶

After the Anti-Discrimination Commission dismissed the complaint as being out of time, Mr Tasker could not recall having any in-depth discussion about what further action Swimming Australia should take on AEE's allegation.⁹¹⁷ Swimming Australia did not discuss setting up any investigation of its own. Mr Tasker explained this by saying they were following legal advice.⁹¹⁸

No consideration was given to contacting the complainant and offering her counselling.⁹¹⁹ Mr Tasker gave evidence that, to his knowledge, Swimming Australia had never contacted AEE.⁹²⁰

Mr Tasker agreed that the response to AEE's allegation was outside the spirit of the Member Protection Policy (the policy did not apply because the complaint concerned conduct that occurred before 2002).⁹²¹ Mr Tasker accepted that Swimming Australia should have been more vigorous in investigating and responding to the allegations.⁹²² If it happened again, Mr Tasker said he would conduct an investigation and try to support the athlete.⁹²³

In about February 2005, Mr Tasker told Swimming Australia's high performance manager not to use Mr Volkens again.⁹²⁴ Mr Tasker's evidence was that he made this decision after he became aware of AEE's allegations against Mr Volkens.⁹²⁵

2.9 First application for a blue card – June 2008

Application by the Academy

Mr Bennett King was appointed as the Executive Director of the Academy in June 2007 and remains in that position.⁹²⁶

Mr King was not given any briefing or information about the allegations that Ms Gilbert, Ms Boyce, Ms Rogers and AEE made against Mr Volkens.⁹²⁷ However, he was aware from media reports that in 2002, Mr Volkens had been committed to trial for criminal charges of child sexual abuse while he was a coach and that those charges had been dropped.⁹²⁸

In mid-2008, Mr King introduced a new policy that required all staff of the Academy to apply for a blue card.⁹²⁹ Mr King told the Royal Commission that he wanted a more robust screening process for

employees⁹³⁰ because of the unique role the Academy had in relation to athletes.⁹³¹ Before then the Department screening process was a simple criminal history check.⁹³² Mr King submitted that this change in policy revealed ‘an obvious consciousness of the importance of mitigating risks in relation to the mistreatment of children’.⁹³³

On 17 June 2008, the Academy applied to the CCYPCG on behalf of Mr Volkers for a blue card as a paid employee of the Academy.⁹³⁴

At the same time, the Academy applied for blue cards for around 59 other staff members. On each application, the Academy declared that no exemption applied under the Children and Young People Act.⁹³⁵ Mr King was unaware of the exemption that existed for the employees of government entities.⁹³⁶ Mr King told the Royal Commission that he thought it would be a good move for Academy staff to have a blue card.⁹³⁷

The CCYPCG considers the application

With the exception of the application received on behalf of Mr Volkers, the CCYPCG regarded the 59 or so applications for blue cards that the CCYPCG received on behalf of employees of the Academy as straightforward.⁹³⁸ Each of these other staff members had their applications processed by the CCYPCG and received a blue card within about 28 days.⁹³⁹

Mr Volkers’ application initially returned a positive result on the criminal history check and was therefore singled out for particular attention. Ms Miller explained in her statement to the Royal Commission:

As Mr Volkers police information did not contain convictions for any offence but contained charges for disqualifying offences which were dealt with other than by a conviction, the Children’s Commissioner was required to issue a positive notice unless satisfied it was an exceptional case in which it would not be in the best interests of children for a positive notice to be issued.

The phrase exceptional case is not defined in the [Children and Young People] Act and is determined by looking at the circumstances of each individual case and the legislative intent of the Act, which is to protect children from harm.⁹⁴⁰

The CCYPCG reviewed Mr Volkers’ criminal record, which recorded the seven charges that had been laid against him and that they had been ‘no true billed’. The CCYPCG also obtained copies of the court briefs prepared by the Queensland Police Service, the transcript of the police record of interview with Mr Volkers and 27 witness statements from 20 witnesses, including complainants, police, children and parents of children who Mr Volkers coached. The CCYPCG also considered the first CMC report.⁹⁴¹

On 10 October 2008, the CCYPCG advised Mr Volkens that it had concerns about his suitability to work with children based on the material referred to above.⁹⁴² The CCYPCG provided Mr Volkens with an opportunity to respond by making a submission and providing references and other relevant information to support his application.⁹⁴³

Mr Volkens' solicitors responded to the CCYPCG on his behalf and provided a statement by Mr Volkens together with a number of character references and a copy of the decision of Justice Holmes in the Queensland Supreme Court.⁹⁴⁴

In his statement, Mr Volkens said:

I did receive the accompanying documents and only wish to state that I have been subject to every type of inquiry there is: legal, police, CMC, DPP, media. And all charges were dropped several times. I have always maintained my innocence and always will and therefore there is no need to go into this any further.⁹⁴⁵

Mr Volkens went on to describe his role as a high-level swimming coach who had conducted hundreds of coaching clinics in Australia and overseas. He named a number of high-profile female Olympic Gold Medallist swimmers who he claimed to have developed.⁹⁴⁶ He did not make any submission that addressed the substance of the allegations against him.

The CCYPCG determines it has no jurisdiction to process Mr Volkens' application for a blue card

On 16 February 2009, the Commissioner of the CCYPCG wrote to the Academy seeking 'to clarify whether in fact an exemption from blue card screening requirements may exist' for employees of the Academy.⁹⁴⁷

The letter noted that the CCYPCG had received and processed blue card applications received from the Academy 'on the basis that your organisation had signed the declaration on the form indicating that no exemption applied'. The Commissioner explained that it had come to her attention that the exemption was applicable to the Academy.⁹⁴⁸

The letter set out the exemption for employees of a 'government entity' providing sport and active recreation activities to children and young people.⁹⁴⁹ This explanation is consistent with the advice that Crown Law provided to the Academy on 5 February 2003.⁹⁵⁰

The letter concluded that, as the Academy was part of the Department, the exemption for employees of government entities applied and therefore the CCYPCG did not have legislative authority under the Act to conduct blue card screening for Mr Volkens.⁹⁵¹

Finally, the letter strongly encouraged the Academy to ensure that it had implemented appropriate policies and procedures to identify and mitigate the risks of harm to children and young people given the Academy's role in providing essential and developmentally focused services to children and young people.⁹⁵²

Ms Miller, the former Director of the CCYPCG, now Director of Blue Card Services at the Public Safety Business Agency,⁹⁵³ gave evidence that the CCYPCG had formed the preliminary view that Mr Volkens should be issued with a negative notice but that, before doing so, it realised that the Academy came within the exemption for government entities.⁹⁵⁴

Ms Miller said that the CCYPCG had processed each of the other applications made by staff of the Academy on the mistaken belief that the Academy's declaration on the application that no exemption applied was correct.⁹⁵⁵ Ms Miller explained:

The fact that the organisation has indicated that they're intending to employ that person in regulated employment and an exemption doesn't apply, prima facie we have jurisdiction to proceed with the application.

However, if that jurisdiction is challenged, in that it comes to our attention that the person's employment may not necessarily be in regulated employment, then we're obliged to follow through on that inquiry to ensure that we have jurisdiction before we issue a card, or a negative notice.⁹⁵⁶

Upon discovering that the Academy was in fact a Queensland government entity, the CCYPCG withdrew the final application form from the Academy (Mr Volkens' application) but allowed the blue cards already issued to employees of the Academy to stay in place.⁹⁵⁷

The CCYPCG formed the view that it was legally not able to issue Mr Volkens with a negative notice and was not able to use the information it had about Mr Volkens for any other purpose.⁹⁵⁸ This included information that the CCYPCG had received from the DPP and the Queensland Police Service.⁹⁵⁹

Ms Miller gave evidence that the CCYPCG had 'serious concerns about the matter'⁹⁶⁰ and accepted that Mr Volkens was an inappropriate person to be involved with organisations that work with children, but she said that confidentiality provisions prevented the CCYPCG from sharing that information with the Academy. She also said that the Academy, through the Department, could have done its own screening, which would have allowed it to take into account recorded and unrecorded convictions, charges and investigations.⁹⁶¹

Response of the Academy

Mr King gave evidence that the first time he became aware of the exemption for government employees was when he received the letter from the CCYPCG.⁹⁶² Mr King said he was not happy

with the CCYPCG's decision.⁹⁶³ He did not seek any advice on the CCYPCG's letter or what it entailed for the Academy.⁹⁶⁴ When asked what he did to address the CCYPCG's recommendation that the Academy ensure it had implemented appropriate policies and procedures to identify and mitigate the risk of harm to children and young people that might arise, Mr King said:

[The Academy] regularly have team briefings, we have six a year, that actually give us educational updates on all the department's policies and procedures. So we, every year, are taken through the code of conduct, various policies, sexual harassment policies, bullying policies ... We also have twice-yearly performance reviews with all of our staff to ensure that they're performing well and conducting their role.

When Mr King was asked whether he went back and reviewed the Department's policies and procedures to satisfy himself that they were appropriate, he said, 'I would have liked all staff to abide by the blue card rule. That was my thought. And we didn't have to at that stage'.⁹⁶⁵ Mr King said the Academy adopted the position that it would not employ any future employees unless they were able to obtain a blue card.⁹⁶⁶

From July 2008, Mr Volkers was the only coach employed by the Academy who did not have a blue card.⁹⁶⁷ Mr King said he allowed Mr Volkers to continue to be employed because:

I was attempting to try to work with the sport of swimming to try to ensure that coaching remained strong within Queensland and that there continued to be a coach mentor for coaches in Queensland.⁹⁶⁸

... I was advised through my upper management that it was in swimming's best interests to keep him employed.⁹⁶⁹

... I made the decision to keep him employed because he was good for Swimming Queensland and for the coaches.⁹⁷⁰

2.10 Swimming Queensland contemplates employing Mr Volkers – 2008

In 2008, Swimming Queensland inducted Mr Volkers into its Hall of Fame in recognition of his outstanding contribution to the sport of swimming.⁹⁷¹

In 2008, the Academy reviewed the role of 'head coaches' or 'mentor coaches' who were not actually training Academy athletes. It was determined that those mentor coaches could more effectively perform their roles if they were employed directly by state sporting organisations.⁹⁷²

It is against this background that the Academy began to discuss with Swimming Queensland the possibility of transferring Mr Volkers' employment to Swimming Queensland.⁹⁷³

Mr King understood that Swimming Queensland would employ Mr Volkers in a role that was similar to his role at the Academy.⁹⁷⁴

Swimming Queensland is not a government entity and was not covered by the exemption for employees of government entities under the Children and Young People Act.

An internal email between staff members of the Academy recorded: ‘the Academy wanted to transfer Scott’s position to Swimming Queensland. They won’t accept him unless he has a blue card.’⁹⁷⁵ Mr King gave evidence that this was consistent with his understanding of the position⁹⁷⁶ and his understanding that Swimming Queensland required Mr Volkers to have a blue card.⁹⁷⁷

Mr Hasemann, CEO of Swimming Queensland, was aware of the allegations against Mr Volkers through the media.⁹⁷⁸ He knew the allegations related to the sexual abuse of young female swimmers. He subsequently became aware through the media that the charges against Mr Volkers had been dropped.⁹⁷⁹ Mr Hasemann did not recall the CMC report being handed down.⁹⁸⁰ Mr Hasemann did not know about the further allegations that AEE made against Mr Volkers in 2005 until the Royal Commission’s public hearing.⁹⁸¹

2.11 Second application for a blue card – March 2009

Application by Swimming Queensland

On 5 March 2009, while Mr Volkers was still employed at the Academy, Swimming Queensland applied for a blue card on his behalf.⁹⁸²

Swimming Queensland submitted that this application was lodged because once Mr Volkers commenced as an employee at Swimming Queensland he would no longer be covered by the exemption for government employees. Swimming Queensland was also unsure whether Mr Volkers would need a blue card in his role as ‘mentor coach’.⁹⁸³

In his evidence to the Royal Commission, Mr Hasemann did not accept that it was the position of Swimming Queensland that it would not employ Mr Volkers unless he could obtain a blue card.⁹⁸⁴ Mr Hasemann said he was not sure if Mr Volkers would need a blue card to work as a ‘mentor coach’.⁹⁸⁵ Mr Hasemann said he did not think that the role involved child-related employment because it would be possible to fulfil the role without having contact with children,⁹⁸⁶ but it was not possible to be emphatic about it.⁹⁸⁷

He said that Swimming Queensland applied for a blue card for Mr Volkers on legal advice ‘to be certain’.⁹⁸⁸ Mr Hasemann said that the allegations against Mr Volkers factored into his decision to seek a blue card for Mr Volkers, but he did not discuss the allegations with Mr Volkers.⁹⁸⁹

Mr Hasemann accepted that it was the practice of Swimming Queensland to get blue cards for people it employed.⁹⁹⁰

Determination of the CCYPCG

On 3 April 2009, the CCYPCG wrote to Mr Volkers and advised him that it had received information – the same information that had been provided to him in respect of his first application – that raised concerns about his eligibility to hold a blue card. The CCYPCG invited him to respond to this information.⁹⁹¹

Mr Volkers responded that he did not wish to provide any further submissions and requested that the application be assessed on the basis of the material already provided to the CCYPCG in support of his first application.⁹⁹²

On 29 May 2009, the CCYPCG decided to issue a negative notice to Mr Volkers.⁹⁹³

On 1 June 2009, the CCYPCG sent Mr Volkers a copy of the reasons of the Commissioner of the CCYPCG.⁹⁹⁴ The CCYPCG also notified Swimming Queensland that a negative notice had been issued; Swimming Queensland did not receive a copy of the reasons for the decision.⁹⁹⁵ Swimming Queensland informed Mr King at the Academy of the decision.⁹⁹⁶

In her reasons, the Commissioner of the CCYPCG noted that Mr Volkers' criminal history was a 'disqualifying offence dealt with other than by way of conviction' and he must issue Mr Volkers a positive notice under the Children and Young People Act unless the case was exceptional. The Commissioner explained:

I must issue a positive notice unless satisfied it is an exceptional case in which it would not be in the best interests of children to issue a positive notice to the applicant.⁹⁹⁷

The Commissioner concluded that Mr Volkers' case was an exceptional one, stating:

I acknowledge factors in the applicant's favour in relation to my assessment of his eligibility to hold a positive notice and blue card, including the discontinuance of the formal charges against him by the DPP, the length of time that has elapsed since the allegations and the positive references made in his favour.

However, the following considerations are adverse to the applicant's eligibility to hold a positive notice and the blue card and significantly outweigh the mitigating factors in the applicant's favour.

In addition to the official complaints made, there is substantial material flowing from witness statements and the CMC report, which suggest that the applicant allegedly

engaged in inappropriate behaviour towards female children whom he trained in swimming. Behaviour consistently complained of included:

- a. Comments of a sexual nature, including comments about development during puberty and sexual relationships;
- b. Sexual/inappropriate touching during the course of massage, which was instigated by the applicant; and
- c. Inappropriate invasion of personal space, as in the case of sticking his tongue in the ears of the female swimmers in his squad.

On the material before the Commission, this alleged behaviour appears to have only been directed towards female children between the approximate ages of 12 and 18 years.

The possibility that any of the applicant's behaviour has any substance raises significant concerns that he has abused the position of trust and authority, and taken advantage of the imbalance of power apparent in the relationship between him as a coach and his students.⁹⁹⁸

On 25 June 2009, Mr Volkers applied to the then Queensland Children's Services Tribunal for a review of the decision to issue him with a negative notice.⁹⁹⁹ Mr Volkers' appeal is discussed in further detail later in this report.

2.12 Response to issuing of a negative notice

The Academy continues to employ Mr Volkers

Despite the issuing of a negative notice, the Academy continued to employ Mr Volkers until February 2010, when he was appointed Swimming Queensland Head Coach.¹⁰⁰⁰

Mr King told the Royal Commission that, when the Academy applied for a blue card on Mr Volkers' behalf in 2008, his intention was not to terminate Mr Volkers' employment with the Academy if a negative notice was issued.¹⁰⁰¹ This is despite the fact that Mr Volkers' employment agreement provided that if a negative notice was issued the Academy could terminate the agreement immediately.¹⁰⁰²

Mr King agreed that the CCYPCG's decision to issue a negative notice to Mr Volkers was a matter of 'great significance'¹⁰⁰³ and said it was 'concerning'.¹⁰⁰⁴ He said the Academy did discuss the negative notice 'as a group' but made a decision to continue with Mr Volkers' employment.¹⁰⁰⁵ The Academy did not seek any advice from the Department about the implications of Mr Volkers having been issued with a negative notice.¹⁰⁰⁶ Also, it did not make any inquires about whether any part of

Mr Volk's role fell within the definition of 'child-related employment' under the Children and Young People Act.¹⁰⁰⁷ Mr King formed the view that he could continue to employ Mr Volk's in his existing role based on 'how we had employed him in the past and the role that he had played in the past'.¹⁰⁰⁸

Mr King did not know the reasons that the CCYPCG had issued Mr Volk's with a negative notice, but he understood it was related to the allegations that had previously been made against him that had resulted in criminal charges.¹⁰⁰⁹ He did not take any action to inform himself in more detail of the nature of the allegations.¹⁰¹⁰ He did not think at the time that he should defer to the Commissioner's view that Mr Volk's was not safe to work with children.¹⁰¹¹ Mr King did not make any investigation or undertake any consideration of the quality of the Commissioner's assessment that Mr Volk's was not a suitable person to work with children.¹⁰¹²

Mr King conceded that Mr Volk's, in his role as 'mentor coach', had contact with athletes under the age of 18. However, Mr King said that he 'deemed his role as being one that would be working with coaches'.¹⁰¹³ He also said that 'Scott Volk's' reports back from Management were that Scott Volk's was a very good swimming coach and under his role, he was fulfilling that effectively, well'.¹⁰¹⁴ Mr King did not consider whether it was appropriate to restrict or limit Mr Volk's' duties.¹⁰¹⁵ Mr King accepted that he did not make any assessment of his suitability to work with children because he did not think that Mr Volk's' role required it.¹⁰¹⁶

Mr King described the following factors as relevant to his decision to continue to employ Mr Volk's and later to continue to extend his contract, even though he did not have a blue card:

- Mr Volk's' value as an asset and his quality as a coach.¹⁰¹⁷
- The fact that the Academy had not received any negative reports about Mr Volk's.¹⁰¹⁸
- The Academy's relationship with Swimming Queensland.¹⁰¹⁹
- Ensuring the sport of swimming and swimming coaching 'remained strong'.¹⁰²⁰
- The good feedback from Mr Volk's' managers.¹⁰²¹
- The Academy considered that his contact with children would be limited because of the nature of his role.¹⁰²²

Mr King accepted that whether or not Mr Volk's was a good swimming coach was not relevant to the question of whether he was suitable to work with children.¹⁰²³

Mr King said he did not take any action that was specifically directed to mitigating the risk posed by Mr Volk's other than defining his role description¹⁰²⁴ and conducting twice-yearly performance reviews and informal debriefs.¹⁰²⁵ Mr King did not discuss with other coaches Mr Volk's' relationship with athletes or his approach to boundaries.¹⁰²⁶

Mr King gave evidence that, in 2009, the Department of Communities (which at that point administered the Academy) directed that in the future all staff who worked with children in the department would be required to have a blue card, despite government employees being expressly exempt under the Children and Young People Act.¹⁰²⁷ At around the same time, Mr King

became aware that that the exemption for government employees involved in regulated sport and recreation was likely to be removed from the Children and Young People Act in the near future.¹⁰²⁸ The legislative amendment and the directive ultimately came into effect in April 2010, but Mr King was aware from 2009 that Mr Volkers' employment with the Academy would become untenable at some point in the future.¹⁰²⁹

The Academy continued to employ Mr Volkers as Head Swimming Coach on a series of short-term contracts.¹⁰³⁰ Mr King said that the Academy extended Mr Volkers' contract 'for Swimming Queensland' having regard to 'what Swimming were asking of us in terms of the transition'. He said 'we were trying to work with Swimming Queensland to make that transition smooth'. He also said 'we were looking to try to keep that position going, because we felt it was a valuable position'.¹⁰³¹ When it was put to Mr King that, in deciding to extend Mr Volkers' employment after he was issued with a negative notice, he did not prioritise the safety and wellbeing of the Academy's athletes, Mr King said:

I would say that what I was doing was trying to ensure that swimming remained strong, because Swimming kept on giving me the advice that this person was very good for their sport in terms of his knowledge technically and tactically for their athletes.¹⁰³²

When put to him that his overarching consideration was the success of the sport of swimming, Mr King said 'my role was to try and help keep swimming strong'.¹⁰³³ When it was put to Mr King that the Academy was taking steps to ensure that his employment continued literally up until the day it became untenable, he replied, 'he was a good – he was good at what he was doing'.¹⁰³⁴ Mr King rejected the proposition that the Academy's views about his ability as a coach outweighed any concerns about safety for children.¹⁰³⁵

Mr King said he made the right decision at the time in light of the information he had.¹⁰³⁶ Mr King accepted that, having now read the decision of the Queensland Civil and Administrative Tribunal (the Tribunal) affirming the decision of the CCYPCG not to issue Mr Volkers with a blue card, 'it would have influenced [him] in the future, or at that particular time'.¹⁰³⁷ He accepted that he should have asked for the information¹⁰³⁸ and he would not employ a person now if that person could not get a blue card.¹⁰³⁹

In his submissions, Mr King accepted that, after being advised that Mr Volkers had received a negative notice on 1 June 2009, the Academy should have acted more proactively to mitigate any risks to children that may have been associated with employing Mr Volkers. Mr King submitted that it would have been appropriate to put Mr Volkers on limited or suspended duties while the Academy obtained further information, carried out an investigation and sought advice about Mr Volkers' continued employment.¹⁰⁴⁰

However, Mr King submitted that his actions and decisions, in keeping Mr Volkers employed for approximately seven months after the CCYPCG had determined that Mr Volkers was not a suitable person to work with children, needs to be understood against the backdrop of this decision.¹⁰⁴¹

Mr King submitted that he had taken a decision from early in his tenure that it was only a matter of time until the Academy ceased to employ Mr Volkers. He also submitted that the extensions of Mr Volkers' employment were made in reasonable and good-faith reliance upon the particular role that Mr Volkers held at the Academy, which was 'largely an advisory and coordinating role'. He also submitted that it is of significance that there is no evidence that Mr Volkers acted in an inappropriate way towards any athlete during his period of employment as Head Swimming Coach at the Academy from 2001. Mr King submitted that in these circumstances his decision to continue to employ Mr Volkers should not be criticised.¹⁰⁴²

We are satisfied that the Academy should not have continued to employ Mr Volkers in the role of Head Swimming Coach after the CCYPCG had determined that he was not a suitable person to work with children.

We are satisfied that, during the period of Mr Volkers' employment, the Academy did not have and still does not have a child protection policy that deals with:

- sexual abuse of an athlete sponsored by the Academy
- complaints by athletes sponsored by the Academy
- mitigating the risks of overnight travel.

Swimming Queensland seeks advice from the CCYPCG

On 3 June 2009, an employee from Swimming Queensland called the CCYPCG and 'inquired whether a potential employee of a State Sporting Organisation is required to have a Blue Card if their role involves working with coaches over 18 but not working with children under 18'.¹⁰⁴³

Swimming Queensland was advised that a blue card would not be required in those circumstances.¹⁰⁴⁴ Mr Hasemann stated that, when Mr Volkers commenced employment with Swimming Queensland, they took steps to ensure that Mr Volkers role was 'confined to working with adults'.¹⁰⁴⁵

Swimming Queensland submitted that, following that advice, its position was that Mr Volkers' ongoing employment with Swimming Queensland was not subject to the issuing of a blue card 'as it was not envisaged at the time of employment his role would require him to be the holder of a [b]lue [c]ard'.¹⁰⁴⁶

The difficulty with that submission is that Mr Volkers was not employed by Swimming Queensland in a role that did not involve working with children under 18. The evidence discloses that Mr Volkers' role with Swimming Queensland did involve working with children, albeit this formed only 10 per cent of his role and his contact with children was not unaccompanied.¹⁰⁴⁷

Swimming Queensland employs Mr Volkers despite negative notice

On 11 February 2010, Mr Wayne Lomas of Swimming Queensland emailed Mr Peter Shaw of the Academy stating that ‘our end game here is to ensure that Scott is able to continue to work his job FULLY for as long as legally possible, that is, until the Proclamation of the Act by the Governor & Counsel’. The email also noted that, if Mr Volkers were to be employed by Swimming Queensland before the ‘Children’s Services Tribunal’ made a decision, the position description and contract would have to be reviewed.¹⁰⁴⁸

On 17 February 2010, Mr Volkers’ ceased employment with the Academy, effective 12 February 2010.¹⁰⁴⁹

On 12 February 2010, Mr Volkers was appointed Swimming Queensland Head Coach.¹⁰⁵⁰

The letter of appointment noted that the cost of Mr Volkers’ employment was to be fully funded by the Academy.¹⁰⁵¹ It also stated:

I note that your application for a Blue Card has been refused and you have been issued with a negative notice by the Commission for Children and Young People and Child Guardian. Consequently, your employment with SQ is conditional upon your complying at all times with the conditions imposed upon you under that negative notice. I also note that you have lodged an appeal against that negative notice, which has not yet been heard.¹⁰⁵²

The employment contract described Mr Volkers’ role as, among other things, to provide mentoring, support and education to targeted coaches.¹⁰⁵³ Mr Hasemann’s evidence was that this comprised approximately 10 per cent of the role in which he may be in proximity to child swimmers.¹⁰⁵⁴ Mr Hasemann also gave evidence that, in association with Swimming Queensland and advisers, he formed the view that because of the nature of the role and provisions put in place there was no opportunity for unaccompanied access to children and hence no risk to children.¹⁰⁵⁵

Mr King accepted that, because the Academy was funding the position, it had a continuing responsibility to ensure that Mr Volkers was an appropriate person to fill the position of ‘mentor coach’ at Swimming Queensland.¹⁰⁵⁶ Mr King said he discussed the matter with Swimming Queensland and Swimming Queensland believed that the environment would be a safe one for children.¹⁰⁵⁷

In its submissions, Swimming Queensland sought to characterise Mr Volkers’ role as one involving ‘ostensibly supervised access to children’.¹⁰⁵⁸ We do not understand what ‘ostensible supervision’ is. In any event, we reject the submission that Mr Volkers’ access to children in the course of his employment with Swimming Queensland was supervised. There is no evidence of any formal or structured supervision of Mr Volkers. The fact that others were present when Mr Volkers was in the company of children does not amount to ‘supervision’.

Swimming Queensland's submissions also emphasise that the contract between Swimming Queensland and Mr Volkers was negotiated and entered into before the Tribunal determined a view that Mr Volkers was not a suitable person to be working with children.¹⁰⁵⁹ We do not consider this to be of any weight. At the time of his recruitment to Swimming Queensland, the CCYPCG had already determined that Mr Volkers was not a suitable person to work with children. The Tribunal ultimately affirmed that decision.

We are satisfied that, between 12 February 2010 and 14 September 2010, Mr Volkers came into contact with and had access to children in the course of his employment as Head Swimming Coach at Swimming Queensland. That role involved him working with children, even though he was a 'coaches' coach' and did not directly coach athletes.

We are satisfied it was artificial of Swimming Queensland to try to tailor the role of Head Swimming Coach to prevent Mr Volkers having 'impermissible' contact with children, in circumstances where the CCYPCG and the Tribunal had formed the view that Mr Volkers was not a suitable person to work with children.

2.13 Appeal to the Queensland Children's Services Tribunal in 2009

As noted earlier in this report, on 25 June 2009, Mr Volkers applied to the then Queensland Children's Services Tribunal for a review of the decision to issue him with a negative notice.

The Queensland Children's Services Tribunal issued notices to produce material to the CCYPCG, with the CCYPCG producing approximately 2,000 pages of documents relevant to Mr Volkers.¹⁰⁶⁰

On 1 December 2009, the functions performed by the Queensland Children's Services Tribunal were transferred to the new tribunal, the Queensland Civil and Administrative Tribunal (the Tribunal).¹⁰⁶¹

Request to the Tribunal to expedite hearing

On 12 November 2009, Mr Wayne Lomas of Swimming Queensland contacted Mr Peter Shields, the solicitor representing Mr Volkers, by facsimile. Mr Lomas noted that Mr Volkers' contract of employment with Swimming Queensland expired on 12 February 2010 and that Swimming Queensland was prohibited from employing Mr Volkers in his current role unless he was issued with a blue card by the CCYPCG. Mr Lomas requested that Mr Shields contact the Tribunal to request that the hearing be expedited.¹⁰⁶²

Mr Shields wrote to the Tribunal on 11 December 2009, enclosing the correspondence from Mr Lomas.¹⁰⁶³ The letter noted that Mr Volkers' contract of employment with the Academy would expire on 12 February 2010 and requested that the Tribunal expedite the hearing of Mr Volkers' case because 'Swimming Queensland is prohibited from employing Mr Volkers in his current role unless he is granted a positive suitability notice by the CCYPCG'.¹⁰⁶⁴

Mr Hasemann gave evidence to the Royal Commission that he did not believe that to be an accurate statement and that he did not remember seeing the letter before it was sent.¹⁰⁶⁵

Mr Hasemann provides a reference

On 29 January 2010, Mr Hasemann provided a reference in support of Mr Volkers' application to the Tribunal.¹⁰⁶⁶ The reference stated that Mr Hasemann had known Mr Volkers since 2002 and was aware 'through the media, that police had investigated serious allegations against him involving young female swimmers'. It also stated:

Throughout our association, I have found Scott's conduct to be beyond reproach, and, in particular, his behaviour towards swimmers – including young females – to be exemplary. Scott's outstanding contribution to swimming in Queensland and his extremely high regard in which he is held by the Board of Swimming Queensland were recognised in 2008 when he was inducted into the Swimming Queensland Hall of Fame.¹⁰⁶⁷

At the time Mr Hasemann wrote the reference, his only knowledge of the allegations made by Ms Gilbert, Ms Boyce and Ms Rogers was what he had read in the media. He had not spoken to Mr Volkers about the allegations and he did not know the details of the allegations.¹⁰⁶⁸ He did not see the reasons from the CCYPCG as to why Mr Volkers had not been issued a blue card, as this was sent to Mr Volkers separately.¹⁰⁶⁹ He was unaware of AEE's allegations.¹⁰⁷⁰ He said he worked on the basis that the charges against Mr Volkers had been withdrawn because a determination had been made that the evidence was not strong enough.¹⁰⁷¹ He turned his mind to the fact that a person might engage in inappropriate conduct that fell short of being criminal conduct, but he did not turn his mind to whether the details of the allegations against Mr Volkers might have revealed such conduct.¹⁰⁷²

Mr Hasemann did not concede that it was inappropriate for him to write the reference without knowing the details of the allegations.¹⁰⁷³ However, he accepted that, had he known of the details of the allegations, he would not have supported Mr Volkers' application for a blue card.¹⁰⁷⁴

Determination of the Tribunal

The Tribunal heard Mr Volkers' application on 19 April 2010. On 31 May 2010, the Tribunal refused his appeal and confirmed the Commissioner of the CCYPCG's decision to issue him with a negative notice.¹⁰⁷⁵

The Tribunal found the following factors to be relevant:

1. The seven charges against the applicant were not discontinued because of a finding that the conduct alleged did not occur; rather, it was because of a range of factors including the difficulty in prosecuting matters alleged to have occurred many years before.¹⁰⁷⁶

2. The applicant had acknowledged to the complainants in pretext conversations that certain actions did occur:
 - a. giving a massage in his home to one of the girls using a massage stick;
 - b. making a comment to one of the complainants about returning as her pool buoy (a flotation device which the swimmers held between their legs in training), which he regarded as a joke;
 - c. rubbing the leg of a complainant while driving. When asked by the second complainant about rubbing her vagina, Mr Volkers is recorded as saying he was 'trying to, you know, rubbing your legs on both sides' and in a further pretext conversation he is recorded as saying, 'Well I – like okay, I was driving along. I remember just rubbing your leg. I remember – I do remember it as very – it was high, right up in the groin area and I may be been – or something. I don't know, but I am not saying you're a liar but I am telling you that I didn't try to finger you';
 - d. When challenged by a complainant after admitting he rubbed her leg on both sides [and in response to the complainant] stating that he was the adult and should have been aware of the boundaries, he is recorded as saying, 'I do – I do know – and I've had opportunities to – you know – look at that area. There's no doubt and I maybe I shouldn't have';
 - e. Aside from the comment above, which could be construed as an admission by the applicant that he acted inappropriately, he has not demonstrated insight that he was aware of his obligations in his role as a coach and a mentor to ensure that he did not abuse the position of trust he held in respect of the girls he was coaching.
3. The complaints have a degree of similarity; and
4. There were allegations from two other girls of sexualised behaviour, with the second complaint referring to behaviour in 1999.¹⁰⁷⁷

The Tribunal identified the following potential risk factors:

1. The alleged offending occurred over a period of years and was not an isolated incident; they involved a number of complainants.
2. Not all allegations of improper behaviour became the subject of criminal charges.
3. The applicant was in a position of trust in relation to those whom he coached.
4. Apart from inappropriate touching he regularly engaged in crude sexually slanted conversations with a number of young women.
5. Because of his high profile and the esteem in which he was held in the coaching field, the complainants were of the view that any complaint they made was likely to be disbelieved.

6. The applicant's behaviour caused harm to the complainants, including ongoing psychological difficulties extending into their adulthood. However, the applicant has not demonstrated any awareness, other than in a very limited manner, ... of the effect of his behaviour on the complainants.
7. Despite the charges being laid and the aftermath that ensued, the applicant has not demonstrated that he has engaged in any protective strategies ie chaperoning, a change of practice when coaching/interacting with young people.¹⁰⁷⁸

The Tribunal was only able to identify two protective factors:

1. Various referees had a strong belief that Mr Volkers did not commit the offences with which he was charged, although it is unclear the extent of their knowledge about the charges or allegations.
2. The charges relate to events which allegedly occurred many years ago and since 1999 there has not been any allegation or hint that he has engaged in inappropriate conduct with young people.¹⁰⁷⁹

The Tribunal concluded that 'the protective factors do not outweigh the potential risk factors. In fact, they are grossly disproportionate'.¹⁰⁸⁰ The Tribunal also concluded:

When viewed in totality, and upon a close analysis of the evidence, the Tribunal is satisfied the applicant conducted himself inappropriately and not protectively with young women to whom he had a significant responsibility in his position of trust. Consequently, it is satisfied that the applicant poses an unacceptable risk to children.¹⁰⁸¹

Response to the Tribunal's decision

Mr King, Executive Director of the Academy, gave evidence that he did not read the Tribunal's reasons at the time, but he has read them recently.¹⁰⁸² When questioned during the public hearing, he agreed that what he read caused him to feel concerned.¹⁰⁸³ He wishes he had known more information at the time. Mr King told the Royal Commission that, had he known all of the information at the time, 'I think it would have influenced me in the future or at that particular time' in relation to his decision to keep Mr Volkers in the position of mentor coach funded by the Academy.¹⁰⁸⁴

Mr Hasemann, CEO of Swimming Queensland, read the Tribunal's decision at the time. He was concerned by the allegations set out in it and that the Tribunal found the allegations to be credible.¹⁰⁸⁵ He was also concerned by the pretext conversations set out in the decision, in which Mr Volkers had admitted to certain inappropriate conduct, including having his hand high up a female swimmer's leg, in the groin area.¹⁰⁸⁶

Mr Hasemann's evidence was that, after consulting with the lawyers and reviewing the risk management strategies in place, he confirmed in his mind that the risk management strategies were robust enough to protect children.¹⁰⁸⁷

Mr Hasemann advised the Board of Swimming Queensland of the Tribunal's decision. He told the Board that Mr Volkers' duties in his employment related solely to the development and mentoring of adult coaches and that Swimming Queensland's lawyers had advised that Mr Volkers did not require a blue card in those circumstances.¹⁰⁸⁸ Swimming Queensland did not inform parents or swimmers of its decision.¹⁰⁸⁹

The allegations set out in the Tribunal's decision caused Mr Hasemann to reflect on whether Mr Volkers should be included in Swimming Queensland's Hall of Fame and his suitability to be employed by the organisation.¹⁰⁹⁰ He believes now that he should have asked Mr Volkers to show cause why he should remain employed with Swimming Queensland at that time.¹⁰⁹¹ Mr Hasemann did not accept that his decision to continue to employ Mr Volkers as a mentor coach was wrong having regard to the risk measures that were in place to protect children.¹⁰⁹²

Mr Hasemann accepted that in Swimming Queensland's annual report in 2011–12 he held Mr Volkers out to the world as a good coach.¹⁰⁹³ He now accepts this was wrong.¹⁰⁹⁴ He accepts that Mr Volkers should not be included in Swimming Queensland's annual report as a life member or in its Hall of Fame¹⁰⁹⁵ and that he will take this matter to the Board.¹⁰⁹⁶

2.14 Further interaction between the CCYPCG and Swimming Queensland in 2010

CCYPCG raises concerns with Swimming Queensland

On 6 July 2010, the Commissioner of the CCYPCG wrote to Swimming Queensland advising that it had received two separate anonymous complaints about Mr Volkers that alleged his continued involvement with and coaching of children.¹⁰⁹⁷

The first complainant alleged that Swimming Queensland had allowed Mr Volkers to be the Head Coach for a trip to China and that Mr Volkers continued to coach at the Sleeman Aquatic Centre, providing regular assistance and coaching to swimmers.¹⁰⁹⁸

The second complainant alleged that they had recently received a newsletter from Swimming Queensland showing a photograph of Mr Volkers together with eight other male coaches on the China trip and that the trip included predominantly females aged 14 to 17 years.¹⁰⁹⁹

Ms Miller from the CCYPCG gave evidence to the Royal Commission that until then, the information that Swimming Australia had provided to the CCYPCG was that Mr Volkers' contact with children was incidental and in presence of adults.¹¹⁰⁰

The Commissioner asked Swimming Queensland to clarify Mr Volk's employment activities and to provide its strategies to mitigate risks to children and young people more generally within the swimming environment. In particular, the Commissioner warned:

if Mr Volk's has been or continues to engage in regulated child-related employment activities under the Commission's legislation, both he and his employer (SQ) can be held liable for prosecution action.¹¹⁰¹

This correspondence was the first in a series of communications and meetings between CCYPCG and Swimming Queensland about Mr Volk's role with Swimming Queensland, his level of contact with children and, more generally, the risk management plans and other strategies that Swimming Australia had implemented to ensure its compliance with the Children and Young People Act.¹¹⁰²

Swimming Queensland seeks advice from the CCYPCG

In September 2010, Swimming Queensland sought advice from the CCYPCG about whether certain activities that Mr Volk's undertook – as a negative notice holder – would be considered to fall within the scope of 'regulated employment' under the Children and Young People Act.¹¹⁰³ Swimming Queensland advised the CCYPCG that Mr Volk's employment activities fell within three categories:

1. Program visits (Mentor Coach program) – these required Mr Volk's to be poolside to assist and mentor coaches who were coaching child swimmers. Mr Volk's provided advice to the coach about the child's technique, which the coach then conveyed to the child.
2. Development Coach workshops – these required Mr Volk's to conduct and facilitate coach briefings/training sessions away from the pool deck. This was not in the presence of swimmers and all attendees were coaches.
3. Overseas visits – these required Mr Volk's to attend overseas trips, swimming meets, competitions and camps to assist in mentoring coaches in the training of child swimmers in a similar manner to the mentor coach program.¹¹⁰⁴

On 14 September 2010, the Commissioner of the CCYPCG advised that, in CCYPCG's view, the program visits and overseas visits constituted regulated employment and could not be undertaken by a negative notice holder.¹¹⁰⁵ The Commissioner advised that, in order for those activities not to be considered regulated employment, Mr Volk's would need to observe the coaches' training of the child swimmers from a reasonable distance (for example, by video or from a location away from the pool deck) and debrief the coaches following his observations rather than providing advice in the presence of the child. The Commissioner said there should be no interaction with children and the briefings should not occur in direct view or hearing of children.¹¹⁰⁶ Ms Miller accepted it was open to take the view that this separation was artificial.¹¹⁰⁷

Ms Miller gave evidence that, although from time to time the CCYPCG may have received inquiries about what a person can do if issued a negative notice, the case of Mr Volk's was quite rare. She said:

In the large majority of people that we issue negative notices for are people removed from child-related employment. Where they do stay within the employ of the organisation, they are often placed in employment outside of that child-related environment. This was an environment where that was what they were intending to do, but as it turned out didn't quite – you know, there were some activities that, as it turned out, he was having an engagement with children.¹¹⁰⁸

Ms Miller agreed that 'it's obvious that people still do not have a very good understanding of what is required of them' in relation to what is and what is not child-related employment.¹¹⁰⁹ Ms Miller said that, in retrospect, it would have been useful if Swimming Queensland had approached the CCYPCG to discuss the role before Mr Volkers started.¹¹¹⁰ She was concerned that Swimming Queensland was intent on keeping Mr Volkers in the position but said it did not change the way the CCYPCG dealt with the organisation.¹¹¹¹

Swimming Queensland interprets and implements the advice

Mr Hasemann understood the CCYPCG's advice to mean that, as a coach of coaches:

[Mr Volkers would,] in his role, nevertheless come into contact with children, therefore we needed to amend his functions, but they didn't say that we couldn't employ ... him without a blue card. So the advice from the commission didn't say we couldn't employ him without a blue card. They actually said that we needed to shift the parameters.¹¹¹²

Mr Hasemann told the Royal Commission that 'it's impossible to go through life without contact with children, so it's the nature of the contact [that is relevant]'. The frequency and circumstances of contact were relevant, he said.¹¹¹³ He also said that, if Mr Volkers' contact with children at the pool was in the presence of a coach¹¹¹⁴ and he was not on the pool deck but observing from the grandstand, his employment was appropriate.¹¹¹⁵

Before Swimming Queensland received the CCYPCG's advice, Mr Volkers had been on a number of overnight trips with athletes. Mr Hasemann accepted that overnight trips increased risk of sexual abuse for children,¹¹¹⁶ but he does not think it was unwise to permit Mr Volkers to accompany young swimmers on overnight trips.¹¹¹⁷ He said that Swimming Queensland had put in place sufficient risk management strategies – namely, team management supervision and the Safe Trips Away Policy.¹¹¹⁸ The risk management strategies put in place¹¹¹⁹ described the level of risk of child sexual abuse as medium and the likelihood remote¹¹²⁰ because of the level of supervision.¹¹²¹

On 27 September 2010, Mr Hasemann wrote to Mr Volkers and informed him that the CCYPCG had advised that some of the activities Mr Volkers was undertaking as part of his role were within the scope of the Children and Young People Act. Mr Hasemann wrote that these activities would need to be reviewed to avoid a potential breach of the Children and Young People Act by both Swimming Queensland and Mr Volkers. The letter concluded:

I look forward to continuing to work with you in the role of Mentor Coach and to us taking every precaution to ensure that we comply fully with the Commission's advice at all times. This will include you documenting all activities you propose to undertake and obtaining my written approval before proceeding.¹¹²²

Mr Volkers continued to work in the role of mentor coach but did not go on any further overseas trips.¹¹²³

The CCYPCG did not have any ongoing role with Swimming Queensland about whether or not they were complying with the advice.¹¹²⁴ Ms Miller said that the CCYPCG was satisfied that Swimming Queensland clearly understood the confines of what they were required to do.

The Public Safety Business Agency, which now administers the blue card system, has a small compliance team able to audit organisations, including a police officer to undertake surveillance.¹¹²⁵ Ms Miller told the Royal Commission:

Now, we'd probably go off and look at the situation and make sure that there is a bit of surveillance to make sure that those things they promised to put in place are continuing to be in place, and, if they're not, then certainly take appropriate action to refer that to police.¹¹²⁶

Parameters of the advice

Counsel Assisting submitted that it was artificial of Swimming Queensland and the CCYPCG to try to tweak Mr Volkers' role so that he could continue to perform it in circumstances where the CCYPCG and the Tribunal had determined that he was an inappropriate person to work with children.¹¹²⁷

Ms Miller submitted that any suggestion that the CCYPCG was complicit with Swimming Queensland to achieve this purpose is not supported on the evidence.¹¹²⁸ We accept this and do not understand Counsel Assisting to be suggesting any complicity between the two organisations. Ms Miller submits that, while it is correct that the letter from the CCYPCG to Swimming Queensland of 14 September 2010 did not say that it could not employ Mr Volkers without a blue card, it cannot be inferred from this that the CCYPCG supported the continued employment of Mr Volkers by Swimming Queensland. She submits that there is no basis to support the inference that the letter from CCYPCG suggested that Swimming Queensland should change Mr Volkers' role rather than discontinue his employment. She submitted that any statement by the CCYPCG to the effect that Swimming Queensland was unable to employ Mr Volkers in any capacity because he did not hold a blue card would have been incorrect and would have exceeded the CCYPCG's legislative authority.¹¹²⁹

The CCYPCG's letter went beyond advising Swimming Queensland that Mr Volkers' program visits and overseas visits constituted regulated employment and could not be undertaken by a negative notice holder. It went on to describe circumstances in which Mr Volkers could continue to undertake mentor visits without breaching the legislation. In our view, it was reasonable of Mr Hasemann

and Swimming Queensland to interpret the letter of 14 September 2010 as advising them that Mr Volk's existing role could be tailored so as to allow him to continue in it, notwithstanding that he was a negative notice holder.

We accept that the CCYPCG was acting in good faith in providing this advice. However, in our view, it is artificial to alter the parameters of a role that involves working with children in this way. In our view, a person who is considered inappropriate to work with children should not be working with children at all – we find little comfort in the notion that a person who is inappropriate to work with children can safely perform their role by watching and analysing videos of children wearing swimming suits.

Swimming Queensland submitted that the conduct of Swimming Queensland and Mr Hasemann did not involve any 'artificiality' or 'inappropriate' or cynical 'tweaking'.¹¹³⁰ We accept that Swimming Queensland and Mr Hasemann, in seeking to tailor Mr Volk's role, were not acting in cynically or in bad faith. We accept that Mr Hasemann genuinely believed that he was acting within the confines of the CCYPCG's advice. However, we find that it was nevertheless artificial of Swimming Queensland to try to tailor the role of Head Swimming Coach to prevent Mr Volk's having 'impermissible' contact with children, in circumstances where the CCYPCG and Tribunal had formed the view that Mr Volk's was not a suitable person to work with children. In our view, in circumstances where Mr Volk's had been found to be an inappropriate person to work with children, he should not have been working with children at all.

2.15 Mr Volk's leaves Swimming Queensland

The Swimming Queensland 2011–12 annual report lists Mr Volk's as a life member and a member of the Hall of Fame.¹¹³¹

The annual report states:

Towards the end of the year [Mr Volk's] accepted an offer to coach in Brazil as the country prepares to host the 2016 Olympic Games. Mr Volk's' contribution to coach development during the relatively short time he worked for [Swimming Queensland] was invaluable and greatly appreciated by the participants concerned. He is indeed a masterful coach.¹¹³²

Mr Volk's stopped working with Swimming Queensland in early 2012. The decision to leave Swimming Queensland was made by Mr Volk's.¹¹³³ Mr Volk's still coaches swimmers in Brazil.¹¹³⁴

Mr Mark Anderson, the current CEO of Swimming Australia, told the Royal Commission that he was unsure whether Mr Volk's received any support from Swimming Australia or any other Australian organisation during the process of obtaining a coaching role in Brazil.¹¹³⁵

Mr Hasemann told the Royal Commission that he would ask the Board of Swimming Queensland to reconsider Mr Volkers' life membership and Hall of Fame membership.¹¹³⁶ Mr Hasemann also said that, on reflection, the positive terms used to describe Mr Volkers in the 2011–12 annual report were not appropriate.¹¹³⁷

Swimming Queensland has not attempted to contact anyone in Brazil, but Mr Hasemann accepts that Swimming Queensland should take further action through Swimming Australia to contact Brazil.¹¹³⁸ Swimming Australia's CEO, Mr Anderson, said that they have informed Brazil that they will not accredit Mr Volkers to coach on behalf of Brazil in Australia¹¹³⁹ but accepted that Swimming Australia should inform Brazil of the allegations.¹¹⁴⁰

2.16 Policies

The Academy

The Academy did not at the relevant time, and still does not, have policies in place that are specific to the Academy.¹¹⁴¹ Rather, it adopts the policies of whatever department it is being administered by from time to time. The current suite of policies that cover the Academy's activities are those of the Department of National Parks, Recreation, Sport and Racing.¹¹⁴²

Mr King accepted that the Academy is a different environment to parks or racing. He accepted that coaches employed by the Academy work directly with athletes and spend long periods of time with athletes and that those circumstances increase the risk of child sexual abuse.¹¹⁴³ He accepted that the Academy does not have a policy that deals with inappropriate behaviour by coaches towards athletes sponsored by the Academy.¹¹⁴⁴ He accepted that the Academy does not have any policy that deals with complaints by athletes sponsored by the Academy.¹¹⁴⁵

In May 2009, the Academy introduced an operational framework to deal with 'at risk' athletes.¹¹⁴⁶ This framework defined 'at risk' behaviour to be dysfunctional behaviours that may jeopardise an athlete's welfare. They included 'indication of physical, psychological and sexual abuse'. Under the policy, the Academy's coaching staff, the Academy's support staff, external consultants, the athletes' families and other athletes are jointly responsible for identifying athletes who were at risk. If an athlete is identified as being at risk, the athlete is provided with assistance and support as required. However, this policy does not address the specific risk of athletes being abused by coaches within the sport.

When asked how an athlete sponsored by the Academy would go about making a complaint of sexual harassment, he said would 'suspect' that there would be an avenue for them to go through and that they would tell their coach or, if it came to his attention, he would tell Human Resources.¹¹⁴⁷ Mr King accepted that coaches at the Academy on occasions travel domestically or overseas with athletes and that there is a greater opportunity for child sexual abuse on an overnight trip.¹¹⁴⁸ Mr King accepted that the Academy does not have a child protection policy that

is specifically directed towards mitigating the risks of overnight travel. When asked whether the Academy should have such a policy, Mr King said 'I guess it is something we can explore, yes'.¹¹⁴⁹

Mr King subsequently submitted that the Department of National Parks, Recreation, Sport and Racing is currently developing a Child Protection Procedures Manual in consultation with the Academy and the Public Safety Business Agency (the agency now responsible for issuing blue cards). He submitted that the manual will provide practical guidance on the standard of behaviour that the coaches and adults involved with the Academy are expected to comply with. It will also outline an athlete complaints framework and identify practical strategies for mitigating the risks associated with travel.¹¹⁵⁰

Swimming Australia

In response to the roll-out of the Member Protection Policy in 2002, Mr Tasker stated that Swimming Australia received many questions from 'people at state level and from swimming clubs about how to apply the policy in the case of children'. Swimming Australia decided to create a separate policy for children 'to better deal with those issues'.¹¹⁵¹

In 2006, Swimming Australia adopted a Child Welfare Policy¹¹⁵² and published a document called 'Child Welfare Policy – General Information and Procedures', to be used 'in order to ensure the principles of Natural Justice are followed in all aspects of handling or conducting complaints, allegations, investigations, tribunals and disciplinary measures'.¹¹⁵³

The Child Welfare Policy was implemented 'to allow a safe environment for all members' where the 'child's welfare is the first and foremost consideration, and all the children have the right to be protected from abuse'. The Child Welfare Policy sets out the best practice procedures for those in contact with children. These include:

- a. Being aware of and be quick to act on any games that are physically rough or sexually provocative or that involve inappropriate language or contact.
- b. Get the consent of a child before making physical contact with them and let the child know what you are doing and why.
- c. Ensuring children are not invited to a coach's house unless accompanied by that child's parent or guardian, or with the consent of a parent or legal guardian.¹¹⁵⁴

Under the Child Welfare Policy, any person working with children under the age of 18 is required to undergo a Working with Children Check or sign a Child Welfare declaration if there is no Working with Children Check in their state (currently only Tasmania).¹¹⁵⁵ The declaration covers criminal convictions and charges as well as disciplinary proceedings or other matters that Swimming Australia may consider to constitute a risk to its members, employees, volunteers, athletes or reputation.¹¹⁵⁶

The Child Welfare Policy – General Information and Procedures relevantly sets out the steps that should be taken where an allegation of child sexual abuse has been received.¹¹⁵⁷ Mr Anderson explained the steps in his evidence to the Royal Commission:

1. A person wishing to make a complaint could make it to the coaches association [Australian Swimming Coaches and Teachers Association], state association or directly to Swimming Australia.¹¹⁵⁸
2. Any person who receives a complaint must take the complaint to a Member Protection officer. The Member Protection Officer must inform the president of the club or the CEO of the state swimming association, who informs the CEO of Swimming Australia.¹¹⁵⁹
3. The initial complaint does not need to be in writing but Swimming Australia will ultimately need to put it in writing.¹¹⁶⁰
4. The organisation cannot assist to resolve the complaint if the complainant wishes to remain anonymous.¹¹⁶¹

Step 4 of the Child Welfare Policy relevantly sets out the internal action to be taken where other external investigations may be in progress:

For allegations of a serious or criminal nature (for example, sexual abuse) up to three different investigations could be undertaken to examine allegations that are made against a person to whom this policy applies, including:

- a. a criminal investigation (conducted by the police);
- b. a child protection investigation (conducted by the relevant child protection agency); and/or
- c. a disciplinary or misconduct inquiry/investigation the Involved Organisation.

Regardless of the findings of the police and/or child protection agency investigations, the Involved Organisation should carry out its own internal investigation in accordance with this policy's procedures but may hold over its investigation pending the finalisation of the other investigations.¹¹⁶²

Originally the Child Welfare Policy did not apply to complaints made before the Member Protection Policy commenced in 2002. The current Child Welfare Policy does not include this limit and the current CEO, Mr Anderson, said that Swimming Australia has a responsibility to investigate all complaints.¹¹⁶³

The Child Welfare Policy was also amended in January 2014 to include a position statement on taking photos of children. In addition to not allowing camera phones, videos and cameras in changerooms, showers and toilets, where permission is granted to take a photo of a child:

[W]e will not name or identify the Child or publish personal information, such as residential address, email address or telephone number, without the consent of the parent/guardian. We will not provide information about a Child's hobbies, interests, school or the like, as this can be used by paedophiles or other persons to 'groom' a Child.¹¹⁶⁴

This is the only reference to 'grooming' or 'paedophiles' in the Child Welfare Policy.

Swimming Australia also publishes a Parent Handbook.¹¹⁶⁵ The Parent Handbook refers to the Member Protection Policy and the Child Welfare Policy. It also refers parents to a free online member and child welfare course.¹¹⁶⁶ It has offered the course since about 2003, but Swimming Australia does not keep records of how many people have completed it.¹¹⁶⁷

Swimming Australia has also created a Code of Conduct, which sets out general obligations for everyone in swimming and specific obligations for coaches, swimmers and so on.¹¹⁶⁸ The Code of Conduct is in part an attempt to communicate the policies more effectively and practically to children and with parents.¹¹⁶⁹ The general Code of Conduct requires everyone to report immediately any breaches of the Swimming Australia Member Welfare and Child Welfare Policies to the appropriate authority.¹¹⁷⁰ It also says that no-one can harass or abuse others or have intimate relations with people they supervise or have power over. The coach-specific code requires coaches to ensure that any physical contact with others is appropriate to the situation and necessary for the person's skill development.¹¹⁷¹

Mr Anderson also gave evidence that it is no longer appropriate for a coach to massage an athlete. Swimming Australia has accredited massage therapists. Massage occurs in open environment.¹¹⁷²

Since 2012, Swimming Australia has employed an independent integrity officer to travel with its national team. Mr Anderson gave evidence that:

[I]f there are any issues that an athlete would have about any member of staff, which includes coaches, but support staff as well, the integrity officer is there as an external person that that athlete can go to. They would handle any claim confidentially, appropriately, and certainly would include matters such as this Royal Commission hearing.¹¹⁷³

As a result of this Royal Commission, Swimming Australia has begun working with Child Wise and the Australian Sports Commission to audit its child protection processes and develop better processes.¹¹⁷⁴ Funding for child protection staff is a key issue.¹¹⁷⁵

Swimming Australia does not have a financial redress scheme and no complainant has made a claim or been offered compensation.¹¹⁷⁶ Swimming Australia was unsure whether its insurance would cover such claims.¹¹⁷⁷

Now, if a person makes an allegation against a coach, Swimming Australia will first check with the Australian Swimming Coaches and Teachers Association that the coach is an accredited member of Swimming Australia.¹¹⁷⁸ Mr Anderson gave evidence that Swimming Australia is responsible for

deciding whether or not it is appropriate for someone to continue coaching pending an investigation.¹¹⁷⁹

Mr Anderson accepted that Swimming Australia should and will consider the following changes to its policies and procedures:

- Keeping a record of nominated member protection information officers for each local club to ensure that local clubs are aware of the Member Protection Policy.¹¹⁸⁰
- Putting up signs or posters about its rules or policies in clubhouses.¹¹⁸¹
- Holding meetings about behaviour in clubs.¹¹⁸²
- Making policy documents more accessible.¹¹⁸³
- Ensuring that parents know that children should never be at a coach's house without another adult present.¹¹⁸⁴
- Working with Child Wise to develop material to be included in Child Welfare Policy and published to parents about grooming behaviours,¹¹⁸⁵ particularly with respect to social media.¹¹⁸⁶
- Amending the Parent Handbook to cover 'trusted persons' and how parents might reinforce the message for the child in terms of problems that might arise.¹¹⁸⁷
- Keeping records of how many people complete the child welfare online course.¹¹⁸⁸
- Adapting its policies to recognise the difficulties children have in making a complaint, including how to address complaints if a complainant wishes to remain anonymous.¹¹⁸⁹
- Amending step 2 of its Child Welfare Policy (which states that it is not necessary for the person who reports the child abuse to know for sure if the child abuse is happening).¹¹⁹⁰
- Amending step 4 of its Child Welfare Policy to confirm that an organisation should not undertake an internal investigation until any police investigation is complete.¹¹⁹¹
- Seeking input from victims in developing child protection policies through Child Wise review.¹¹⁹²
- Considering how to address historical complaints, including what support to provide to those people.¹¹⁹³

3 Terrence Buck

3.1 Introduction

Mr Terrence Buck was an Olympic swimming coach who trained at Clovelly Surf Life Saving Club (Clovelly Surf Club) as a teenager during the 1950s and 1960s.¹¹⁹⁴

During the period 1956 to 1968, while training at Clovelly Surf Club, AEA was subject to, and witnessed, a number of sexual assaults by Mr Buck,¹¹⁹⁵ including abuse of his brothers.¹¹⁹⁶ While the abuse eventually stopped, Mr Buck continued to express interest in maintaining sexual relations with AEA.¹¹⁹⁷

Mr Buck went on to coach AEA for the Olympic Games between 1968 and 1973.¹¹⁹⁸ Mr Buck and AEA later entered into a partnership to lease a swim school, which AEA eventually purchased from Mr Buck in 2002.¹¹⁹⁹ Mr Buck died in 2005.

In 2000, a complaint was made to NSW Police on behalf of AEA and his brother.¹²⁰⁰ Police established a taskforce – Strike Force Solano – to investigate the allegations against Mr Buck, which concluded approximately five weeks later due to:¹²⁰¹

1. the age of the evidence
2. inconsistencies in the evidence
3. the failure of other victims to come forward.

Swimming Australia first became aware of allegations against Mr Buck in December 2009,¹²⁰² when contacted by a journalist from *The Daily Telegraph* about Strike Force Solano.¹²⁰³ Swimming Australia responded by launching an investigation of allegations against Mr Buck and also called for victims of child sexual abuse within the swimming community to come forward.¹²⁰⁴

This case study shows the steps taken to address allegations of child sexual abuse once they were brought to the attention of Swimming Australia.

3.2 Sexual abuse of AEA

From about 1960 to 1965, AEA was sexually abused by Mr Buck. AEA and Mr Buck were both at the time members of a swimming squad at the Clovelly Surf Club, coached by Mr Tom Caddy.¹²⁰⁵ At this time, AEA was aged between 11 and 17 years old and Mr Buck was aged between 16 and 22 years old.¹²⁰⁶

Mr Buck first sexually abused AEA after a swimming session in the winter of 1960.¹²⁰⁷ Mr Buck masturbated in front of AEA and then took AEA's hand and placed it on his testicles, placing his own hand inside the front of AEA's swimming costume and fondling him. He then ejaculated on AEA's back and on top of his swimming costume.¹²⁰⁸

The sexual abuse happened quite regularly during this winter period. During this time, AEA also witnessed Mr Buck sexually abusing other boys at the Clovelly Surf Club.¹²⁰⁹

In 1962, Mr Buck left the swimming squad at Clovelly Surf Club and commenced training under Mr Don Talbot at a pool in south-west Sydney.¹²¹⁰ Even after leaving the Clovelly Surf Club, Mr Buck continued to visit AEA, befriending his mother and father and taking him and his brothers to surf carnivals.¹²¹¹

Mr Buck was also very interested in AEA's younger brothers, who were two and a half years and five years younger than him. Mr Buck would come to AEA's house when his parents were not home and abuse AEA and his brothers.¹²¹²

The abuse escalated during the summer of 1962–1963, when Mr Buck attempted to have anal intercourse with AEA at Mr Buck's home after offering AEA a lift home after squad training.¹²¹³

The abuse stopped when AEA was about 17 years old.¹²¹⁴ By this age, AEA had his car licence and could drive himself to and from the Clovelly Surf Club and pool.¹²¹⁵ Even though the sexual abuse stopped, Mr Buck continued to make suggestions to AEA for a number of years, wanting to continue the sexual intimacy between the two of them.¹²¹⁶

Mr Buck later became AEA's swimming coach for the Olympic Games between 1968 and 1973.¹²¹⁷ During this time, AEA's interaction with Mr Buck was limited to his dealings with him in his role as coach.¹²¹⁸ After 1968, AEA had little contact with Mr Buck, except for his interactions with Mr Buck in his role as AEA's swimming coach.¹²¹⁹

In 1997, AEA acquired the lease on the Sans Souci Pool in Sydney.¹²²⁰ In 1998, AEA and Mr Buck had a conversation about Mr Buck's lease on the Hefron Pool and that it was possible that Mr Buck could lose the lease.¹²²¹ Mr Buck approached AEA about forming a partnership and leasing a swim school.¹²²² The arrangement involved Mr Buck providing AEA with a line of credit to enable AEA to lease the swim school from him, with the aim of eventually buying it over a period of time.¹²²³ AEA purchased the swim school from Mr Buck in 2002.¹²²⁴

AEA did not disclose the abuse to anyone at the time.¹²²⁵ AEA did not feel he could report the abuse to anyone at the Clovelly Surf Club or his family given Mr Buck's status as an Olympian and Australian sporting icon.¹²²⁶ AEA was also ashamed and concerned about the repercussions of reporting. As a swimming coach himself, AEA was concerned that 'any publicity about child sexual abuse would seem sinister' and could affect his livelihood.¹²²⁷

3.3 Police investigation

On 27 October 2000, NSW Police received a complaint from a former swimmer about Mr Buck sexually abusing AEA and AEA's brother.¹²²⁸

Strike Force Solano was established to investigate the allegations against Mr Buck.¹²²⁹ The investigation went for around five weeks, with 41 people identified as either victims or witnesses. NSW Police detectives spoke to 29 of these 41 identified victims or witnesses.¹²³⁰ AEA provided a detailed statement to police as part of the investigation, recalling 13 specific occasions where he was sexually assaulted by Mr Buck.¹²³¹

About one month later, the police investigation concluded with no charges laid against Mr Buck. It was considered there was insufficient evidence to charge Mr Buck because of the age of the evidence, inconsistencies in the evidence and the failure of other victims to come forward.¹²³²

AEA was contacted by Detective Sergeant Peter Yeomans from NSW Police and advised that Mr Buck would not be charged and prosecuted.¹²³³ AEA was told that many of the witnesses, to a point, did not disagree with him, but they did not want to come forward or make a statement. Other witnesses that AEA had mentioned in his police statement were deceased.¹²³⁴ The issue about the age of the evidence was not explained to AEA.¹²³⁵

3.4 Media interest in allegations of child sexual abuse

In December 2009, *The Daily Telegraph* published an article on Mr Buck and allegations of child sexual abuse within the swimming community.¹²³⁶ AEA was referred to (but not named) in the article. The article stated:

A three-month investigation by *The Daily Telegraph* has uncovered claims of sexual assaults by former Australian swim team coach and manager Terry Buck ...

NSW Police secretly formed Strike Force Solano at the end of the Sydney Olympic Games after being handed a list of 29 alleged victims and witnesses, including four Olympic swimmers. But the investigation was abandoned ... with little explanation despite the willingness of the swimmer, his younger brother and a third man to testify.¹²³⁷

The CEO of Swimming Australia at the time, Mr Kevin Neil, was quoted in the article as saying that the Board of Swimming Australia was surprised and unaware of any previous police investigation before being contacted by *The Daily Telegraph*.¹²³⁸

In response to the allegations raised in the newspaper article, Mr Neil sought and received legal advice quickly.¹²³⁹ The legal advice recommended that an investigation of the allegations be conducted in addition to a broader investigation of allegations of sexual abuse within the wider swimming community. It was also recommended that:

the investigation ... include a broader call for complaints to be raised with Swimming Australia where there is sexual abuse or misconduct with such a call being done in one or two ways

- a. if the allegations are made public, in a press release made by Swimming Australia;
- b. irrespective of whether the allegations are made public, through swim clubs and as a general reminder of the existence of the member protection Policy and the Child Welfare Policy and Swimming Australia's willingness to action the policies.¹²⁴⁰

The advice also recommended that Swimming Australia offer to arrange counselling for individuals who came forward.¹²⁴¹

On 6 December 2009, the Board of Swimming Australia agreed that the legal advice 'should be implemented'¹²⁴² and to refer the allegations back to the police investigation unit 'for further consideration'.¹²⁴³

At this meeting, the Board of Swimming Australia also discussed allegations against another employee. Mr Neil noted that the allegations were unfounded and that Swimming Australia had not received an official complaint from anyone.¹²⁴⁴ Mr Neil also advised that he had met with the employee and informed him that he was 'under no obligation to respond and should seek his own legal advice'.¹²⁴⁵ Swimming Australia offered to help the employee with legal advice and counselling if required.¹²⁴⁶

The Board discussed and agreed that the two matters should be treated separately and that the current employee should be 'stood down from his position as an employee of [Swimming Australia] with full entitlements until such investigations be completed'.¹²⁴⁷

The Board agreed to refer the other matter concerning the criminal allegation to police (in relation to Mr Buck)¹²⁴⁸ and to deal with the allegation of improper conduct by appointing an independent person to conduct an investigation on behalf of Swimming Australia.¹²⁴⁹

3.5 Swimming Australia's public call for victims of child sexual abuse

On 7 December 2009, Mr Neil read a pre-prepared statement to media, which was later issued by Swimming Australia, stating that 'Swimming Australia takes any allegation or incident seriously and we are appalled at the nature of these allegations'.¹²⁵⁰ The media release did not use Mr Buck's name specifically, but his name was being used by the media at the time.¹²⁵¹

In response to questions from a journalist, Mr Neil confirmed that any person was welcome to come forward in regard to allegations, that Swimming Australia would cooperate with police should the matter be reopened and that Swimming Australia would not be involved in a cover-up of any allegation.¹²⁵²

Complaints received

As a result of that public call, eight complaints were received. Four of them concerned child sexual abuse.¹²⁵³ Swimming Australia handled the complaints in collaboration with its solicitors¹²⁵⁴ and a barrister was appointed to undertake the wider investigation.¹²⁵⁵

Complainants who came forward were required to put their complaints in writing.¹²⁵⁶ If the complaint was criminal in nature, Swimming Australia would advise the complainant to report to police or to authorise Swimming Australia to report to police on their behalf.¹²⁵⁷ Swimming Australia would also encourage the complainant to seek legal advice.¹²⁵⁸

Where Swimming Australia determined that a complaint involved child sexual abuse or came within the Member Welfare Policy, the matter was referred to Swimming Australia's solicitors.¹²⁵⁹

Swimming Australia's solicitors provided a monthly report of allegations.¹²⁶⁰ Mr Anderson was questioned during the public hearing on a report that set out six allegations made as at 14 May 2010,¹²⁶¹ of which four related to allegations of child sexual abuse. The allegations and action taken are set out in the table below.

Complaint	Nature of complaint	Action taken
Complaint 1	Complaint predated public call. ¹²⁶²	No evidence was heard in relation to this complaint.
Complaint 2	Concerned conduct in the 1980s by a former coach and former member of Swimming Australia. ¹²⁶³ The complaint was made through the media.	<p>Swimming Australia issued a press release to encourage the complainant to come forward to Swimming Australia and to the police.¹²⁶⁴</p> <p>After the complainant contacted Swimming Australia by email, Swimming Australia's solicitors obtained further details from him about his complaint and provided a report to the CEO.¹²⁶⁵ The solicitors also asked that he provide a document that could be forwarded to police, but the complainant chose not to progress the matter further.¹²⁶⁶</p> <p>The matter could not be progressed further internally because the coach was no longer a member of Swimming Australia.¹²⁶⁷</p>

Complaint	Nature of complaint	Action taken
Complaint 3	Concerned abuse by coaches in the 1960s. ¹²⁶⁸ The complaint was made by email.	<p>Swimming Australia's solicitors sought further information from the complainant and made a report to the CEO.¹²⁶⁹ The solicitors asked the complainant to provide a written record, which was forwarded to police with her consent.¹²⁷⁰ The complainant chose not to progress the complaint with the police.¹²⁷¹</p> <p>Swimming Australia also provided her statement, with consent, to the Australian Swimming Coaches and Teachers Association 'so that they could be made aware of the sort of abuse that can happen in a swimming coaching environment, to assist them in better teaching coaches and swimming teachers'.¹²⁷²</p> <p>Swimming Australia also offered the complainant counselling and support at the time; however, the complainant did not feel she needed it at the time.¹²⁷³</p>
Complaint 4	Concerned bullying between coaches.	This complaint was dealt with separately. ¹²⁷⁴
Complaint 5	Concerned abuse in the 1960s corroborating AEA's complaint about Mr Buck. ¹²⁷⁵ The complainant telephoned the CEO of Swimming Australia directly ¹²⁷⁶ and the CEO referred the matter to Swimming Australia's solicitors.	<p>The complainant did not wish to make a written statement but, with his permission, the solicitors forwarded to the police a file note of their conversation with him.¹²⁷⁷</p> <p>Mr Anderson did not know whether Mr Buck was an accredited coach with Swimming Australia at the time of the alleged abuse.¹²⁷⁸</p>
Complaint 6	Concerned abuse by a former coach and former Swimming Australia member in 1978. ¹²⁷⁹	Swimming Australia obtained a written statement and forwarded it to police, with the consent of the complainant. ¹²⁸⁰

Consequences of public call

No complaints were received about current serving coaches or members of Swimming Australia at the time of the public call.¹²⁸¹ After no further complaints had been made for a number of months, Swimming Australia's solicitors proposed to close their files but would reopen them if any of the matters reactivated; if police investigations were finalised and the complainant sought further investigation by Swimming Australia; or if a new allegation was received.¹²⁸² Swimming Australia received no further complaints in response to the public call.¹²⁸³

A final report documenting what happened in respect of each complaint was not prepared; however, Mr Anderson gave evidence that he understood from his discussions with Swimming Australia's solicitors that all of the cases had been 'handled appropriately' and there were 'no outstanding matters'.¹²⁸⁴ He said there were 'quite detailed' file notes addressing each of the complaints.¹²⁸⁵ Mr Anderson was not sure what steps Swimming Australia took to follow up with the police where complaints were referred to the police,¹²⁸⁶ as required by the Child Welfare Policy.¹²⁸⁷

Mr Anderson confirmed in his evidence in the public hearing that the recommendation from Swimming Australia's solicitors to hold an internal inquiry into allegations against Mr Buck, and the swimming community more generally, had not been actioned.¹²⁸⁸

None of the complainants were provided with any form of compensation¹²⁸⁹ and only one of the complainants who came forward was offered counselling at the time.¹²⁹⁰

We are satisfied that Swimming Australia did not conduct an internal investigation of allegations of child sexual abuse made against Mr Buck, as required by the Child Welfare Policy.

AEA's awareness of public call and Swimming Australia investigation

AEA was not aware of the public call to come forward and Swimming Australia did not inform him that they were launching an internal investigation of child sexual abuse.¹²⁹¹ AEA had a conversation with Mr Stephen Foley, a former swimmer and acquaintance of AEA's brother as well as an officer of the court in child protection,¹²⁹² about the publicity. Mr Foley had spoken with Mr Neil at the time; however, AEA and Mr Foley did not speak about this conversation.¹²⁹³

AEA did not feel he could approach Swimming Australia at the time because he thought it might, among other things, damage his coaching career:

I'd just lost the lease on my third pool in succession within three years, and I've got a wife and two daughters who swim, and I've found it very hard to gain employment from that time to this in my chosen vocation of swimming. Even though I've coached world record holders and Australian champions and State champions over the years, I have virtually been blacklisted by the swimming community at the top end.¹²⁹⁴

3.6 Impact of sexual abuse on AEA

AEA gave evidence that Swimming Australia has never contacted him about the abuse or offered him counselling or support.¹²⁹⁵ AEA felt ‘ostracised by the swimming community’ when his story was made public.

As a result of the abuse, the police investigation and the publicity, AEA has suffered from hypertension and he received counselling in 2001 and 2013.¹²⁹⁶ AEA’s coaching career has been ‘irretrievably damaged’ and he has found it difficult to secure employment in swimming.¹²⁹⁷

3.7 Addressing future complaints

In addressing future complaints, Mr Anderson gave evidence that how Swimming Australia deals with matters ‘as they emerge’ is important to ensure that survivors of child sexual abuse are not deterred from making a complaint because they fear being ostracised.¹²⁹⁸ Mr Anderson explained that Swimming Australia is focused on the culture it wants to establish and part of that culture is ‘if there are victims that come forward or we think there are victims, to seek them out and make contact with them and support them, importantly, in that process’.¹²⁹⁹ Mr Anderson agreed that a good organisation will do everything it can to proactively seek out those that have been injured or potentially injured and provide assistance.¹³⁰⁰

Since commencing in the role of CEO at Swimming Australia, Mr Anderson has not done anything to seek out victims.¹³⁰¹ When questioned whether Swimming Australia was going to ‘proactively’ seek out victims, Mr Anderson stated that ‘it’s a difficult thing to seek out without knowing any information’;¹³⁰² however, ‘we’ll certainly be making contact with the individuals that are known’.¹³⁰³ This included AEA. Mr Anderson stated that it was his intention to approach AEA about his complaints against Mr Buck¹³⁰⁴ and ‘[make] contact with the individuals that are known’ in relation to Mr Buck.¹³⁰⁵

Since the public hearing, Swimming Australia has advised the Royal Commission that it has written to the representatives of all victims, including AEA, to offer counselling.¹³⁰⁶

4 Stephen Roser

4.1 Introduction

Scone Swimming Club is a local swimming club run by volunteers¹³⁰⁷ in Scone, New South Wales. Mr Stephen Roser was a coach at the club from 1985 to 1986.¹³⁰⁸ During summer of 1985–1986, AEB was sexually abused by Mr Roser.¹³⁰⁹ AEB was 13 years old at the time the abuse started.¹³¹⁰

Mr Roser left Scone Swimming Club sometime in 1986 or 1987.¹³¹¹ Some years later, AEB reported the abuse to the police and Mr Roser was charged in July 1994.¹³¹² Mr Roser plead guilty and was convicted in December 1994 of indecent assault on a child under 16 years in relation to AEB and one other complainant.¹³¹³

This case study examined the response of Scone Swimming Club to Mr Roser's conviction for child sexual abuse offences after AEB brought the conviction to the club's attention.

4.2 Sexual abuse of AEB

AEB started swimming training at the Scone Memorial Pool when she was eight years old. By the 1984–1985 swimming season she had begun to win regional races. At the age of 13, AEB was the 'fastest female breaststroker in the club and the district',¹³¹⁴ attending swimming training four days a week and racing one night a week.¹³¹⁵

Mr Roser was the only coach at the pool during the 1985–1986 season.¹³¹⁶ At one training session in December 1985, Mr Roser asked AEB to try a new 'technique' to improve her breaststroke. He instructed her to float stomach-down in the water in front of him and to wrap her thighs around his hips and 'stroke' with her arms without using her legs. Mr Roser was supporting AEB in the water when he moved his hands to her inner thighs and began 'toying with the edge of her swimmers'. Mr Roser moved his fingers over the top of AEB's swimmers and started to rub her pubic mound. He then moved his fingers inside her swimmers and began to rub and probe her vagina.¹³¹⁷

Mr Roser repeated this abuse on three further occasions¹³¹⁸ during training sessions in the pool as well as in the clubhouse.¹³¹⁹

Following the 1985–1986 swimming season, the Scone Swimming Club awarded AEB the inaugural Stephen Roser Breaststroke Award.¹³²⁰ AEB gave evidence it made her 'nauseous to think that ... more or less 29 kids have received that trophy', including her and another victim of Mr Roser's.¹³²¹

AEB did not tell anyone at the time about the abuse. AEB disclosed the abuse to a friend in 1991 after reading an article about child sexual abuse that triggered the memory of the abuse she had suffered.¹³²² In late 1992, AEB told a counsellor and also disclosed the abuse to her then partner.¹³²³

4.3 Criminal process

In August 1993, AEB reported the abuse to the police and made two statements.¹³²⁴ Mr Roser was charged in July 1994¹³²⁵ and convicted in December that year after pleading guilty of indecent assault on a child under 16 years in relation to AEB and one other complainant.¹³²⁶

On the charge concerning AEB, the court sentenced Mr Roser to 200 hours of community service.¹³²⁷ On 15 December 1994, the New South Wales ODPP wrote to AEB to tell her that Mr Roser had been convicted and sentenced.¹³²⁸

AEB suffered from ‘stress and violent nightmares in the weeks’ after she made the statement to police.¹³²⁹ AEB felt that the police and ODPP had not assisted her through the investigation and prosecution. For example, AEB did not know what was involved in the police investigation or whether the police or ODPP had notified the Scone Swimming Club.¹³³⁰ Mr Cowdery QC, then New South Wales DPP, gave evidence during the public hearing that it would be ‘normal practice’ where an accused pleads guilty for the prosecutor to consult with the victim about the statement of agreed facts in the matter.¹³³¹

AEB prepared a Victim Impact Statement for the purpose of the proceedings.¹³³² She could not recall anyone helping her to prepare her statement¹³³³ and she was also not informed why only part of the statement was allowed into evidence.¹³³⁴

Mr Cowdery QC gave evidence that it would not have been the normal practice at that time for a victim to be given assistance to prepare a Victim Impact Statement;¹³³⁵ however, it was normal practice for a prosecutor to advise a victim if some parts of the statement were not admissible in court.¹³³⁶

AEB did not understand the punishment imposed on Mr Roser at the time¹³³⁷ and she wished someone had explained it to her in plain English.¹³³⁸ AEB became aware from media reports that Mr Roser completed building work for a Scout group as part of his community service.¹³³⁹

Mr Cowdery QC gave evidence that prosecutors have no role in determining where an offender serves a community service order.¹³⁴⁰ Mr Cowdery QC agreed that ‘any sensible approach’ would require the people responsible for making decisions about community service to take into account the person’s suitability for a particular placement – for example, where they might come into contact with children.¹³⁴¹

4.4 Impact of sexual abuse on AEB

As result of the abuse, AEB developed an anxiety disorder, became depressed and suicidal and developed a severe phobia, for which she received counselling in 1992.¹³⁴² She continued to

receive counselling in 1993 after she told her counsellor about the abuse.¹³⁴³ During the criminal proceedings, AEB instructed a solicitor to make an application on her behalf to the New South Wales Victims Compensation Tribunal for victim's compensation.¹³⁴⁴ A psychologist report obtained on her behalf to assist with the application diagnosed AEB as having suffered from depersonalisation disorder (which significantly impaired her educational and social functioning) and post-traumatic stress disorder.¹³⁴⁵ Although the tribunal initially rejected her application for being out of time, AEB appealed and the tribunal ultimately awarded her \$40,000 in compensation.¹³⁴⁶

Since reporting the matter to the police, AEB has been able to complete her university studies, including a Bachelor of Arts (Honours) degree, two graduate diplomas and a Master of Education.¹³⁴⁷

In coming forward to the Royal Commission, AEB wanted to raise the issue that:

abuse happens not only in the big institutions but also in small institutions like the Scone Swimming Club. Victims of abuse in that setting also need significant, lifelong support.¹³⁴⁸

4.5 Response of Scone Swimming Club, Swimming NSW and Swimming Australia

Relationship between local, state and national swimming bodies

Under the Swimming Australia Constitution, local clubs such as Scone Swimming Club are members of Swimming Australia through their affiliation with a state swimming association.¹³⁴⁹ To be affiliated with a state association, local swimming clubs must agree to be bound by Swimming Australia's policies and procedures.¹³⁵⁰

The Scone Swimming Club is affiliated to Swimming NSW. Its Constitution provides that it must comply with the directions of Swimming NSW.¹³⁵¹ By-laws or club rules made pursuant to the Scone Swimming Club Constitution must not be inconsistent with rules adopted or recognised by Swimming NSW.¹³⁵²

Individual members of Scone Swimming Club pay an annual fee to register with Swimming NSW.¹³⁵³ The effect of registration is that individuals registered with Swimming NSW are considered to be members of Swimming Australia and are bound by the Constitution, by-laws and policies of Swimming Australia.¹³⁵⁴

Swimming NSW has formally adopted Swimming Australia's child protection policies.¹³⁵⁵ Mr Mark Heathcote, the current CEO of Swimming NSW, outlined in his statement to the Royal Commission that, when the Swimming NSW Board adopts a policy, notification is provided to clubs by electronic newsletter. The newsletter is sent out each month, usually within a few days of the monthly Board meeting.¹³⁵⁶ These policies are also posted on Swimming NSW's website.

When an individual registers as a swimmer, the local club will provide them with a swimmer kit from Swimming Australia. Swimming Australia relies on the state associations to ensure that these policies are being implemented at the club level.¹³⁵⁷ From September 2013, Swimming Australia has handed out 22,000 new member kits to state associations to distribute to new members.¹³⁵⁸

Within this kit, there is a pack of information that contains, amongst other things, a parent information pack that refers to the Swimming Australia Child Welfare Policy but does not contain the policy itself.¹³⁵⁹

AEB contacts Scone Swimming Club

AEB contacted Scone Swimming Club by email in or around 2009 to ask whether the club still awarded the Stephen Roser Breaststroke Award.¹³⁶⁰ AEB gave evidence that it was ‘something that has worried’ her ‘for a long time’. She thought:

maybe it had just discontinued [the Stephen Roser Breaststroke Award] for some reason or that maybe the police had notified the club and it had been discontinued. I really didn’t think it would still be going, but I just wanted to make sure.¹³⁶¹

AEB did not recall receiving a response to her email.¹³⁶² AEB again emailed Scone Swimming Club on 23 November 2012 and 15 January 2013 using an address from the Swimming NSW website but again did not receive a response.¹³⁶³

The current President of the Scone Swimming Club, Ms Joanne Wright, gave evidence at the public hearing that the club could not locate any record of emails from AEB.¹³⁶⁴ On the days AEB sent the emails in 2012 and 2013, AEB checked the Swimming NSW website for the correct contact details. AEB realised that it was possible the Scone Swimming Club did not receive her emails because the contact details from the Swimming NSW website were not current or correct.¹³⁶⁵

AEB again obtained an email address for the Scone Swimming Club from the Swimming NSW website on 7 February 2014.¹³⁶⁶ This email address was not the correct contact for the Scone Swimming Club, but the recipient of the email ultimately provided AEB with an email address for Ms Katherine Meier, the then Secretary of the club, on 17 February 2014.¹³⁶⁷

AEB succeeded in contacting Ms Meier on 17 February 2014.¹³⁶⁸ AEB informed Ms Meier that Mr Roser had been convicted of child sexual abuse offences and requested that Scone Swimming Club remove Mr Roser’s name from the list of club champions, all other publications and any associated champion boards as well as from the Stephen Roser Breaststroke Award and connected trophies if they were still being awarded.¹³⁶⁹

Response of Scone Swimming Club to AEB's concerns

Ms Wright only became aware of the offences that Mr Roser had committed through AEB's email to Ms Meier.¹³⁷⁰ Ms Wright has been a member of the Scone Swimming Club since about 2010¹³⁷¹ and has volunteered as the President of the club since April 2014.¹³⁷²

After contact from AEB, the Scone Swimming Club committee met on 4 March 2014 and agreed to remove Mr Roser's name from the Stephen Roser Breaststroke Award, list of club champions in the club book and 'all other club materials from now and in the future unanimously'.¹³⁷³

Ms Wright was unaware why the Scone Swimming Club committee had previously taken no action concerning Roser's conviction.¹³⁷⁴ Mr Cowdery QC gave evidence that the ODPP had no responsibility for informing the swimming club of the arrest or conviction.¹³⁷⁵

Scone Swimming Club committee did not communicate with Swimming NSW or Swimming Australia about Mr Roser's conviction after being notified by AEB. The club did not consider notifying former club members about the conviction.¹³⁷⁶ Ms Wright gave evidence that:

[The committee] reacted and tried to assist as best we could [after being contacted by AEB and the Royal Commission] and I guess not having an understanding of our requirements to contact New South Wales Swimming.¹³⁷⁷

Ms Wright stated that in future she would notify Swimming Australia through relevant channels if another victim of historical abuse comes forward to Scone Swimming Club.¹³⁷⁸ Ms Wright agreed that it was important that people who were members at the time Mr Roser was at the club should be advised.¹³⁷⁹

AEB contacts Swimming Australia

AEB contacted Swimming Australia by email on 10 February 2014 to enquire about the child welfare policies in existence in the 1980s.¹³⁸⁰ AEB received a telephone call from Ms Melissa Backhouse at Swimming Australia, who explained that the Child Welfare Policy was not introduced until 2002.¹³⁸¹ AEB did not have any further contact with Swimming Australia.¹³⁸²

Mr Anderson, the current CEO of Swimming Australia, first became aware of AEB's complaint through the Royal Commission process.¹³⁸³ Mr Anderson confirmed that Swimming Australia was not contacted by Scone Swimming Club.¹³⁸⁴

Mr Anderson gave evidence that if another such matter occurred he would expect the swimming club or state member association (for example, Swimming NSW) to notify Swimming Australia.¹³⁸⁵ Mr Anderson understood that many local clubs are small and manned mainly by volunteers,¹³⁸⁶ however, it is Swimming Australia's expectation that coaches in these clubs would not be volunteers but would be accredited coaches.¹³⁸⁷

Mr Anderson gave evidence that Swimming Australia will be approaching victims of historical abuse to offer counselling or other services.¹³⁸⁸ Mr Anderson said that Swimming Australia will approach AEB when the public hearing is finalised.¹³⁸⁹ Mr Anderson also agreed that it would 'make good sense and provide a great insight' if Swimming Australia sought input from victims on the development of a Child Wise Policy.¹³⁹⁰

4.6 Policies and procedures of Scone Swimming Club

Before 3 June 2014, the Scone Swimming Club did not have a dedicated child sexual abuse policy.¹³⁹¹ Ms Wright gave evidence that the previous Scone Swimming Club committee members implemented a policy that required volunteers to fill out a Working with Children Check form.¹³⁹² Ms Wright did not indicate a date when this policy was introduced. Ms Wright also gave evidence that no amended or adopted policies from Swimming NSW have been presented through the Scone Swimming Club committee forum.¹³⁹³

Ms Wright did not recall receiving any material from Swimming Australia or Swimming NSW when she joined the Scone Swimming Club.¹³⁹⁴ She had not seen the Swimming Australia Parent Handbook and was not aware of the new member kit.¹³⁹⁵ Ms Wright said that, when she joined the club as a parent, no-one drew her attention to child protection issues, told her about any policies or gave her any information about child abuse.¹³⁹⁶ She did receive a club book, which she said outlined the role of the club, points of contact, committee members and the availability to attend swimming carnivals.¹³⁹⁷

Since becoming President of the Scone Swimming Club, Ms Wright stated that there has been no regular communication between the Scone Swimming Club and Swimming Australia or Swimming NSW. She does not know who to approach in those organisations if she needs to.¹³⁹⁸

When questioned about whether Scone Swimming Club receives any newsletters or brochures from Swimming NSW or Swimming Australia, Ms Wright replied, 'I believe that at times there is some correspondence coming through the club secretary, but predominately we would go searching for that information ourselves'.¹³⁹⁹ Ms Wright was also unaware whether the Scone Swimming Club had recently received any new member kits from Swimming NSW to provide to new people joining Scone Swimming Club.¹⁴⁰⁰

Recent changes

On 3 June 2014, as a result of the letter from AEB and inquiries from the Royal Commission, the Scone Swimming Club committee formally adopted the Swimming Australia policies and procedures about child welfare.¹⁴⁰¹ Ms Wright gave evidence that she identified these policies from the Swimming Australia website. She did not look at the Swimming NSW website.¹⁴⁰²

Currently, the Scone Swimming Club does not engage a coach or offer structured training, but it does hold weekly races for child members.¹⁴⁰³ The Scone Swimming Club will now make available the policies and procedures to all members and will post a copy in the clubhouse during the swimming season, which recommenced in October 2014.¹⁴⁰⁴ They will also incorporate reference to child protection and complaint-handling policy into the club book.¹⁴⁰⁵ Ms Wright is aware from recent training that club is required to have member protection information officer. They will appoint an officer and notify to Swimming NSW and Swimming Australia as required.¹⁴⁰⁶

Ms Wright indicated that it would be helpful to receive training from Swimming Australia and Swimming NSW about its child protection policies and to have a contact person within those organisations.¹⁴⁰⁷ She said that, because of turnover of volunteers, this would be suitable annually and at a district level.¹⁴⁰⁸

5 Systemic issues

Systemic issues

The systemic issues that arise from this case study include:

- processes for prosecution of child sexual abuse offences in relation to ensuring justice for victims
- the recording of reasons for decisions
- independence and oversight of Directors of Public Prosecution
- the operation of Working with Children Checks systems
- complaint handling.

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: Advice of Margaret Cunneen

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DEPUTY SENIOR CROWN PROSECUTOR'S CHAMBERS
New South Wales

THE DIRECTOR OF PUBLIC PROSECUTIONS

26 MAR 2004

SCOTT ALEXANDER VOLKERS

Request by Queensland DPP for Advice re Further Proceedings

BACKGROUND

1. On 25 July 2002, Scott Volkers, an internationally renowned swimming coach, was committed for trial on seven counts of Indecent Dealing with Children under the Age of 16 years in relation to allegations by three complainants who had been coached by him as teenage girls.
2. On 18 September 2002 the DPP (Qld), decided to discontinue the charges prior to the presentation of any indictment on the basis that there was no reasonable prospect of conviction.
3. The conduct of the prosecution was referred to the CMC (Qld) (CMC) which published a report, in March 2003, which was critical of some aspects of the handling of the matter within the Office of the Director of Public Prosecutions (Qld).
4. The CMC was most critical of a meeting held between the Deputy Director of Public Prosecutions and Volkers' lawyers during which a number of statements favouring the defence were shown to the Deputy Director of Public Prosecutions

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so that they might (without further investigation of them) assist him in coming to a decision as to whether the matter should continue.

5. This was criticised as having put pressure on the prosecution to discontinue the proceedings.
6. Four other criticisms, "*of lesser importance*", all concerned Complainant 3, Julie Gilbert, who had alleged two indecent approaches by Volkens in the massage room of a swimming pool during training and two in the caravan in which he lived. Her third allegation was by far the most serious of all of the allegations, namely that Volkens put his hand into her swimming costume and rubbed her clitoris until she had an orgasm when she was 13.
7. The CMC criticised the Director of Public Prosecutions for:
 - Misapprehending the length of time Ms Gilbert had said Volkens was away from the pool;
 - Making too much of the damage done to her credibility by Witness K (a defence witness who would say that she had never gone into the sauna and massage room with Volkens when Gilbert said she had seen this occur – when Gilbert was told of K's statement she modified the contention to merely having seen K at the doorway);
 - Giving too little analyses of the prospects of conviction on the caravan offences (including consideration of proceeding on those alone);
 - Giving too little attention to the possibility that Ms Gilbert would "*simply be believed by a jury*".
8. Ms Gilbert had been critical of the Office of the Director of Public Prosecutions when interviewed for "*Australian Story*" which went to air on 10 February 2003 (the month before the CMC Report was handed down).

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9. The Queensland Police Service, of its own initiative, reopened the investigation and produced a quantity of new material (which seems largely to consist of diagrams of pool complexes, lists of swimming meet participants, car transfer and conveyancing records and meteorological reports) which was delivered to the Director of Public Prosecutions between May and November 2003.
10. The Director of Public Prosecutions (Qld) seeks advice whether:
 - (i) there is sufficient new evidence to justify recharging Volkers in relation to any of the original allegations; and
 - (ii) there are reasonable prospects of convictions in respect of any new allegations.

OFFENCES ALLEGED BY KYLIE Rogers **DOB** REDACTED **71**

11. Ms Rogers is now 32 years of age. She alleges two offences against Volkers:
 - (i) Volkers offered to massage her back at his home in August or September 1986 but instead massaged her bare buttocks after placing his hands underneath her shorts and underpants. She states he touched the inside of her upper legs but did not touch her "vagina". The incident was interrupted by Volkers' wife "turning up at the front door".
 - (ii) Around September 1986 while Volkers was driving her to swimming training he suggested she change the gears. While she did this he rubbed "her vagina", on top of her swimmers, for "virtually the whole trip" (approximately 15 minutes).
12. Rogers states that Volkers would rub her "vagina" at least once a week, sometimes moreover one and a half years. This was on the outside of the swimming costume. Volkers referred to her as "Hot Pants" and "Buns" and told her would like to come back (in the next life) as her "pool buoy". This latter comment is something Volkers said to a number of girls, a pool buoy being a

floatation device the swimmers put between their legs while working on their stroke.

13. During 1987 [Rogers] developed anorexia nervosa and her swimming deteriorated. She stopped swimming training and last saw Volkens on 16 December 1987. In late 1988 or early 1989 [Rogers] told some counsellors that Volkens had indecently dealt with her. [Rogers] developed depression.
14. [Rogers] states that she told her mother in 1988 or 1989, in general terms, that Scott "molested" her although her mother says that the complaint was made in 1993.
15. In 1997 [Rogers] saw Simone Boyce at the Brisbane Entertainment Centre and was asked by Boyce "if he did to me too" and she said "Yes". Boyce agreed "he did to her too".
16. On 27 November 2001 the Police contacted [Rogers] and asked her whether Volkens had sexually assaulted her. Police had been told by Simone Boyce that [Rogers] may have some information.
17. On 17 December 2001 [Rogers] had a conversation with Volkens which was recorded by listening device. She put to him that he had rubbed her vagina in the car and he said:

"...I didn't do anything that I...I was upsetting you..I don't think I was rubbing you on purpose to do anything. I know that I was doing your leg, remember you had asked".

She told him he had rubbed her backside and he said:

"I don't..I don't..I don't recall that. I mean there's certain like...muscles that tighten up exercises I mean your glute muscles...but I don't remember ever doing that to be honest...if you're doing a massage that people whether it be pecs or whether it be shoulders or you know groin which I've had to do with a lot of people...you know [REDACTED] and things like that...you know obviously that it's something that they don't agree with I'd rather them say hey that's enough of that you know".

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Then [Rogers] told Volkers about her anorexia and her marriage breakdown and said:

"I mean did you love me...or were you infatuated with me...were you obsessed with me or something"?

Volkers said:

"You were just a girl...that...you were going through some sort of trouble already...I remember you told me you were thinking of committing suicide...you were having trouble with your parents..I don't remember the details or anything like that."

She invited him to apologise for "overstepping that boundary" and he said:

"Yeah...well yeah depends yeah...I mean like I said I can only apologise to you if...anything I did upset you I don't remember a couple of things you're saying...I've trained a lot of people in my time...I think I tried to help you I really did...maybe...its...you know mistook it the wrong way."

NEW EVIDENCE RE [Rogers]

18. A new statement was obtained from Susan Ogarsby, the psychologist who treated [Rogers] for anorexia in 1988. She had made notes then while seeing [Rogers]

"Pt had been coach's pet...uncomfortable re his behaviour...no significant sexual behaviour other than his suggestive comments and touches (not intimate)."

19. Ms Ogarsby says now that:

"The fact that Kylie reported no significant sexual behaviour other than her coach's suggestive comments and touches is not necessarily indicative of the occurrence or non-occurrence of this actually occurring."

20. She goes on to note that the records from June and July 1988 "suggest a significant level of psychological distress reported by Kylie during the time leading up to the assessment, involving suicidal ideation and self-harming behaviour".

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21. Other new evidence was obtained which supported [Rogers] recollection of features of Volk's home in 1986. (As it is not suggested [Rogers] never visited the home this does nothing to fortify her allegations. The same applies to records about his car, which everyone agrees she did travel in).

OTHER FACTORS AFFECTING PROSPECTS OF CONVICTION RE [Rogers]

22. [Rogers] medical file contains material which is enormously damaging to her credibility. Her parents had her committed to a Mental Health Institution in 2001 because:
- (i) [Rogers] believed her mother had an affair with Volk's;
 - (ii) She falsely accused a family member of stealing her car and abducting her children; and
 - (iii) She had regressed to her childhood and was confused about reality.
23. A Dr Curtain indicated that [Rogers] in 2001, was acting irrationally and erratically. The Intake Notes of the District Mental Health Service record a false complaint by [Rogers] to Police that her husband had abducted their children and an allegation that her parents had known of and condoned Volk's sexual abuse of her (which conflicts with her later statement that she told her mother about Volk's in 1988 or 1989).
24. A further difficulty is that some evidence suggests that the incident in the car may well have occurred after [Rogers] turned 16. In that case, lack of consent would also have to be proved in circumstances in which the complainant does not suggest she attempted to convey such a thing.

OFFENCES ALLEGED BY SIMONE BOYCE: DOB [REDACTED] 75

25. Ms Boyce is now aged 28. She alleges one offence against Volk's.
26. During summer 1987, when she was 12, Volk's invited her to his home to babysit his infant daughter. Volk's did not leave the house. He offered Ms

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Boyce a massage in the loungeroom and she declined. Volkers proceeded to massage her neck anyway. He moved to the arms and back. He stuck his tongue into her ear. She was wearing a swimming costume with the straps pulled down to below the armpits and a T-shirt.

27. Volkers touched Ms Boyce's stomach area and then massaged both breasts and touched the nipples, which became hard. The touching of the breasts continued for 20 to 30 seconds and he stuck his tongue into her ear again as he did it. Then he put his hands back onto her stomach and then stopped.
28. Ms Boyce told no one at the time, although she avoided massages by Volkers, as she was intent on becoming an elite swimmer under his tutelage.
29. In 1995 she told her mother, in vague terms, about the incident. She also told Dr Margaret Cotter.
30. In 1997 Ms Boyce saw Kylie Rogers at the Brisbane Entertainment Centre. (At about the time that Volkers had indecently touched her she had seen Volkers put his tongue into Ms Rogers ear). She said to Ms Rogers "Did he to you?" and she replied: "Yes, did he to you?". She said: "Yes".
31. In November 2001 Boyce complained to Police and told them that Kylie Rogers had been similarly molested.

NEW EVIDENCE RE BOYCE

32. New statements have been obtained concerning colours of the lounge and floor covering in Volkers' home in 1986, and the recollection of Boyce's mother as to her daughter's visit there, which she recalls coincided with the visit of another girl, AEG
33. Ms AEG has also given a statement in which she recalls going to Volkers' home at the relevant time, (although she does not remember Boyce there), and recalls that either the lounge or carpet was blue/grey. Her mother, REDACTED

proffers the recollection that on at least one occasion her daughter visited Volkens she told her mother that Simone Boyce was going to be there.

34. Dr Margaret Cotter's new statement ventures the opinion that the major triggering factor for the major depression for which she has been treating Boyce since September 2001 was the inappropriate conduct of a sexual nature, towards her, by Scott Volkens.
35. This additional evidence does nothing to support Boyce's allegation and Dr Cotter's hypothesis seems, in view of the trivial nature (relative to the nature and duration of most sexual assaults which come before the courts) of the allegation, almost fanciful.

OTHER FACTORS AFFECTING PROSPECTS OF CONVICTION RE BOYCE

36. Two months before her complaint to Police, Ms Boyce commenced medical treatment for "major depression" from the doctor who attributes her condition solely to Volkens' having touched her breasts on a single occasion 14 years before when she was 12. The illness, and its alleged cause, would give rise to substantial attack on the credibility of Ms Boyce (and her doctor) in any trial in relation to this matter.

OFFENCES ALLEGED BY JULIE GILBERT (nee [REDACTED] DOB [REDACTED])

37. Ms Gilbert is a physical education teacher and mother of four, now aged 33. She alleges four offences against Volkens:
- (i) Around August, September 1984 he asked her to go to the massage room. He said: "*Lay on the table on your back*". She did. He massaged her shoulders and then moved his hands over her breasts in a caressing motion. (Her breasts were not yet fully developed and she was wearing two pairs of swimming costumes). Volkens said "*You're frigid and very stiff. The other girls don't mind doing this*".

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- (ii) About a week later Volkers asked Ms Gilbert to go to the massage room. He asked her to lie on her front. He said *"Pull your togs down to your waist."* He massaged her back and said *"roll over onto your back."* Volkers said *"You are very flat..."* then touched her breasts.
- (iii) Just before her 14th birthday in January 1985 Volkers asked Ms Gilbert to meet him at his caravan and she was dropped off there by her mother. Volkers said to her *"Go up to my bed and I'll give you a massage"*. She did as she was told. She was wearing two pairs of swimmers and shorts over the top. Volkers put his hands between her legs and inside her swimmers. He rubbed her clitoris and vulva and she experienced an orgasm.
- (iv) About two days later Ms Gilbert went to Volkers' caravan and he said to her: *"Take your shirt off and lay down on your stomach."* She was clothed as on the last occasion. He put his hands inside her shorts. She said: *"No"*. He stopped and she left.

- 38. No sexual activity occurred between them after that date.
- 39. Ms Gilbert told her husband just before their marriage in 1993 that Volkers had molested her.
- 40. When she heard that Volkers had been arrested in relation to the indecent assaults upon two other girls she deliberated over going to the police to make a complaint but came to the view that no one would believe such a thing of *"one of Australia's best swimming coaches"*.
- 41. On 29 April 2002 the police approached her in the course of their investigation and she made her statement on 30 April 2002.

NEW EVIDENCE RE GILBERT

- 42. Additional statements have been obtained about a knee operation upon Gilbert around the time she alleges the first indecent dealing. While it assists to date the allegation, it does nothing to support it.

43. Two witnesses, one being the mother of the complainant [Rogers] say they recall seeing Gilbert walking with Volkers in the vicinity of the door of the sauna (beyond which is the massage room in which she alleges the first two indecent dealings occurred).
44. New statements were also obtained from many former swimmers to the effect that:
- (i) It was not unusual for Volkers to leave the pool deck during training (to counter the many witnesses who say it was); and
 - (ii) Volkers often used a blackboard during his training (as Gilbert maintains, apropos of nothing, to counter the many witnesses who say he did not).
45. Swimming programmes tending to confirm the dates for the third and fourth allegations were also obtained which, of course, lend no support to the allegations themselves.

OTHER FACTORS AFFECTING PROSPECTS OF CONVICTION RE GILBERT

46. One of the major matters which troubled the DPP (Qld) in relation to Gilbert's credibility was her willingness to change her evidence when confronted with a contrary account by another witness. In her original statement of 30 April 2002, Gilbert made her allegations concerning the sauna and massage room and said: *"The only other person that I saw go into the sauna and massage room with Scott was [AEH]".* Ms [AEH] was approached by Police and she would not speak to them as she had already contacted Volkers' lawyers. Volkers' lawyers provided a statement from [AEH] to the Deputy DPP (Qld) in the controversial circumstances which were criticised by the CMC (see paragraph 4 above). [AEH] said in her statement: *"I did not on any occasion remember going into the massage room with Scott as contained in the statement of (Gilbert)".*
47. When Gilbert was apprised of the contents of [AEH] statement, (in breach, according to Volkers' lawyers, of the agreement between them and the Deputy DPP) she said: *"What I meant was that I saw her at the doorway off the pool*

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deck that enters into the room that I think Scott used to write programmes that led into the massage room and the women's gym. I remember that when I saw AEH at the door, while I(sic) resting between sets and I couldn't see if she went into the massage room or sauna from where I was". (Statement of 22 January 2003).

48. This would certainly be fertile ground for a savage attack on Gilbert's credibility. However, the CMC criticises the DPP (Qld) for not considering prosecuting Volkers only on allegations (iii) and (iv), which are said to have occurred in his caravan and not in the massage room.
49. I am at a loss to see how jettisoning allegations (i) and (ii) would avoid an attack upon Gilbert's credibility based on this issue. Cross-examination need not be confined to matters pertaining to the charges. It is submitted that there is nothing to be gained through the artificiality of proceeding only on the two charges for which there is, as yet, no contrary evidence.
50. My much greater concerns about the credibility of Ms Gilbert arise from two matters which trouble me and which, I am certain, would trouble a jury. The only serious indecent dealing alleged by Gilbert (or by any of them) is incident (iii). No other direct genital contact is alleged. (I also find it somewhat novel that no one alleges that Volkers ever exposed himself or encouraged any touching of his genital area).
51. The trouble with Gilbert's allegation (iii) is, as I see it, the unlikelihood that a 13 year-old girl would have experienced an orgasm while being indecently assaulted. Firstly, one must envisage that there would be sufficient manual leverage for Volkers to manipulate the clitoris of a girl who had never before had an orgasm while she was wearing two pairs of tight nylon swimming costumes and a pair of shorts. Secondly, and this is quite unlike the situation that pertains when an adolescent male is assaulted and experiences orgasm as an involuntary (and momentarily pleasant) reflex, it is difficult to accept that Gilbert could have been feeling sufficiently relaxed for orgasm to ensue. Indeed, she says in the paragraph in which she makes the allegation in her statement of 30 April 2002: *"I remember feeling scared"*. This, it is submitted, is completely inconsistent

with the mental amenability required for a female to achieve orgasm, particularly for the first time. (I interpolate that I have frequently seen occasions where male victims have had an orgasm while being sexually assaulted, and the best witnesses among them explain that, while the moment of orgasm was pleasurable, the sexual assaults and their contexts were ghastly). I have never before, in the many hundreds of sexual cases that have crossed my desk over the last 18 years, seen a female complainant who experienced orgasm during the assault).

52. Thirdly, the concept of female orgasm is very difficult to explain. Gilbert says: *"I couldn't explain what I felt, but now that I am an adult I experienced an orgasm"*. This suggests that Gilbert did not realise what she felt until several, perhaps many years later. There is a connotation of reconstruction at a later time.
53. The other issue which strikes me as disturbing in relation to Ms Gilbert's credibility is that the overwhelming impression one gets from the hours of tapes she recorded for Australian Story is that it was ceasing swimming training which pained her far more than Volkers' approaches. Transcript J records:

"...I ran away from it. I gave up swimming...And if people asked me...why did you give up swimming? Oh dad really wanted me to concentrate on my schoolwork and that was the reason I gave...I think probably the hardest time I really felt was when I started my Phys Ed course...you come out against people who obviously represent Queensland for a number of sports, whether its rugby league or rugby union, you've got hockey players, netballers and the all talk above their sport...And I think, oh, you know, I wish I could say I recently made a Queensland side, and I couldn't say that...I wish I could have found out how good I could have been".

54. In the context of Ms Gilbert's deteriorating performance due to ill-health in the months leading up to the allegations and the fact that she did not simply change coaches, she does come across as someone looking for someone to blame for not being a more successful swimmer.

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55. Also of concern as it affects credibility is the fact that Ms Gilbert returned to Volkers in 1997, when already a physical education teacher, to gain accreditation with him as a swimming coach. Her husband's statement indicates that he met Volkers then and apparently did nothing to discourage the association even though both Ms Gilbert and her husband say she told him of Volkers' abuse shortly before they married three years before.

SEPARATE TRIALS

56. There is nothing to justify the prosecution of the several complainants' allegations in a single trial. Separate trials would be inevitable.

SIMILAR FACT/PROPENSITY EVIDENCE

57. Additional statements have been obtained from a number of girls about various unsavoury incidents and the inevitable conclusion from the brief as a whole, is that Scott Volkers was a thoroughly disreputable man given to inappropriate touching and comments towards young swimmers in his charge.
58. AEI [REDACTED] indicates that when she was 12, Volkers was massaging her and she felt his hands on the sides of her breasts. (It is legitimate to consider whether 12 year-old swimmers even had breasts, but that is the allegation). She does not however confirm the making of a comment which Ms Gilbert says Volkers' made in her presence. She does not wish to make any formal complaint.
59. REDACTED [REDACTED] says: *"I recall Scott as being very touchy. At the time I was flattered by his affection.....the attention I got from Scott was welcomed. I enjoyed it. I also recall that I was going through changes and found Scott an attractive guy. I think back now that I am a woman and feel that Scott touching me on the leg and shoulder was inappropriate...Scott liked bums. He would always comment on them".*
60. Volkers' stepbrother, Robert Law, states that he saw girls coming out of Volkers' caravan at the relevant times but does not know who they were. He has also seen Volkers massage girls under their T-shirts on the sides of their breasts.

61. Clearly Volkens crossed the appropriate boundaries when it came to the girls under his charge but the situation is complicated by the fondness of many of them for him. Kylie Rogers for example, told her psychologist she had been "her coach's pet". It is also significant that there is now much greater awareness of inappropriate touching and greater observation of the requisite standards today than there was 16-19 years ago.
62. None of the existing or additional evidence would qualify as similar fact or propensity evidence.

PROSECUTION POLICY

63. The DPP (Qld) invites attention to her Guideline 16(v) which provides that a decision to discontinue a prosecution will be not reversed unless:
- significant fresh evidence has been produced or the decision was obtained by fraud; and
 - in all the circumstances, it is in the interests of justice that the matter be reviewed.
64. It is submitted that neither of these criteria has been fulfilled. Nonetheless the matter has been exhaustively reviewed.
65. I am of the view that the decision of the DPP (Qld) not to proceed with the prosecution of Volkens on any matter was a correct one.
66. Prosecution Guideline 4 (Qld) imposed a two-tier test:
- is there sufficient evidence?; and
 - does the public interest require a prosecution?
67. The sufficiency of evidence test requires consideration of the prospect of conviction before a reasonable jury.

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68. It is patently clear that Ms Rogers psychiatric history and false allegations about members of her family would be fatal to her credibility. These charges have no prospect of resulting in convictions.
69. In relation to Ms Boyce's single allegation of the touching of her breasts in the context of a massage when she was 12 years old, it is considered that there is no prospect of conviction largely due to the relative triviality of the offence alleged and the length of time (over 16 years) since it happened. It must be borne in mind also that Volkers is in a position to call an endless parade of women who were coached by him at the same time who will say that he did not so behave toward them.
70. I am also of the view that the charges derived from the allegations by Ms Gilbert have no prospect of conviction due to the trivial nature of (i), (ii) and (iv), the inherent unlikelihood of the central feature of allegation (iii) and the damage to the credibility of the complainant by the witness AEH and her return to Volkers, at the age of 26, for coaching accreditation.
71. Even if this analysis is incorrect in the case of Gilbert (and the others, for that matter), the public interest criterion requires that consideration be given to a range of discretionary factors.
72. Relevant factors in this case are:
- (i) that the offences alleged are, relative to the general run of sexual assault prosecutions, at a low level of seriousness. I interpolate that proceeding with these relatively trivial allegations, occurring so long ago, would tend to bring all sexual assault prosecutions into disrepute;
 - (ii) that Volkers' antecedents suggest that he is a person of good character and there would be an array of impressive witnesses to say so;
 - (iii) the offences are stale, all having occurred between October 1984 and October 1987;

- (iv) the likely outcome even if there was the prospect of conviction would be a non-custodial penalty;
 - (v) the effect of the publicity in this matter has already constituted a punishment upon Volkers and, in addition, it is highly unlikely that he will misconduct himself in the future;
 - (vi) the prosecution of these old matters, being so relatively minor, would, it is submitted, erode public confidence in the Courts and the criminal justice system.
73. Were there to have been allegations of sexual penetration by a credible witness, it may well have been in the public interest to proceed.
74. In all of the circumstances I am of the view that there is nothing which justifies the recharging of Volkers in respect of the original allegations and no reasonable prospects of conviction in respect of any new allegations.
75. **I RECOMMEND** that the DPP (Qld) be so advised.



M M Cunneen
Crown Prosecutor

Date: 26 March 2004

Appendix C: 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 (Chair) Mr Robert Fitzgerald AM Professor Helen Milroy
Date of hearing	7–16 July 2014
Legislation	<i>Royal Commissions Act 1902</i> (Cth) <i>Royal Commissions Act 1923</i> (NSW) <i>Commissions of Inquiry Act 1950</i> (Qld) <i>Evidence (Miscellaneous Provisions) Act 1968</i> (Vic)
Leave to appear	State of New South Wales State of Queensland Julie Gilbert Kylie Rogers Sharyn and John Rogers Simone Boyce Scott Volkers AEA Swimming Australia Ltd Kevin Hasemann Swimming Queensland Swimming NSW Ltd Mark Heathcoate AEB Joanne Wright Laraine Buck

Legal representation	<p>G Furness SC and C Spruce, Counsel Assisting the Royal Commission</p> <p>S Naughton SC and D Kell, instructed by Mr IV Knight, Crown Solicitors, appearing for the State of New South Wales</p> <p>S Doyle QC and S Webster, instructed by M Zemek and P Dwyer, Crown Law, appearing for the State of Queensland</p> <p>A Boe, instructed by A Anderson and B W Anderson, appearing for Julie Gilbert, Simone Boyce, Kylie Rogers, Sharyn Rogers and John Rogers</p> <p>P Shields, Peter Shields Lawyers, appearing for Scott Volkens</p> <p>A Kernaghan, Kernaghan and Associates, appearing for AEA</p> <p>K Reese SC, instructed by P McGrath, Griffin Legal, appearing for Swimming Australia Ltd</p> <p>J Duncan, instructed by A Hill, McInnes Wilson Lawyers, appearing for Kevin Hasemann and Swimming Queensland</p> <p>D Villa, instructed by G Towan, Lander & Rogers, appearing for Mark Heathcoate and Swimming NSW Ltd</p> <p>L Hughes, appearing for AEB</p> <p>A English, Equilaw, appearing for Joanne Wright</p> <p>B Green, instructed by P McGirr, appearing for Laraine Buck</p>
Pages of transcript	1051 pages
Notice to Produce issued under <i>Royal Commissions Act 1902</i> (Cth) and documents produced	30 Notices to Produce issued. 3,245 documents produced.
Summons to Produce Documents issued under <i>Royal Commissions Act 1923</i> (NSW) and documents produced	18 Summons to Produce issued. 2,941 documents produced.

Requirement to Produce issued under <i>Commissions of Inquiry Act 1950</i> (Qld) and documents produced	17 Requirements to Produce issued. 8,671 documents produced.
Summons to Produce issued under <i>Evidence (Miscellaneous Provisions) Act 1968</i> (Vic) and documents produced	One Summons to Produce issued. 14,864 documents produced.
Number of exhibits	41 exhibits consisting of a total of 372 documents tendered at the hearing
Witnesses	<p>AEB Former swimming student of Stephen Roser</p> <p>AEA Former swimming student of Terrence Buck</p> <p>Julie Gilbert Former swimming student of Scott Volkers</p> <p>Kylie Rogers Former swimming student of Scott Volkers</p> <p>Simone Boyce Former swimming student of Scott Volkers</p> <p>Alexander Baumann Former Executive Director, Queensland Academy of Sport</p> <p>Bennett King Executive Director, Queensland Academy of Sport</p> <p>Glenn Tasker Former Chief Executive Officer, Swimming Australia Ltd</p> <p>Mark Anderson Chief Executive Officer, Swimming Australia Ltd</p> <p>Mr Kevin Hasemann Chief Executive Officer, Swimming Queensland</p> <p>Michelle Miller Director, Blue Card Services, Public Safety Business Agency</p> <p>Joanne Wright President, Scone Swimming Club</p>

Witnesses**Mark Heathcote**

Chief Executive Officer, Swimming NSW Ltd

Anthony Moynihan QC

Director, Office of the Director of Public Prosecutions, Queensland

Lloyd Babb SC

Director, Office of the Director of Public Prosecutions, NSW

Margaret Cunneen SC

Deputy Senior Crown Prosecutor, Office of the Director of Public Prosecutions, NSW

Paul Rutledge

Former Deputy Director, Office of the Director of Public Prosecutions, Queensland

Nicholas Cowdery QC

Former Director, Office of the Director of Public Prosecutions, NSW

Her Honour Judge Leanne Clare SC

Former Director, Office of the Director of Public Prosecutions, Queensland

Endnotes

- 1 Exhibit 15-0013, PUB.0006.001.0001 at 0062.
- 2 Transcript of G Tasker, T8409:38–47 (Day 79); Exhibit 15-0012, Annexure MDA-1, STAT.0295.001.0002_R at 0007_R–0008_R.
- 3 Exhibit 15-0013, QLD.0015.001.0006_R.
- 4 Exhibit 15-0013, QLD.0015.001.0022_R.
- 5 Transcript of A Baumann, T8314:28–39 (Day 79).
- 6 Transcript of A Baumann, T8314:45–T8315:7 (Day 79).
- 7 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [10].
- 8 Transcript of A Baumann, T8314:14–26 (Day 79).
- 9 Transcript of A Baumann T8319:31–39 (Day 79), T8347:35–T8348:2 (Day 79).
- 10 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [22], [25].
- 11 Transcript of G Tasker, T8434:28–35 (Day 80); Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [37].
- 12 Transcript of B King, T8364:31–38 (Day 79).
- 13 Exhibit-00013, SWI.0005.001.0008_R.
- 14 Transcript of D Anderson, T8472:37–43 (Day 80).
- 15 Exhibit 15-0013, PUB.0006.001.0001 at 0011.
- 16 Exhibit 15-0013, PUB.0006.001.0001 at 0023.
- 17 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [7].
- 18 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [10].
- 19 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [8].
- 20 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [8]–[9].
- 21 Exhibit 15-0005, QLD.0020.001.0865_R at 0868_R.
- 22 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [7]; Exhibit 15-0005, QLD.0020.001.0865_R at 0867_R–0868_R.
- 23 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [11]–[12]; Exhibit 15-0005, QLD.0020.001.0865_R at 0869_R.
- 24 Exhibit 15-0005, QLD.0020.001.0865_R at 0871_R.
- 25 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [14]; Exhibit 15-0005, QLD.0020.001.0865_R at 0871_R.
- 26 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [14]; Exhibit 15-0005, QLD.0020.001.0865_R at 0871_R.
- 27 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [15].
- 28 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [16]; Exhibit 15-0005, QLD.0020.001.1165_R.
- 29 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [19]–[20].
- 30 Exhibit 15-0005, QLD.0020.001.0865_R at 0873_R.
- 31 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [21] and [30].
- 32 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [22].
- 33 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [23].
- 34 Exhibit 15-0005, QLD.0020.001.0865_R at 0873_R; Exhibit 15-0005, QLD.0024.001.0228_R at 0229_R–0230_R.
- 35 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [27].
- 36 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [24] and [26].
- 37 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [27].
- 38 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [8].
- 39 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [12].
- 40 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [10].
- 41 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [8] and [10].
- 42 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [10].
- 43 Exhibit 15-0006, Annexure SMB-1, STAT.0305.001.0017_R at 0019_R.
- 44 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [9] and [43].
- 45 Exhibit 15-0006, Annexure SMB-1, STAT.0305.001.0017_R at 0020_R.
- 46 Exhibit 15-0006, Annexure SMB-1, STAT.0305.001.0017_R at 0021_R–0022_R.

47 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [12]; Exhibit 15-0006,
 Annexure SMB-1, STAT.0305.001.0017_R at 0021_R–0022_R.
 48 Exhibit 15-0006, Annexure SMB-1, STAT.0305.001.0017_R at 0022_R.
 49 Exhibit 15-0006, Annexure SMB-1, STAT.0305.001.0017_R at 0022_R.
 50 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [13].
 51 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [11].
 52 Exhibit 15-0006, Annexure SMB-1, STAT.0305.001.0017_R at 0022_R–0023_R.
 53 Exhibit 15-0006, Annexure SMB-1, STAT.0305.001.0017_R at 0023_R.
 54 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [15].
 55 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [16]; Exhibit 15-0006,
 Annexure SMB-1, STAT.0305.001.0017_R at 0023_R–0024_R.
 56 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [14].
 57 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [54].
 58 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [52]–[53].
 59 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [54].
 60 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [54].
 61 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [56].
 62 Exhibit 15-0002, Statement of J Gilbert, STAT.0262.001.0001_R at [4].
 63 Exhibit 15-0002, Statement of J Gilbert, STAT.0262.001.0001_R at [9]; Exhibit 15-0002,
 Annexure JTG-1, STAT.0262.001.0009_R at 0012_R–0017_R.
 64 Exhibit 15-0002, Statement of J Gilbert, STAT.0262.001.0001_R at [5]; Exhibit 15-0002,
 Annexure JTG-1, STAT.0262.001.0009_R at 0018_R.
 65 Exhibit 15-0002, Statement of J Gilbert, STAT.0262.001.0001_R at [6].
 66 Exhibit 15-0002, Statement of J Gilbert, STAT.0262.001.0001_R at [7].
 67 Exhibit 15-0002, Statement of J Gilbert, STAT.0262.001.0001_R at [29].
 68 Exhibit 15-0002, Annexure JTG-1, STAT.0262.001.0009 at 0012.
 69 Exhibit 15-0002, Statement of J Gilbert, STAT.0262.001.0001_R; Exhibit 15-0002,
 Annexure JTG-1, STAT.0262.001.0009_R at 0013_R–0014_R.
 70 Exhibit 15-0002, Annexure JTG-1, STAT.0262.001.0009_R at 0013_R–0014_R.
 71 Exhibit 15-0002, Annexure JTG-1, STAT.0262.001.0009_R at 0014_R–0015_R.
 72 Exhibit 15-0002, Annexure JTG-1, STAT.0262.001.0009_R at 0013_R.
 73 Exhibit 15-0002, Annexure JTG-1, STAT.0262.001.0009_R at 0014_R–0015_R.
 74 Exhibit 15-0002, Annexure JTG-1, STAT.0262.001.0009_R at 0016_R.
 75 Exhibit 15-0002, Annexure JTG-1, STAT.0262.001.0009_R at 0016_R–0017_R.
 76 Exhibit 15-0002, Annexure JTG-1, STAT.0262.001.0009_R at 0017_R.
 77 Exhibit 15-0002, Annexure JTG-1, STAT.0262.001.0009_R at 0018_R.
 78 Exhibit 15-0002, Annexure JTG-1, STAT.0262.001.0009_R at 0015_R.
 79 Exhibit 15-0002, Statement of J Gilbert, STAT.0262.001.0001_R at [5].
 80 Exhibit 15-0002, Annexure JTG-1, STAT.0262.001.0009_R at 0018_R.
 81 Exhibit 15-0002, Statement of J Gilbert, STAT.0262.001.0001_R at [12].
 82 Exhibit 15-0002, Statement of J Gilbert, STAT.0262.001.0001_R at [13], [14].
 83 Exhibit 15-0002, Statement of J Gilbert, STAT.0262.001.0001_R at [13]–[14].
 84 Exhibit 15-0002, Statement of J Gilbert, STAT.0262.001.0001_R at [23].
 85 Transcript of J Gilbert, T8264: 5–7 (Day 78).
 86 Exhibit 15-0002, Statement of J Gilbert, STAT.0262.001.0001_R at [29].
 87 Exhibit 15-0002, Statement of J Gilbert, STAT.0262.001.0001_R at [35].
 88 Transcript of J Gilbert, T8264: 8–15 (Day 78).
 89 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [28]–[29];
 Exhibit 15-0005, QLD.0020.001.0865_R at 0874_R; Exhibit 15-0006, Statement of S Boyce,
 STAT.0305.001.0001_R at [17]; Exhibit 15-0006, Annexure SMB-1,
 STAT.0305.001.0017_R at 0024_R.
 90 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [28]–[29].
 91 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [17].
 92 Exhibit 15-0013, PUB.0006.001.0001 at 0011 and 0014.

93 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [31]; Exhibit 15-0005,
QLD.0020.001.0865_R.

94 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [31].

95 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [33].

96 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [33].

97 Exhibit 15-0005, QLD.0024.001.0330_R.

98 Exhibit 15-0005, QLD.0020.001.1165_R.

99 Exhibit 15-0005, QLD.0024.001.0228_R.

100 Exhibit 15-0005, QLD.0020.001.0885_R.

101 Exhibit 15-0013, PUB.0006.001.0001 at 0011.

102 Exhibit 15-0002, Statement of J Gilbert, STAT.0262.001.0001_R at [16].

103 Exhibit 15-0002, Annexure JTG-1, STAT.0262.001.0009_R.

104 Exhibit 15-0002, Annexure JTG-2, STAT.0262.001.0021_R.

105 Exhibit 15-0017, CMC.0001.002.0174_R.

106 Exhibit 15-0017, CMC.0001.002.0174_R at 0215_R.

107 Exhibit 15-0017, CMC.0001.002.0174_R at 0179_R-0184_R.

108 Exhibit 15-0017, CMC.0001.002.0174_R at 0215_R.

109 Exhibit 15-0017, CMC.0001.002.0174_R at 0213_R.

110 Exhibit 15-0017, CMC.0001.002.0174_R at 0215_R-0216_R.

111 Exhibit 15-0013, QLD.0027.001.1736_R; Exhibit 15-0013, QLD.0022.001.0491_R at 0491_R.

112 Exhibit 15-0013, PUB.0006.001.0001 at 0013 and 0046.

113 Exhibit 15-0013, QLD.0022.001.0491_R at 0491_R.

114 Exhibit 15-0013, QLD.0022.001.0491_R.

115 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [32]; Exhibit 15-0006, Annexure SMB-9,
STAT.0305.001.0038; Exhibit 15-0003, Supplementary Statement of J Gilbert, STAT.0262.002.0001_R at [11];
Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [42].

116 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [35]; Exhibit 15-0006,
SMB-10, STAT.0305.001.0039_R.

117 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [38]; Exhibit 15-0006,
SMB-13, STAT.0305.001.0042_R.

118 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [39]; Exhibit 15-0006,
SMB-14 STAT.0305.001.0043_R.

119 Exhibit 15-0003, Supplementary Statement of J Gilbert, STAT.0262.002.0001_R at [13];
Transcript of J Gilbert, T8240:15–29 (Day 78).

120 Exhibit 15-0006, Annexure SMB-10, STAT.0305.001.0039_R.

121 Exhibit 15-0006, Annexure SMB-10, STAT.0305.001.0039_R; Exhibit 15-0013,
QLD.0022.001.0491_R.

122 Exhibit 15-0013, QLD.0027.001.1576_R.

123 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [39]; Exhibit 15-0006,
Annexure SMB-14, STAT.0305.001.0043_R.

124 Exhibit 15-0006, Annexure SMB-10, STAT.0305.001.0039_R.

125 Exhibit 15-0006, Annexure SMB-10, STAT.0305.001.0039_R.

126 Exhibit 15-0013, QLD.0022.001.0491_R at 0492_R-0498_R.

127 Exhibit 15-0013, QLD.0022.001.0491_R at 0493_R.

128 Exhibit 15-0013, QLD.0022.001.0491_R at 0493_R.

129 Exhibit 15-0013, QLD.0022.001.0491_R at 0493_R.

130 Exhibit 15-0013, QLD.0022.001.0491_R at 0495_R.

131 Exhibit 15-0013, QLD.0022.001.0491_R at 0494_R.

132 Exhibit 15-0013, QLD.0022.001.0491_R at 0495_R.

133 Exhibit 15-0013, QLD.0022.001.0491_R at 0495_R.

134 Exhibit 15-0013, QLD.0022.001.0491_R at 0491_R.

135 Exhibit 15-0013, QLD.0022.001.0491_R at 0492_R.

136 Exhibit 15-0013, QLD.0022.001.0491_R at 0492_R.

137 Exhibit 15-0013, QLD.0022.001.0491_R at 0492_R.

138 Exhibit 15-0013, QLD.0022.001.0491_R at 0495_R.
 139 Exhibit 15-0013, QLD.0022.001.0491_R at 0495_R.
 140 Exhibit 15-0013, QLD.0022.001.0491_R at 0496_R.
 141 Exhibit 15-0013, QLD.0022.001.0491_R at 0496_R.
 142 Exhibit 15-0013, QLD.0022.001.0491_R at 0496_R.
 143 Exhibit 15-0013, QLD.0027.001.1576_R at 0497_R.
 144 Exhibit 15-0013, QLD.0022.001.0491_R at 0498_R.
 145 Exhibit 15-0013, QLD.0022.001.0491_R at 0498_R.
 146 Exhibit 15-0013, QLD.0022.001.0491_R at 0498_R.
 147 Exhibit 15-0013, QLD.0022.001.0491_R at 0498_R.
 148 Exhibit 15-0013, QLD.0022.001.0491_R at 0498_R-0499_R.
 149 Exhibit 15-0013, QLD.0022.001.0491_R at 0498_R.
 150 Exhibit 15-0013, QLD.0022.001.0491_R at 0498_R.
 151 Exhibit 15-0013, QLD.0027.001.1576_R at 1577_R.
 152 Exhibit 15-0013, QLD.0027.001.1576_R at 1577_R.
 153 Exhibit 15-0013, QLD.0027.001.1576_R at 1576_R.
 154 Exhibit 15-0013, QLD.0027.001.1576_R at 1576_R.
 155 Exhibit 15-0013, QLD.0027.001.1576_R at 1576_R.
 156 Exhibit 15-0013, QLD.0027.001.1576_R at 1577_R.
 157 Exhibit 15-0013, QLD.0027.001.1576_R at 1578_R.
 158 Exhibit 15-0013, QLD.0027.001.1576_R at 1577_R.
 159 Exhibit 15-0013, QLD.0027.001.1576_R at 1577_R.
 160 Exhibit 15-0013, QLD.0027.001.1576_R at 1576_R.
 161 Exhibit 15-0013, QLD.0027.001.1576_R at 1578_R.
 162 Exhibit 15-0006, Annexure SMB-14, STAT.0305.001.0043_R at 0043_R.
 163 Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [39]; Exhibit 15-0006,
 Annexure SMB-14, STAT.0305.001.0043_R at 0043_R.
 164 Exhibit 15-0013, PUB.0006.001.0001 at 0023.
 165 Exhibit 15-0013, PUB.0006.001.0001 at 0024.
 166 Exhibit 15-0013, PUB.0006.001.0001 at 0024.
 167 Exhibit 15-0013, PUB.0006.001.0001 at 0012.
 168 Exhibit 15-0013, PUB.0006.001.0001 at 0012 and 0024.
 169 Exhibit 15-0013, PUB.0006.001.0001 at 0045.
 170 Exhibit 15-0013, PUB.0006.001.0001 at 0024.
 171 Exhibit 15-0013, PUB.0006.001.0001 at 0024.
 172 Exhibit 15-0013, PUB.0006.001.0001 at 0024–0025.
 173 Exhibit 15-0013, PUB.0006.001.0001 at 0027.
 174 Exhibit 15-0013, PUB.0006.001.0001 at 0027.
 175 Exhibit 15-0013, PUB.0006.001.0001 at 0015.
 176 Exhibit 15-0013, PUB.0006.001.0001 at 0015.
 177 Exhibit 15-0013, PUB.0006.001.0001 at 0015.
 178 Exhibit 15-0013, PUB.0006.001.0001 at 0015.
 179 Exhibit 15-0013, PUB.0006.001.0001 at 0052.
 180 Exhibit 15-0013, PUB.0006.001.0001 at 0065.
 181 Exhibit 15-0013, PUB.0006.001.0001 at 0062.
 182 Exhibit 15-0013, PUB.0006.001.0001 at 0015, 0046–0051 and 0094.
 183 Exhibit 15-0013, PUB.0006.001.0001 at 0015.
 184 Exhibit 15-0013, PUB.0006.001.0001 at 0015.
 185 Exhibit 15-0013, PUB.0006.001.0001 at 0052.
 186 Exhibit 15-0013, PUB.0006.001.0001 at 0053.
 187 Exhibit 15-0013, PUB.0006.001.0001 at 0053.
 188 Exhibit 15-0013, PUB.0006.001.0001 at 0053.
 189 Exhibit 15-0013, PUB.0006.001.0001 at 0053.
 190 Exhibit 15-0013, PUB.0006.001.0001 at 0054.

191 Exhibit 15-0013, PUB.0006.001.0001 at 0054.
 192 Exhibit 15-0013, PUB.0006.001.0001 at 0054.
 193 Exhibit 15-0013, PUB.0006.001.0001 at 0054.
 194 Exhibit 15-0013, PUB.0006.001.0001 at 0054–0055.
 195 Exhibit 15-0013, PUB.0006.001.0001 at 0055.
 196 Exhibit 15-0013, PUB.0006.001.0001 at 0055–0056.
 197 Exhibit 15-0013, PUB.0006.001.0001 at 0056.
 198 Exhibit 15-0013, PUB.0006.001.0001 at 0056–0057.
 199 Exhibit 15-0013, PUB.0006.001.0001 at 0057.
 200 Exhibit 15-0013, PUB.0006.001.0001 at 0057.
 201 Exhibit 15-0013, PUB.0006.001.0001 at 0014.
 202 Exhibit 15-0013, PUB.0006.001.0001 at 0015.
 203 Exhibit 15-0013, PUB.0006.001.0001 at 0072.
 204 Exhibit 15-0013, PUB.0006.001.0001 at 0074.
 205 Exhibit 15-0013, PUB.0006.001.0001 at 0015, 0070–0073 and 0081.
 206 Exhibit 15-0013, PUB.0006.001.0001 at 0028.
 207 Exhibit 15-0013, PUB.0006.001.0001 at 0031.
 208 Exhibit 15-0013, PUB.0006.001.0001 at 0056.
 209 Exhibit 15-0013, PUB.0006.001.0001 at 0015, 0074–0075.
 210 Exhibit 15-0013, PUB.0006.001.0001 at 0015, 0074–0075.
 211 Exhibit 15-0013, PUB.0006.001.0001 at 0015 and 0081.
 212 Exhibit 15-0013, PUB.0006.001.0001 at 0016.
 213 Exhibit 15-0013, PUB.0006.001.0001 at 0016 and 0095.
 214 Exhibit 15-0036, QLD.0027.001.0733_R at 0775_R.
 215 Exhibit 15-0013, QLD.0027.001.1096_R; Exhibit 15-0013, QLD.0027.001.0019_R at 0019_R.
 216 Exhibit 15-0036, QLD.0027.001.0733_R; Exhibit 15-0013, QLD.0027.001.0019_R at 0019_R.
 217 Exhibit 15-0013, QLD.0027.001.0019_R at 0019_R.
 218 Exhibit 15-0013, QLD.0027.001.0019_R; Transcript of L Clare, T8927:28–T8928:36 (Day 85).
 219 Exhibit 15-0036, QLD.0027.001.0733_R at 0733_R.
 220 Exhibit 15-0013, QLD.0027.001.0019_R at 0020_R.
 221 Exhibit 15-0013, QLD.0027.001.0019_R at 0019_R–0020_R.
 222 Exhibit 15-0013, QLD.0027.001.0019_R at 0020_R.
 223 Exhibit 15-0013, QLD.0027.001.0019_R at 0020_R.
 224 Exhibit 15-0013, QLD.0027.001.0019_R at 0021_R.
 225 Exhibit 15-0013, QLD.0027.001.0019_R at 0021_R.
 226 Exhibit 15-0013, QLD.0027.001.0019_R at 0021_R.
 227 Exhibit 15-0013, QLD.0027.001.0019_R at 0021_R–0020_R.
 228 Exhibit 15-0013, QLD.0027.001.0019_R at 0022_R.
 229 Exhibit 15-0013, QLD.0027.001.0019_R at 0023_R.
 230 Exhibit 15-0013, QLD.0027.001.0019_R at 0024_R.
 231 Exhibit 15-0006, STAT.0305.001.0017_R at 0024_R.
 232 Exhibit 15-0013, QLD.0027.001.0019_R at 0024_R.
 233 Exhibit 15-0013, QLD.0027.001.0019_R at 0025_R.
 234 Exhibit 15-0013, QLD.0027.001.0019_R at 0024_R.
 235 Exhibit 15-0013, QLD.0027.001.0019_R at 0027_R.
 236 Exhibit 15-0013, QLD.0027.001.0019_R at 0027_R.
 237 Exhibit 15-0013, QLD.0027.001.0019_R at 0027_R.
 238 Exhibit 15-0013, QLD.0027.001.0019_R at 0030_R.
 239 Exhibit 15-0013, QLD.0027.001.0019_R at 0031_R.
 240 Exhibit 15-0013, QLD.0027.001.0019_R at 0032_R.
 241 Exhibit 15-0013, QLD.0027.001.0019_R at 0032_R.
 242 Exhibit 15-0024, Statement of N Cowdery, STAT.0308.001.0001_R at [7]; Exhibit 15-0013,
 QLD.0027.001.1096_R.
 243 Exhibit 15-0013, QLD.0027.001.1096_R at 1100_R–1101_R.

244 Exhibit 15-0013, QLD.0027.001.1096_R at 1101_R.
 245 Exhibit 15-0013, QLD.0027.001.1096_R at 1100_R.
 246 Exhibit 15-0013, QLD.0027.001.1096_R at 1101_R.
 247 Exhibit 15-0036, QLD.0027.001.0733_R.
 248 Exhibit 15-0013, QLD.0027.001.0019_R; Transcript of M Cunneen, T8586:34–45 (Day 81),
 T8588:11–12 (Day 81), T8591:30–32 (Day 81), T8609:11–16 (Day 81), T8652:41–44 (Day
 81); Transcript of N Cowdery, T8810:1–6 (Day 83); Transcript of L Clare, T8933:13–23 (Day
 85); Exhibit 15-0013, QLD.0027.001.1165_R at 1167_R-1168_R.
 249 Exhibit 15-0035, Statement of L Clare, STAT.0312.001.0001_R at [11].
 250 Exhibit 15-0035, Statement of L Clare, STAT.0312.001.0001_R at [11]; Transcript of L Clare,
 T8931:6–15 (Day 85); Transcript of N Cowdery, T8851:27–40 (Day 83); Exhibit 15-0024,
 Statement of N Cowdery, STAT.0308.001.0001_R at [7].
 251 Transcript of N Cowdery, T8766:29–41 (Day 82), T8767:4–7 (Day 82).
 252 Transcript of L Clare, T8965:40–T8966:3 (Day 85).
 253 Exhibit 15-0035, Statement of L Clare, STAT.0312.001.0001_R at [9].
 254 Exhibit 15-0035, Statement of L Clare, STAT.0312.001.0001_R at [9]; Transcript of L Clare,
 T8925:1–16 (Day 85).
 255 Transcript of N Cowdery, T8766:2–21 (Day 82); Transcript of L Clare, T8931:3–4 (Day 85).
 256 Transcript of L Clare, T8931:3–4 (Day 85).
 257 Exhibit 15-0035, Statement of L Clare, STAT.0312.001.0001_R at [10]; Transcript of L Clare,
 T8931:6–10 (Day 85); Exhibit 15-0013, QLD.0027.001.1165_R at 1169_R.
 258 Transcript of N Cowdery, T8852:16–23 (Day 83).
 259 Transcript of N Cowdery, T8766:2–18 (Day 82).
 260 Transcript of N Cowdery, T8781:24–38 (Day 83), T8851:42–T8852:5 (Day 83).
 261 Transcript of N Cowdery, T8852:25–33 (Day 83).
 262 Transcript of M Cunneen, T8585:46–T8586:1 (Day 81); Transcript of M Cunneen,
 T8726:15–24 (Day 82).
 263 Exhibit 15-0020, Statement of M Cunneen, STAT.0306.001.0001_R at [38].
 264 Transcript of M Cunneen, T8578:28–38 (Day 81); Exhibit 15-0020,
 Statement of M Cunneen, STAT.0306.001.0001_R at [38].
 265 Transcript of M Cunneen, T8586:6–8 (Day 81).
 266 Transcript of M Cunneen, T8585:25–T8586:22 (Day 81).
 267 Transcript of M Cunneen, T8677:15–22 (Day 82).
 268 Ms Margaret Cunneen will be referred to in these submissions as Ms Cunneen in the
 context of the advice she provided as Deputy Senior Crown Prosecutor in 2004 (before her appointment
 as Senior Counsel). She will be referred to as Ms Cunneen SC in the context of the statement and evidence
 before the Royal Commission.
 269 Transcript of N Cowdery, T8768:38–T8769:13 (Day 82); Exhibit 15-0020,
 Statement of M Cunneen, STAT.0306.001.0001_R at [30].
 270 Exhibit 15-0020, Statement of M Cunneen, STAT.0306.001.0001_R at [2].
 271 Exhibit 15-0020, Statement of M Cunneen, STAT.0306.001.0001_R at [9], [12]–[16].
 272 Exhibit 15-0020, Statement of M Cunneen, STAT.0306.001.0001_R at [17], [20]–[30].
 273 Transcript of M Cunneen, T8576:1–29 (Day 81).
 274 Exhibit 15-0020, Statement of M Cunneen, STAT.0306.001.0001_R at [21].
 275 Transcript of M Cunneen, T8577:18–47 (Day 82).
 276 Exhibit 15-0020, Statement of M Cunneen, STAT.0306.001.0001_R at [27], [30]–[31].
 277 Transcript of M Cunneen, T8579:11–17 (Day 81); Exhibit 15-0024, STAT.0308.001.0010_R.
 278 Exhibit 15-0013, QLD.0027.001.1096_R at 1097_R.
 279 Exhibit 15-0013, QLD.0027.001.1096_R at 1097_R–1099_R.
 280 Exhibit 15-0021, EXH.015.021.0001 at 0051.
 281 Exhibit 15-0028, Statement of A Moynihan, STAT.0296.001.0001 at [45].
 282 Transcript of L Clare, T8931:17–32 (Day 85), T8932:10–15 (Day 85).
 283 Transcript of L Clare, T8931:34–41 (Day 85).
 284 Transcript of L Clare, T8932:4–8 (Day 85).

285 Exhibit 15-0035, Statement of L Clare, STAT.0312.001.0001_R at [12]; Transcript of L Clare,
 T8928:38–T8929:34 (Day 85); Exhibit 15-0013, QLD.0027.001.1165_R at 1168_R.
 286 Transcript of L Clare, T8929:36–46 (Day 85).
 287 Transcript of N Cowdery, T8769:45–T8770:5 (Day 82).
 288 Transcript of N Cowdery, T8838:17–41 (Day 83).
 289 Transcript of N Cowdery, T8778:31–33 (Day 83).
 290 Transcript of N Cowdery, T8778:44–T8779:5 (Day 83).
 291 Transcript of N Cowdery, T8771:21–44 (Day 82).
 292 Transcript of N Cowdery, T8776:38–T8777:10 (Day 81).
 293 Exhibit 15-0020, Statement of M Cunneen, STAT.0306.001.0001_R at [39];
 Transcript of N Cowdery, T8771:17–19 (Day 82), T8769:15-43 (Day 82).
 294 Transcript of N Cowdery, T8776:29–36 (Day 83).
 295 Transcript of N Cowdery, T8771:21–37 (Day 82); Exhibit 15-0020, Statement of M
 Cunneen, STAT.0306.001.0001_R at [36]; Transcript of M Cunneen, T8590:22–T8591:3 (Day 81).
 296 Transcript of M Cunneen, T8584:19–31 (Day 81).
 297 Transcript of M Cunneen, T8726:45–T8727:2 (Day 82).
 298 Transcript of M Cunneen, T8590:23–33 (Day 81).
 299 Transcript of M Cunneen, T8590:23–33 (Day 81), T8635:4–14 (Day 81), T8636:41–46 (Day 81).
 300 Transcript of M Cunneen, T8727:6–11 (Day 82).
 301 Transcript of M Cunneen, T8727:4–16 (Day 82).
 302 Transcript of M Cunneen, T8727:29–36 (Day 82); see also Exhibit 15-0020, Statement of M
 Cunneen, STAT.0306.001.0001_R at [38].
 303 Exhibit 15-0013, NSW.0471.001.0001_R at 0016_R.
 304 Exhibit 15-0020, Statement of M Cunneen, STAT.0306.001.0001_R at [65].
 305 Exhibit 15-0013, NSW.0471.001.0001_R at 0015_R.
 306 Exhibit 15-0013, NSW.0471.001.0001_R at 0006_R.
 307 Exhibit 15-0020, Statement of M Cunneen, STAT.0306.001.0001_R at [36].
 308 Transcript of M Cunneen, T8714:1–T8715:11 (Day 82).
 309 Transcript of M Cunneen, T8721:12–18 (Day 82).
 310 Transcript of M Cunneen, T8721:20–27 (Day 82).
 311 Transcript of M Cunneen, T8721:29–39 (Day 82).
 312 Transcript of M Cunneen, T8577:43–T8578:1 (Day 81).
 313 Transcript of M Cunneen, T8709:14–T8711:9 (Day 82).
 314 Transcript of M Cunneen, T8707:1–T8708:11 (Day 82).
 315 Transcript of M Cunneen, T8712:31–T8713:20 (Day 82).
 316 Exhibit 15-0013, NSW.0471.001.0001_R at 0015_R.
 317 Exhibit 15-0013, NSW.0471.001.0001_R at 0008_R.
 318 Exhibit 15-0013, NSW.0471.001.0001_R at 0008_R.
 319 Transcript of M Cunneen, T8598:11–15 (Day 81), T8599:11–23 (Day 81), T8600:24–28 (Day 81).
 320 Transcript of M Cunneen, T8598:37–43 (Day 81).
 321 Transcript of M Cunneen, T8598:47–T8599:2 (Day 81), T8602:1–10 (Day 81).
 322 Transcript of M Cunneen, T8598:11–15 (Day 81).
 323 Transcript of M Cunneen, T8598:2–43 (Day 81), T8599:11–23 (Day 81);
 Exhibit 15-0020, Statement of M Cunneen, STAT.0306.001.0001_R at [47].
 324 Transcript of M Cunneen, T8599:40–T8600:5 (Day 81); Exhibit 15-0020,
 Statement of M Cunneen, STAT.0306.001.0001_R at [47].
 325 Transcript of M Cunneen, T8597:24–39 (Day 81).
 326 Transcript of M Cunneen, T8592:24–34 (Day 81) referring to Exhibit 15-0013,
 PUB.0006.001.0096 at 0125.
 327 Transcript of M Cunneen, T8592:36–45 (Day 81) referring to Exhibit 15-0013,
 PUB.0006.001.0096 at 0126.
 328 Transcript of M Cunneen, T8600:40–T8601:5 (Day 81).
 329 Transcript of M Cunneen, T8600:30–45 (Day 81).
 330 Transcript of M Cunneen, T8601:7–23 (Day 81).

331 Exhibit 15-0020, Statement of M Cunneen, STAT.0306.001.0001_R at [47].
 332 Transcript of M Cunneen, T8584:19–31 (Day 81).
 333 Exhibit 15-0013, NSW.0471.001.0001_R at 0015_R.
 334 Exhibit 15-0013, NSW.0471.001.0001_R at 0010_R.
 335 Transcript of M Cunneen, T8604:10–40 (Day 81).
 336 Exhibit 15-0013, NSW.0471.001.0001_R at 0011_R.
 337 Exhibit 15-0013, NSW.0471.001.0001_R at 0011_R–0012_R.
 338 Transcript of M Cunneen, T8606:14–43 (Day 81).
 339 Transcript of M Cunneen, T8613:45–47 (Day 81).
 340 Transcript of M Cunneen, T8614:46–T8615:8 (Day 81).
 341 Transcript of M Cunneen, T8627:4–7 (Day 81).
 342 Transcript of M Cunneen, T8627:9–18 (Day 81).
 343 Transcript of M Cunneen, T8613:39–T8614:38 (Day 81).
 344 Transcript of M Cunneen, T8615:24–29 (Day 81).
 345 Transcript of M Cunneen, T8615:34–35 (Day 81).
 346 Transcript of M Cunneen, T8615:10–T8616:19 (Day 81), T8688:18–T8690:39 (Day 82).
 347 Transcript of M Cunneen, T8693:20–24 (Day 82).
 348 Transcript of M Cunneen, T8694:19–24 (Day 82).
 349 Transcript of M Cunneen, T8616:27–T8617:1 (Day 81); Exhibit 15-0020,
 Statement of M Cunneen, STAT.0306.001.0001_R at [43].
 350 Transcript of M Cunneen, T8618:2–8 (Day 81).
 351 Exhibit 15-0013, QCYC.0002.001.1866 at 1869.
 352 Exhibit 15-0013, QCYC.0002.001.1866 at 1869–70.
 353 Exhibit 15-0013, QCYC.0002.001.1866 at 1870.
 354 Exhibit 15-0013, QCYC.0002.001.1866 at 1872.
 355 Transcript of M Cunneen, T8657:26–33 (Day 82).
 356 Transcript of M Cunneen, T8658:18–27 (Day 82).
 357 Exhibit 15-0013, QCYC.0002.001.1866 at 1871.
 358 Transcript of M Cunneen, T8661:40–46 (Day 82).
 359 Transcript of M Cunneen, T8662:1–16 (Day 82), T8694:20–24 (Day 82).
 360 Transcript of M Cunneen, T8660:29–T8661:15 (Day 82).
 361 Exhibit 15-0013, CRT.0007.001.0050_R at 0051_R.
 362 Transcript of M Cunneen, T8688:26–28 (Day 82).
 363 Transcript of M Cunneen, T8621:17–35 (Day 81).
 364 Exhibit 15-0013, CRT.0007.001.0001_R at 0002_R.
 365 Transcript of M Cunneen, T8619:2–12 (Day 81).
 366 Transcript of M Cunneen, T8621:1–15 (Day 81).
 367 Transcript of M Cunneen, T8623:12–35 (Day 81).
 368 Transcript of M Cunneen, T8624:31–T8625:45 (Day 81), T8619:14–28 (Day 81),
 T8623:37–T8624:26 (Day 81).
 369 Transcript of M Cunneen, T8618:2–17 (Day 81).
 370 Transcript of M Cunneen, T8625:44–47 (Day 81); see also Exhibit 15-0020,
 Statement of M Cunneen, STAT.0306.001.0001_R at [44].
 371 Transcript of M Cunneen, T8626:11–26 (Day 81).
 372 Transcript of M Cunneen, T8628:10–36 (Day 81).
 373 Transcript of M Cunneen, T8628:38–42 (Day 81), T8629:11–13 (Day 81).
 374 Transcript of M Cunneen, T8628:2–4 (Day 81).
 375 Transcript of M Cunneen, T8629:2–19 (Day 81).
 376 Transcript of M Cunneen, T8691:5–18 (Day 81).
 377 Exhibit 15-0013, NSW.0471.001.0001_R at 0015_R.
 378 Exhibit 15-0013, NSW.0471.001.0001_R at 0010_R.
 379 Exhibit 15-0013, NSW.0471.001.0001_R at 0011_R.
 380 Transcript of M Cunneen, T8605:35–43 (Day 81).
 381 Exhibit 15-0013, NSW.0471.001.0001_R at 0013_R.

382 Exhibit 15-0020, Statement of Margaret Cunneen SC, STAT.0306.001.0001_R at [45].
 383 Transcript of M Cunneen, T8637:24–36 (Day 81).
 384 Transcript of M Cunneen, T8578:3–26 (Day 81).
 385 Transcript of M Cunneen, T8637:38–43 (Day 81).
 386 Transcript of M Cunneen, T8637:1–22 (Day 81).
 387 Transcript of M Cunneen, T8637:7–T8638:10 (Day 81).
 388 Exhibit 15-0013, NSW.0471.001.0001_R at 0011_R.
 389 Exhibit 15-0013, NSW.0471.001.0001_R at 0012_R.
 390 Transcript of M Cunneen, T8630:28–40 (Day 81), T8632:19–26 (Day 81).
 391 Transcript of M Cunneen, T8632:13–17 (Day 81).
 392 Transcript of M Cunneen, T8635:16–T8636:30 (Day 81).
 393 Transcript of M Cunneen, T8636:7–9 (Day 81).
 394 Transcript of M Cunneen, T8636:3–20 (Day 81).
 395 Exhibit 15-0013, NSW.0471.001.0001_R at 0013_R.
 396 Transcript of M Cunneen, T8698:5–20 (Day 82).
 397 Transcript of M Cunneen, T8700:22–43 (Day 82).
 398 Exhibit 15-0013, NSW.0471.001.0001_R at 0013_R.
 399 Exhibit 15-0013, NSW.0471.001.0001_R at 0014_R.
 400 Exhibit 15-0013, NSW.0471.001.0001_R at 0014_R.
 401 Transcript of M Cunneen, T8638:12–16 (Day 81).
 402 Transcript of M Cunneen, T8606:14–43 (Day 81).
 403 Exhibit 15-0013, NSW.0471.001.0001_R at 0013_R.
 404 Transcript of M Cunneen, T8602:17–T8603:11 (Day 81), T8664:1–27 (Day 82).
 405 Transcript of M Cunneen, T8664:9–27 (Day 82).
 406 Exhibit 15-0020, Statement of M Cunneen, STAT.0306.001.0001_R at [46].
 407 Transcript of M Cunneen, T8603:2–11 (Day 81).
 408 Exhibit 15-0013, NSW.0471.001.0001_R at 0011_R.
 409 Transcript of M Cunneen, T8609:1–30 (Day 81).
 410 Transcript of M Cunneen, T8609:1–30 (Day 81).
 411 Transcript of M Cunneen, T8610:6–13 (Day 81).
 412 Transcript of M Cunneen, T8608:28–39 (Day 81).
 413 Transcript of M Cunneen, T8608:1–39 (Day 81).
 414 Exhibit 15-0020, Statement of M Cunneen, STAT.0306.001.0001_R at [48].
 415 Transcript of M Cunneen, T8613:9–37 (Day 81).
 416 Transcript of M Cunneen, T8660:4–21 (Day 82).
 417 Exhibit 15-0020 Statement of M Cunneen, STAT.0306.001.0001_R at [48].
 418 Transcript of M Cunneen, T8608:41–46 (Day 81).
 419 Transcript of M Cunneen, T8609:31–41 (Day 81).
 420 Exhibit 15-0013, NSW.0471.001.0001_R at 0015_R–0016_R.
 421 Transcript of M Cunneen, T8667:19–30 (Day 82).
 422 Exhibit 15-0013, NSW.0471.001.0001_R at 0008_R.
 423 Exhibit 15-0013, NSW.0471.001.0001_R at 0015_R.
 424 Exhibit 15-0013, NSW.0471.001.0001_R at 0002_R; see also Transcript of M Cunneen,
 T8667:28–T8668:30 (Day 82).
 425 Exhibit 15-0013, NSW.0471.001.0001_R at 0011_R.
 426 Exhibit 15-0013, NSW.0471.001.0001_R at 0016_R.
 427 Transcript of M Cunneen, T8576:40–T8577:1 (Day 81).
 428 Transcript of M Cunneen, T8642:1–7 (Day 81).
 429 Transcript of M Cunneen, T8642:12–23 (Day 81).
 430 Transcript of M Cunneen, T8675:36–47 (Day 82) as per Guideline 5(iv) of the QLD
 Director’s Guidelines of 18 November 2003.
 431 Transcript of M Cunneen, T8663:35–43 (Day 82).
 432 Transcript of M Cunneen, T8607:16–19 (Day 81).
 433 Transcript of M Cunneen, T8663:45–46 (Day 82).

434 Transcript of M Cunneen, T8607:14–19 (Day 81).
 435 Transcript of M Cunneen, T8663:38–46 (Day 82).
 436 Transcript of M Cunneen, T8642:32–T8643:4 (Day 81).
 437 Transcript of M Cunneen, T8643:6–42 (Day 81).
 438 Transcript of M Cunneen, T8641:7–16 (Day 81).
 439 Transcript of M Cunneen, T8640:38–T8641:5 (Day 81).
 440 Transcript of M Cunneen, T8641:1–5 (Day 81).
 441 Transcript of M Cunneen, T8641:34–40 (Day 81).
 442 Transcript of M Cunneen, T8644:12–18 (Day 81).
 443 Transcript of M Cunneen, T8644:12–24 (Day 81).
 444 Transcript of M Cunneen, T8643:44–T8644:1 (Day 81), T8642:33–T8643:47 (Day 81).
 445 Transcript of M Cunneen, T8670:6–11 (Day 82), T8672:21–26 (Day 82).
 446 Transcript of M Cunneen, T8672:31–T8673:11 (Day 82).
 447 Transcript of M Cunneen, T8674:22–T8675:4 (Day 82).
 448 Transcript of M Cunneen, T8648:10–13 (Day 81).
 449 Transcript of M Cunneen, T8647:37–42 (Day 81).
 450 Transcript of M Cunneen, T8648:24–25 (Day 81).
 451 Transcript of M Cunneen, T8649:1–T8650:25 (Day 81).
 452 Transcript of M Cunneen, T8651:42–T8652:35 (Day 81).
 453 Transcript of M Cunneen, T8644:39–T8645:42 (Day 81).
 454 Transcript of M Cunneen, T8645:22–42 (Day 81).
 455 Transcript of M Cunneen, T8646:1–T8646:13 (Day 81).
 456 Transcript of M Cunneen, T8680:1–5 (Day 82).
 457 Transcript of M Cunneen, T8629:23–31 (Day 81).
 458 Transcript of M Cunneen, T8629:15–T8630:18 (Day 81).
 459 Transcript of M Cunneen, T8630:14–18 (Day 81), T8677:40–T8679:36 (Day 82).
 460 Transcript of M Cunneen, T8678:24–T8679:47 (Day 82).
 461 Transcript of M Cunneen, T8680:8–42 (Day 82).
 462 Exhibit 15-0013, NSW.0471.001.0001_R at 0014_R.
 463 Transcript of M Cunneen, T8639:35–43 (Day 81).
 464 Transcript of M Cunneen, T8580:33–44 (Day 81).
 465 Transcript of M Cunneen, T8581:11–16 (Day 81).
 466 Transcript of M Cunneen, T8729:29–44 (Day 82).
 467 Transcript of M Cunneen, T8581:31–33 (Day 81).
 468 Transcript of M Cunneen, T8581:44–T8582:2 (Day 81).
 469 Transcript of M Cunneen, T8583:20–36 (Day 81).
 470 Exhibit 15-0013, QLD.0027.001.1351.
 471 Exhibit 15-0013, QLD.0027.001.1351.
 472 Transcript of L Clare, T8937:13–22 (Day 85).
 473 Transcript of N Cowdery, T8770:12–20 (Day 82).
 474 Exhibit 15-0035, Statement of L Clare, STAT.0312.001.0001_R at [16];
 Transcript of L Clare, T8938:9–13 (Day 85).
 475 Transcript of L Clare, T8980:30–35 (Day 85), T8981:22–34 (Day 85), T8990:24–36 (Day 85).
 476 Exhibit 15-0024, Statement of N Cowdery, STAT.0308.001.0001_R at [11]; Transcript of N Cowdery,
 T8833:33–T8834:40 (Day 83), T8808:45–T8809:4 (Day 83).
 477 Transcript of N Cowdery, T8833:44–T8836:6 (Day 83); Exhibit 15-0035, Statement of
 L Clare, STAT.0312.001.0001_R at [17].
 478 Exhibit 15-0024, Annexure B, STAT.0308.001.0010_R.
 479 Exhibit 15-0024, Statement of N Cowdery, STAT.0308.001.0001_R at [9].
 480 Exhibit 15-0013, QLD.0027.001.1351.
 481 Transcript of N Cowdery, T8771:5–15 (Day 82).
 482 Transcript of N Cowdery, T8771:35 (Day 82).
 483 Transcript of N Cowdery, T8781:6–10 (Day 83).
 484 Exhibit 15-0024, Statement of N Cowdery, STAT.0308.001.0001_R at [9].

485 Transcript of N Cowdery, T8772:6–13 (Day 83).
 486 Transcript of N Cowdery, T8776:38–46 (Day 83).
 487 Transcript of N Cowdery, T8771:13–15 (Day 82).
 488 Exhibit 15-0024, Statement of N Cowdery, STAT.0308.001.0001_R at [13(b)].
 489 Exhibit 15-0025, Supplementary Statement of N Cowdery, STAT.0308.002.0001_R at [7]–[10].
 490 Transcript of N Cowdery, T8782:34–42 (Day 83).
 491 Exhibit 15-0013, NSW.0471.001.0001_R at 0011_R.
 492 Transcript of N Cowdery, T8843:17–35 (Day 83).
 493 Transcript of N Cowdery, T8812:18–23 (Day 83).
 494 Transcript of N Cowdery, T8786:37–39 (Day 83).
 495 Transcript of N Cowdery, T8784:25–44 (Day 83).
 496 Transcript of N Cowdery, T8765:42–T8786:7 (Day 83).
 497 Transcript of N Cowdery, T8788:16–T8789:34 (Day 83).
 498 Transcript of N Cowdery, T8789:25–34 (Day 83).
 499 Transcript of N Cowdery, T8785:17–24 (Day 83), T8784:25–28 (Day 83).
 500 Transcript of N Cowdery, T8815:15–29 (Day 83).
 501 Transcript of N Cowdery, T8802:7–9 (Day 85).
 502 Transcript of N Cowdery, T8802:7–9 (Day 83).
 503 Transcript of N Cowdery, T8796:25–44 (Day 83).
 504 Exhibit 15-0022, Statement of N Cowdery, STAT.0308.001.0001_R at [13].
 505 Transcript of N Cowdery, T8798:11–14 (Day 83).
 506 Transcript of N Cowdery, T8801:28–35 (Day 83).
 507 Transcript of N Cowdery, T8779:23–41 (Day 83), T8780:2–11 (Day 83), T8793:43–47 (Day 83).
 508 Transcript of N Cowdery, T8807:24–30 (Day 83).
 509 Transcript of N Cowdery, T8807:24–30 (Day 83).
 510 Transcript of N Cowdery, T8806:44–T8807:15 (Day 83).
 511 Transcript of N Cowdery, T8805:45–T8806:5 (Day 83).
 512 Transcript of N Cowdery, T8814:21–42 (Day 83).
 513 Transcript of N Cowdery, T8816:11–14 (Day 83).
 514 Transcript of N Cowdery, T8817:47–T8819:31 (Day 83).
 515 Transcript of N Cowdery, T8818:38–42 (Day 83).
 516 Transcript of N Cowdery, T8820:23–29 (Day 83).
 517 Transcript of N Cowdery, T8817:4–11 (Day 83).
 518 Transcript of N Cowdery, T8839:38–T8840:9 (Day 83).
 519 Transcript of N Cowdery, T8819:12–31 (Day 83).
 520 Transcript of N Cowdery, T8773:13–17 (Day 82).
 521 Transcript of L Clare, T8940:7–13 (Day 85).
 522 Transcript of L Clare, T8937:43–46 (Day 85), T8938:7–9 (Day 85).
 523 Transcript of N Cowdery, T8822:36–T8823:3 (Day 83).
 524 Transcript of N Cowdery, T8853:30–36 (Day 83).
 525 Transcript of N Cowdery, T8777:12–19 (Day 83).
 526 Exhibit 15-0024, Statement of N Cowdery, STAT.0308.001.0001_R at [13(a)];
 Transcript of N Cowdery, T8821:9–34 (Day 83).
 527 Transcript of N Cowdery, T8821:16–22 (Day 83).
 528 Transcript of N Cowdery, T8821:9–43 (Day 83).
 529 Transcript of N Cowdery, T8779:21–24 (Day 83).
 530 Transcript of N Cowdery, T8823:9–12 (Day 83).
 531 Transcript of N Cowdery, T8556:22–T8857:14 (Day 83).
 532 Transcript of N Cowdery, T8835:36–T8836:6 (Day 83).
 533 Transcript of N Cowdery, T8809:45–T8810:6 (Day 83).
 534 Exhibit 15-0025, Supplementary Statement of N Cowdery, STAT.0308.002.0001_R at [15];
 Transcript of N Cowdery, T8809:45–T8810:46 (Day 83).
 535 Transcript of N Cowdery, T8810:32–36 (Day 83).
 536 Exhibit 15-0025, Supplementary Statement of N Cowdery, STAT.0308.002.0001_R at [14], [16].

537 Transcript of N Cowdery, T8786:41–44 (Day 83).
 538 Transcript of N Cowdery, T8837:8–27 (Day 83).
 539 Exhibit 15-0035, Statement of L Clare, STAT.0312.001.0001_R at [18];
 Transcript of L Clare, T8940:15–37 (Day 85); Transcript of L Clare, T8982:34–41 (Day 85).
 540 Exhibit 15-0035, Statement of L Clare, STAT.0312.001.0001_R at [14]; Transcript of L Clare,
 T8940:33–37 (Day 85).
 541 Transcript of L Clare, T8966:14–26 (Day 85).
 542 Exhibit 15-0035, Statement of L Clare, STAT.0312.001.0001_R at [14].
 543 Exhibit 15-0013, NSW.0471.001.0001_R at 0015_R; Transcript of L Clare, T8941:18–33
 (Day 85), T9020:28–40 (Day 85).
 544 Transcript of L Clare, T8941:25–33 (Day 85).
 545 Transcript of L Clare, T8944:3–6 (Day 85).
 546 Transcript of L Clare, T8943:40–T8944:1 (Day 85).
 547 Transcript of L Clare, T8943:32–35 (Day 85).
 548 Transcript of L Clare, T8958:42–T8959:5 (Day 85).
 549 Transcript of L Clare, T8959:3–5 (Day 83).
 550 Transcript of L Clare, T8930:8–13 (Day 85), T8959:44–T8962:33 (Day 85).
 551 Transcript of L Clare, T8949:21–32 (Day 85), T8961:40–43 (Day 85), T9025:2–12 (Day 85).
 552 Transcript of L Clare, T8957:31–T8958:19 (Day 85).
 553 Transcript of L Clare, T8958:10–14 (Day 85).
 554 Transcript of L Clare, T8950:9–17 (Day 85).
 555 Transcript of L Clare, T8950:23–37 (Day 85).
 556 Transcript of L Clare, T8944:16–T8945:4 (Day 85).
 557 Transcript of L Clare, T8945:6–22 (Day 85).
 558 Transcript of L Clare, T8945:24–39 (Day 85).
 559 Transcript of L Clare, T8952:12–15 (Day 85).
 560 Transcript of L Clare, T8947:7–31 (Day 85).
 561 Transcript of L Clare, T8953:9–32 (Day 85).
 562 Transcript of L Clare, T8967:44–T8968:3 (Day 85), T8960:1–17 (Day 85).
 563 Transcript of L Clare, T8968:5–9 (Day 85).
 564 Transcript of L Clare, T8968:47–T8969:9 (Day 85).
 565 Transcript of L Clare, T8969:11–15 (Day 85).
 566 Transcript of L Clare, T8977:8–14 (Day 85).
 567 Transcript of L Clare, T8956:44–45 (Day 85).
 568 Transcript of L Clare, T8969:41–T8970:15 (Day 85).
 569 Transcript of L Clare, T8956:44–T8957:3 (Day 85).
 570 Transcript of L Clare, T8969:41–T8970:1 (Day 85).
 571 Exhibit 15-0035, Statement of L Clare, STAT.0312.001.0001_R at [14].
 572 Transcript of L Clare, T8968:33–41 (Day 85).
 573 Transcript of L Clare, T8968:35–38 (Day 85).
 574 Transcript of L Clare, T8968:22–26 (Day 85).
 575 Transcript of L Clare, T8968:28–31 (Day 85).
 576 Transcript of L Clare, T8989:35–43 (Day 85).
 577 Transcript of L Clare, T8990:3–23 (Day 85).
 578 Transcript of L Clare, T8996:36–T8997:8 (Day 85).
 579 Transcript of L Clare, T8966:28–31 (Day 85), T8990:38–T8991:21 (Day 85).
 580 Transcript of L Clare, T8966:10–12 (Day 85).
 581 Transcript of L Clare, T8966:14–26 (Day 85).
 582 Exhibit 15-0035, Statement of L Clare, STAT.0312.001.0001_R at [14].
 583 Transcript of L Clare, T8992:30–34 (Day 85).
 584 Transcript of L Clare, T8992:1–28 (Day 85).
 585 Transcript of L Clare, T8992:8–17 (Day 85).

586 Exhibit 15-0003, Supplementary Statement of J Gilbert, STAT.0262.002.0001_R at [40]; Exhibit 15-
 0004, Statement of K Rogers, STAT.0307.001.0001_R at [45]; Exhibit 15-0004, Annexure Rogers-4,
 STAT.0307.001.0018_R; Exhibit 15-0006, Statement of S Boyce, STAT.0305.001.0001_R at [48]; Exhibit 15-
 0006, Annexure SMB-17, STAT.0305.001.0049_R; Exhibit 15-0004, QLD.0024.001.2059_R.
 587 Exhibit 15-0004, QLD.0024.001.2059_R at 2059_R.
 588 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [45].
 589 Exhibit 15-0004, Statement of K Rogers, STAT.0307.001.0001_R at [46]; Exhibit 15-0004,
 Annexure Rogers-5, STAT.0307.001.0020_R.
 590 Exhibit 15-0003, Supplementary Statement of J Gilbert, STAT.0262.002.0001_R at [41];
 Exhibit 15-0013, QLD.0027.001.1165_R.
 591 Exhibit 15-0013, QLD.0027.001.1165_R at 1176_R and 1188_R.
 592 Exhibit 15-0013, QLD.0027.001.1165_R at 1171_R and 1193_R.
 593 Exhibit 15-0013, QLD.0027.001.1165_R at 1171_R.
 594 Exhibit 15-0013, QLD.0027.001.1165_R at 1172_R.
 595 Exhibit 15-0013, QLD.0027.001.1165_R at 1169_R–1170_R.
 596 Exhibit 15-0003, Supplementary Statement of J Gilbert, STAT.0262.002.0001_R at [42];
 Transcript of J Gilbert, T8243:39–T8244:2 (Day 78).
 597 Exhibit 15-0021, EXH.0015.021.0001 at 0051.
 598 Transcript of L Clare, T8993:28–44 (Day 85).
 599 Transcript of L Clare, T9029:46–T9030:12 (Day 85), T8973:10–15 (Day 85).
 600 Transcript of L Clare, T8972:38–42 (Day 85).
 601 Transcript of L Clare, T8972:44–46 (Day 85).
 602 Transcript of L Clare, T8972:38–T8973:15 (Day 85).
 603 Transcript of L Clare, T8972:14–20 (Day 85).
 604 Transcript of L Clare, T8972:22–33 (Day 85).
 605 Transcript of L Clare, T8972:14–20 (Day 85).
 606 Exhibit 15-0035, Statement of L Clare, STAT.0312.001.0001_R at [22]; Transcript of L Clare,
 T8972:4–12 (Day 85).
 607 Exhibit 15-0035, Statement of L Clare, STAT.0312.001.0001_R at [23].
 608 Transcript of L Clare, T8971:41–T8972:2 (Day 85).
 609 Transcript of M Cunneen, T8589:27–34 (Day 81).
 610 Exhibit 15-0020, Statement of M Cunneen, STAT.0306.001.0001_R at [39]; Transcript of M
 Cunneen, T8589:31–34 (Day 81).
 611 Exhibit 15-0003, Supplementary Statement of J Gilbert, STAT.0262.002.0001_R [33];
 Exhibit 15-0003, Annexure JTG-4, STAT.0262.002.0088_R.
 612 Exhibit 15-0003, Supplementary Statement of J Gilbert, STAT.0262.002.0001_R at [47];
 Exhibit 15-0013, QCYC.0002.001.1866.
 613 Exhibit 15-0013, QCYC.0002.001.1866 at 1868.
 614 Exhibit 15-0003, Supplementary Statement of J Gilbert, STAT.0262.002.0001_R at [49];
 Exhibit 15-0003, Annexure JTG-8, STAT.0262.002.0105_R.
 615 Exhibit 15-0002, Statement of J Gilbert, STAT.0262.001.0001_R at [20].
 616 Exhibit 15-0013, CRT.0007.001.0001 at 0002.
 617 Exhibit 15-0013, CRT.0007.001.0050_R at 0050_R.
 618 Exhibit 15-0013, CRT.0007.001.0001 at 0002.
 619 Exhibit 15-0013, CRT.0007.001.0001 at 0002.
 620 Exhibit 15-0013, CRT.0007.001.0001 at 0004.
 621 Exhibit 15-0013, CRT.0007.001.0050_R at 0050_R.
 622 Exhibit 15-0013, CRT.0007.001.0050_R at 0051_R
 623 Exhibit 15-0013, CRT.0007.001.0050_R at 0051_R .
 624 Exhibit 15-0013, CRT.0007.001.0050_R at 0051_R.
 625 Exhibit 15-0013, CRT.0007.001.0050_R at 0051_R.
 626 Exhibit 15-0013, QCYC.0002.001.0278 at 0287.
 627 Exhibit 15-0013, QCYC.0002.001.0278 at 0291.
 628 Exhibit 15-0013, QCYC.0002.001.0278 at 0291–0292.

629 Letters Patent (Cth), 11 January 2013.
 630 Exhibit 15-0032, Annexure D, STAT.0304.001.0097 at 0115.
 631 Exhibit 15-0030, QLD.0039.001.0001 at 0031.
 632 *Public Services Board of NSW v Osmond* (1986) 159 CLR 656 at 675.
 633 *Public Services Board of NSW v Osmond* (1986) 159 CLR 656 at 668.
 634 Exhibit 15-0024, Statement of N Cowdery, STAT.0308.001.0001_R at [9].
 635 Transcript of N Cowdery, T8772:6–13 (Day 83).
 636 Transcript of N Cowdery, T8782:34–42 (Day 83).
 637 Transcript of N Cowdery, T8802:7–9 (Day 85).
 638 Transcript of N Cowdery, T8802:7–9 (Day 83).
 639 Transcript of N Cowdery, T8805:45–T8806:5 (Day 83).
 640 Transcript of N Cowdery, T8817:4–11 (Day 83).
 641 Transcript of N Cowdery, T8839:38–T8840:9 (Day 83).
 642 Transcript of N Cowdery, T8819:12–31 (Day 83).
 643 Transcript of N Cowdery, T8773:13–17 (Day 82).
 644 Transcript of N Cowdery, T8843:17–35 (Day 83).
 645 Transcript of N Cowdery, T8786:37–39 (Day 83).
 646 Transcript of N Cowdery, T8784:37–44 (Day 83).
 647 Transcript of N Cowdery, T8765:42–T8786:7 (Day 83).
 648 Transcript of N Cowdery, T8785:17–24 (Day 83), T8784:25–28 (Day 83).
 649 Transcript of N Cowdery, T8815:15–29 (Day 83).
 650 Transcript of N Cowdery, T8796:25–44 (Day 83).
 651 Exhibit 15-0022, Statement of N Cowdery, STAT.0308.001.0001_R at [13].
 652 Transcript of N Cowdery, T8798:11–14 (Day 83).
 653 Transcript of N Cowdery, T8801:28–35 (Day 83).
 654 Transcript of N Cowdery, T8779:23–41 (Day 83), T8780:2–11 (Day 83), T8793:43–47 (Day 83).
 655 Transcript of N Cowdery, T8807:24–30 (Day 83).
 656 Transcript of N Cowdery, T8807:24–30 (Day 83).
 657 Transcript of N Cowdery, T8806:44–T8807:15 (Day 83).
 658 Transcript of N Cowdery, T8814:21–42 (Day 83).
 659 Transcript of N Cowdery, T8817:47–T8819:31 (Day 83).
 660 Transcript of N Cowdery, T8818:38–42 (Day 83).
 661 Transcript of N Cowdery, T8820:23–29 (Day 83).
 662 Exhibit 15-0035, Statement of L Clare, STAT.0312.001.0001_R at [14]; Transcript of L Clare, T8940:33–37 (Day 85).
 663 Transcript of L Clare, T8941:18–33 (Day 85), T9020:28–40 (Day 85).
 664 Exhibit 15-0013, NSW.0471.001.0001_R at 0015_R; Transcript of L Clare, T8941:18–33 (Day 85).
 665 Transcript of L Clare, T8949:21–32 (Day 85), T8961:40–43 (Day 85), T9025:2–12 (Day 85).
 666 Transcript of L Clare, T8949:26–35 (Day 85), T8958:10–14 (Day 85).
 667 Transcript of L Clare, T8950:23–37 (Day 85).
 668 Transcript of L Clare, T8969:41–T8970:15 (Day 85).
 669 Transcript of L Clare, T8967:44–T8968:3 (Day 85), T8960:1–17 (Day 85).
 670 Transcript of L Clare, T8966:14–26 (Day 85).
 671 Exhibit 15-0035, Statement of L Clare, STAT.0312.001.0001_R at [14].
 672 Transcript of L Clare, T8943:40–T8944:1 (Day 85).
 673 Transcript of L Clare, T8943:32–35 (Day 85).
 674 Transcript of L Clare, T8944:16–T8945:4 (Day 85).
 675 Transcript of L Clare, T8945:6–22 (Day 85).
 676 Transcript of L Clare, T8952:12–15 (Day 85).
 677 Transcript of L Clare, T8947:7–31 (Day 85).
 678 Transcript of L Clare, T8953:9–32 (Day 85).
 679 Exhibit 15-0035, Statement of L Clare, STAT.0312.001.0001_R at [14].
 680 Transcript of L Clare, T8969:41–T8970:1 (Day 85).
 681 Transcript of L Clare, T8968:22–26 (Day 85).

- 682 Transcript of L Clare, T8968:28–31 (Day 85).
- 683 Exhibit 15-0032, Annexure D, STAT.0304.001.0097 at 0100.
- 684 *Maxwell v The Queen* (1996) 184 CLR 501 at 534. See also *Likiardopoulos v The Queen* (2012) 247 CLR 265 at 269 (French CJ) and 279–80 (Gummow, Hayne, Crennan, Kiefel and Bell JJ); *Elias v The Queen* (2013) 248 CLR 483 at 497 (French CJ, Hayne, Kiefel, Bell and Keane JJ); *Magaming v The Queen* (2013) 87 ALJR 1060 at 1067 (French CJ, Hayne, Crennan, Kiefel and Bell JJ, Keane J agreeing).
- 685 Crown Prosecution Service, Victim's Right to Review (VRR) leaflet, http://www.cps.gov.uk/publications/docs/VRR_leaflet.pdf (viewed 7 May 2015).
- 686 Crown Prosecution Service Inspectorate Act 2000 (UK) c 10, s 2.
- 687 HM Crown Prosecution Service Inspectorate, How we inspect, www.justiceinspectors.gov.uk/hmcpsi/about-our-inspections/how-we-inspect/#.VQig26O4a7Q (viewed 7 May 2015).
- 688 *R v Director of Public Prosecutions, Ex parte C* [1995] 1 Cr App R 136; *R v Director of Public Prosecutions, Ex Parte Manning* [2001] QB 330.
- 689 Transcript of A Baumann, T8312:40–46 (Day 79).
- 690 Submissions of A Baumann, SUBM.1015.005.0001 at 0002.
- 691 Exhibit 15-0009, Statement of B King, QLD.0026.001.0001 at [12].
- 692 Queensland Academy of Sport, *Funding*, www.qasport.qld.gov.au/about/funding.html (viewed 14 April 2015).
- 693 Exhibit 15-0008, Statement of A Baumann, STAT.0268.001.0001 at [3].
- 694 Exhibit 15-0008, Statement of A Baumann, STAT.0268.001.0001 at [4].
- 695 Transcript of A Baumann T8312:23–25 (Day 79).
- 696 Exhibit 15-0009, Statement of B King, QLD.0026.001.0001 at [1].
- 697 Exhibit 15-0012, STAT.0295.001.0002_R.
- 698 Exhibit 15-0012, STAT.0295.001.0169 at 170.
- 699 Exhibit 15-0012, STAT.0295.001.0169 at 171.
- 700 Submissions of Swimming Australia, SUBM.1015.011.0001.
- 701 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [5].
- 702 Exhibit 15-0013, SWI.0011.001.0001 at 0004.
- 703 Exhibit 15-0013, SWI.0011.001.0001 at 0013; Exhibit 15-0033, Statement of M Heathcote, STAT.0270.001.0001_R at [15]–[16]; Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [39].
- 704 Exhibit 15-0014, Statement of K Hasemann, STAT.0244.001.0002_R at [3].
- 705 *Commission for Children and Young People and Child Guardian Act 2000* (QLD), as in force on 9 February 2001, effective 2 February 2001. Part 6, Sch 1 commenced on 1 May 2001 (except ss 101, 109, 111(2)(c), 113, 114(4)). Other sections commenced on 1 October 2001 (ss 101, 111(2)(c), 114(4)) and 1 February 2002 (ss 109, 113).
- 706 Explanatory Notes, *Commission for Children and Young People Bill 2000* (QLD).
- 707 *Commission for Children and Young People and Child Guardian Act 2000* (QLD) ss 100(1), 105–108. Note that s 100(1) and s 107 did not require employers to apply to the CCYPCG for a suitability notice prior to employing a person; it simply enabled them to do so. Section 105 required employers to apply to the CCYPCG for a suitability notice shortly after the employee commenced regulated employment.
- 708 *Commission for Children and Young People and Child Guardian Act 2000* (QLD) s 105.
- 709 *Commission for Children and Young People and Child Guardian Act 2000* (QLD) s 102.
- 710 *Commission for Children and Young People and Child Guardian Act 2000* (QLD) s 97.
- 711 *Commission for Children and Young People and Child Guardian Act 2000* (QLD) Sch 4.
- 712 *Commission for Children and Young People and Child Guardian Act 2000* (QLD) s 9.
- 713 Transcript of M Miller, T8541:9-44 (Day 81).
- 714 Criminal History Screening Legislation Amendment Act 2010 (QLD) ss 65(4) and 65(18).
- 715 Child Protection Reform Amendment Act 2014 Part 4.
- 716 Exhibit 15-0018, Statement of M Miller, STAT.0303.001.0001_R at [5].
- 717 Exhibit 15-0018, Statement of M Miller, STAT.0303.001.0001_R at [3] and [5].
- 718 Exhibit 15-0013, PUB.0006.001.0001 at 0011.
- 719 Exhibit 15-0013, PUB.0006.001.0001 at 0023.
- 720 Submissions of Swimming Australia, SUBM.1015.011.0001 at 0003.

721 Exhibit 15-0008, Statement of A Baumann, STAT.0268.001.0001 at [14].
 722 Submissions of A Baumann, SUBM.1015.005.0001 at 0003.
 723 Exhibit 15-0013, QLD.0015.001.0215_R at 0215_R.
 724 Exhibit 15-0008, Statement of A Baumann, STAT.0268.001.0001 at [6].
 725 Exhibit 15-0008, Statement of A Baumann, STAT.0268.001.0001 at [5].
 726 Transcript of A Baumann, T8316:18–30 (Day 79).
 727 Transcript of A Baumann, T8315:9–14 (Day 79).
 728 Transcript of A Baumann, T8317:6–11 (Day 79).
 729 Transcript of A Baumann, T8322:5–28 (Day 79).
 730 Transcript of A Baumann, T8315:21–27 (Day 79).
 731 Exhibit 15-0013, QLD.0015.001.0215_R at 0215_R.
 732 Exhibit 15-0013, QLD.0015.001.0215_R at 0216_R.
 733 Transcript of A Baumann, T8340:4–17 (Day 79).
 734 Transcript of A Baumann, T8340:4–12 (Day 79).
 735 Transcript of A Baumann, T8319:10–15 (Day 79).
 736 Transcript of A Baumann, T8320:15–23 (Day 79).
 737 Transcript of A Baumann, T8313:9–23 (Day 79).
 738 Transcript of A Baumann, T8320:15–23 (Day 79).
 739 Exhibit 15-0008, Statement of A Baumann, STAT.0268.001.0001 at [13].
 740 Transcript of A Baumann, T8318:13–22 (Day 79).
 741 Transcript of A Baumann, T8318:13–18 (Day 79).
 742 Exhibit 15-0013, QLD.0015.001.0217.
 743 Transcript of A Baumann, T8342:22–25 (Day 79).
 744 Submissions of A Baumann, SUBM.1015.005.0001 at 0002.
 745 Exhibit 15-0008, Statement of A Baumann, STAT.0268.001.0001 at [13].
 746 Transcript of A Baumann, T8341:14–33 (Day 79).
 747 Transcript of A Baumann, T8342:1–12 (Day 79).
 748 Transcript of A Baumann, T8345:43–46 (Day 79).
 749 Transcript of A Baumann, T8346:5–8 (Day 79).
 750 Transcript of A Baumann, T8346:5–8 (Day 79).
 751 Transcript of A Baumann, T8324:47–T8325:3 (Day 79).
 752 Submissions of A Baumann, SUBM.1015.005.0001 at 0006.
 753 Crown Law provides legal services to the Queensland Government only. This includes ministers, statutory
 authorities, government departments and agencies. Crown Law operates as a self-funded business unit of
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 agencies/crown-law](http://www.justice.qld.gov.au/justice-services/justice-agencies/crown-law)> (accessed on 8 September 2015).
 754 Submissions of A Baumann, SUBM.1015.005.0001 at 0002.
 755 Submissions of A Baumann, SUBM.1015.005.0001 at 0002.
 756 Submissions of A Baumann, SUBM.1015.005.0001 at 0004.
 757 Transcript of A Baumann, T8321:14–19 (Day 79).
 758 Transcript of A Baumann, T8321:9–12 (Day 79).
 759 Submissions of A Baumann, SUBM.1015.005.0001 at 0010.
 760 Submissions of A Baumann, SUBM.1015.005.0001 at 0010.
 761 Submissions of A Baumann, SUBM.1015.005.0001 at 0008.
 762 Exhibit 15-0013, QLD.0015.001.0420.
 763 Exhibit 15-0013, QLD.0015.001.0420.
 764 Transcript of A Baumann, T8321:46–T8322:3 (Day 79).
 765 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [11]; Exhibit 15-0011,
 STAT.0299.001.0026_R at 0026_R; Transcript of G Tasker, T8411:13–43 (Day 80).
 766 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [11].
 767 Transcript of G Tasker, T8416:15–19 (Day 80).
 768 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [13].
 769 Exhibit 15-0011, STAT.0299.001.0038.
 770 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [15].

771 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [16].
 772 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [16].
 773 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [17].
 774 Transcript of G Tasker, T8418:38–44 (Day 80).
 775 Transcript of G Tasker, T8418:46–T8419:9 (Day 80).
 776 Transcript of G Tasker, T8419:2–9 (Day 80).
 777 Transcript of G Tasker, T8419:17–19 (Day 80).
 778 Transcript of G Tasker, T8419:21–32 (Day 80).
 779 Transcript of G Tasker, T8419:30–32 (Day 80).
 780 Transcript of G Tasker, T8419:34–39 (Day 80).
 781 Transcript of G Tasker, T8419:41–T8420:3 (Day 80).
 782 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [18]; Transcript of G Tasker, T8421:3–6 (Day 80).
 783 Transcript of G Tasker, T8423:5–7 (Day 80).
 784 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [19].
 785 Transcript of G Tasker, T8421:3–6 (Day 80).
 786 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [20].
 787 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [21].
 788 Transcript of G Tasker, T8421:8–14 (Day 80); Exhibit 15-0011, STAT.0299.001.0056.
 789 Transcript of G Tasker, T8423:29–T8424:07 (Day 80).
 790 Exhibit 15-0013, SWI.9100.01001.0040 at 0040.
 791 Exhibit 15-0013, SWI.9100.01001.0040 at 0045.
 792 Exhibit 15-0013, SWI.9100.01001.0040 at 0045.
 793 Exhibit 15-0013, SWI.9100.01001.0040 at 0045.
 794 Transcript of G Tasker, T8421:16–46 (Day 80).
 795 Transcript of G Tasker, T8421:38–41 (Day 80).
 796 Transcript of G Tasker, T8421:43–46 (Day 80).
 797 Transcript of G Tasker, T8422:1–6 (Day 80).
 798 Transcript of G Tasker, T8422:27–33 (Day 80).
 799 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [19].
 800 Transcript of G Tasker, T8422:8–13 (Day 80).
 801 Transcript of G Tasker, T8422:18–25 (Day 80).
 802 Transcript of G Tasker, T8445:21–30 (Day 80).
 803 Submissions of Swimming Australia, SUBM.1015.011.0001 at 0004.
 804 Submissions of Swimming Australia, SUBM.1015.011.0001 at 0004.
 805 Submissions of Swimming Australia, SUBM.1015.011.0001 at 0004.
 806 Exhibit 15-0013, SWI.0007.001.1215.
 807 Exhibit 15-0013, SWI.0007.001.1215.
 808 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [24]; Exhibit 15-0011, STAT.0299.001.0066.
 809 Exhibit 15-0013, SWI.0007.001.1217; Exhibit 15-0013, SWI.0007.001.1218.
 810 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [24].
 811 Exhibit 15-0011, STAT.0299.001.0068.
 812 Transcript of G Tasker, T8425:28–T8426:6 (Day 80).
 813 Exhibit 15-0013, QLD.0015.001.0389.
 814 Exhibit 15-0013, QLD.0015.001.0389 at 0389.
 815 Exhibit 15-0013, QLD.0015.001.0389 at 0389.
 816 Exhibit 15-0013, QLD.0015.001.0389 at 0390.
 817 Exhibit 15-0013, QLD.0015.001.0389 at 0390.
 818 Transcript of A Baumann, T8324:33–35 (Day 79).
 819 Transcript of A Baumann, T8324:13–17 (Day 79).
 820 Transcript of A Baumann, T8324:13–17 (Day 79).
 821 Transcript of A Baumann, T8324:37–41 (Day 79).
 822 Transcript of A Baumann, T8329:35–40 (Day 79).

823 Exhibit 15-0013, QLD.0015.001.0405_R.
 824 Exhibit 15-0013, QLD.0015.001.0405_R at 0405_R-0408_R.
 825 Exhibit 15-0013, QLD.0015.001.0405_R at 0407_R.
 826 Exhibit 15-0013, QLD.0015.001.0405_R at 0405_R.
 827 Exhibit 15-0013, QLD.0015.001.0405_R at 0410_R.
 828 Exhibit 15-0013, QLD.0015.001.0387.
 829 Exhibit 15-0013, QLD.0015.001.0387.
 830 Exhibit 15-0013, QLD.0015.001.0405 at 0410.
 831 Transcript of A Baumann, T8327:45–T8328:2 (Day 79).
 832 Transcript of A Baumann, T8328:4–19 (Day 79).
 833 Transcript of A Baumann, T8328:8–19 (Day 79).
 834 Transcript of A Baumann, T8324:3–41 (Day 79).
 835 Transcript of A Baumann, T8323:19–22 (Day 79), T8322:43–T8323:4 (Day 79).
 836 Transcript of A Baumann, T8346:10–29 (Day 79).
 837 Transcript of A Baumann, T8346:32–38 (Day 79).
 838 Exhibit 15-0013, QLD.0015.001.0393_R.
 839 Exhibit 15-0013, QLD.0015.001.0393_R at 0394_R, 0396_R-0037_R.
 840 Exhibit 15-0013, QLD.0015.001.0393_R at 0396_R.
 841 Exhibit 15-0013, QLD.0015.001.0393_R at 0397_R.
 842 Exhibit 15-0011, STAT.0299.001.0074.
 843 Exhibit 15-0011, STAT.0299.001.0074 at 0074-0075.
 844 Exhibit 15-0011, STAT.0299.001.0076 at 0077.
 845 Exhibit 15-0011, STAT.0299.001.0074; Transcript of G Tasker T8444:8–21 (Day 80).
 846 Exhibit 15-0011, STAT.0299.001.0076 at 0077.
 847 Transcript of G Tasker, T8444:23–29 (Day 80).
 848 Transcript of G Tasker, T8444:31-39 (Day 80).
 849 Transcript of G Tasker, T8445:12–19 (Day 80).
 850 Transcript of G Tasker, T8445:26–30 (Day 80).
 851 Transcript of G Tasker, T8446:21–29 (Day 80).
 852 Transcript of G Tasker, T8447:3–44 (Day 80).
 853 Exhibit 15-0011, Annexure 14, STAT.0299.001.0078 at 0079.
 854 Exhibit 15-0011, Annexure 14, STAT.0299.001.0078 at 0079.
 855 Transcript of A Baumann, T8328:21–27 (Day 79).
 856 Transcript of A Baumann, T8328:34–42 (Day 79).
 857 Transcript of A Baumann, T8328:44–T8329:6 (Day 79).
 858 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [30].
 859 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [55].
 860 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [36]; Exhibit 15-0011, Annexure 19, STAT.0299.001.0118 at 0118–0119.
 861 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [36]; Exhibit 15-0011, Annexure 19, STAT.0299.001.0120_R.
 862 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [37]; Exhibit 15-0011, Annexure 20, STAT.0299.001.0121.
 863 Transcript of G Tasker, T8434:28–35 (Day 80).
 864 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [37].
 865 Transcript of G Tasker, T8434:37–T8435:3; T8435:18–24 (Day 80).
 866 Exhibit 15-0013, QLD.0015.001.0097_R.
 867 Exhibit 15-0013, QLD.0015.001.0097_R at 0113_R.
 868 Transcript of A Baumann, T8331:6–38 (Day 79).
 869 Transcript of A Baumann, T8331:29–33 (Day 79).
 870 Exhibit 15-0013, QLD.0015.001.0097_R at 0109_R.
 871 Exhibit 15-0013, QLD.0015.001.0097_R at 0109_R.
 872 Exhibit 15-0013, QLD.0015.001.0097 at 0110_R.
 873 Transcript of A Baumann, T8330:13–35 (Day 79).

874 Exhibit 15-0017, QLD.0034.001.0004_R at 0007_R-0008_R; Exhibit 15-0017,
QLD.0034.001.0004_R at 0014_R.

875 Exhibit 15-0017, QLD.0034.001.0004_R at 0008_R.

876 Exhibit 15-0017, QLD.0034.001.0004_R.

877 Exhibit 15-0017, QLD.0034.001.0009_R.

878 Exhibit 15-0017, QLD.0034.001.0020_R.

879 Exhibit 15-0017, QLD.0034.001.0031_R.

880 Exhibit 15-0017, QLD.0034.001.0004_R at 0008_R.

881 Exhibit 15-0017, QLD.0034.001.0009_R at 0013_R-0015_R.

882 Exhibit 15-0017, QLD.0034.001.0009 at 0012_R.

883 Exhibit 15-0013, QLD.0018.001.0017_R.

884 Exhibit 15-0017, QLD.0034.001.0043_R.

885 Exhibit 15-0017, QLD.0034.001.0043_R at 0048_R.

886 Exhibit 15-0013, QLD.0018.001.0004_R at 0011_R.

887 Exhibit 15-0013, QLD.0018.001.0004_R at 0011_R.

888 Transcript of G Tasker, T8426:36-41 (Day 80).

889 Transcript of A Baumann, T8332:1-7 (Day 79), T8332:25-T8333:47 (Day 79), T8334:10-15 (Day 79).

890 Transcript of A Baumann, T8333:42-T8334:15 (Day 79).

891 Transcript of A Baumann, T8334:17-21 (Day 79).

892 Transcript of A Baumann, T8334:38-T8335:2 (Day 79).

893 Transcript of A Baumann, T8335:4-7 (Day 79).

894 Transcript of A Baumann, T8335:28-34 (Day 79).

895 Submissions of A Baumann, SUBM.1015.005.0001 at 0011.

896 Submissions of A Baumann, SUBM.1015.005.0001 at 0010-0011.

897 Transcript of A Baumann, T8337:4-31 (Day 79).

898 Transcript of A Baumann, T8341:19-24 (Day 79).

899 Transcript of A Baumann, T8335:20-26 (Day 79).

900 Transcript of A Baumann, T8335:40-44 (Day 79).

901 Transcript of A Baumann, T8336:37-T8337:2 (Day 79), T8347:21-33 (Day 79).

902 Transcript of A Baumann, T8328:4-19 (Day 79).

903 Transcript of A Baumann, T8350:5-23 (Day 79).

904 Transcript of A Baumann, T8336:15-19 (Day 79), T8336:37-46 (Day 79).

905 Transcript of A Baumann, T8336:21-23 (Day 79).

906 Transcript of A Baumann, T8336:29-35 (Day 79).

907 Submissions of Counsel Assisting the Royal Commission, SUBM.0015.001.0001_R at 0138_R.

908 Submissions of A Baumann, SUBM.1015.005.0001 at 0011.

909 Submissions of A Baumann, SUBM.1015.005.0001 at 0012.

910 Submissions of A Baumann, SUBM.1015.005.0001 at 0012.

911 Submissions of A Baumann, SUBM.1015.005.0001 at 0012.

912 Submissions of A Baumann, SUBM.1015.005.0001 at 0013.

913 Submissions of A Baumann, SUBM.1015.005.0001 at 0013.

914 Transcript of G Tasker, T8426:22 (Day 80).

915 Transcript of G Tasker, T8427:24-29 (Day 80).

916 Transcript of G Tasker, T8426:36-41 (Day 80).

917 Transcript of G Tasker, T8426:46-T8427:2 (Day 80).

918 Transcript of G Tasker, T8425:16-21 (Day 80), T8426:24-34 (Day 80).

919 Transcript of G Tasker, T8427:4-6 (Day 80).

920 Transcript of G Tasker, T8427:4-6 (Day 80).

921 Transcript of G Tasker, T8427:8-16 (Day 80).

922 Transcript of G Tasker, T8429:35-37 (Day 80), T8430:18-23 (Day 80).

923 Transcript of G Tasker, T8427:19-22 (Day 80).

924 Transcript of G Tasker, T8427:45-T8428:7 (Day 80), T8434:28-T8435:28 (Day 80).

925 Transcript of G Tasker, T8433:42-T8434:3 (Day 80).

926 Exhibit 15-0009, Statement of B King, QLD.0026.001.0001 at [1].

927 Transcript of B King, T8353:15–32 (Day 79); Transcript of B King, T8355:32–44 (Day 79).
 928 Exhibit 15-0009, Statement of B King, QLD.0026.001.0001 at [4]; Transcript of B King, T8395:2–47 (Day 79).
 929 Transcript of B King, T8356:33–44 (Day 79).
 930 Transcript of B King, T8356:38–T8357:15 (Day 79).
 931 Transcript of B King, T8357:17–22 (Day 79).
 932 Transcript of B King, T8356:38–T8357:15 (Day 79).
 933 Submissions of B King, SUBM.1015.004.0001 at 0002.
 934 Exhibit 15-0009, Statement of B King, QLD.0026.001.0001 [14]; Exhibit 15-0009,
 Annexure A, QLD.0026.001.0006_R.
 935 Exhibit 15-0013, QLD.0015.001.0197 at 0198.
 936 Transcript of B King, T8357:24–27 (Day 79).
 937 Transcript of B King, T8357:33–37 (Day 79).
 938 Transcript of M Miller, T8537:17–24 (Day 81).
 939 Transcript of B King, T8391:46–T8392:5 (Day 79).
 940 Exhibit 15-0018, Statement of M Miller, STAT.0303.001.0001_R at [14]–[15].
 941 Exhibit 15-0018, Statement of M Miller, STAT.0303.001.0001_R at [27]–[30].
 942 Transcript of M Miller, T8537:26–34 (Day 81).
 943 Exhibit 15-0018, Statement of M Miller, STAT.0303.001.0001_R at [31].
 944 Exhibit 15-0018, Statement of M Miller, STAT.0303.001.0001_R at [32].
 945 Exhibit 15-0013, QCYC.0002.001.0276.
 946 Exhibit 15-0013, QCYC.0002.001.0276.
 947 Exhibit 15-0013, QLD.0015.001.0197.
 948 Exhibit 15-0013, QLD.0015.001.0197 at 0198.
 949 Exhibit 15-0013, QLD.0015.001.0197.
 950 Exhibit 15-0013, QLD.0015.001.0393_R at 0394_R.
 951 Exhibit 15-0013, QLD.0015.001.0197 at 0198.
 952 Exhibit 15-0013, QLD.0015.001.0197 at 0198.
 953 Exhibit 15-0018, Statement of M Miller, STAT.0303.001.0001_R at [5].
 954 Transcript of M Miller, T8538:18–23 (Day 81), T8539:13–33 (Day 81).
 955 Transcript of M Miller, T8557:28–31 (Day 81).
 956 Transcript of M Miller, T8557:16–26 (Day 81).
 957 Transcript of M Miller, T8540:1–19 (Day 81).
 958 Transcript of M Miller, T8540:35–40 (Day 81).
 959 Transcript of M Miller, T8540:21–40 (Day 81).
 960 Transcript of M Miller, T8549:35–40 (Day 81).
 961 Transcript of M Miller, T8540:42–45 (Day 81), T8541:25–44 (Day 81).
 962 Transcript of B King, T8359:8–11 (Day 79), T8404:8–18 (Day 79).
 963 Transcript of B King, T8397:24–33 (Day 79).
 964 Transcript of B King, T8397:41–44 (Day 79).
 965 Transcript of B King, T8360:27–30 (Day 79).
 966 Transcript of B King, T8360:32–36 (Day 79).
 967 Transcript of B King, T8391:41–T8391:5 (Day 79).
 968 Transcript of B King, T8392:10–13 (Day 79).
 969 Transcript of B King, T8393:15–25 (Day 79).
 970 Transcript of B King, T8393:20–25 (Day 79).
 971 Transcript of K Hasemann, T8499:27–36 (Day 80).
 972 Exhibit 15-0009, Statement of B King, QLD.0026.001.0001 at 0002.
 973 Transcript of B King, T8363:22–35 (Day 79); Transcript of K Hasemann, T8502:17–39 (Day 80).
 974 Transcript of B King, T8364:31–38 (Day 79).
 975 Exhibit 15-0013, QLD.0015.001.0193_R at 0194_R.
 976 Transcript of B King, T8368:3–14 (Day 79).
 977 Transcript of B King, T8364:4–8 and 40–43 (Day 79).
 978 Transcript of K Hasemann, T8499:47–T8500:2 (Day 80).
 979 Transcript of K Hasemann, T8501:10–13 (Day 80).

980 Transcript of K Hasemann, T8501:19–22 (Day 80).
 981 Transcript of K Hasemann, T8501:24–T8502:11 (Day 80).
 982 Exhibit 15-0013, QLD.0021.001.0471.
 983 Transcript of B King, T8369:27–40 (Day 79); Submissions of K Hasemann and Swimming
 Queensland, SUBM.1015.008.0001 at 0002.
 984 Transcript of K Hasemann, T8502:41–44 (Day 80).
 985 Transcript of K Hasemann, T8502:41–T8503:6, T8503:18–28 (Day 80).
 986 Transcript of K Hasemann, T8506:36–T8507:30, T8507:23–30 (Day 80).
 987 Transcript of K Hasemann, T8503:41–43 (Day 80).
 988 Transcript of K Hasemann, T8503:18–T8505:14 (Day 80).
 989 Transcript of K Hasemann, T8505:16–36 (Day 80), T8505:46–T8506:4 (Day 80).
 990 Transcript of K Hasemann, T8504:8–22 (Day 80).
 991 Exhibit 15-0013, QCYC.0002.001.0259_R.
 992 Exhibit 15-0013, QCYC.0002.001.0276.
 993 Exhibit 15-0013, QCYC.0002.001.0345 at 0379.
 994 Exhibit 15-0013, QCYC.0002.001.0259_R; Exhibit 15-0013, QCYC.0002.001.0345.
 995 Exhibit 15-0013, QCYC.0002.001.1094.
 996 Transcript of B King, T8372:21–25 (Day 79).
 997 Exhibit 15-0013, QCYC.0002.001.0345 at 0366.
 998 Exhibit 15-0013, QCYC.0002.001.0345 at 0378–0379.
 999 Exhibit 15-0013, QLD.0021.001.0201_R at 0201_R and 0203_R.
 1000 Exhibit 15-0009, Statement of B King, QLD.0026.001.0001 at [18]; Exhibit 15-0013,
 QLD.0015.001.0022_R; Exhibit 15-0013, SWI.0005.001.0008_R.
 1001 Transcript of B King, T8366:40–44.
 1002 Exhibit 15-0013, QLD.0015.001.0097_R at 0109_R–0110_R; Exhibit 15-0013,
 QLD.0015.001.0115 at 0127–0128.
 1003 Transcript of B King, T8372:39–42 (Day 79).
 1004 Transcript of B King, T8372:44–47 (Day 79).
 1005 Transcript of B King, T8375:28–32 (Day 79).
 1006 Transcript of B King, T8375:47–T8376:2 (Day 79).
 1007 Transcript of B King, T8376:10–15 (Day 79).
 1008 Transcript of B King, T8376:4–8 (Day 79).
 1009 Transcript of B King’ T8375:9–21 (Day 79).
 1010 Transcript of B King’ T8375:23–26 (Day 79).
 1011 Transcript of B King’ T8374:44–T8375:7 (Day 79).
 1012 Transcript of B King’ T8398:9–15 (Day 79).
 1013 Transcript of B King’ T8370:6–7 (Day 79).
 1014 Transcript of B King, T8370:26–32 (Day 79).
 1015 Transcript of B King, T8377:7–11 (Day 79).
 1016 Transcript of B King, T8371:37–T8372:19 (Day 79).
 1017 Transcript of B King, T8392:31–43 (Day 79), T8393:15–25 (Day 79), T8393:38–42 (Day 79),
 T8396:22–31 (Day 79).
 1018 Transcript of B King, T8373:40–47 (Day 79).
 1019 Transcript of B King, T8392:31–37 (Day 79).
 1020 Transcript of B King, T8392:7–13 (Day 79), T8379:26–38 (Day 79), T8392:7–13 (Day 79),
 T8396:11–28 (Day 79), T8392:45–47 (Day 79).
 1021 Transcript of B King, T8393:17–25 (Day 79).
 1022 Transcript of B King, T8399:5–14 (Day 79), T8399:32–36 (Day 79), T8406:13–24 (Day 79).
 1023 Transcript of B King, T8371:20–35 (Day 79).
 1024 Transcript of B King, T8362:26–33 (Day 79).
 1025 Transcript of B King, T8360:9–21 (Day 79), T8362:26–33 (Day 79), T8363:15–20 (Day 79).
 1026 Transcript of B King, T8365:28–31 (Day 79).
 1027 Exhibit 15-0009, Statement of B King, QLD.0026.001.0001 at [12].
 1028 Transcript of B King, T8377:18–T8378:6 (Day 79).

- 1029 Transcript of B King, T8374:4–11 (Day 79).
- 1030 Transcript of B King, T8382:27–34 (Day 79); Exhibit 15-0013, QLD.0015.001.0013; Exhibit 15-0013, QLD.0015.001.0015; Exhibit 15-0013, QLD.0015.001.0018_R; Exhibit 15-0013, QLD.0015.001.0020_R; Exhibit 15-0013, QLD.0015.001.0024.
- 1031 Transcript of B King, T8382:42–47–T8383:1–4 (Day 79).
- 1032 Transcript of B King, T8379:26–34 (Day 79).
- 1033 Transcript of B King, T8379:36–38 (Day 79).
- 1034 Transcript of B King, T8381:24–27 (Day 79).
- 1035 Transcript of B King, T8398:44–T8399:6 (Day 79), T8399:16–30 (Day 79).
- 1036 Transcript of B King, T8394:8–47 (Day 79).
- 1037 Transcript of B King, T8384:25–34 (Day 79).
- 1038 Transcript of B King, T8399:44–47, T8400:2–T8401:9 (Day 79).
- 1039 Transcript of B King, T8394:8–11 (Day 79).
- 1040 Submissions of B King, SUBM.1015.004.0001 at 0004.
- 1041 Submissions of B King, SUBM.1015.004.0001 at 0005.
- 1042 Submissions of B King, SUBM.1015.004.0001 at 0005.
- 1043 Exhibit 15-0014, Statement of K Hasemann, STAT.0244.001.0002_R at [11].
- 1044 Exhibit 15-0014, Statement of K Hasemann, STAT.0244.001.0002_R at [11].
- 1045 Exhibit 15-0014, Statement of K Hasemann, STAT.0244.001.0002_R at [21].
- 1046 Submissions of K Hasemann and Swimming Queensland, SUBM.1015.008.0001 at 0009.
- 1047 Transcript of K Hasemann, T8530:12–30 (Day 80).
- 1048 Exhibit 15-0013, QLD.0015.001.0362_R at 0363_R.
- 1049 Exhibit 15-0009, Statement of B King, QLD.0026.001.0001 at [18]; Exhibit 15-0009, QLD.0026.001.0014_R.
- 1050 Exhibit 15-0013, SWI.0005.001.0008_R.
- 1051 Exhibit 15-0013, SWI.0005.001.0008_R; Transcript of B King, T8381:40–T8382:10 (Day 79).
- 1052 Exhibit 15-0013, SWI.0005.001.0008_R.
- 1053 Exhibit 15-0017, SWI.0005.001.0009.
- 1054 Transcript of K Hasemann, T8530:12–17 (Day 80).
- 1055 Transcript of A Baumann, T8530:25–36 (Day 79).
- 1056 Transcript of B King, T8383:6–13 (Day 79).
- 1057 Transcript of B King, T8382:33–40 (Day 79).
- 1058 Submissions of K Hasemann and Swimming Queensland, SUBM.1015.008.0001 at 0005.
- 1059 Submissions of K Hasemann and Swimming Queensland, SUBM.1015.008.0001 at 0002.
- 1060 Exhibit 15-0018, Statement of M Miller, STAT.0303.001.0001_R at [45]–[46].
- 1061 Exhibit 15-0018, Statement of M Miller, STAT.0303.001.0001_R at [48].
- 1062 Exhibit 15-0008, STAT.0303.001.0064_R.
- 1063 Exhibit 15-0008, Annexure B, STAT.0303.001.0063.
- 1064 Exhibit 15-0018, Annexure B, STAT.0303.001.0063.
- 1065 Transcript of K Hasemann, T8511:6–19 (Day 80).
- 1066 Exhibit 15-0015, QCYC.0002.001.1370.
- 1067 Exhibit 15-0015, QCYC.0002.001.1370.
- 1068 Transcript of K Hasemann, T8509:21–31 (Day 80).
- 1069 Transcript of K Hasemann, T8506:15–24 (Day 80).
- 1070 Transcript of K Hasemann, T8501:29–44 (Day 80).
- 1071 Transcript of K Hasemann, T8509:33–T8510:5 (Day 80).
- 1072 Transcript of K Hasemann, T8510:7–18 (Day 80).
- 1073 Transcript of K Hasemann, T8510:20–28 (Day 80).
- 1074 Transcript of K Hasemann, T8510:30–35 (Day 80).
- 1075 Exhibit 15-0013, QLD.0021.001.0287.
- 1076 Exhibit 15-0013, QLD.0021.001.0287 at 0296.
- 1077 Exhibit 15-0013, QLD.0021.001.0287 at 0296.
- 1078 Exhibit 15-0013, QLD.0021.001.0287 at 0297.
- 1079 Exhibit 15-0013, QLD.0021.001.0287 at 0297.

1080 Exhibit 15-0013, QLD.0021.001.0287 at 0297.
 1081 Exhibit 15-0013, QLD.0021.001.0287 at 0298.
 1082 Transcript of B King, T8383:42–T8384:4 (Day 79).
 1083 Transcript of B King, T8384:11–12 (Day 79).
 1084 Transcript of B King, T8384:25–41 (Day 79).
 1085 Transcript of K Hasemann, T8511:35–41 (Day 80).
 1086 Transcript of K Hasemann, T8512:9–14 (Day 80).
 1087 Transcript of K Hasemann, T8512:16–21 and 30–37 (Day 80).
 1088 Exhibit 15-0013, SWI.0005.001.0012 at 0014.
 1089 Transcript of K Hasemann, T8531:12–20 (Day 80).
 1090 Transcript of K Hasemann, T8515:18–45 (Day 80), T8516:5–9 (Day 80), T8516:36–47 (Day 80).
 1091 Transcript of K Hasemann, T8516:6–22 (Day 80).
 1092 Transcript of K Hasemann, T8512:34–42 (Day 80).
 1093 Transcript of K Hasemann, T8519:22–29 (Day 80); Exhibit 15-0016, EXH.015.016.0001 at 0031.
 1094 Transcript of K Hasemann, T8518:23–46 (Day 80).
 1095 Exhibit 15-0016, EXH.015.016.0001 at 0002.
 1096 Transcript of K Hasemann, T8517:12–38 (Day 80).
 1097 Exhibit 15-0013, QCYC.0002.001.0524.
 1098 Exhibit 15-0013, QCYC.0002.001.0524.
 1099 Exhibit 15-0013, QCYC.0002.001.0524.
 1100 Transcript of M Miller, T8554:14–27 (Day 81).
 1101 Exhibit 15-0013, QCYC.0002.001.0524 at 0524.
 1102 Exhibit 15-0013, QCYC.0002.001.0524; Exhibit 15-0013, QCYC.0002.001.0618; Exhibit 15-0013, QCYC.0002.001.0603_R.
 1103 Exhibit 15-0013, QCYC.0002.001.0603_R at 0603_R.
 1104 Exhibit 15-0013, QCYC.0002.001.0603_R at 0603_R.
 1105 Exhibit 15-0013, QCYC.0002.001.0603_R at 0604_R.
 1106 Exhibit 15-0013, QCYC.0002.001.0603_R at 0604_R.
 1107 Transcript of M Miller, T8551:5–T8552:5 (Day 81).
 1108 Transcript of M Miller, T8542:22–30 (Day 81).
 1109 Transcript of M Miller, T8549:42–47 (Day 81).
 1110 Transcript of M Miller, T8542:17–T8543:19 (Day 81).
 1111 Transcript of M Miller, T8554:29–T8555:16 (Day 81).
 1112 Transcript of K Hasemann, T8507:1–9 (Day 80).
 1113 Transcript of K Hasemann, T8508:12–22 (Day 80).
 1114 Transcript of K Hasemann, T8508:24–26 (Day 80).
 1115 Transcript of K Hasemann, T8507:23–30 (Day 80).
 1116 Transcript of K Hasemann, T8514:35–38 (Day 80).
 1117 Transcript of K Hasemann, T8514:40–43 (Day 80).
 1118 Transcript of K Hasemann, T8514:40–T8515:4 (Day 80).
 1119 Exhibit 15-0014, Annexure K, STAT.0244.001.0222.
 1120 Exhibit 15-0014, Annexure K, STAT.0244.001.0222 at 0226.
 1121 Transcript of K Hasemann, T8524:32–44 (Day 80).
 1122 Exhibit 15-0013, SWI.0005.001.0056_R.
 1123 Transcript of K Hasemann, T8531:8–10 (Day 80).
 1124 Transcript of M Miller, T8543:44–T8544:4 (Day 81), T8549:8–28 (Day 81).
 1125 Transcript of M Miller, T8544:6–T8545:6 (Day 81).
 1126 Transcript of M Miller, T8544:23–27 (Day 81).
 1127 Submissions of Counsel Assisting the Royal Commission, SUBM.0015.001.0001_R at 0158_R.
 1128 Submissions of M Miller, SUBM.1015.003.0001 at 0007.
 1129 Further submissions of M Miller, SUBM.1015.003.0009 at 0012.
 1130 Submissions of K Hasemann and Swimming Queensland, SUBM.1015.008.0001 at 0004.
 1131 Exhibit 15-0016, EXH.015.016.0001 at 0002.
 1132 Exhibit 15-0016, EXH.015.016.0001 at 0008.

- 1133 Exhibit 15-0014, Statement of K Hasemann, STAT.0244.001.0002_R at [24].
 1134 Transcript of M Anderson, T8472:37–43 (Day 80).
 1135 Transcript of M Anderson T8472:45–8473:4 (Day 80).
 1136 Transcript of K Hasemann, T8516:43–8517:38 (Day 80).
 1137 Transcript of K Hasemann, T8518:41–46 (Day 80).
 1138 Transcript of K Hasemann, T8519:1–33 (Day 80).
 1139 Transcript of M Anderson, T8473:6–28 (Day 80).
 1140 Transcript of M Anderson, T8473:6–9 (Day 80).
 1141 Transcript of B King, T8385:21–38 (Day 79).
 1142 Transcript of B King, T8385:21–34 (Day 79).
 1143 Transcript of B King, T8385:40–T8386:22 (Day 79).
 1144 Transcript of B King, T8386:41–46 (Day 79).
 1145 Transcript of B King, T8387:7–9 (Day 79).
 1146 Exhibit 15-0039, EXH.015.039.0001.
 1147 Transcript of B King, T8387:11–27 (Day 79).
 1148 Transcript of B King, T8389:25–36 (Day 79).
 1149 Transcript of B King, T8389:38–42 (Day 79).
 1150 Submissions of B King, SUBM.1015.004.0001 at 0006.
 1151 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R [44].
 1152 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [45]; Exhibit 15-0012, Annexure MDA1-A2, STAT.0270.001.0028.
 1153 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R [45]; Exhibit 15-0012, Annexure 25, STAT.0299.001.0255 at 0257.
 1154 Exhibit 15-0011, STAT.0299.001.0227 at 0233.
 1155 Transcript of K Hasemann, T8534:30–41 (Day 85); Exhibit 15-0011, STAT.0299.001.0227 at 0240-0252.
 1156 Exhibit 15-0012, Annexure MDA1-A2, STAT.0270.001.0028 at 0050; Transcript of K Hasemann, T8527:12–T8528:5 (Day 80).
 1157 Exhibit 15-0012, Annexure MDA1-A4, STAT.0295.001.0074 at 0085-0088.
 1158 Transcript of M Anderson, T8467:35–T8468:3 (Day 80).
 1159 Transcript of M Anderson, T8458:38–T8459:4 (Day 80).
 1160 Transcript of M Anderson, T8460:8–15 (Day 80).
 1161 Transcript of M Anderson, T8476:35–T8477:20 (Day 80); Exhibit 15-0012, Annexure MDA1-A4, STAT.0295.001.0074 at 0078.
 1162 Exhibit 15-0012, Annexure MDA1-A4, STAT.0295.001.0074 at 0086.
 1163 Transcript of M Anderson, T8459:6–19 (Day 80).
 1164 Exhibit 15-0012, Annexure MDA1-A2, STAT.0270.001.0028 at 0047.
 1165 Exhibit 15-0013, QCYC.0002.001.0620_E.
 1166 Exhibit 15-0013, QCYC.0002.001.0620_E at 0630_E.
 1167 Transcript of M Anderson, T8454:21–T8455:10 (Day 80).
 1168 Exhibit 15-0012, Annexure MDA1-A5, STAT.0295.001.0113.
 1169 Transcript of M Anderson, T8487:25–39, T8488:5–8 (Day 80).
 1170 Transcript of M Anderson, T8488:32–42 (Day 80).
 1171 Transcript of M Anderson, T8488:44–T8489:8 (Day 80).
 1172 Transcript of M Anderson, T8449:22–T8450:21 (Day 80).
 1173 Transcript of M Anderson, T8457:33–T8458:3 (Day 80).
 1174 Transcript of M Anderson, T8456:11–34 (Day 80).
 1175 Transcript of M Anderson, T8457:16–31 (Day 80).
 1176 Transcript of M Anderson, T8465:37–46 (Day 80).
 1177 Transcript of M Anderson, T8466:5–11 (Day 80).
 1178 Transcript of M Anderson, T8470:17–35 (Day 80).
 1179 Transcript of M Anderson, T8470:37–47 (Day 80).
 1180 Transcript of M Anderson, T8459:36–T8460:6 (Day 80).
 1181 Transcript of M Anderson, T8453:29–T8454:5 (Day 80).
 1182 Transcript of M Anderson, T8453:43–47 (Day 80).

1183 Transcript of M Anderson, T8453:19–38 (Day 80).
 1184 Transcript of M Anderson, T8474:11–43 (Day 80).
 1185 Transcript of M Anderson, T8474:45–T8475:42 (Day 80).
 1186 Transcript of M Anderson, T8476:7–33 (Day 80).
 1187 Transcript of M Anderson, T8460:17–26 (Day 80).
 1188 Transcript of M Anderson, T8454:21–T8455:10 (Day 80).
 1189 Transcript of M Anderson, T8476:35–T8477:27 (Day 80).
 1190 Transcript of M Anderson, T8477:29–T8478:6 (Day 80).
 1191 Transcript of M Anderson, T8478:8–T8479:26 (Day 80).
 1192 Transcript of M Anderson, T8485:46–T8486:4 (Day 80).
 1193 Transcript of M Anderson, T8468:43–T8470:15 (Day 80).
 1194 Exhibit 15-0007, Annexure AEA-1, STAT.0263.001.0004_R.
 1195 Exhibit 15-0007, Annexure AEA-1, STAT.0263.001.0004_R at 0006_R.
 1196 Transcript of AEA, T8299:22–33 (Day 78).
 1197 Exhibit 15-0007, Annexure AEA-1, STAT.0263.001.0004_R at 0017_R.
 1198 Transcript of AEA, T8293:40–41 (Day 78); Exhibit 15-0007, Statement of AEA, STAT.0263.001.0001_R at [10].
 1199 Transcript of AEA, T8300:8–10 (Day 78).
 1200 Exhibit 15-0017, NPF.040.001.0230_R at 0232_R.
 1201 Exhibit 15-0007, Statement of AEA, STAT.0263.001.0001_R at [15].
 1202 Exhibit 15-0012, Annexure MDA1, STAT.0295.001.0002_R at 0003_R Exhibit 15-0011;
 Statement of G Tasker, STAT.0299.001.0003_R at [7]; Transcript of G Tasker, T8431:7–15 (Day 80).
 1203 Exhibit 15-0012, Annexure MDA1, STAT.0295.001.0002_R at 0003_R.
 1204 Exhibit 15-0012, Annexure MDA1, STAT.0295.001.0002_R at 0004_R–0005_R; Exhibit 15-
 0012, Annexure MDA1-D, STAT.0295.001.0185_R at 0187_R.
 1205 Exhibit 15-0007, Statement of AEA, STAT.0263.001.0001_R at [6].
 1206 Exhibit 15-0007, Statement of AEA, STAT.0263.001.0001_R at [3]; Transcript of AEA T8300:12–27 (Day 78).
 1207 Exhibit 15-0007, Statement of AEA, STAT.0263.001.0001_R at [7].
 1208 Exhibit 15-0007, Annexure AEA-1, STAT.0263.001.0004_R at 0006_R.
 1209 Exhibit 15-0007, Annexure AEA-1, STAT.0263.001.0004_R at 0007_R.
 1210 Transcript of AEA, T8299:13–16 (Day 78).
 1211 Transcript of AEA, T8299:22–33 (Day 78).
 1212 Transcript of AEA, T8299:22–33 (Day 78).
 1213 Exhibit 15-0007, Annexure AEA-1, STAT.0263.001.0004_R at 0011_R–0013_R.
 1214 Exhibit 15-0007, Annexure AEA-1, STAT.0263.001.0004_R at 0017_R.
 1215 Exhibit 15-0007, Annexure AEA-1, STAT.0263.001.0004_R at 0017_R.
 1216 Exhibit 15-0007, Annexure AEA-1, STAT.0263.001.0004_R at 0017_R.
 1217 Transcript of AEA, T8293:40–41 (Day 78); Exhibit 15-0007, Statement of AEA, STAT.0263.001.0001_R at [10].
 1218 Exhibit 15-0007, Statement of AEA, STAT.0263.001.0001_R at [10].
 1219 Exhibit 15-0007, Statement of AEA, STAT.0263.001.0001_R at [10].
 1220 Exhibit 15-0007, Annexure AEA-1, STAT.0263.001.0004_R at 0005_R.
 1221 Exhibit 15-0007, Annexure AEA-1, STAT.0263.001.0004_R at 0005_R.
 1222 Exhibit 15-0007, Annexure AEA-1, STAT.0263.001.0004_R at 0005_R.
 1223 Exhibit 15-0007, Annexure AEA-1, STAT.0263.001.0004_R at 0005_R; Transcript of AEA,
 T8299:40–T8300:6 (Day 78).
 1224 Transcript of AEA, T8300:8–10 (Day 78).
 1225 Exhibit 15-0007, Statement of AEA, STAT.0263.001.0001_R at [12]; Exhibit 15-0007,
 Annexure AEA-1, STAT.0263.001.0004_R at 0026_R.
 1226 Exhibit 15-0007, Statement of AEA, STAT.0263.001.0001_R at [13].
 1227 Exhibit 15-0007, Statement of AEA, STAT.0263.001.0001_R at [14].
 1228 Exhibit 15-0017, NPF.040.001.0230_R at 0232_R.
 1229 Exhibit 15-0017, NPF.040.001.0230_R at 0231_R.
 1230 Exhibit 15-0017, NPF.040.001.0230_R at 0231_R.
 1231 Exhibit 15-0017, NPF.040.001.0230_R at 0232_R.
 1232 Exhibit 15-0017, NPF.040.001.0230_R at 0233_R–0234_R.

- 1233 Exhibit 15-0007, Statement of AEA, STAT.0263.001.0001_R at [15].
- 1234 Transcript of AEA, T8302:39–47 (Day 78).
- 1235 Transcript of AEA, T8302:34–37 (Day 78).
- 1236 Exhibit 15-0012, Annexure MDA1-F, STAT.0295.001.0190.
- 1237 Exhibit 15-0012, Annexure MDA1-F, STAT.0295.001.0190.
- 1238 Transcript of M Anderson, T8490:25–39 (Day 80); Exhibit 15-0012, Annexure MDA1, STAT.0295.001.0002_R at 0003_R-0004_R; Exhibit 15-0011, Statement of Glenn Tasker, STAT.0299.001.0003_R at [7]; Transcript of G Tasker, T8431:7–15 (Day 80).
- 1239 Exhibit 15-0012, Annexure MDA1, STAT.0295.001.0002_R at 0004_R; Exhibit 15-0012, Annexure MDA1-D, STAT.0295.001.0185_R.
- 1240 Exhibit 15-0012, Annexure MDA1, STAT.0295.001.0002_R at 0004_R; Exhibit 15-0012, Annexure MDA1-D, STAT.0295.001.0185_R at 0187_R.
- 1241 Exhibit 15-0012, Annexure MDA1, STAT.0295.001.0002_R at 0004_R; Exhibit 15-0012, Annexure MDA1-D, STAT.0295.001.0185_R at 0187_R.
- 1242 Exhibit 15-0012, Annexure MDA1, STAT.0295.001.0002_R at 0004_R; Exhibit 15-0012, Annexure MDA1-E, STAT.0295.001.0189_R.
- 1243 Exhibit 15-0012, Annexure MDA1-E, STAT.0295.001.0189_R; Transcript of M Anderson T8481:22–30 (Day 80).
- 1244 Exhibit 15-0012, Annexure MDA1-E, STAT.0295.001.0189_R.
- 1245 Exhibit 15-0012, Annexure MDA1-E, STAT.0295.001.0189_R.
- 1246 Exhibit 15-0012, Annexure MDA1-E, STAT.0295.001.0189_R.
- 1247 Exhibit 15-0012, Annexure MDA1-E, STAT.0295.001.0189_R.
- 1248 Transcript of M Anderson, T8481:42–47 (Day 80).
- 1249 Exhibit 15-0012, Annexure MDA1-E, STAT.0295.001.0189_R.
- 1250 Exhibit 15-0012, Annexure MDA-1, STAT.0295.001.0002_R at 0005_R.
- 1251 Transcript of M Anderson, T8496:10–15 (Day 80).
- 1252 Exhibit 15-0012, Annexure MDA1, STAT.0295.001.0002_R at 0005_R.
- 1253 Transcript of M Anderson, T8494:40–46 (Day 80).
- 1254 Transcript of M Anderson, T8462:12–21 (Day 80).
- 1255 Transcript of M Anderson, T8490:41–T8491:2 (Day 80).
- 1256 Exhibit 15-0012, Annexure MDA-1, STAT.0295.001.0002_R at 0006_R.
- 1257 Exhibit 15-0012, Annexure MDA-1, STAT.0295.001.0002_R at 0006_R; Transcript of M Anderson, T8464:21–T8465:29 (Day 80).
- 1258 Exhibit 15-0012, Annexure MDA-1, STAT.0295.001.0002_R at 0006_R.
- 1259 Exhibit 15-0012, Annexure MDA-1, STAT.0295.001.0002_R at 0006_R.
- 1260 Transcript of M Anderson, T8491:4–9 (Day 80); Exhibit 15-0012, Annexure MDA1-H, STAT.0295.001.0193_R.
- 1261 Exhibit 15-0012, Annexure MDA1-H, STAT.0295.001.0193_R.
- 1262 Exhibit 15-0012, Annexure MDA1-H, STAT.0295.001.0193_R; Transcript of M Anderson, T8491:11–17 (Day 80).
- 1263 Transcript of M Anderson, T8491:37–40 (Day 80).
- 1264 Transcript of M Anderson, T8491:11–31 (Day 80).
- 1265 Transcript of M Anderson, T8491:33–T8492:19 (Day 80).
- 1266 Transcript of M Anderson, T8492:21–32 (Day 80).
- 1267 Transcript of M Anderson, T8492:27–32 (Day 80).
- 1268 Transcript of M Anderson, T8492:34–41 (Day 80).
- 1269 Transcript of M Anderson, T8492:43–T8493:9 (Day 80).
- 1270 Transcript of M Anderson, T8493:11–18 (Day 80).
- 1271 Transcript of M Anderson, T8493:20–25 (Day 80).
- 1272 Transcript of M Anderson, T8493:27–38 (Day 80).
- 1273 Transcript of M Anderson, T8493:40–44 (Day 80).
- 1274 Transcript of M Anderson, T8493:46–T8494:7 (Day 80).
- 1275 Transcript of M Anderson, T8494:9–16 (Day 80).
- 1276 Transcript of M Anderson, T8494:18–21 (Day 80).

- 1277 Transcript of M Anderson, T8494:29–38 (Day 80), T8479:47–T8480:1 (Day 80).
- 1278 Transcript of M Anderson, T8497:3–6 (Day 80).
- 1279 Transcript of M Anderson, T8495:1–7 (Day 80).
- 1280 Transcript of M Anderson, T8495:9–13 (Day 80).
- 1281 Transcript of M Anderson, T8495:15–17 (Day 80).
- 1282 Transcript of M Anderson, T8495:19–31 (Day 80).
- 1283 Transcript of M Anderson, T8495:33–36 (Day 80).
- 1284 Transcript of M Anderson, T8464:41–T8465:29 (Day 80).
- 1285 Transcript of M Anderson, T8482:8–18 (Day 80).
- 1286 Transcript of M Anderson, T8464:21–39 (Day 80).
- 1287 Transcript of M Anderson, T8464:28–39 (Day 80).
- 1288 Transcript of M Anderson, T8484:6–12 (Day 80).
- 1289 Transcript of M Anderson, T8465:37–42 (Day 80).
- 1290 Transcript of M Anderson, T8465:31–35 (Day 80), T8493:40–44 (Day 80).
- 1291 Transcript of AEA, T8296:10–14 (Day 78).
- 1292 Transcript of AEA, T8303:25–37 (Day 78), T8296:36–37 (Day 78).
- 1293 Transcript of AEA, T8296:31–47 (Day 78).
- 1294 Transcript of AEA, T8297:36–43 (Day 78).
- 1295 Exhibit 15-0007, Statement of AEA, STAT.0263.001.0001_R at [20]; Transcript of AEA, T8304:39–45 (Day 78).
- 1296 Exhibit 15-0007, Statement of AEA, STAT.0263.001.0001_R at [19].
- 1297 Exhibit 15-0007, Statement of AEA, STAT.0263.001.0001_R at [18]; Transcript of AEA, T8295:35–45 (Day 78).
- 1298 Transcript of M Anderson, T8483:29–38 (Day 80).
- 1299 Transcript of M Anderson, T8483:29–38 (Day 80).
- 1300 Transcript of M Anderson, T8482:20–34 (Day 80).
- 1301 Transcript of M Anderson, T8482:36–T8483:7 (Day 80).
- 1302 Transcript of M Anderson, T8483:40–44 (Day 80).
- 1303 Transcript of M Anderson, T8483:40–T8484:4 (Day 80).
- 1304 Transcript of M Anderson, T8483:18–T8484:4 (Day 80).
- 1305 Transcript of M Anderson, T8484:1–4 (Day 80).
- 1306 Submissions of Swimming Australia, SUBM.1015.001.0001_R at 0007.
- 1307 Transcript of J Wright, T8559:28–30 (Day 81).
- 1308 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [4].
- 1309 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [4] and [7].
- 1310 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [3].
- 1311 Transcript of AEB, T8221:4–16 (Day 78).
- 1312 Transcript of AEB, T8223:45–T8224:1 (Day 78).
- 1313 Exhibit 15-0001, Annexure AEB-5, STAT.0264.001.0034_R; Transcript of AEB, T8224:3–8 (Day 78).
- 1314 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [6].
- 1315 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [5].
- 1316 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [4].
- 1317 Exhibit 15-0001, Annexure AEB-1, STAT.0264.001.0008_R at 0011_R–0012_R.
- 1318 Exhibit 15-0001, Annexure AEB-1, STAT.0264.001.0008_R at 0012_R.
- 1319 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [7].
- 1320 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [8].
- 1321 Transcript of AEB, T8226:38–47 (Day 78).
- 1322 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [11].
- 1323 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [12].
- 1324 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [14]; see Exhibit 15-0001, Annexure AEB-1, STAT.0264.001.0008_R and Exhibit 15-0001, Annexure AEB-2, STAT.0264.001.0015_R.
- 1325 Transcript of AEB, T8223:45–T8224:1 (Day 78).
- 1326 Exhibit 15-0001, Annexure AEB-5, STAT.0264.001.0034_R; Transcript of AEB, T8224:3–8 (Day 78).
- 1327 Exhibit 15-0001, Annexure AEB-5, STAT.0264.001.0034_R.
- 1328 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [19]; Exhibit 15-0001, Annexure AEB-5, STAT.0264.001.0034_R.

- 1329 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [15].
- 1330 Transcript of AEB, T8227:30–33 (Day 78).
- 1331 Transcript of N Cowdery, T8850:1–25 (Day 83).
- 1332 Transcript of AEB, T8224:10–12 (Day 83).
- 1333 Transcript of AEB, T8224:10–45 (Day 83); see Exhibit 15-0001, Annexure AEB-3, STAT.0264.001.0017_R.
- 1334 Transcript of AEB, T8224:14–21 (Day 83).
- 1335 Transcript of N Cowdery, T8850:27–36 (Day 83).
- 1336 Transcript of N Cowdery, T8850:38–42 (Day 83).
- 1337 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [19].
- 1338 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [19].
- 1339 Transcript of AEB, T8221:19–30 (Day 78).
- 1340 Transcript of N Cowdery, T8850:44–T8851:5 (Day 83).
- 1341 Transcript of N Cowdery, T8851:7–15 (Day 83).
- 1342 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [10]–[12].
- 1343 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [12]–[13].
- 1344 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0034_R at [17].
- 1345 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [18]; Exhibit 15-0001, Annexure AEB-4, STAT.0264.001.0024_R at 0033_R; Transcript of AEB, T8224:47–T8225:28 (Day 78).
- 1346 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001 at [21]–[22].
- 1347 Transcript of AEB, T8225:30–38 (Day 78).
- 1348 Transcript of AEB, T8227:15–24 (Day 78).
- 1349 Exhibit 15-0033, Statement of M Heathcote, STAT.0270.001.0001_R at [12]–[15].
- 1350 Exhibit 15-0011, Statement of G Tasker, STAT.0299.001.0003_R at [39]; Exhibit 15-0033, Statement of M Heathcote, STAT.0270.001.0001_R at [15]–[16].
- 1351 Exhibit 15-0019, Annexure 8, STAT.0302.001.0030 at 0035.
- 1352 Exhibit 15-0019, Annexure 8, STAT.0302.001.0030 at 0035–0036.
- 1353 Transcript of J Wright, T8561:5–12 (Day 81).
- 1354 Exhibit 15-0033, Statement of M Heathcote, STAT.0270.001.0001_R at [13]–[15].
- 1355 Exhibit 15-0033, Statement of M Heathcote, STAT.0270.001.0001_R at [21].
- 1356 Exhibit 15-0033, Statement of M Heathcote, STAT.0270.001.0001_R at [22].
- 1357 Transcript of M Anderson, T8452:3–16 (Day 80).
- 1358 Transcript of J Wright, T8571:24–34 (Day 81).
- 1359 Transcript of M Anderson, T8451:4–19 (Day 80).
- 1360 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [23].
- 1361 Transcript of AEB, T8226:29–36 (Day 78).
- 1362 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [23].
- 1363 Exhibit 15-0001, Annexure AEB-7, STAT.0264.001.0039_R; Exhibit 15-0001, Statement of AEB, STAT.0264.001.0034_R at [24]–[25].
- 1364 Transcript of J Wright, T8565:21–25 (Day 81).
- 1365 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [26]–[27].
- 1366 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [28]; Exhibit 15-0001, Annexure AEB-8, STAT.0264.001.0041_R.
- 1367 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [28]; Exhibit 15-0001, Annexure AEB-9, STAT.0264.001.0043_R.
- 1368 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [29]–[30].
- 1369 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [29]; Exhibit 15-0001, Annexure AEB-10, STAT.0264.001.0045_R; Transcript of AEB, T8226:29–36 (Day 78).
- 1370 Exhibit 15-0019, Statement of J Wright, STAT.0292.001.0001_M_R at [6].
- 1371 Transcript of J Wright, T8558:40–46 (Day 81).
- 1372 Exhibit 15-0019, Statement of J Wright, STAT.0292.001.0001_M_R at [4].
- 1373 Exhibit 15-0019, Statement of J Wright, STAT.0292.001.0001_M_R at [7]–[8]; Exhibit 15-0019, Annexure 5, STAT.0302.001.0025_R; Transcript of AEB, T8227:2–10 (Day 78).
- 1374 Transcript of J Wright, T8565:1–12 (Day 81).

- 1375 Transcript of N Cowdery, T8851:17–21 (Day 83).
- 1376 Transcript of J Wright, T8566:14–20 (Day 81).
- 1377 Transcript of J Wright, T8563:39–44 (Day 81).
- 1378 Transcript of J Wright, T8563:30–T8564:7 (Day 81).
- 1379 Transcript of J Wright, T8566:9–24 (Day 81).
- 1380 Exhibit 15-0001, Annexure AEB-12, STAT.0264.001.0053_R.
- 1381 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [33].
- 1382 Exhibit 15-0001, Statement of AEB, STAT.0264.001.0001_R at [33].
- 1383 Transcript of M Anderson, T8484:28–32 (Day 80).
- 1384 Transcript of M Anderson, T8484:43–45 (Day 80).
- 1385 Transcript of M Anderson, T8484:34–41 (Day 80).
- 1386 Transcript of M Anderson, T8485:1–4 (Day 80).
- 1387 Transcript of M Anderson, T8485:6–15 (Day 80).
- 1388 Transcript of M Anderson, T8485:23–32 (Day 80).
- 1389 Transcript of M Anderson, T8485:23–44 (Day 80).
- 1390 Transcript of M Anderson, T8485:46–47–T8486:4 (Day 80).
- 1391 Exhibit 15-0019, Statement of J Wright, STAT.0292.001.0001_M_R at [8]–[9].
- 1392 Transcript of J Wright, T8564:31–44 (Day 81).
- 1393 Transcript of J Wright, T8572:2–10 (Day 81).
- 1394 Transcript of J Wright, T8559:17–19 (Day 81).
- 1395 Transcript of J Wright, T8559:21–26 (Day 81), T8571:36–39 (Day 81).
- 1396 Transcript of J Wright, T8559:1–7 (Day 81).
- 1397 Transcript of J Wright, T8559:9–15 (Day 81).
- 1398 Transcript of J Wright, T8561:14–16 (Day 81), T8562:39–46 (Day 81).
- 1399 Transcript of J Wright, T8561:18–32 (Day 81).
- 1400 Transcript of J Wright, T8571:36–39 (Day 81).
- 1401 Exhibit 15-0019, Statement of J Wright, STAT.0292.001.0001_M_R at [9].
- 1402 Transcript of J Wright, T8560:43–47 (Day 81), T8572:12–25 (Day 81).
- 1403 Transcript of J Wright, T8559:39–T8560:5 (Day 81), T8564:25–29 (Day 81).
- 1404 Exhibit 15-0019, Statement of J Wright, STAT.0292.001.0001_M_R at [8]–[9].
- 1405 Transcript of J Wright, T8564:16–23 (Day 81).
- 1406 Transcript of J Wright, T8563:14–28 (Day 81).
- 1407 Transcript of J Wright, T8563:1–8 (Day 81).
- 1408 Transcript of J Wright, T8570:26–T8571:22 (Day 81).



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