

# TRANSCRIPT

## FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

### Inquiry into the handling of child abuse by religious and other organisations

Melbourne — 5 April 2013

#### Members

Mrs A. Coote

Ms G. Crozier

Ms B. Halfpenny

Mr F. McGuire

Mr D. O'Brien

Mr N. Wakeling

Chair: Ms G. Crozier

Deputy Chair: Mr F. McGuire

#### Staff

Executive Officer: Dr J. Bush

Research Officer: Ms V. Finn

#### Witnesses

Mr B. Geary, principal commissioner,

Ms C. Withers, manager, promotion and policy,

Ms M. Scannell, senior project manager, and

Ms V. Dods, policy adviser, Commission for Children and Young People.

**The CHAIR** — On behalf of the committee, I welcome Mr Bernie Geary, principal commissioner from the Commission for Children and Young People. With the commissioner are Christine Withers, manager from the promotion and policy area; Megan Scannell, senior project manager; and Virginia Dods, policy adviser. Thank you all for being with us this morning. All evidence taken by this committee is taken under the provisions of the Parliamentary Committees Act, attracts parliamentary privilege and is protected from judicial review. Any comments made outside the precincts of the hearings are not protected by parliamentary privilege. All evidence given today is being recorded. Witnesses will be provided with proof versions of the transcript. Please note that these proceedings are not being broadcast.

Following your presentation, committee members will ask questions relating to the inquiry. I thank you again for the submission that you have provided and look forward to hearing from you. Please commence.

**Mr GEARY** — Thank you, Chair, and thank you for the invitation to present to the committee today on behalf of people from my office and myself. I wish to acknowledge the pain and suffering of people who were abused as children by those people and institutions who were supposed to care for and protect them. In my 42 years in the sector, I have personally seen the impact that child abuse within these organisations has had, and I have witnessed the generational trauma that has resulted. I also want it noted that I am wearing a tie; people will ask.

As you may be aware, on 1 March 2013 the Commission for Children and Young People was created, and I am pleased to have the privilege of being the inaugural Principal Commissioner of that commission. The commission operates under the mandate of the Commission for Children and Young People Act 2012, which includes the functions previously undertaken by the Office of the Child Safety Commissioner. My written submission provides more detail, but I will just briefly respond to the questions raised in your letter to me inviting me to appear here today. I thought it would be easiest to do so first by addressing the questions you have raised in relation to working with children checks. I will then address other questions you have asked me, which are around what are the most effective methods of preventing criminal child abuse in organisations? How well are organisations today doing in terms of putting child-safe strategies into practice? How might the law be improved to better protect children? And finally, how to improve victim support mechanisms.

Firstly, around the working with children checks. You have asked whether I had any suggestions for changes to the working with children check framework and what I have found in my reviews of the administration of the Working with Children Act. In brief, I believe that the Working with Children Act was a good and necessary reform when introduced in 2005, even though at the time, I have to say, I felt that it was “hitting an ant on the head with a sledgehammer”. But I have changed my opinion of that. I certainly do believe, though, that there is room to improve.

Since its inception, over 1300 people have received negative notices, removing their capacity to work with children in the occupational fields nominated by the Working with Children Act. That is 1300 people with a relevant criminal history who wanted to work with children. From the start, I have had a legislated role to review the way in which the Department of Justice administers the checks. In accordance with this role, I have made a number of recommendations over the years, and I have been satisfied with the way in which the Department of Justice has responded to those recommendations. In general, the Act is well administered by the Department of Justice. My main areas of concern in relation to the Working with Children Act are not about how it is administered, but rather I have concerns about the provisions within the Act itself. I would like to see a number of amendments made to the Working with Children Act.

The parent exemption is a key area of concern for me. The safety net of a working with children check does not apply if you are a parent volunteering in an activity in which your child normally participates. In such cases, you are exempt under the Act from needing a working with children check. So if I am a father and I am coaching my son in the under-12s, I do not need a working with children check. The fact that a person is a parent does not guarantee that they are suitable to work with children. Research and clinical practice consistently demonstrates that adults who present a risk of harm to children will seek access to children, including peers of their own children. It is my view that the current exemption for parents volunteering in an activity in which their child participates should be removed from the Working with Children Act.

The Working with Children Act has now been in operation for a number of years, and at this stage there should be a strong focus on ensuring that all organisations and individuals who are required to comply with the Act do

in fact comply. The Act should be amended to make compliance monitoring a function of the Department of Justice. For example, the department should be empowered to do spot checks of relevant organisations which provide services to children to check and see if the organisations are aware of and abiding by the requirements of the Act. I note from transcripts of submissions to this committee that the Department of Justice has indicated that reforms such as these are not currently on the government's agenda. I will continue to lobby for such improvements to the system, together with the establishment of a clearer evidence base regarding those people in our communities who pose the greatest risk of harm to children.

Around child-safe organisations, you have asked my view for the most effective methods of preventing criminal child abuse within organisations. Working with children checks are an important part of preventing such abuse, but they are not sufficient on their own. Organisations need to develop a culture of safety that includes screening, supervision, monitoring and importantly listening to children. Churches and community groups must develop child-safe practices that hold the protection of children at their core. Policies and practices are required to guide senior staff on how to respond to any concerns raised about child safety. Central to these policies and practices is the development of a culture within an organisation that does not accept or tolerate concerning or criminal behaviour towards children. In addition to organisations having a culture that proactively reduces the risk of abuse, organisations must also have clear reporting pathways to police if allegations of abuse are raised. It is pretty black and white and pretty simplistic I know.

Protective behaviours: organisations which provide care to children need to shoulder the prime responsibility for keeping children within their care safe from abuse. The powerful testimony that you have already received from victims of abuse and their families has shown that organisations sometimes fail in this responsibility. To better protect children, the whole community needs to be aware of signs of abuse and how to respond. In particular, all children should receive age-appropriate protective behaviour education and training. Early years programs such as kinder and child care, together with primary schools, appear to me to be common-sense locations for this to occur. Parents also need to be assisted and informed about how they can best keep their children safe. We need to encourage parents to be open to hearing and seeing the signals their children may give to them when they have been abused. The importance of family support has been amply demonstrated once again during this inquiry. My office has long advocated the importance of hearing the voices of children. All those who work with, or care for children, need to believe children so that they will be heard when they seek help.

You have asked me for my views on the extent to which organisations in Victoria have put in place the mechanisms required to keep children safe. In particular, you have sought my views on the adequacy of current education and training relating to criminal child abuse in organisations. I have not conducted detailed research on how well organisations are doing today, but based on the information I have received from various areas of work at my office, I believe that more can and should be done to assist all organisations to put in place best practice strategies for keeping children safe. In addition, specific strategies should be put in place for those children who are most vulnerable.

There is a greater awareness today of the need to take a proactive approach to keeping children safe from abuse within organisations. My office developed a hands-on, user-friendly resource — *A Guide for Creating a Child-safe Organisation* — which has been widely distributed across Victoria, and which Ms Withers might speak to later. Many organisations do want to create child-safe environments, but they need assistance to put the principles into practice. To help organisations, especially those which are small and volunteer based, I recommend that other supports be considered, including funding, to better assist organisations to develop their own policies and practices and to respond appropriately when they suspect that someone within their organisation may be unsafe or inappropriate to work with children. In a small organisation that can become helpful because relationships are involved.

In addition, specific strategies need to be developed to protect those children who are most vulnerable to abuse. The new Act, which provides a legislative mandate for my office, highlights my responsibility to monitor services provided to vulnerable children. The Act recognises the particular vulnerability of children and young people who are clients of child protection, who are cared for by out-of-home care services and who come into contact with the youth justice system. Although we may no longer have the large-scale institutions of the past, children in out-of-home care and youth justice facilities can still experience the isolation and challenges which come along with being cared for by an institution, so in fact they are institutions themselves. In Victoria we have also had recent examples, for instance, of children in adult prisons — and if prisons are not institutions, I do not know what is.

A child living in residential care may now live in a smaller group facility than those larger institutions of the past, but such children are still vulnerable, are still being cared for by paid staff and are still often isolated from family and community supports that offer a level of protection to other children in the community. These children and young people are our state's most vulnerable and require advocacy and monitoring to ensure that they are not subjected to criminal abuse and to ensure that their human rights are protected. Let us not forget that these children are in the care of the state. The state must ensure that they are safe. The standard to which the state should be held accountable should be at least as high as those standards we expect of other organisations — and in fact, ladies and gentlemen, you, as politicians, are their de facto parents, as we all are in this room as members of the community of this state.

We need extra systems to monitor the services provided to our most vulnerable children. This monitoring must include the use of independent visitors. We have independent visitors in our systems in prisons, in the mental health system and in the disability system. It is only since this government recently allowed my office to commence a system of independent visitors in the Victorian youth justice centres that we have had it in the youth justice area. I am advocating for this to be extended to out-of-home care. In the first instance, I would like to see community visitors being implemented for the 600 children in Victoria who live in residential care. I receive category 1 incident reports from the Department of Human Services in relation to children who live in out-of-home care. These clearly indicate that children in these settings continue to be at risk. Out-of-home care is an imperfect model where often our best efforts are not good enough.

The committee has also asked for my views on other areas of possible legislative reform. I believe reform would be useful in relation to religious organisations. The standards expected of churches should be no less than those expected of other organisations which work with children, and in fact we could expect a higher standard. Religious organisations are special places of trust. They work with vulnerable people in their most vulnerable moments. This highlights the need for a special emphasis on religious organisations. For example, all religious personnel should be required to have a working with children check. Currently only religious personnel who have regular, direct and unsupervised contact with children are required to have a check. I think this classification is ridiculous and too narrow for religious organisations.

There is no justification for exempting religious organisations from the requirement to report abuse to police. There should be no difference in how a sexual assault is handled, and who the perpetrator is should not govern the response.

The whole community needs to take responsibility upon becoming aware a child is being or is at risk of being abused. When there is concern that abuse is occurring within a family, child protection should be contacted. Mandatory reporting already exists for this. When abuse occurs within an institutional context, it is a crime and must be reported to police. The Crimes Act should be amended to make clear that there is an obligation to report such criminal behaviour. Churches should not be exempted from this obligation, regardless of where or how this knowledge of abuse is gained.

I would also like to take this opportunity to raise a matter of terminology that I believe is causing some confusion. Mandatory reporting was introduced in Victoria in 1993 through the Children and Young Persons Act and continues via the Children, Youth and Families Act 2005. This statute requires certain professionals who form a belief on reasonable grounds that a child is in need of protection from specified types of abuse to report that matter to child protection. That is what mandatory reporting is. Mandatory reports are made to child protection, and they focus on the capacity of a parent to keep their child safe, but this inquiry is considering organisational abuse. Parents cannot act to keep the children safe from a harm they do not know about. I believe the criminal law needs to be strengthened to incorporate an obligation to report to police where there is a reasonable suspicion a child is being abused by an individual within a religious or other organisation and to specify the penalties that apply for not reporting.

The committee has also sought my views on how to improve current victim support mechanisms. For those who are survivors of abuse by religious personnel, it can be argued that there are extra layers of trauma due to the abuse being perpetrated by a person promoted and entrusted as a spiritual adviser. We see long-term difficulties for survivors and their families in being able to trust institutions and agencies, which can make it harder for them to then seek help. We need to see fast-tracking of specialist services, such as Centres Against Sexual Assault for children and young people who have been abused. Particular consideration should be given to ensuring that there are sufficient services available, especially in rural areas. Children and young people who

have been abused should also be able to access extra support for making claims to the Victims of Crime Assistance Tribunal.

In closing I would like to reconfirm my view that vulnerable children do not have adequate advocacy available to them to ensure that they are protected from abuse within institutional settings. My key recommendations to the committee are: to remove the current exemption in the Working with Children Act for parent volunteers who have regular, direct and unsupervised contact with children in those activities in which their child participates; an expansion of the Working with Children Act to enable better monitoring for compliance with the Act; to strengthen the criminal law to incorporate a reporting duty where there is a reasonable suspicion of a child being abused by an individual within a religious or other organisation — so, to strengthen the criminal law to incorporate a reporting duty; to provide support, including funding being made available to assist organisations to strengthen their child-safe practices — and you heard about that from the previous submitters; protective behaviours education and training should be delivered to all Victorian children and families; and the need for independent monitoring of institutions, particularly residential care facilities.

Once again I would prompt you around the independent community visitors program, which is a voluntary program that relies upon the incredible generosity that I have found exists in the Victorian community. We work with this in the youth justice system, and I believe that by giving access to community visitors to our residential care services, our children would be a lot safer. Also, systems should be developed to fast-track children and young people who are survivors of abuse to specialist support services.

I thank committee members for their time and for allowing us to comment on this very important issue. My colleagues and I would be pleased to take any questions that you may have. One of the reasons I brought these colleagues is because I know you are going to ask me questions I cannot answer.

**The CHAIR** — Thank you very much for your presentation and your insights from the many years of experience that you have had in this area. Would any of your colleagues like to make any comment to the committee? I know that you have got some expertise in that policy area that you refer to.

**Mr GEARY** — I might ask Christine to talk about those resources that we have had in the office.

**Ms WITHERS** — Just building on the comments made by Child Wise, we would certainly support a joined-up approach to a framework to guide organisations to be child safe, but it would need to be aligned with a lot of activity that exists across government already — for example, the Department of Education and Early Childhood Development is responsible for the regulation of children's services; the Department of Justice administers the working with children check; and the Department of Human Services is responsible for the registration standards, or the monitoring of agencies compliance with registration standards. Those agencies are funded community service organisations that deliver programs to vulnerable children. We would encourage a joined-up approach — really a whole-of-government approach — to a child-safe framework that could be aligned with all of that other activity. That would actually provide some overall guidance.

We commend the work of Child Wise in terms of getting out there and trying to assist a lot of agencies to become child safe. It is a huge job; there are a lot of organisations. You were talking about a lot of voluntary organisations where there is turnover of committees. There actually needs to be an understanding out there of the need to have a framework that includes a policy; a code of conduct; an approach to engaging children — their views on issues in a particular service; appropriate recruitment of staff; and management of staff. We know Child Wise has done some great work, and we have also built on the work that Child Wise has done.

We have created a very simple guide to assist agencies to create a child-safe organisation — all the elements that Child Wise talked about — and we have copies here for you to look at. It is designed to be very, very simple to use. We have also produced a DVD that is designed to assist parents to choose a child-safe organisation — what they need to think about in terms of choosing an appropriate organisation, like a child-care centre, for their child. We have got that, and it is produced in a number of languages. So there are resources, but some sort of joined-up, whole-of-government approach that could provide some guidance that is aligned with a whole lot of other activity I think would be quite useful.

**The CHAIR** — Thank you. I think you raise that point from the previous presenters, who highlighted that example that there were different policies within that one organisation, and you have just highlighted that whole-of-government approach, so in your view who should be administering that policy area?

**Ms WITHERS** — Who should administer it?

**Mr GEARY** — Don't you dare say the commissioner.

**Ms WITHERS** — There needs to be a government policy framework, and obviously relevant government agencies would administer whatever components are relevant to their activity.

In terms of monitoring and accrediting agencies, I think there are some dangers in terms of accrediting organisations, because they can be child safe 1 minute and not child safe the next. I think that is a challenge for government in terms of thinking about an accreditation approach. But there is definitely a need for raising awareness and probably putting some money into that, and for having a framework that is readily used. I think we can certainly play a role in promoting the framework and encouraging agencies to adopt the key elements, like a child-safe policy, a code of conduct. I would see, for example, DHS playing a role in terms of encouraging its funded agencies to do the same thing, and DEECD doing the same thing for its organisations that it regulates.

**The CHAIR** — Should it be those independent departments that then do the monitoring and evaluation, or should it be somebody from your office that does the evaluation and monitoring?

**Mr GEARY** — It is certainly something that in our new being we are taking on as a principal role — to bang heads together really, to ensure that departments are working together around issues such as these and others, but certainly issues such as these. We are monitoring a situation, and because the new legislation gives me a capacity to have an entree into other departments, we really have a bit of a stick to beat them on the head with.

**Mrs COOTE** — Bernie, thank you very much indeed for a really comprehensive outline and also to Christine, Megan and Virginia for being here as well. I have hundreds of questions, as you can well imagine. However, I am allowed one, so you are off the hook here. It is to do with the New South Wales Ombudsman and his monitoring opportunity, and you did put comments in your brief about that. Yesterday we had Steve Kinmond in here, who gave us a very excellent — —

**Mr GEARY** — Yes, we know Steve.

**Mrs COOTE** — Yes, he was saying the same. In relation to aspects of the New South Wales legislation and its Ombudsman, we have been told by other presenters that it is recognised worldwide, and you, too, mentioned the monitoring capacity that it has. Could you talk a bit more about that model and how you see that fitting here within Victoria?

**Ms SCANNELL** — Yes, my understanding of what the New South Wales Ombudsman does, and I think does quite well, is both the monitoring of how agencies respond when complaints arise, but also some support back to organisations about how to do things well. It is that combination that is really powerful, because a lot of organisations do want to get it right but, particularly for smaller or volunteer-based organisations, it can be really hard to know what to do, particularly if a problem arises and how to go about dealing with it. The idea of hiring lawyers to help you through it is probably not within most people's capacity.

I think they do it well, and when we were talking about compliance, we were talking about the working with children check, but it could be a broader compliance role, and whether that sits within a working with children check unit or some other body to both make sure that organisations are abiding by whatever requirements there are, but also to give organisations some information and assistance to enable them to comply, and to be a source of advice to help them if things go awry. It is that combination of things. New South Wales does it in the Ombudsman, but there are different places where that kind of regulatory and support mechanism could sit.

**Mrs COOTE** — Could I ask about that? The Ombudsman here does not have that role, obviously, and with the way things are structured at the moment it would probably come back to you. But speaking about the joined-up government approaches to everyone, part of the problem seems to be that in itself that there are so many different agencies doing a little bit of something. Do you think it should be, as it is in New South Wales, under the umbrella of one particular agency — vis-a-vis the different departments being involved, as Christine outlined before, with various aspects?

**Mr GEARY** — It is certainly a different use of an Ombudsman’s office. It is a much more proactive use of an Ombudsman’s office that happens in New South Wales. It is not to say that New South Wales does not have its problems, believe me. But the challenge is, in our instance, that children impact on all of those departments that we talked about before; all of those departments with their own models of operating and with their own objectives. Some are there to educate children, some are there — as in the case of DHS — to protect them, and we even have worked, and we do work closely with police.

It is not just a matter of clicking our fingers and saying ‘joined-up’; it is a matter of the act of joining up that is our biggest challenge. I believe, that with the way my office is at the moment we can be useful in encouraging that, and also useful in trying to create a culture. But there needs to be a process of inculcation, because I do not think it exists at the moment.

**Mrs COOTE** — That was really my point, to try to change the culture so that each one of these organisations works cooperatively and is answerable to someone, or someone is monitoring them or looking at them, but they are working. So it needs to be a specific body, which is what they have in New South Wales. That is what you are envisaging as well?

**Mr GEARY** — I think it is a model that would work. Who they would be answerable to in that respect, I would not be prepared to say.

**Ms WITHERS** — Just to add to what Bernie is saying, there are various mechanisms by which you can make agencies accountable. You can use service agreements and funding arrangements, and you can build requirements into all of that activity, and the agencies that provide the funding and that are regulating could certainly be incorporating child-safe organisational principles into all of that activity. But DPC could take some leadership on a whole-of-government framework. They are well positioned to undertake that coordinated thinking so you have that joined-up, whole-of-government policy approach, and obviously the implementation would roll out differently through various agencies.

**Mr GEARY** — It is certainly a cultural thing, but probably DPC would be the best people to drive it, to say, ‘This is your culture’, but certainly we are pushing uphill if we do not develop first of all that culture. I have been around for a long time, and I have seen a lot of interdepartmental work being done, and some of it falls away because of lack of culture.

**Mrs COOTE** — Thank you very much indeed. Thanks.

**Ms HALFPENNY** — Just talking about culture, but within the non-government organisations, and given there are a lot of suggestions in terms of legislation change and monitoring and so on, I wonder what your view is as well? I suppose it is a little bit like the health and safety legislation, which is a combination of penalties, common-law actions — not so much criminal penalties, but of course they could be considered. With the common-law aspect where there is duty of care, negligence and those sorts of things, do you think that also has a place in trying to change the culture of organisations? Sometimes you can have the best of policies and it all looks good on paper and it seems to be working well, but behind that there may not be the will of the leadership of an organisation to really ensure that children are protected.

**Mr GEARY** — Yes, and I am the commissioner for children, not organisations or any other area. I think when children are abused, it is a criminal act. It is as black and white as that as far as I am concerned. I think we just have not to be getting tricky when it comes to children being abused.

**Ms HALFPENNY** — But the criminal act is against an individual, not against the organisation, so should the organisation also be responsible — —

**Mr GEARY** — Be responsible. Absolutely.

**Ms HALFPENNY** — whether it is financially or whatever, or maybe there are criminal aspects of that too?

**Mr GEARY** — I think there is a point that an organisation needs to be responsible. If organisations are not training their staff or if they do not have the proper policies, yes, they are responsible.

**Ms HALFPENNY** — Thank you.

**The CHAIR** — Would you like to say something further, Mr Geary?

**Mr GEARY** — No. It is just that Ms Scannell is a lawyer, and sometimes I think I have done the wrong thing.

**Mrs COOTE** — Well here is another one. He is a barrister.

**The CHAIR** — He is an ex-lawyer.

**Mr O'BRIEN** — I do not think you have done anything wrong today. But you have asked a question which we need to think about as legislators, because it poses a big debate between your recommendation and the view of the Catholic Church, and that is on pages 7 and 8, where you touch on the obligation for mandatory reporting to be general. We heard from the witnesses just before and in other hearings why it is important that it be general and without exemptions. If your recommendation was to be enforced, you say:

The OCSC does not agree that this reporting duty should only apply to abuse within religious or spiritual organisations, nor does the OCSC agree that there should be an exemption for information received during confession.

We know from the submission of the Catholic Church that they say on page 107:

Any legislative requirement that purported to require priests to violate the sacramental seal of confession will be ineffective as priests will simply be unable and unwilling to comply.

And it says:

However, Canon Law is clear that a priest's Canonical obligations override inconsistent obligations purportedly imposed by civil law.

If that is the state of your recommendation and what the church is saying in response to it, how do you — —

**Mr GEARY** — You could say that we are opposed.

**Mr O'BRIEN** — You could say we are opposed?

**Mr GEARY** — As a former CEO of Jesuit Social Services and having grown up Irish Catholic, we are still vehemently opposed, yes.

**Mr O'BRIEN** — You are opposed to the view of the church there? Yes?

**Mr GEARY** — Yes.

**Mr O'BRIEN** — And our view has shifted since this inquiry began. At the Cummins report they had opposed mandatory reporting altogether. Now they are agreeing to it in principle, except for the seal of the confessional, but it becomes in a sense a broader proposition of the debate on civil law over canon law or any other non-civil law, and the hierarchy of the state versus the church and other institutions. That is why, if you are going to make that recommendation, how do you think it can be given effect to in practice? Back to Ms Halfpenny's question, are we going to see priests locked up for failing to comply, if we had evidence that they did not comply? What do you say should be done to implement such an obligation and to deal with the church in coming to terms with its effect?

**Mr GEARY** — Right, and I will ask — —

**Mr O'BRIEN** — And you may defer to your lawyer at appropriate stages.

**Mr GEARY** — But I will say this: what I say, I say. If we have an opinion, and what is predominant in our opinion is how we are going to go about doing it, we will never make the opinion. That is what I say, and it is as a consequence of defending children and children's rights how it is done.

**Mr O'BRIEN** — That is why I want to hear it from you, because you have got the experience.

**Mr GEARY** — I will say again: what I say is what I say. You will probably struggle to get from me how I would go about it. Ms Scannell might tell me, but I do not think so.



**Ms SCANNELL** — I can get that one.

**Mr GEARY** — It is a strong opinion, and I believe that if a person in my position as an advocate for children gets confused and caught up with how, we will never make the opinion.

**Mr O'BRIEN** — I interpret that by saying that you say the law should be absolute and it will be up to the organisations to respond, and whether they go into non-compliance if that is what that implies —

**Mr GEARY** — It will be up to the law or the organisations, yes.

**The CHAIR** — Do you have a comment, Ms Scannell?

**Ms SCANNELL** — From the position of being the commissioner for children and young people, it is just a position that the best interests of children have to be the paramount consideration, and the rights of children. It is just very difficult to imagine how one could say that you could be aware that this is going on on a regular basis within your organisation and do nothing to stop it. How that actually gets incorporated into legislation and how people then choose to live within their legal obligations I guess is something others have to work out in detail. But I think the position is that the best interests of children and the safety of children have to be paramount.

**Mr O'BRIEN** — Are you prepared to work with the church? If so, I would ask you to implement it as obviously a paramount consideration and then how they deal with what they call the sacrament.

**Mr GEARY** — Yes.

**Mr O'BRIEN** — All right. Thank you.

**Mr WAKELING** — Commissioner, thank you very much to you and your team for the work that you have done. I would like to bring you to your proposition in regard to the independent community visitors program that you are looking for for out-of-home care. I am just interested to hear how you propose that would work. We had evidence led to us by, from memory, a resident who lived in a boys' home in Ballarat. He talked about a time when the independent visitor would come to the facility and they would actually have to clean up the place, put out the good furniture and put toys on the beds. Then once the person left they would put it all away again and go back to living the way they were living. I am just interested from that perspective how this program would work in terms of looking at systemic behaviour within those facilities — if in fact this type of behaviour is currently occurring in those facilities, which is what I am assuming you are wanting to uncover through this program?

**Mr GEARY** — We have a program at the moment that is doing something similar — working in residential care in a smaller way and connecting young people who live in residential care to community activities. That has been going on for two years. There is absolutely no indication that the house is tidied up before they come. I have a sister who has an intellectual disability and is in her 50s. She lives in a residential care unit, which I visit weekly. I know there is a community visitor who goes there.

I think it is drawing a fairly long bow to think that that would be the case generally, because there would be a great deal of cooperation. People on staff in these organisations are crying out for that sort of interaction. They like the idea. They want the community to come in and the want these young people to be connected with the community. I think it would be terrible for a child to live in a situation where they were disconnected from family. But to walk to the front gate of their residence and not know what is happening in their community is a terrible thing. Just having people from the community come in, interact with them and look to see what is happening, means that it becomes a relationship-based visit when you find out stuff that is really worthwhile knowing.

**Mr WAKELING** — I should clarify that that example was from many decades ago.

**Mr GEARY** — Sure, yes.

**Mr WAKELING** — I am not indicating that that is current practice. I am assuming that this role ensures that we do not have any of that systemic behaviour.

**Mr GEARY** — There is a community-based visiting program in out-of-home care in Queensland that has been operating for some time. Queensland is geographically a much more difficult place to service than Victoria. We can do it easily here.

**Mr WAKELING** — If I may also ask, it has been raised — not through this process, but through others — that the working with children check is only as good as the time at which the records are accessed. Obviously if there is a problem down the track, the check will not necessarily pick that up. Do you have any comments about that, particularly for the protection for volunteer organisations which are looking at someone who has a card that is not valid at the time of its release?

**Ms SCANNELL** — If you have your working with children check and then you commit an offence, the working with children check unit, if it is a relevant offence, would then contact the people that it knows you work or volunteer with. You would have to get the details specifically from them, but it is an ongoing check over the five-year time.

The difficulty would be if you volunteer in an organisation and you show them the working with children check card but you never tell the working with children check unit that you are actually working with that organisation, and they never check again. But there are mechanisms under the current working with children check legislation — Justice would be in a better position to confirm this — by which organisations can regularly go online and check to make sure that the cards of their volunteers are still current.

It is also a requirement that you tell Justice where you are volunteering or working in relation to that, so they should have an up-to-date register of the places that you are involved in. I think if you do commit a relevant offence, even after you have your working with children check card, if you have done all that compliance sort of stuff you would be told, ‘You no longer have a valid card’, and would have to — —

**Mr WAKELING** — So the onus is on the footy club or the scout group to constantly check?

**Mr GEARY** — It is.

**Ms SCANNELL** — That, and also to make sure that their volunteers notify the working with children check unit that they are now volunteering for the footy club or whatever organisation it is. My understanding is that it is a current requirement under the act that people should keep their details up-to-date in relation to the working with children check. It may be an area where you might need some kind of active compliance monitoring to make sure that people are regularly doing that, because I think there is a tendency for people to say, ‘Yes, you’ve got a card’, and nobody does anything further; they just record the detail. Lots of parents volunteer for lots of different organisations and might not know that they need to keep those details updated.

**Mr WAKELING** — Particularly if it is left to the secretary of the junior footy club to be the person who is doing the effective monitoring.

**Mr GEARY** — Yes, that is right. As we said before, we believe the Department of Justice should be much more proactive in relation to the way it is seeking out information. I think it is a little like having drink-driving laws and no booze buses, quite frankly, if we make these laws and are not checking them.

**The CHAIR** — Mrs Coote has another question.

**Mrs COOTE** — I want to ask a bit more about the community visitors notion. We are dealing with organisations and institutions, and you made the comment that the culture of some of those very large orphanages et cetera was translated into some of these residential houses. Given our brief and what we have to look at — we are looking at institutional change et cetera — would you, for the purpose of our inquiry, suggest that those out-of-home care houses are institutions?

**Mr GEARY** — Many of them are institutions, yes. There is no doubt about it.

**Mrs COOTE** — Therefore, with the community visitors — and you speak about staff, and as you know I have a lot to do with — —

**Mr GEARY** — They would hate to hear me say that, I should say.

**Mrs COOTE** — I know. Community visitors go into residential care, as you know, in disability, mental health and other areas. Going into people's homes, foster houses and out-of-home care, staff — paid staff — might want to see this sort of engagement. How do you feel they would find going into people's homes? We have a lot of trouble, as you know, getting foster parents. Do you believe this is going to be another form of regulation that they will feel intimidated by and not want to engage with?

**Mr GEARY** — I agree that would be an issue, and that is why we have said that we believe that this should be looked at in relation to the 600 children who live in residential care. There are 6000 kids in out-of-home care in Victoria, and that pointy end of children live in residential care where people are paid to care for them. I think our residential care system has improved markedly over a period of years, but the bottom line is that these are children who are not special in the eyes of any adult. We need to respect that, we need to acknowledge that and we need to be in there looking to them.

**Mrs COOTE** — One of the things you mentioned when you were speaking about the independent visitors is that they bring part of the community into that area, which is slightly different to what the community visitors from, say, the disability sector do. They are there to monitor that things are being done properly, to look at incident reports et cetera. Do you see this as a slightly different role from what is already happening with community visitors elsewhere?

**Mr GEARY** — In the small program that I have operating, it is slightly different. The small program I have operating revolves around introducing young people into community activities. As we do in the youth justice system with our community visitors, community visitors come in and talk to young people about how the system is impacting on them. They are not mentors; they are not case managers. They are simply there to talk to them about how it is going there.

**Mrs COOTE** — Terminology could probably play a part in this. 'Independent visitor' is probably a better term than 'community visitor' if we are going to be making recommendations. It has broadened from what exists as a community visitor. It is slightly different.

**Mr GEARY** — Yes, that is very true.

**Mrs COOTE** — Let us get this completely straight. You do not envisage them going into foster houses under any circumstances.

**Mr GEARY** — No, I think there would be a degree of furore.

**Mrs COOTE** — Good. Thank you for the clarification.

**The CHAIR** — I do not believe there are any further questions, so on behalf of the committee I thank you all very much indeed for your attendance this morning. Your evidence has been most helpful.

**Witnesses withdrew.**