



REPORT ON

THE INVESTIGATION OF

A COMPLAINT OF UNJUST DISMISSAL

BECAUSE OF ALLEGATIONS MADE

BY FACILITATED COMMUNICATION

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THE OMBUDSMAN
VICTORIA AUSTRALIA
& The Deputy Ombudsman (Police Complaints)

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**ADDENDUM TO REPORT ON
THE INVESTIGATION OF
A COMPLAINT OF UNJUST DISMISSAL
BECAUSE OF ALLEGATIONS MADE
BY FACILITATED COMMUNICATION**

Following the printing of this Report, a late response was received today from the President of the LaTrobe Valley Residential Services Association Inc. via the Regional Director of the Department of Health and Community Services. This body was responsible for the management of the Community Residential Unit, although staff were employees of the Department.

The LVRSA response fully supports the actions of the Department in the handling of the allegations and the dismissal of Mr. Williams and expresses great confidence in the actions of the Co-ordinator. The President of the LVRSA further expresses concern that the Ombudsman has made findings adverse to the LVRSA and has questioned the accountability of the organisation in terms of the proper management of government funds.

I do not believe that any such findings have been made. The LVRSA is a non-government funded agency and, as such, has not been investigated by me. The central findings of this Report relate to the failure by the Department to have in place proper process for dealing with allegations made by Facilitated Communication.

I have therefore considered the LVRSA response and I believe that the issues raised have been covered by the Department response. I do not believe any further amendment to my Report is required.



Norman Geschke
OMBUDSMAN

10 May 1993

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THE OMBUDSMAN
VICTORIA AUSTRALIA

& The Deputy Ombudsman (Police Complaints)

10 May 1993

The Hon. B.A. Chamberlain MLC
President
Legislative Council
Parliament House
MELBOURNE 3002

The Hon. J.E. Delzoppo JP
Speaker
Legislative Assembly
Parliament House
MELBOURNE 3002

Mr President and Mr Speaker

Section 23, sub-section 5 of the Ombudsman Act provides that "where it appears to the Ombudsman that that no steps seem to him to be appropriate have been taken within a reasonable time of his making any report or recommendations, he may send to the Governor-in-Council a copy of the report and the recommendations together with any such comments". Sub-section 6 provides that "where a copy of any report and recommendations together with a copy of any comments has been so sent to the Governor-in-Council the Ombudsman may cause to be laid before each House of Parliament a report on such of the matters to which they relate as he thinks fit".

In mid 1991, I received a complaint from Mr Robert Williams, formerly an employee of Community Services Victoria, now the Department of Health and Community Services. Mr Williams was dismissed from his position as an employee at the Traralgon Community Residential Unit because of allegations made against him by three residents who have intellectual disabilities. The allegations were made by Facilitated Communication, a method of communicating which has been the subject of some controversy.

Following investigation, including the assessment of the skills of one of the alleged victims who has been shown to be unable to communicate, I have found Mr Williams' complaint established. I believe Mr Williams was unjustly dismissed.

I have recommended to the Department that Mr Williams be re-instated and be financially compensated. As the Department has not agreed to my recommendations, I have forwarded a copy of my report to the Governor-in-Council.

I also raise in this report my serious concerns with the use of Facilitated Communication and its possible abuse in two other cases currently under investigation. In both cases, allegations of sexual abuse were made by individuals who have been clearly shown not to have the capacity to make such allegations.

I now place the matter before Parliament for its consideration of my investigation and recommendations.

Yours sincerely

A handwritten signature in cursive script that reads "Norman Geschke". The signature is written in black ink and is positioned above a horizontal line.

(Norman Geschke)
OMBUDSMAN

TABLE OF CONTENTS

	Page
SYNOPSIS	1
FURTHER COMPLAINTS	1
RECOMMENDATIONS TO PARLIAMENT	3
THE COMPLAINT - A SUMMARY OF EVENTS	4
FACILITATED COMMUNICATION:	6
The Background	7
Validation	9
AN OUTLINE OF THE INVESTIGATION	10
The Ombudsman requests validation of the Communication, March 1992	11
New Evidence - Stylometric Analysis	12
Analysis of Supporting Evidence	13
Psychological Assessments	13
The CSV Investigation	18
The Ombudsman's Report on Concluding the Investigation. July 1992	20
The Department Rejects the Ombudsman's Conclusions	23
Further Action	24
The Ombudsman's Recommendations	25
FACILITATED COMMUNICATION - FURTHER ISSUES	27
Further Recommendations	33
Addendum	34
Further Action in Terms of Section 23(5) and 23(6) of the Ombudsman's Act	36
<u>LIST OF APPENDICES</u>	
Appendix A Chronological Summary	
Appendix B Statements to Police	
Appendix C Response from the Department, September 1992	

REPORT

On the investigation of a complaint by Mr Robert Williams that he was unfairly dismissed by the Department of Health and Community Services on the basis of allegations of sexual abuse made against him by three residents of a Community Residential Unit. These allegations were made using Facilitated Communication.

SYNOPSIS

In June 1991 a letter was referred to the Ombudsman by the Health Services Commissioner from Mr Keith Hamilton MLA on behalf of his constituent, Mr Robert Williams, who had been dismissed from his position at the Traralgon Community Residential Unit.

Mr Williams was charged with rape and indecent assault of three female residents of the CRU. The allegations were made by Facilitated Communication on the Canon Communicator¹. At a Committal Hearing at Moe Magistrate's Court, 15 May 1990, Mr Williams was discharged from custody because the evidence was not able to be heard. A Hearing was held at the Office of Merit Protection, 7 December 1990 and the dismissal was upheld.

A formal investigation was made under Section 17(1) of the Ombudsman Act. For the purposes of the investigation the administrative action was defined as the alleged failure to give full consideration to all evidence prior to the dismissal of Mr Williams. The investigation has been concluded. A comprehensive assessment of the skills of one of the clients has confirmed that she was unable to make the allegations attributed to her. The complaint that Mr Williams was unjustly dismissed has been substantiated. The Ombudsman has recommended that Mr Williams be reinstated to a position within the Department and that he be financially compensated. The Department has rejected the recommendation.

FURTHER COMPLAINTS

In the course of this investigation, two other complaints were made to the Ombudsman by individuals affected by allegations made by Facilitated Communication. One complaint came

¹ *This process will be explained. The Canon Communicator is a small lap-top keyboard. In the video of communication viewed by the Ombudsman, the client's hand was supported by the facilitator, an assistant in the typing process. The communication emerges as a tape of the typed words. The person with a disability is referred to as the "client", in relation to Intellectual Disabilities Services. That term will be used in this report.*

from the family members of "Carla" a woman with an intellectual disability who had been removed from her family on two occasions in December 1990 because of allegations to staff at an Adult Activity Unit that her father had raped her. This was later followed by similar allegations against her brother.

The family made an Application to the Guardianship and Administration Board (GAB) in December 1990 for guardianship of Carla. They did not accept Carla's capacity to communicate the allegations and did not believe the allegations. The Board first heard the matter in February 1991 and referred it to the Public Advocate for a full investigation. The investigation included assessments of Carla's ability to communicate, including the administration of the tests advocated by the Intellectual Disability Review Panel Report, 1989. The Board found that Carla did not have the capacity to communicate with Facilitated Communication. She did not therefore make the allegations. Guardianship was awarded to the family.

As a result of the Application, the family incurred very substantial medical and legal costs. The Board awarded costs against the Department. The Department then appealed to the Administrative Appeals Tribunal which found that the Department was not a party to the Application and the order was quashed. The Tribunal stated "the circumstances of this matter demand a sympathetic response to the anxieties and experiences of the family."

Both the previous and the present Minister have had discussions in regard to an ex-gratia payment to cover costs and the Ombudsman's investigation has been deferred until a decision is made.

Enquiries to this point indicate that the Application was precipitated by the Department's action in removing Carla and the family's fear that they might do so again. There was no medical or forensic evidence to support the allegations. The removal and subsequent involvement with the family appears to have been based on an uncritical acceptance that the communications were made by the client. No steps were taken to test the validity of the communications. This was despite the controversy raised by the Williams allegations twelve months earlier and despite the Department's acceptance of the IDRP Report in April 1990.

The Department engaged Counsel to appear at the GAB hearing and to present witnesses to support their initial position that "from information and evidence they have they are of the opinion that 'Carla' was able to communicate by means of facilitated communication".

The Department did not accept the validation testing and commissioned an independent psychologist whose report also concluded that it was highly unlikely that Carla could communicate independently. The psychologist accepted that Carla had a severe to profound intellectual disability.

Following these findings, the Department continued to play an active role in the Hearing, a role seen by some of the participants as adversarial to the Application by the family.

While discussions continue, the family have been forced to mortgage their house to cover more than \$40,000 costs incurred over a year ago.

Carla was one of four clients at the Unit who alleged, by Facilitated Communication, serious sexual and physical abuse against their families between October and December 1990.

A second family made a complaint in March 1993 but the investigation has not yet been completed. Like "Carla's" family this was a family from a non-English speaking background. Their daughter was removed for one week in 1990 and for four months in 1991, following allegations of sexual abuse against her three brothers and of physical abuse by a family member. The allegations were made by Facilitated Communication despite the fact that S. has some speech. The family were not initially told of the allegations when two CSV officers called at the home to take S. on a "holiday" a word to which, the mother explained, S. responded enthusiastically. The mother was so horrified when she was later told of the allegations that she did not even tell one son, who did not live at home, that these allegations were made against him.

The mother stated that she was not allowed to see the tape of the allegations and attempted to show by simple tests that her daughter could not recognise the words attributed to her. The family state that, when questioned, the Department officer said that they did not report the allegations to the police because S. communicated that she did not want that action taken.

S. was again placed in a residential unit for four months in late 1991. The family were told that she was not happy at home and she verbally agreed to leave home. However, the family questioned her ability to understand that proposition and her tendency to respond to pressure from staff. The mother stated that an Instructor at the Unit later informed her that S. communicated that she had been burnt by a cigarette on the face. There was no medical check. S. was only returned home when the family refused to take her back to the unit after a week-end at home. The family stated S. was distressed each time she was returned to the Unit and felt abandoned by her family.

The mother stated that the Department informed her that S. had communicated that she wished to stay permanently in a residential unit. The family were not aware of any avenues of appeal against the Department's decision and did not seek legal advice until they learnt of the "Carla" case from SBS television. They then made an Application to the Guardianship and Administration Board.

S.'s communication skills have been comprehensively assessed. The evidence indicates that she cannot read and write and she was not capable of authoring the statements on the Canon Communicator attributed to her. Apart from emotional distress, the mother, a pensioner, has legal costs of nearly \$4,000.

RECOMMENDATIONS TO PARLIAMENT

Following investigation of this complaint and issues arising from two further complaints I recommend:

1. That Mr Williams be reinstated to a position within the Department of Health and Community Services or be financially compensated for the loss of career prospects.

2. That Mr Williams receive the salary to which he would have been entitled had he continued in employment for the period since his dismissal in February 1990 and that he receive legal and associated costs.
3. That a thorough review be conducted of the use and effectiveness of Facilitated Communication programs in Government and non-Government Agencies.
4. That the two clients, subject of the allegations against Mr Williams, who have not yet been assessed, be comprehensively assessed to determine the appropriate method of communication for them.
5. That the practice of having a male attendant on "sleepover" duty in all female units should be reviewed.
6. That a Register of sexual abuse allegations reported to the Department by, or on behalf of clients of Intellectual Disabilities Services be developed.
7. That the Office of Intellectual Disabilities Services assess the use of Stylometric Analysis as a means of resolving disputes about the validity of communications.

THE COMPLAINT - A SUMMARY OF EVENTS

(A chronological summary is provided in Appendix A.)

In August 1988 Mr Williams was employed by Community Services Victoria, now the Department of Health and Community Services, as a casual worker at the La Trobe Valley Residential Services Association Units. In June, he became a temporary employee based mainly at Traralgon Community Residential Unit. In April 1989, Ms W. became Co-ordinator at Traralgon Community Residential Unit, following the suspension of the previous Co-ordinator after allegations of sexual abuse of residents.

The Traralgon Community Residential Unit had three permanent residents. Ms K. a non verbal resident with Downs Syndrome, transferred to Moe Community Residential Unit in August and her place was taken at Traralgon CRU by Ms C. Ms C. had been using Facilitated Communication since February 1988 and had previously made an allegation of sexual abuse against a family member. She brought a Canon Communicator with her to the Community Residential Unit. (CRU). Ms C., Ms J. another resident, and Ms K. all attended Cooinda Hill Day Training Centre where staff members and students were trained by DEAL (the Centre for Dignity Education Access and Learning established by Ms. Crossley in 1986) in the use of Facilitated Communication. In August, the Co-ordinator, attended Life Skills classes and as a result, began to facilitate for Ms C. to use the Canon Communicator.

In November, Ms C. alleged on the Canon to the Co-ordinator who was assisting her, that she had been raped by Mr Williams. There was no medical check and no police involvement. Following an interview with the management of the La Trobe Valley Residential Services Association, Ms C. withdrew the allegation the following day. At the same time, she made further allegations that Mr Williams hit her and that he was using drugs. Mr Williams was

interviewed and denied these allegations. At about this time, he was confirmed in a permanent part-time position.

In December, an incident was recorded when Ms J. was upset and crying while Mr Williams was on duty. Two days later, Ms C. alleged to the Co-ordinator that "Rob" had raped Ms.J. The Co-ordinator then assisted Ms J. on the Canon and she confirmed that allegation. On 20 December 1989, Mr Williams was suspended on full pay while an investigation occurred.

The Co-ordinator assisted Ms J. and Ms C. in making statements to a Community Policing Squad member on the Canon Communicator. The substance of these allegations was that Mr Williams had raped each of them, had prepared and injected heroin to himself and them, and forced each of them to masturbate while viewing sex with the other. The allegations included oral sex and referred to the offender wearing black pantyhose and having a tattoo on his stomach. The most recent incident of rape was allegedly two days prior to the "disclosure" to the Co-ordinator. There is no reference in the first two Police statements to the involvement of any other resident.

Following these allegations Ms K. visited Traralgon CRU for a New Years Eve party. While she was there, Ms J. alleged to the Co-ordinator on the Canon that, "Rob hurt K. too." A week later, Ms K. made allegations to a second facilitator who had brought her to the party. The facilitator was aware of the other allegations. The Co-ordinator then assisted her to make a statement to a Community Policing Squad member on the Canon Communicator, 9 January 1992. The allegations were essentially the same as the previous two statements to Police although less detailed, but involved Ms J. and Ms K. only. The offences therefore were alleged to have occurred prior to Ms K. moving from the CRU in August. Mr Williams was charged by police. (Ms K. clearly does not have the skills to produce the statement alleged authored by her.) (Appendix B).

A CSV investigation, headed by two Regional Managers of the Intellectual Disability Services commenced, 31 January. On 7 February, they recommended that there was sufficient evidence to terminate Mr Williams employment.

At a Committal Hearing at Moe Magistrates Court, 15 May 1990, Ms J. was to give evidence on the Canon Communicator. A simple test was proposed. The facilitator, still supporting Ms. J.'s arm, was asked to turn away from the keyboard while Ms J. gave her evidence. No sensible communication emerged. Mr Williams was discharged by the Magistrate as the evidence could not be heard. The Acting Director of Public Prosecutions stated, "The state of the law in Victoria leaves this case impossible of prosecution".(20 December 1990.) The allegations have therefore never been tested in a Court of law.

Mr Williams appealed to the Office of Merit Protection but the appeal was dismissed. The Hearing Officer commented that Public Service Officers and employees of CSV may be at risk because, "They may become the victims of malicious or vindictive allegations and not have an avenue of redress through the Court."

The residents continued to use Facilitated Communication. During this period the CSV psychologist conducted sexual abuse counselling for the three residents, using Facilitated Communication.

In April 1990, Ms K. alleged on the Canon Communicator that she was sexually abused by a family member while on a visit to their home. Again there were was no medical check. The tape of the allegation was not kept. The notification to CSV appears to have been lost and police were not informed until six weeks later. The family were deeply upset when they became aware of the allegations some time later and discontinued visits by Ms K. to their home. They explained that this was because of their distrust of the C.R.U. staff and their disbelief in the method of communication. Ms. K., following the death of her parents, communicated a wish to contest the will against other family members.

Ms J. gave consent to a major surgical procedure using Facilitated Communication in October 1990. Consideration was given to charging Ms J. with assault of another resident in May 1991, on the basis of her understanding of her actions communicated by Facilitated Communication. Ms C. acknowledged on the Canon that she was responsible for sexual abuse of another resident and a program of behaviour modification was instituted for her. Towards the beginning of 1992, both Ms C. and Ms J. ceased using the Canon.

In March 1992 the Ombudsman informed the Department that, unless the communications could be validated, Mr Williams had been unjustly dismissed. By this time, only one of the residents was still using Facilitated Communication. The Department and the Public Advocate appeared to have problems in establishing any assessment of the individuals' capacity to communicate. In part, this was because both departments insisted that the clients would have to personally agree to validation. This assumes the capacity of the individual to give informed consent prior to objective testing and raises the dilemma of obtaining consent through Facilitated Communication.

All three women had made statements to the Police, facilitated by the Co-ordinator. A linguistic analysis of the police statements of the three women, was therefore commissioned. Stylometric Analysis, conducted by Dr. Phemister of the University of Melbourne, confirmed that the three statements were in all probability, authored by the facilitator. The Department refused to accept that evidence.

The Ombudsman an application to the Guardianship Board and Ms K.'s communication skills were comprehensively assessed. The findings are that, due to the level of intellectual functioning, Ms K. is definitely not capable of producing the communications ascribed to her. The allegations are a fabrication or a fantasy, conscious or unconscious, of the facilitators.

There is sufficient evidence to seriously question the validity of the other allegations against Mr Williams.

The conclusion is that Mr Williams was unjustly dismissed.

FACILITATED COMMUNICATION

The Intellectual Disability Review Panel 1989 defined "assisted communication" (Facilitated Communication) as "communication by a person in which the response of that person is expressed through the use of equipment and is dependent upon the assistance of another person".

In the three cases investigated by the Ombudsman the communication device used by the client was a Canon Communicator, a small laptop keyboard. The client's hand or arm was supported by the facilitator. As the letters were depressed, the typed communication emerged as a ribbon. The Facilitator's role was to provide physical and emotional support to the client who was believed to have the mental, but not the physical ability, to communicate. The Facilitator enabled the client to direct her movement to the desired key.

The DEAL Communication Centre handbook states, *"In facilitated communication training the task of using a communication aid is made easier for a student with a severe communication impairment. The degree of facilitation needed varies from person to person, ranging from an encouraging hand on the shoulder to boost confidence, to full support and shaping of a student's hand to enable isolation and extension of an index finger for pointing."*

Many individuals with communication impairments use communication devices independently. The controversial aspect of Facilitated Communication is the dependence on physical contact with the Facilitator.

It has been claimed that this method of communication enables persons who do not communicate verbally and persons regarded previously as unable to communicate, to communicate at a high level of literacy. A feature of this method of assisted communication is the quality of communication which often varies remarkably from what had previously been expected of the client.

The Background

A system of facilitated or assisted communication was introduced by Rosemary Crossley in the 1970's, when she worked with a group of children with severe disabilities at St Nicholas Hospital. Using this system a group of children demonstrated normal, even superior intelligence. The method gained public acclaim following a decision of the Supreme Court in 1979 to accept the evidence given by a young person who was unable to communicate verbally, regarding her wish to leave St Nicholas. She used a method of assisted communication facilitated by Ms Crossley. The case was won against the Health Department and, amid some controversy, the institution was eventually closed².

In 1986 Ms Crossley established the Centre for Dignity Education Access and Learning (DEAL), in Melbourne. This service is the only source of training in the technique of Facilitated Communication for persons with disabilities and for staff who facilitate them. It is also the main advocate for this method of communication. In addition, the agency provides

² In the matter of Anne Therese McDonald (Murphy T Supreme Court of Victoria, 25 September 1979).

a range of augmentative communication³ equipment, including training in the use of the Canon Communicator. DEAL receives annual Commonwealth and State funding. In 1992 this amounted to about two hundred thousand dollars.

Following the closure of St Nicholas Hospital, ex-residents were moved to Community Residential Units. Some, who were the original group working with Facilitated Communication, continued to work with psychologists from the Spastic Society to continue communication. Concerns developed, however, about the validity of the communication method including the question of whether it was the facilitator or the person with a disability who was communicating and/or the level of influence of the facilitator.

A major concern was the fact that no theoretical framework had been developed for the method and there had been no controlled testing. A statement of concerns by a number of professionals working in Intellectual Disabilities led to a Government inquiry. A report was commissioned and completed by the Intellectual Disability Review Panel in 1989.

Unfortunately, this inquiry was hamstrung from the start by the refusal of DEAL, the main service provider, to co-operate with the testing. The report is therefore equivocal on the outcome of the testing. Three clients were tested using a controlled methodology developed by the Panel. Tests were designed to discover whether the typed communication originated from the client or from the facilitator. Music played through headphones was used to prevent facilitators hearing the questions. When the same questions were played to the client and the facilitator the response was always appropriate. When the facilitator heard different questions or heard only music, the accuracy of response plummeted.

The Panel accepted that the communication of one of the three persons was validated. However, critics have argued that this was a very lenient interpretation of the results and debate has continued on that point. The test results could equally be interpreted to show that all three persons tested failed to validate their communications.

Another three clients were tested by a less rigorous methodology of "Message passing". While the facilitator was out of the room, the client was given an object which he/she had to describe to the facilitator on return. The three clients were all regarded as having their communications validated. This was not a controlled methodology.

The only unequivocal finding that emerged from the testing was that in all instances the facilitator influences communication. The facilitator is unaware of this influence and only the use of the controlled study could determine whether an individual communication was influenced by the facilitator. Observation alone was not sufficient to establish that.

The major significance of the IDRP Report to this investigation was the recommendation to the Director General of CSV that any dispute about communication which could not be

³ Augmentative communication refers to modes of communication other than natural speech. There are over 2,000 individual systems or aids which can be utilised with individuals

resolved by conciliation, be resolved by use of the objective methodology developed by the Panel. In a letter to the Panel of 5 April 1990, the Director-General accepted the need to develop a protocol for dispute resolution. However, no steps were taken to develop a policy on dispute resolution until after the Guardianship Application in the well publicised "Carla" case. It was 1992 before any significant action was taken.

Validation

Prior to the IDRP Report, the interdisciplinary group conducted two systematic investigations of clients alleged to be successfully using a pointer and a communication board. The validity of these communications was not established. Since that time a number of validations have been conducted both in Australia and in the United States. Reports of fifty case studies conducted in the United States using different testing methods have been available to this investigation. One expert estimates the number of tests conducted overall, in Australia and the U.S.A. to be 140. In a study of an Autism Program in the USA, twelve participants, all of whom were believed to be successfully using Facilitated Communication, were tested. Their communication was not validated. The researchers were surprised to find that facilitators were, quite unknowingly, controlling the communications.

Both the Guardianship and Administration Board and the Intellectual Disability Review Panel have dealt with cases involving the use of Facilitated Communication. However, the first contentious case was the "Carla" case, referred to earlier in this report. In another complaint under investigation by the Ombudsman, also referred to earlier in this report, the client allegedly made statements of sexual and physical abuse against her family who were her caregivers. Recent assessment confirms that she was unable to author the statements attributed to her. Where validation testing has occurred there has not been one case where communication was validated.

Testing was conducted by the Department of Health and Community Services, formerly CSV, and the Committee of Management of one Adult Training Centre. Of eight clients tested using the controlled methodology advocated by the IDRP, and a further methodology developed by facilitators at the Centre who were dissatisfied with the first method of testing, not one client was found to be independently communicating.

In the present case, one of the three clients involved in the allegations has been assessed. The results of the assessment indicate that she is unable to communicate. The Department has advanced anecdotal and observational evidence to support their view that the other two clients were capable of the communications attributed to them. Further assessments of the second client dispute that and forensic evidence suggests that all three statements were authored by the facilitator. There is no objective evidence that these two women were capable of the communications attributed to them.

Recent Court decisions in America have not accepted Facilitated Communication as an acceptable means of providing evidence because the validity of the process has not been established.

AN OUTLINE OF THE INVESTIGATION

The Ombudsman appointed Ms Rhonda Day, Senior Investigation Officer, to conduct the investigation.

The Ombudsman initially wrote to Dr Paterson, Director-General of Community Services Victoria, now the Department of Health and Community Services, in July 1991.

The Department outlined their grounds for the dismissal of Mr. Williams in a Hearing Process conducted by the Office of Merit Protection of the Public Service Board, in December 1990. The decision to dismiss was based on the following grounds: the police statement of interviews; that collusion between the women was not possible; the psychologist's finding that the women knew about right and wrong and truth and falsehood; the fact that the same allegations were made to a second facilitator; the fact that Mr Williams response provided nothing but a denial; and the Departments view that the balance of probability and duty of care supported a decision of dismissal.

The initial correspondence to the Director-General addressed those grounds. In regard to the Police statements of interviews (see Appendix B), the questions covered the number of interviews with the clients prior to the Police interview; whether investigation was made of the skills the clients would require to successfully use a Communicator; how the clients may have acquired those skills and whether any of the clients had a previous history of literacy.

In regards to the statement that collusion between the women was not possible, enquiries focused on whether there was any means of communication between residents and how this had been tested. For example, all three clients referred to a tattoo on Mr. Williams' stomach but no tattoo existed.

The psychologist's assessment that the women knew about right and wrong and truth and falsehood, was made by the use of Facilitated Communication. In the case of two of the clients, the facilitator was the person who had facilitated both the initial allegations and the police statements. A second psychologist's opinion was not sought at that stage.

The fact that the same allegations had been made by a third client to a second facilitator was accepted as corroboration by the Department. The Ombudsman raised with the Department the fact that it is clear from the facilitator's statements to a fellow worker that she was aware of the prior allegations and she sent away the other worker while she interviewed the client. There was no witness to the communication. The facilitator also stated that this was the first time that she had seen the client use her communicator for more than one word.

The Ombudsman stated that the duty of care may have supported a decision to remove the accused person from a situation where it was not possible to substantiate the allegations and where there were not sufficient safeguards to protect both the clients and the worker. He wished to know the grounds for immediate dismissal prior to the hearing of the charges.

The Ombudsman raised further concerns about the conduct of the initial investigation. The Departments record of interview of the Co-ordinator, indicated that she was not aware of the

procedures to be followed to investigate serious allegations. Medical checks could have determined drug usage and sexual abuse, if carried out promptly. When the client informed the Co-ordinator that Mr Williams used a "needle" the Co-ordinator asked the client to find the needle as evidence. It also appears that a forensic check could have been made on the sieve which two employees mentioned as possible evidence that Mr Williams was using drugs. Similarly, spot checks of the CRU could have been made by the Co-ordinator. It was also not clear whether the resident who could communicate verbally had been interviewed.

Another concern was that it appeared to be an accepted arrangement for the CRU's to have a male staff member as the only person on duty in an all female residence. These allegations were made when Mr. Williams was on "sleep over" duty.

Further, the CSV report, made at the time of the allegations, states, *"A reason why more substantial evidence is not available is considered to be a result of numerous failures to properly follow up clients complaints. There are grounds to believe those responsible have been either incompetent or negligent in this respect. Basic medical attention for example was not apparently provided to clients even following claims of rape, bruising and drug abuse."*

An Investigation Officer initially interviewed the Regional Manager, Mr Mark Diamond and the Regional Manager of Intellectual Disability Services, Mrs Sue Christensen; Senior Constable Thomas of the Community Policing Squad and Sergeant Olsen formerly of Morwell CIB and Mr & Mrs Williams. Files have been examined from CSV, the Office of Merit Protection, the Office of the Public Prosecutor and the office of the Latrobe Valley Residential Association. Telephone contact was made with DEAL. A meeting has been held with the Public Advocate and staff and contact has been made with families. Further interviews have been held with the Regional Manager and with the psychologist Ms Bowman, responsible for assessment and counselling of the clients. The Police statements have been analysed by Stylometric Analysis, a computerised technique of document analysis.

One of the clients, Ms K. has been thoroughly assessed for her communication skills by the Micro Computer Applications Centre. This testing was as a result of a decision taken at the General Service Plan meeting and was reinforced by an application to the Guardianship Board following concerns about the welfare of this client. Contact has been made with a number of persons with expertise in the area of Facilitated Communication and literature has been reviewed.

The Ombudsman Requests Validation of the Communication, March 1992

The Ombudsman wrote to Dr Paterson, 2 March 1992, stating that he believed there was no evidence against Mr Williams which was not dependent on the validity of Facilitated Communication. There had been no attempt by CSV to validate the communication and similarly the Hearing at the Office of Merit Protection depended entirely on evidence provided through facilitation. It was recommended that the communication of all three witnesses would need to be validated in line with the guidelines provided by the Intellectual Disability Review Panel.

The arrangements for validation were to be made through the Public Advocate's Office. Consultation took place between the Department and the Office of the Public Advocate but it soon became obvious that arranging testing would not be a simple matter. Advice from, Mr Diamond, Regional Director, Gippsland Region, was that one resident had not used the Canon Communicator in the past six months and a second resident was unwilling to use the Communicator.

It was suggested that it might be possible to gain consent from the third client for such testing. It was the view of the Public Advocate and the Department that the client would have to consent to testing. The assumption of both Departments was that the client had the capacity to give consent. However, only objective testing could show whether that was the case. The problems with such an approach are obvious, particularly if consent is given by Facilitated Communication.

The Ombudsman was informed in May that the third client, Ms. K. , had refused on more than one occasion, to give consent to a validation process. Consideration was given to whether there were any other means of validating the communication which might be acceptable.

New Evidence -Stylometric Analysis

Information was obtained about the use of Stylometric Analysis which has been used in Court in determining disputed police statements. There were three quite lengthy statements available. These had been made by the clients to a Community Policing Squad member and were all facilitated by the one staff member. Arrangements were made for a Stylometric Analysis of the police statements. The facilitator for all three Police statements was the Co-ordinator of Traralgon Community Residential Unit. The Ombudsman commissioned Dr Phemister, lecturer in Education and researcher in Linguistics at the Institute of Education of the University of Melbourne, to conduct the analysis. The basis of this analysis is that there is a pattern to language acquisition and an individual pattern to language use which can be detected by close analysis.

Dr. Phemister found that there was a very high probability that all three statements were authored by one hand, the facilitator. He has verbally informed the Ombudsman that he is convinced that the evidence is sufficient to stand up in Court.

Dr Phemister's analysis reveals similarities between the three statements in excess of what would normally be expected of three statements by individuals. It also indicates the possession of a vocabulary greater than the women might be expected to have. The complexity of sentence structure, the accuracy of spelling and aspects of the language usage raise serious questions about the validity of the communication. Dr Phemister verbally estimates the probability that the facilitator produced the statements, whether consciously or not, at 99%. Areas of commonality between the statements include the misspelling of the word 'Canon' which is misspelt by both facilitators in their own statements to police. (Although the Co-ordinator facilitated all police statements for the clients, a second facilitator took the first allegation from Ms K. on 6 January 1990). In all three client statements the word is spelt, 'cannon' despite 'Canon' being clearly visible on the face of the machine.

Non-phonetic words such as 'laugh, supervisor, biscuit, ejaculate, chocolate, sieve' are spelt correctly. Almost identical answers are given to specific questions. Even if the facts are not in dispute, some variation in response would be expected. There is also an inconsistency by one client in spelling her own name, on two documents, both supposedly authored by her.

The material analysed included the actual tapes from the Canon Communicator for Ms C. and Ms K. which were kept with the Department of Public Prosecutions' Brief of Evidence. However, the tape for Ms. J. was not with the other tapes, despite the fact that the tape should have been preserved as evidence. This may, in part, account for the fact that this statement had the most variants. It was the first statement taken by the police and was typed by the police member with the facilitator reading the tape aloud. It has not been possible to see whether the Canon tape fully coincides with the typed police statement in terms of spelling and expression or whether there have been any improvements in the typed statement in this case.

Analysis of supporting evidence

The Ombudsman therefore had evidence which seriously questioned the validity of the statements to Police. The investigation then examined what supporting evidence was available to the Department to support the decision for dismissal.

No medical or forensic evidence was advanced. The alleged victims had not undergone medical examinations at the time of the allegations and police were not involved until it was too late for them to take that action. Medical checks might have established whether heroin was present in the alleged victims' and the offender's blood. One allegation of rape was made only two days after the alleged incident. Medical checks may have provided evidence.

No attempts were made to gain forensic evidence from the room in which the incidents were alleged to have occurred or by examination of the sieve which was alleged to be used for drug preparation.

Psychological Assessments

The files were examined to determine what information was available to the Department which may have assisted in an assessment of the clients' ability to use the Canon Communicator and what action was taken by the Department to gain further information.

There was no specific assessment of the skills of the three women prior to their use of the Canon Communicator, other than the assessments conducted by DEAL staff. That assessment itself used Facilitated Communication. There was therefore no objective assessment of whether the clients had basic skills in reading and writing. Psychological assessment of the women, based on the use of the Canon Communicator, was in strong contradiction to their earlier childhood assessments available from Department records.

The psychological assessment of the women which determined that they had sufficient understanding of the concepts of truth and of right and wrong was based entirely on Facilitated Communication. The Co-ordinator was the facilitator for two of the clients. An Instructor from Cooida Hill Adult Training Centre facilitated for the third client for these assessment sessions.

The early assessments of Ms C. on the Department's files, stated that she had suffered developmental delay in infancy, had never spoken, and was previously thought to be moderately mentally retarded. In contrast, recent assessment on the Canon revealed her to be of average verbal intelligence.

In February 1990 a Department psychologist, Ms Bowman, using tests based on Facilitated Communication, made the following findings based on preliminary assessments of Ms. C and Ms. J.

"Both clients have sub-test scores from IQ tests which are within the normal range.

Both clients have a good sense of what is 'right ' and 'wrong'.

Both clients have a good social conscience but are socially immature in their relationships with others.

Both clients have an ability to pick up information from their environment and accurately relate/express this.

Both clients have recently developed sophisticated language skills using communication devices.

It is noted that both clients were previously considered to be moderately (Ms.C) or grossly (Ms. J) mentally retarded."

The psychologist concluded that Ms. J. is of average intelligence but has severe deficits of functions in salient areas. She stated that she has a spoken vocabulary of less than ten words. The report stated that Ms. K.'s vocabulary, using the Canon communicator, was borderline although it showed adequate word knowledge, word usage and word fluency. All three clients were demonstrated by these tests to be competent to give evidence in Court.

The Department appears to have considered that Ms. J. would be the most reliable witness for the Court Hearing. The records for Ms J. indicated that she was previously thought to have a severe intellectual disability due to a biochemical disorder known as Phenylketonuria (PKU). A Speech Pathology Report, 1986 stated, *"Ms. J.'s auditory comprehension is inconsistent at the single word level and inadequate at levels beyond commands of one or two elements. She is able to comprehend simple sentences and commands containing a single concept or piece of information. She has no functional spontaneous speech and produces unreliable yes/no responses."*

A report by a regional psychologist in 1987 who attended for a session with Ms J. for the use of Facilitated Communication, raised serious concerns about Ms J.'s ability to use this method. The report stated in part:

"The facilitator both held the communicator and moved it around under J.'s hand and also had her hand under J.'s wrist and seemed to guide J. towards the letters. When questioned about the need for such guidance, the facilitator said it is because when fully supported like she was doing with J. you can get stuck up the top of the communicator and she says she is

bringing J.'s hand back to the middle so she has full range of the board. However when J. was using the communicator with the facilitator's hand on her shoulder instead of under her wrist the facilitator said J. was getting stuck at the bottom of the communicator and this was because of the poor muscle tone.

The facilitator claimed that J. was not able to point to the letters without support because she has very poor muscle tone and does not have very good fine motor control. The types of phrases that were being typed out supposedly by J. with the facilitator's "assistance" were:

I'm sick of being tested."

"Store my sayings for the future."

"Give me a reading test."

"I want to rent a Canon."

"Because I rest on my money, I don't want to buy one."

"I'm sad I can't talk."

"I'm ugly."

The facilitator gave J. a reading test - a series of sentences, each with three pictures and she had to indicate which picture fitted the sentence. At various times J. would point to the wrong picture. When this happened, the facilitator would say she was perseverating. However, I could see no such perseveration. J. would point definitely at a picture and often it was not the right one. The facilitator then gave J. a diagnostic reading test - a short passage of about ten lines with comprehension questions afterwards. The facilitator put the passage in front of J. and asked her to read it. J. glanced at the sheet for about one second and then she was looking around the room and at the people in the room.....

In summary, I have great trouble accepting the validity of the work the facilitator is doing with J. The Training Centre have been carrying on with these communication sessions at the centre and have very little success with J. I believe the value and benefit of these sessionsfor J. should be very seriously questioned."

This report was placed on file but despite the psychologists clearly expressed concerns no further action was taken to assess the suitability of this form of communication for the client.

Three further reports of Ms. J. made after the allegations of 1989 , apart from the report from Ms. Bowman, CSV psychologist, were examined. A Report from another Speech Pathologist, 1991 stated, *"Testing with the Frankston Hospital Concept Test showed Ms. J. to be functioning well below the level expected of a 3 year old. Testing with the Renfrew Word finding Vocabulary Scale showed vocabulary to be at a 3 year level. Ms. J. was unable to read words. Single words are matched with pictures in a random, meaningless way. Writing skills had not developed further than writing of her own name which was clearly printed in block letters. Other letters could be written but are not sequenced to form words."*

The Report further stated, *"The Canon Communicator was not used as a means of communication, and Ms. J. did not appear to be aware that it was not operating correctly. Ms. J. spelt her name but was unwilling to attempt further communication without an assistant holding her hand. Support for her hand did not produce meaningful words."*

A further assessment of Ms. J. was conducted by a CSV psychologist in May 1991, in response to a Police request. This followed an allegation of assault against Ms. J. That report stated that Ms. J.'s response to the Peabody Picture Vocabulary Test, conducted without facilitation, *"demonstrated that Ms. J. understands the spoken word at the level of everyday English. Rarely occurring or 'infrequently used' words are not understood by Ms.J The client demonstrated understanding of infrequent words when their meaning was subsequently explained. For example, the word 'nostril' was not initially understood by the client. The meaning was immediately explained to her and seven days later she demonstrated appropriate understanding."*

Tests were also administered to Ms. J. using Facilitated Communication. On the basis of these tests the report stated, *"the test results indicated that the client can interpret relationships of what she immediately see. In terms of 'Social Reasoning' Ms. J again demonstrated a capacity to interpret information as her responses were not purely descriptive."* It was the psychologist's opinion that Ms. J was capable of understanding *"right, wrong and consequence."*

Ms J.'s parents arranged an alternative independent assessment for her, in May 1991, using a psychologist, not associated with the Department. She did a number of tests. In contrast to the previously quoted assessment of Ms. J.'s performance on the Peabody Picture Vocabulary Test, this psychologist stated that Ms. J.'s score fell into the 'extremely low score' category. Ms. J successfully recognised some 2 and 3 letter words. Tests indicated that she understood more language than she had the ability to express. Her level of comprehension of language was assessed at five to eight years of age and her ability to recognise and "perhaps even 'write' using devices such as the typewriter or a Canon Communicator may be as high as that of an average three to five year old." The report concluded that Ms.J was in the category of moderate to severe retardation.

The psychologist made attempts to test Ms. J.'s use of the Canon and the outcomes are very relevant to this investigation.

Her report states:

"Based on the above observations I saw little evidence to suggest that she has the language structure to perform the complex language emerging on the Canon print-outs when assisted by a facilitator.

She does not find the Canon communicator relevant to her form of communication because: She does not reach for it when it would be relevant to 'talk'

She makes no attempt to read the print-outs

She often does not even look at the keyboard when she is 'choosing ' the letters to print.

This indicates to me the strong possibility that using the Communicator to 'talk' has not become important to Ms. J. This is consistent with the results of earlier language tasks that certainly suggest a substantive lack of expressive language.

The facilitated responses reflect:

The subconscious thought of the facilitator

What the facilitator thinks she knows about Ms. J., and how she thinks Ms.J would respond to particular questions and/or situations : or

The facilitator's own personal construction of the situation at hand.

The facilitated print-out may or may not reflect Ms. J. meanings, only she would know that, but she cannot tell us."

This assessment was made available at the time, to the Department and to the Office of the Public Advocate.

Ms. K.'s records were examined. Records held at the office of the Public Advocate indicate that Ms. K. has been before the Guardianship and Administration Board on a number of occasions. She was found to be unable to manage her own affairs and an Administration Order was granted. The records show that Ms. K. suffers from Downs Syndrome and Department records suggest she may also suffer from Alzheimer's Disease. No proof is available for that assessment. She was previously verbal but her speech had deteriorated and she uses single words spoken in a whisper.

A Psychologist's Report 1972 stated, "*passive, dependent Downs Syndrome. Comprehension, memory functions and visual representations are extremely poor. Mental age 2 to 2 and half years, IQ below 30. Severely retarded, social skills somewhat higher at an approximate 3 year level.*"

A Speech Pathology Report, 1986 stated: "*Ms. K. was unresponsive during testing hence I was unable to obtain an accurate picture of her comprehension skills. She demonstrated comprehension of the non verbal cue to clap her hands. Ms. K. produced no verbal or non verbal expressions during testing. In other circumstances she produces single word responses but requires a great deal of prompting to do this.*"

The psychologist's report of Ms. K. based on Facilitated Communication stated, "*She has an average ability to understand and retain information, verbal dialogue, directions and events happening around her. Ms. K could or would not answer questions requiring more than a one word answer but she nevertheless surprised me with the range of her knowledge. For example she knew the author of Hamlet and the continental locations of the Sahara and Brazil... Although she would not define many words, she was able to correctly define some quite difficult items such as generate, ponder and remorse.*"

Of Ms. K.'s comprehension the psychologist stated, "*This subtest requires testees to answer a series of questions measuring social knowledge, common sense and practical judgement. Ms.K. refused to answer more than two questions but these problems were answered correctly. Thus from what I could ascertain, Ms. K. at least has a social and moral conscience but I cannot say to what extent it may be developed.*"

Testing of Ms. K. by the Microcomputers Applications Centre in 1992 confirms that she is unable to communicate.

There appears to have been no questioning by the Department of why the clients were not able to type on the Canon Communicator independently. Two of the clients had the physical capacity to use the keyboard . Ms. J. could form letters and write and type her name. It appears that Ms. J. was supported for psychological and emotional reasons. A DEAL report states that Ms. K. was supported because of shoulder girdle weakness. It was suggested the third client may have required support because of hand tremors.

There appears to have been no testing of the three women, at the time of the allegations against Mr. Williams, which did not rely on the Canon Communicator. This was despite the acknowledgment by the psychologist that her findings, using Facilitated Communication, were in striking contrast to earlier assessment of the clients' skills. This was not regarded as a reason for further testing.

The other evidence available to the Department came from reports from the Adult Training Centre and reports entered in the CRU Daily Diary. These documents were examined. Contradictions were noted between the level of reflection and understanding of the communications and some of the behaviour outlined in the Diary. There was discordance between what was alleged to be the level of understanding and intent of the individual and the recorded actions of the residents.

The CSV Investigation

An investigation was conducted by Sue Christensen, Intellectual Disability Services Manager, Gippsland and Phil Dalling, IDS Manager, Westernport in January, 1990. They interviewed seven employees of the LVRSA who had been on connecting shifts with Mr Williams, and had submitted relevant Incident Reports or had knowledge of CRU clients and staff.

The interviews with staff established that, although a bruise had been observed on Ms. C.'s buttock, there was no evidence that the bruise was inflicted by Mr. Williams.

The Panel established that there was circumstantial evidence against Mr. Williams in regard to observations on two separate occasions by two staff members that Mr. Williams was seen coming from his bedroom after night duty, returning a sieve to the kitchen. The sieve is referred to in Police statements in relation to preparation of heroin for injection. When questioned by Police, Mr. Williams stated that he stood his hair-piece on the sieve.

Further circumstantial evidence was that the clients referred to chocolate biscuits allegedly used as bribes. Ms. J.'s diet restricted her from chocolate biscuits and she craved them. This information would have been known to staff and is very weak evidence.

The report concluded that there was clear evidence to support their conclusion that staff had not collaborated in setting up the allegations. However, this does not take into account unconscious influencing of the communications. Analysis of staff interviews suggest a high-level of awareness of the allegations among staff. The majority of staff questioned were aware of the allegations and the Co-ordinator's statement indicates that staff had expressed concerns as to whether 'Rob' was using drugs. It was also clear that it was general staff knowledge that Mr Williams had formerly used drugs and was now involved in drug counselling programs. (This information was provided by Mr Williams to staff. He had passed a police check and claimed he had not been involved in drugs for ten years.)

The Department raised as grounds for the dismissal, the fact that the same allegations were made to a second facilitator. The validity of this fact, as corroboration, depends on whether the second facilitator was aware of the allegations prior to Ms. K.'s alleged disclosure. The second facilitator to whom Ms. K. made her allegations, made a statement to a fellow worker

immediately prior to questioning Ms. K. on the Canon, which indicated that she was aware of the nature of the allegations and that she suspected that Ms. K. was involved. The Co-ordinator in her statement to the CSV panel, confirmed that two other staff members were aware of Ms. J.'s statement that, "Rob hurt Ms K.". This was the first indication of the involvement of a third client. Ms. K.'s disclosure followed.

The context in which these allegations were made appears to be one of rumour and suspicion. The second facilitator, Ms S. demonstrated her suspicion of the actions of Mr Williams. Mr Williams stated in interview that the Co-ordinator had been communicating statements of a sexual nature, allegedly made by Ms C. to him and about him, over a number of weeks prior to the allegation. These were not allegations of abuse.

He stated in interview and in his Police statement, that the Co-ordinator also informed him that Ms. C was making sexual statements about another male staff member. Again, these statements were not allegations of abuse by the staff member. The Co-ordinator denied that such statements were made. Mr. Williams believed that some of these tapes were on Ms C.'s files. However, inspection shows that only a very limited number of tapes have been preserved and they do not relate to the period prior to the allegations. Mr Williams allegations are therefore not able to be verified.

A previous employee stated, "There is very little trust involved and there have been in-house problems in all the houses, not just Traralgon. Morwell and Moe, lengthy problems. So I mean there is a lot more I can, I mean I know it is important about C. and what's happening. You're opening a can of worms, that's all." She further states, "a lot of back-stabbing and bitching and gossiping, tales told out of school that were magnified. I'm happy to be out of it."

The one resident of the CRU who was able to speak, was not interviewed by the panel. The Ombudsman was later informed by the psychologist, that she was informally told by this resident that she had seen nothing and that she was a heavy sleeper. The allegations of abuse were limited to the non-verbal residents. There were no attempts to test the allegations non verbally or by utilising the limited speech of two of the residents.

A serious flaw in the Department's investigation is the failure to take into account the fact that Facilitated Communication may be unconsciously influenced. The Report of the Intellectual Disability Review Panel, completed months before these allegations, confirmed that all Facilitated Communication is influenced by the facilitator. Most significantly, the Report recommended that any dispute over communication be resolved by the objective methodology advocated by the Intellectual Disability Review Panel. Two Regional Managers of Intellectual Disabilities Services would be expected to be aware of the controversy over Facilitated Communication. It would be incompetent for officers at this level of seniority not to have knowledge of the IDRPs findings.

Unfortunately for Mr Williams, the Director General of CSV did not formally accept those recommendations until April 1990. Mr Williams employment was terminated 7 February 1990, following the panels report to the Director General. It is amazing that there was nothing in that report recommending that the communications be objectively assessed, despite the expertise in the Intellectual Disabilities area of the two main authors.

The recommendation of the CSV investigation was,
"On the information available, it is believed that Mr Williams has engaged in serious and wilful misconduct. This is based significantly on the allegations made and evidence provided by the three clients concerned, with substantial corroboration evident between all statements. There is no information to suggest that the clients other claims are false. Staff interviewed have provided information which supports the clients' statements being taken as accurate and truthful. These interview records provide other information which although circumstantial in many cases, should nevertheless be taken into account."

The Panel recommended that Mr. Williams be dismissed. However, there is no medical or forensic evidence of drug use or sexual activity. The recommendation to dismiss was based on weak circumstantial evidence and hearsay.

The Ombudsman's Report on concluding the investigation, July 1992

The Ombudsman wrote to Dr Paterson with a report of the investigation which covered the findings of Stylometric Analysis and the analysis of further evidence.

The Ombudsman made the following evaluation.

1. There is no forensic or medical evidence and no verbal corroboration.
2. The independence of the Facilitated Communication in the Police statement is highly suspect.
3. The psychological assessments of the women were based on use of the Communicator with the Co-ordinator as the Facilitator. There is a striking contrast between these assessments and the original assessments of the clients. The independent psychologist's assessment of Ms. J. states that she does not have the ability to produce the statements attributed to her. Two of the women cannot now be assessed for use of the Canon Communicator because we are told they have refused to use the Communicator.
4. All three women made allegations regarding a tattoo on Mr Williams' stomach. There is no tattoo. This has never been explained. (The CSV response offers an explanation. The tattoo was a "transfer", which was wet and stuck on by Mr Williams Ms. J. made a statement to that effect prior to the court Hearing. Appendix C.)
5. The allegations were made within the first three months of the Coordinator learning to facilitate. The first allegations by Ms. C. were withdrawn without investigation. Later allegations were not investigated.
6. Ms. J. had used the communicator only once to the Coordinator's knowledge prior to the allegations. That was for a simple request. Her Communication to Police was the most complex and mature expression of the three women. (It was later explained that she used the Canon at the Day Training Centre, Appendix C)

7. Ms. K. had used the Communicator only for one or two word responses prior to making the allegations. The Police statement was her most complex communication. She has limited verbal communication but this does not appear to have been drawn on.
8. There is a pattern to the allegations. It is stated that Ms C. first alleged to the Co-ordinator that Ms. J. was involved on 18 December. Ms. J.'s allegation with the Co-ordinator as facilitator followed on the same day. Ms. J. then alleged that Ms. K. was involved. There is evidence that the second Facilitator, knew about Ms. J's allegation regarding Ms. K prior to her interview of Ms. K.
9. M. who shared a room with Ms. C. is able to communicate verbally and according to the Co-ordinator, aware of the activities in the CRU. She was never interviewed. No allegations were made that she had been abused by Mr. Williams. The allegations were confined to the non-verbal residents. (The Department response describes informal questioning of M. by the psychologist. She had seen nothing because she slept heavily. She was not questioned by the Panel. Appendix C)
10. The interviews of staff strongly suggest that the allegations were made in an atmosphere of suspicion, distrust and rumour. Staff were aware of the accused's past history and of Ms C.'s prior allegations, (for which they state there is some independent substantiation.) The previous Coordinator had been removed because of allegations of sexual abuse. Mr Williams alleges that the Co-ordinator had facilitated sexual remarks on the Canon Communicator and had told him of accusations against other alleged abusers.
11. There is a lack of professional scepticism which has led to a failure to properly assess the evidence. This is demonstrated in the Memorandum of 21 December 1989, to Paul Bartholomew from the Acting Regional Director which states:

"The parents of Ms. J. are feeling particularly guilty as they have regular contact with Ms. J. and were unable to recognise any indication of the difficulties she was experiencing."

No attention appears to have been given to the substance of the parents' observation.

The Ombudsman's Report concluded :

"The Stylometric Analysis of the Police Statements, while not conclusive, points to a very high probability that the facilitator has significantly influenced, or in fact, authored the statements.

What is not clear is whether that influence has been unconscious or deliberate and therefore criminal. The Coordinator was aware that Ms C. had made a previous allegation of sexual abuse prior to coming to the CRU and that the previous Coordinator had been dismissed for sexual abuse. This may have created an atmosphere of suspicion of sexual abuse and an unconscious influencing. The pattern appears to be her belief that a resident has been abused followed by an allegation by the resident of abuse.

The failure to seek medical attention as soon as the allegation of rape, and later of drug abuse and physical abuse, was made is incompetent and negligent. Further, the Co-ordinator did not attempt to gather forensic evidence, by, for example, checks of the supervisor's room, and admits to responding to the client's allegation of drug abuse by asking her to bring her a "needle". This negligence extends to the Program Liaison Officer and the Manager to whom the Co-ordinator took the allegations and who did not immediately contact the Police. The first allegation was not therefore investigated by the Police. Both the alleged perpetrator and the clients suffered from the lack of confidentiality within that CRU and the neighbouring CRU's and by the lack of proper process to immediately investigate allegations and preserve any forensic or medical evidence.

The allegations appear to have been dealt with in an ad hoc fashion.

The CSV Investigation Panel failed to question the basis of the communication or the validity of psychological assessment based entirely on Facilitated Communication. They appear to have relied entirely on staff opinion that the women were communicating independently and on their judgement that there was no conspiracy against Mr Williams. The Review in 1989 by the Intellectual Disability Review Panel of facilitated communication was available for referral and known to CSV and would have provided means for testing validity. Although the senior staff who carried out the investigation should have been very aware of the issues there appears to have been no question of where the women acquired the skills to communicate at the level of the Police statements, no checks with the Training Centre where the women attended as to their assessment of the individuals' skills or communication ability and no requirement for non-verbal psychological testing. There is also nothing in the report of this investigation to suggest that the families' assessments of the ability to communicate was sought or considered.

There appears to be a reversal of the onus of proof in the Panel's statement, "There is no information to suggest that the clients other claims are false." The decision to dismiss appears to have been reached hastily and prior to consideration by the Court of the charges against Mr Williams. There is nothing on file to suggest that consideration was given to the other options available; that is, to suspend Mr Williams until charges had been heard or to transfer him until such time as charges were determined.

The Panel's decision "on the information available, it is believed that Mr Williams has engaged in serious and wilful misconduct" is not based on a proper assessment of the evidence, including an attempt to validate the communication.

The tentative finding therefore is that Mr Williams was unjustly dismissed. It is not clear whether his dismissal is the consequence of criminal actions by the Coordinator and Ms S. That may become a matter for the Court.

The dismissal has caused great disadvantage to Mr Williams including loss of livelihood, subsequent financial losses which may include costs associated with legal action, loss of reputation and emotional hardship.

There are other issues which this complaint has raised which may require further discussion. These include the question of whether one of the clients had sufficient understanding and skill

with the Communicator to give informed consent to a hysterectomy as she is alleged to have done in communication facilitated by the Co-ordinator. What investigation should now take place of that decision?

The complaint has also highlighted deficiencies in management and staffing competency in an organisation staffed and funded by CSV and the lack of guidelines for the use of facilitated communication within those units. There are serious questions of client and staff welfare and of the role of Service Agreements in ensuring accountability of this CSV funded body."

The Department Rejects the Ombudsman's Conclusions

The Ombudsman received a response, 29 July 1992, stating:

"The Stylometric Analysis which was undertaken at your instigation has, to the best of my knowledge, not been used previously as a validation technique and has no standing in the Intellectual Disability field for the purposes used by your office. I believe the validation process should replicate the protocols set out in the Intellectual Disability Review Panel report, 'Investigation into the Reliability and Validity of the Assisted Communication Technique.' It is this process which has been used in the State during the past six months. I have therefore again asked the Public Advocate to arrange for the validation process to occur and I will respond to your report upon the completion of that process."

The Ombudsman wrote in August requesting a timeline for the validation process.

Dr. Paterson responded in September, enclosing a report from the Regional Director, of Gippsland Region, Mr Mark Diamond. (Enclosed at Appendix C with deletions to respect confidentiality.)

Dr. Paterson stated:

"In the light of that report, I reject the view that the Department has acted improperly in this matter. The Department's actions in dismissing Mr. Williams are consistent with its statutory requirements and common law responsibilities of ensuring that clients with disabilities are not hurt while in the care of staff.

Subsequent to previous correspondence in relation to this matter, the Public Advocate has attempted to gain the consent of one of the alleged victims to undergo this process. Despite several attempts to gain this consent, it has not been successful. In addition, CSV have again asked that another alleged victim be requested to give consent to this process. Again this client has indicated that she is not prepared to undertake this testing procedure.

In view of the fact that the third alleged victim of Mr. Williams' actions has chosen not to use the 'Canon' communication device for some considerable period, a position has arisen where the client's ability to communicate via this device cannot be tested.

Although it is not possible to test the validity of these clients ability to communicate, substantial evidence is available to justify the Department's actions in dismissing Mr. Williams. Your report of 7 July 1992 contains some errors and omissions which are

addressed by the attached report to the General Manager, Child Protection and Placement Support Division.

The Department is required to show diligence and responsiveness in relation to claims made by clients with an intellectual disability. I believe that the action taken by my Department on this occasion was consistent with this requirement."

Further Action

The Ombudsman then called for the documentation referred to in Mr Diamond's report and Mr Diamond and Ms. Bowman, the psychologist who had assessed the women, were interviewed. Following further investigations, he informed Dr. Paterson the Report did not address the central question of the validity of the statements and the nature of the supporting evidence available to the Department. His initial conclusions were not altered by this report.

A reply was received from Mr P Allen, Acting Deputy Secretary of Community Services, 18 November 1992 which stated:

"As you are aware the three clients concerned have been individually requested to submit to a validation of their use of facilitated communication. The women concerned have, of their own volition, declined to consent to undertaking this testing procedure. Clearly, this Department is not in a position to contravene the clients' choice regarding this. I am able to advise, however, that in relation to one client a General Service Plan review is currently being undertaken to assess her communication skills in accordance with the attached draft guidelines. The outcome of this assessment may assist in resolving this issue."

The Ombudsman had, by this stage, developed grave concerns about the welfare of the three women and had taken the very unusual step of applying to the Guardianship and Administration Board to have a Guardian appointed for Ms. K. This was the first such application by the Ombudsman. Although, he was informed, after this action, that Ms. K. was to undergo some assessment, he was not convinced that the form of assessment would be adequate. An Application was lodged in September and a Directions Hearing held in December. Testing by the Microcomputer Applications Centre was not completed until February. That assessment was then reviewed by Professor Hudson, who has acknowledged expertise in this area. The process was not finally completed until March.

The assessment is that Ms. K. has difficulty understanding spoken language and does not have the ability to recognise two dimensional symbols, that is, the written word. She can independently point and recognise and respond to objects and physical prompts in context. In other words, she was not capable of authoring any of the statements attributed to her. Nor is there any evidence of recent decline so that these skills might once have been evident.

The allegations did not therefore come from the client. Two facilitators are involved: the facilitator who took the initial allegations and the Co-ordinator who 'facilitated' the police statement.

The Ombudsman's Recommendations

In March, I recommended that Mr. Williams be re-instated to a position in the Department of Health and Community Services and compensated for loss of salary and legal and other costs associated with the dismissal.

The Department response stated:

"I acknowledge receipt of your letter of 15 March 1993 and note your finding that Mr William's complaint of unjust dismissal has been substantiated. You have recommended that Mr Williams be reinstated to a position in this Department and that he be paid substantial compensation.

You are aware of my view that the discipline process undertaken by this Department against Mr Williams was a just process where full opportunity was given to Mr Williams to respond and challenge the evidence put around the allegations against him. Mr Williams then proceeded to appeal the decision of the then Director-General. That process enabled Mr Williams again to challenge the evidence against him. On each occasion a decision was made on the merits of the case after a full and proper process had been gone through.

I do not accept that any other professional person engaged in deciding the same matter would have used a different process or that in doing so would have reached a different conclusion. The decision makers used current and accepted knowledge upon which to base their decisions. That is not to say, however, that under current guidelines and with current knowledge, critical information used in the process would have been presented in the way it was. I disagree with your finding that Mr Williams was unjustly dismissed, as the process was a proper process and the information presented was the best available on those current standards.

Since his dismissal, Mr Williams has used violent, intimidating and aggressive behaviour against staff of this Department. This behaviour culminated in Mr Williams being charged with threats to kill and threats to cause serious injury. There can be no excuse for such behaviour. Current personnel employment policy would find Mr Williams unacceptable as an employee of this Department. I am certainly not prepared to now make an exception for Mr Williams.

In these circumstances, I must therefore advise you that I cannot accept your recommendations to reinstate Mr Williams immediately or approve the payment of substantial compensation to him."

It is my contention that there is no evidence that Mr Williams was an unfit employee prior to his dismissal. In February 1990, in an interview with the CSV Panel, the Co-ordinator described Mr Williams as "a very good worker, excellent with clients, reserved manner, did his work well, nursing skills were excellent and valued by the CRU. Had no complaints or concerns. J. believed he had a good relationship with other staff - they liked him and were positive about his work. She believed his relationships were very good - noted that he was uncomfortable about physical affections shown by clients. He had a special relationship with one client, she believed he was an efficient organised worker and kept good records." Her first concern about him was the allegation made by Mrs C. I also note that Mr Williams was confirmed as a permanent employee just before his dismissal. Favourable recommendations would have been required for confirmation of permanency.

I note the Department response that Mr Williams has persisted in his harassment of staff at the Community Residential Unit since his dismissal. The reports of these incidents have been examined including reports on three occasions by staff to Police. One report was interpreted by the Department as an attempt by Mr Williams to run an employees private vehicle off the road. The statement to Police does not support that interpretation. No charges were laid. A second report involves a verbal confrontation with one of the facilitators in the street but did not involve threats. No charges were laid.

The third report is a serious Incident Report of 22 April 1992 where Mr Williams is alleged to have threatened the Co-ordinator by telephone, with serious physical injury. Mr Williams was charged and released on bail. However the charges were dropped, presumably because of lack of evidence.

Following the allegations against Mr Williams, he was dismissed from his position and because of the nature of the allegations, had no chance of gaining alternative work. He believes his wife's subsequent dismissal from her employment was also influenced by his loss of reputation. As he lived in a country town this is not unlikely. He was subjected to police action, a Court Hearing, media interest, a Hearing at the Office of Merit Protection and a protracted investigation by this Office. The delays in resolving this matter are documented in the report. He continued to live close to those whom he saw as responsible for ruining his life and no doubt suffered greatly from rumour and innuendo because of the outrageous nature of the allegations against him. I do not condone uncontrolled or injudicious behaviour. I have however seen the distress of other individuals accused of less serious crimes. Mr Williams' actions appear to have arisen out of anger and frustration and there is now evidence that the allegations against him were possibly fabricated or were fantasies of the facilitators. In the circumstances, the harassment which is alleged against him, while not excusable, could be accepted as an aberration due to stress which would have driven many individuals to a more destructive response.

In terms of whether Mr Williams could again work in direct care, there is no evidence of physical violence by him against any individual. The method he took of attempting to clear his name, presumably by attempting to have the allegations retracted, was unwise and unproductive. However, he was in a situation where there appeared to be no legitimate action that could be taken.

I do not agree that the evidence indicates that Mr Williams is unfit to be employed. Mr Williams' behaviour was directly caused by the circumstances of his dismissal and the subsequent actions against him. If he is now, as a result of that action, unsuitable for employment he ought to be compensated appropriately for the loss of career prospects, separately from the matter of compensation for salary forgone for the past three years.

I am satisfied that Mr Williams was unjustly dismissed. I therefore recommend that he receive the salary to which he would have been entitled had he continued in employment. His solicitor estimates that as in the order of \$420 per week from February 1990. I believe he was unjustly caused expenditure for legal and associated costs. His lawyer estimates that at \$3,970.

I believe this is a very modest compensation for Mr Williams sufferings.

FACILITATED COMMUNICATION - FURTHER ISSUES

This investigation has raised wider issues for consideration. Despite increasing controversy, Facilitated Communication has been widely accepted in Victoria. Steps are also being taken to introduce the program in Queensland. A large number of Adult Training Centres and Community Residential Units in Victoria, continue to implement Facilitated Communication with their clients and it is used in some schools and tertiary institutions. A Draft Report by the Office of the Public Advocate in 1992 stated that one hundred and thirty one clients of Intellectual Disability Services were being trained in Facilitated Communication⁴. In the United States Facilitated Communication has spread so widely, following the visit of Professor Biklen of Syracuse University to DEAL in 1988, that one state, Virginia, has mandated its implementation in all centres.

A separate complaint to this office indicates that the Department has played a significant role in the acceptance of Facilitated Communication and that there was previously substantial pressure on agencies to introduce the program. In some cases Facilitated Communication was being provided to clients who had limited verbal communication. One Training Centre was criticised by CSV for limiting its program of Facilitated Communication and restricting its contact with DEAL. The Committee of Management responded that, following an unsubstantiated allegation of sexual abuse by Facilitated Communication, management introduced a structured and limited program. They stated that, despite attempts to do so, they had not been able to move clients to independent use of the Communicator which is one of the stated aims of the method. Further, they were concerned about the validity given to the method of communication, "based on naive acceptance rather than scientific thinking."

In the past seven years many people have been trained to use Facilitated Communication either as clients or as facilitators and the training has been largely funded by Government grants. In that time, however, there appears to be no coherent theory of the underlying principles of Facilitated Communication published and no scientific evaluation of the effectiveness of the method. In fact, the philosophy underpinning the process is resistant to testing. The instructions to facilitators state⁵, "*Do avoid testing. Many aid users have very negative attitudes towards testing and will often muck up or give rubbish answers. ... the aid user who feels that every interaction is a test is likely to become resistant to the whole idea of communication.*" The advice to the facilitator is, "*if the communication attempt is unsuccessful, accept responsibility.*" The basic assumption therefore, is that the client will have the skills to use the Canon Communicator or other communication device.

⁴ The Department of Health and Community Services provided these figures to the researcher.

⁵ *Facilitated Communication Training. Notes prepared by staff of the DEAL Communication Centre - Melbourne 1992.*

On the subject of validation testing in adversarial situations, the "Carla" case is cited as an example of where testing failed the person with a disability and the notes state⁶, *"In adversarial validation only one question is being asked: can the person use his/her communication aid or strategy effectively? There will be a number of people involved who hope he/she cannot. Tests may be administered or suggested by people who hope the user aid will fail. Hostile observers may be present at testing sessions. In the most cases the aid user had everything to lose and nothing to gain from test participation. If they pass, nothing will change. If they fail, they may lose what little in the way of communication they have."*

The Ombudsman's office has personally dealt with three cases and is aware of others. In the cases investigated by the Ombudsman, three persons who have intellectual disabilities, in three separate investigations, have been tested by forms of assessment distinct from, and in one case additional to, the validation process developed by the Intellectual Disability Review Panel. They have been shown by these assessments not to possess intellectual or literacy skills which would make them capable of producing the typed utterances attributed to them. There are similar findings in Victoria and the USA. It does not seem reasonable to suggest that these assessments by experts are, in all cases, wrong. Nor can it be that these individuals and many others, resisted testing and deliberately produced poor results. In cases where the clients were allegedly seeking assistance from the Department to escape abuse, such an argument defies logic.

Advocates of Facilitated Communication suggest that some persons with disabilities may have hidden abilities to communicate which emerge under certain conditions. Failure to communicate clearly by itself, should not be interpreted as an indication of intellectual impairment. These individuals may have unrecognised intellectual capacity. Even if that is accepted, it does not seem feasible that all, or even most, individuals introduced to Facilitated Communication fit that category. It appears to be an expectation that all individuals will be able to communicate using Facilitated Communication, even if they have never previously demonstrated such ability. The cases examined suggest that unrealistic expectations are as dangerous to the individual as too low expectations may have been in the past. Further, it would be preferable to assist those who have the ability to communicate, by providing access to technology which eliminates the need for dependence on an assistant. Technology has advanced to the stage where any individual who can intentionally move a muscle can operate an augmented communication device. Similarly emotional and psychological support can be made available in a variety of ways.

No scientific explanation has been offered for the claim that the process of Facilitated Communication itself has the power to overcome intellectual deficits, although no one doubts that human support and contact advances learning. Nor, without accepting thought transference, could the facilitator be said to deduce the intention of the client from random movements. Workers in Intellectual Disabilities appear to have accepted, without any scientific evidence, that the process of touching an individual as he or she types can so

⁶ *Facilitated Communication Training. Notes prepared by staff of the DEAL Communication Centre - Melbourne 1992.*

significantly influence the quality of the communication that the individual moved from a virtually non-communicative state to one where highly sophisticated statements are made. Miraculous claims are commonplace in the literature of Facilitated Communication. While Government Departments could be expected to fund research for experimental methods which have potential benefits to their client groups there should be requirements for monitoring, regular reviews and accountability. The professional is required to be sceptical of remarkable claims which do not provide a rationale for the achievement and cannot be verified. The moral requirement on Departments which have great power over individual lives and responsibility for public funds is even higher. The Department has a responsibility to protect people from harm. In spite of the warnings expressed in the Intellectual Disability Review Panel Report investigation the Department appears to have been satisfied, at least prior to 1992, with anecdotal accounts of the benefits of Facilitated Communication.

When this investigation commenced the central question was why, when serious allegations were involved, no steps were taken to objectively assess the evidence. In fact, experience indicates that these allegations, extraordinary though they seem, are not unique. Another series of allegations occurred twelve months after the Williams case and were similarly dealt with. As described earlier in this report, "Carla" was one of four clients who between them, alleged serious sexual and physical abuse including cuts and burns, which could easily have been verified by a medical examination. No such action was taken. When the police were finally informed, they were given only brief details of the disclosures but they were told that the alleged abuse was happening in the home and in all but one case was by immediate family members; the alleged abuse was happening on a regular basis, either nightly or regularly through the week in an established pattern; the abuse was not consenting and was causing distress and physical pain. Despite this, the advice stated, only two of the four clients wished to leave the family home and only one client wanted the police involved.

One client, whose case is also under investigation, was removed allegedly at her own request, for one week and later, in response to an allegation that she was burnt on the face by a cigarette, was removed for four months. She has been thoroughly assessed and the evidence indicates she is unable to use the Canon Communicator. The other two clients were supposedly left with abusing families. What is difficult to understand is that staff were ready to accept that four families who had been long-term caregivers of family members, without any previous complaints, were in three cases themselves sexually abusing the sister/brother/son/daughter or conspiring with others to do so. The two families who have come to the Ombudsman were bewildered, ashamed and horrified that such charges would be made against them. After a great deal of emotional stress and severe financial cost, they are still angry and demanding some acknowledgment by the Department of this suffering.

The reaction of staff can partly be understood in the context of the training of facilitators. In the three cases investigated, facilitators have, in the main, been poorly qualified staff at Day Training Centres and CRU's. They do not have the theoretical base from which to question the skills of the clients. Training emphasises that they must have faith in the process and confidence in the ability of the individual to communicate. If the individual does not communicate they are not facilitating properly. Pressure is put on the facilitator to come up with a statement.

Staff are largely unmonitored and unsupervised in the activity of facilitating except for sessions with DEAL, which is an advocate of the process. Facilitators appear to be completely unaware of their capacity to influence communication and there appears to be no accepted code of practice or requirement for credentials. Facilitators do not appear to be informed in training, if they are trained, about the potential for abuse of Facilitated Communication or alerted to cases of abuse.

However, this does not explain why well qualified professionals also failed to question the basis of the communications. When interviewed an administrator acknowledged that he did not understand how Facilitated Communication worked and could not answer questions about the clients' acquisition of skills; he just knew it worked. The reasons for this uncritical acceptance are complex but one significant factor appears to be the power of numbers. A psychologist stated that her belief that the women were communicating was supported by the number of people whose opinion she trusted who accepted that. The process of Facilitated Communication was supported by a number of people with considerable power and influence in the Intellectual Disabilities area. That fact intimidated some of those who might have had questions. This in part, explains the delay by the Department in taking up the recommendations of the IDRP Report and the delay in responding to the concerns of the critics. There were opposing views, as the Psychologist's report on Ms J., written in 1987 and referred to earlier in this report, illustrates. However, contrary views appear to have been largely ignored.

Further, the Department had many clients with communication impairments and limited resources and few trained staff to address this issue. DEAL provided a strong advocacy voice for these people and filled a gap in service provision. Their contribution was enthusiastically and uncritically accepted.

The families spoken to and the accused worker, all initially wanted to accept that the person with a disability could communicate. They welcomed the new potential of the individual. This was despite the fact that families have long-term knowledge of the person and have adapted to accept that level of disability and may not readily accept a sudden change. It was the nature of the allegations that alerted them to question the skills of the individual. Where families continue to express scepticism particularly after statements are made which have an impact on them, a rift can come between them and the family member with a disability. The staff, appears to them, to gain power over the family member because of the fact that the facilitators are the only ones who can 'communicate' with him/her.

The use of Facilitated Communication can therefore divide clients from their families. In Ms K.'s case this was particularly marked. The family were excluded by allegations of sexual abuse against a family member, by later allegations that Ms K. wanted to contest her father's will and then by minor incidents where, for example, they were informed that Ms K. did not want to see them at Christmas because she had a friend visiting.

In the 'Carla' case, an assessing psychologist deliberately manipulated "messages" from Carla to demonstrate to the family the dangers of accepting what they saw as evidence of Carla's skills. He then explained that he had 'cued' the responses. A video of the acknowledgments by the three alleged victims of their police statements, facilitated by the Co-ordinator, showed the investigator the difficulty of visually discerning whether the hand or arm was being

manipulated and/or whether the person was responding to unconscious cues. What was noticeable was the discordance between the expressions of the individuals and the information being dealt with and the very brief attention span of the individual. This experience confirmed how dangerous observation alone was as a method of determining whether the person was communicating.

Prof. Wolfsenberger⁷, in an article which examined Facilitated Communication as a potentially dangerous craze adopted in the autism field (in Victoria its use has obviously spread beyond autism) wrote, "*We do not believe that FC involves deliberate deception, but that it does involve massive self-delusion and wishful thinking , both by its 'doers' as well as by many desperate parents grasping at straws for their handicapped children- though some of them have also recognised that the messages are false.*" He added, "*One thing that the Facilitated Communication craze proves yet again is how poorly competent human services culture is, how gullible it is, and how haphazardly it selects its methods.*"

In the course of this investigation there appears to have been a substantial change in the Department's attitude to Facilitated Communication. In June 1991 when I commenced investigation of Mr William's complaint, the Department appeared to be very reluctant to question the validity of individual communications made by Facilitated Communication. That has changed but the Department has still not instituted any overall review of the use of Facilitated Communication in Victoria.

It was not until the landmark 'Carla' case before the Guardianship and Administration Board, that questioning has accelerated. The Department and the Office of the Public Advocate took initial steps in 1992 to establish a process for resolution of disputed communications. However protocols have not yet been established. Guidelines have been developed for the assessment of the communication needs of each client as part of each clients' General Service Plan. If the guidelines are properly implemented, there should be no further cases such as this one where no assessment of the client's skills was made prior to the introduction of the Facilitated Communication. Where assessment indicates the need for any form of alternative or augmented communication, qualified speech pathologists will be involved. The success of the guidelines will depend on the skills of the assessors and the monitoring of assessment. A recent review of the administration of DEAL questions the nature of the assessment, particularly the paradox of assessment by Facilitated Communication. Any future assessments will be conducted according to the requirements of the new guidelines.

These guidelines however do not necessarily provide for the validation of clients already using Facilitated Communication, unless the communication becomes the subject of a dispute which cannot be conciliated. While the requirement remains that the client must consent to assessment and the client's only form of consent is by Facilitated Communication, it may not be possible to establish whether the "voice" of the client is being heard. This is important in the choices of every day life, not just where contentious allegations are involved.

⁷ *Professor W Wolfsenberger. The Facilitated Communication Craze, Training Institute Publication Series. vol.12 no.2-3. Aug/Oct 1992.*

Facilitated Communication is also being used in schools and tertiary institutions where individuals gain credentials, and by individuals who are not clients of Intellectual Disabilities Services. For this reason a broader review of the use of Facilitated Communication is required.

The Department has also developed guidelines for reporting allegations which should overcome the situation in all three investigations where reports were not made to the police and no medical examinations were conducted, because of a misguided view of the client's confidentiality. If criminal allegations are made in future, the opportunity to gather supporting evidence should not be lost. Guidelines also cover the use of augmented communication devices for making police statements and for preserving tapes; deficiencies in the present investigations.

These steps are good in themselves and should prevent future problems. They do not, however, negate the Department's responsibility to compensate individuals where they have been severely disadvantaged because of failure by the Department to take a reasoned and reasonable approach to the introduction of a method of communication which has changed the lives of some clients and families. The allegations against Mr. Williams occurred after some years of funding of the implementation of Facilitated Communication by the Department. Subsequent events reflect the fact that the Department had not developed an established procedure for training staff, for monitoring or evaluating the use of Facilitated Communication with clients of the Department or for responding to criminal allegations made by clients. The Department did not have a proper process for dealing with allegations made by Facilitated Communication. No process was available for the accused to challenge such evidence. A method of validation of communication was recommended in 1989 but delays by the Department in responding to the Report of the IDRP meant that it was 1992, some six years after the introduction of Facilitated Communication, before methods of dispute resolution were implemented.

There is no doubt that the movement to introduce Facilitated Communication brought energy, optimism and hope to an area of Intellectual Disabilities services where there was a gap in staffing and resources. It has highlighted the intense importance of communication to everyone's life. The individual attention, personal contact and heightened expectations has no doubt benefited individuals. Whether it has actually improved their communication skills has not, in most cases, been tested.

On the other hand, where the untested communications have been accusatory and even criminal, and have been uncritically accepted as the client's statements, individuals have been emotionally and financially devastated by the process. One mother described her powerlessness against perceived 'Government' support of Facilitated Communication and the actions of the Department, without any consideration of her knowledge of her daughter for whom she had cared for more than thirty years. This suffering cannot be denied or discounted.

Further Recommendations

In relation to the two cases where investigations are not completed, preliminary enquiries suggest that both families have incurred unnecessary legal and other costs, let alone trauma, humiliation and considerable disruption to their lives in contesting intervention by the Department. This intervention was as a result of the acceptance of unsubstantiated statements made by a controversial and untested method of communication.

I am foreshadowing a recommendation that the families be fully reimbursed for the losses arising from the actions of the Department.

Further to my recommendation in regard to Mr Williams I recommend:

- A thorough review of the use and effectiveness of Facilitated Communication programs in Government and non-Government agencies.
- That the two clients who have not yet been assessed, be comprehensively assessed by the Microcomputer Applications Centre to determine for each, the appropriate method of communication. If the Department insists without assessment, that the clients have to give consent to this assessment, I recommend that an application be made to the Guardianship and Administration Board to have the matter decided by them.
- That the practice of having a male attendant on "sleepover" duty in all-female units should be reviewed. The practice is dangerous for the staff member, against whom allegations could be made, and inappropriate for the residents.
- The development of a Register of Sexual Abuse allegations reported to the Department by clients or on behalf of clients of the Office of Intellectual Disabilities. The implementation of this recommendation would most appropriately be a matter for an independent body such as the Public Advocate.
- That the Office of Intellectual Disabilities Services assess the use of Stylometric Analysis to provide a linguistic analysis of tapes of communications, both for the purpose of dealing with allegations from disputed communications and for the verification of Facilitated Communication in educational settings.

A number of persons with communication impairments are completing courses, including the VCE at schools and tertiary qualifications at University. Questions of verification will arise and if proper record keeping is introduced, Stylometric Analysis could make a valid contribution to resolving disputes about validity of communications.

Addendum

In accordance with Section 23(7) of the Ombudsman Act whereby "the Ombudsman shall not in any report under this Act make any comment adverse to any person unless that person has been given an opportunity of being heard in the matter and his defence is fairly set forth in the report," the two facilitators and the psychologist were given the opportunity to make a response. This was in addition to the Department's response (Appendix C).

The facilitators wrote:

"We, have seen all the documentation from both Health and Community Services and the Ombudsman with regards to Robert Williams and the allegations made in those reports.

We feel the Health and Community Services report sufficiently covers the events leading up to and the dismissal of Mr Williams.

During this process we acted according to Health and Community Services procedure and are therefore not negligent in any way."

The psychologist wrote:

"I refer to your letter to Dr Paterson dated 5th April 1993 in which you invited me to respond to criticisms of my psychological assessments using Facilitated Communication. Thank you for this opportunity as I feel I did not have that opportunity during my interview with Ms Day. I had believed the purpose of that interview was to provide information to Ms Day relating to a number of issues about the case which those working directly with the women would have the most knowledge about including assessment technique, the womens behaviour and their use of Facilitated Communication.

I urge you to reconsider your individual criticism of me in your report as I did not have a direct role in Mr Williams dismissal nor with the allegations. My role was to support the women through counselling and to provide evidence to the court regarding their ability to testify. To single myself out is, I feel, unfair and I find it necessary to justify this assertion with the following information:

- *I conferred with the more senior and experienced CSV psychologists in this region (who was in a management role at the time) who, given the womens history of Facilitated Communication use, also felt it was not inappropriate to assess them using this means and gave me some advice on assessment strategy.*
- *I was required by management, either implied or directly to proceed to assess the clients using Facilitated Communication as a natural consequence because this was the method through which the allegations had initially been made, the police statements given and through which it was intended the women were to provide evidence*

to court.

- *There was extreme pressure upon me from the management of that time, to have the assessments conducted and the reports completed very quickly. It was my understanding that this was so they would be available to the Department of Public Prosecution, the police and the court. Also, I was providing counselling to the women as well as undertaking my usual duties. Throughout, I received little support or direction from regional management Head Office personnel including senior psychologists were not consulted on my behalf as to the appropriate method and validity of the assessment. Retrospectively I should have consulted them myself but I did not think of that at the time.*
- *As I recall I said in my interview with Ms Day, that I did attempt some validation during the assessments by angling test pictures away from Ms W. so that the subjects alone could see them and provide responses. The subjects achieved a significant number of correct responses which was generally consistent with their overall performance.*

In conclusion, I understand the purpose of your enquiry is to ascertain whether Mr Williams was unfairly dismissed. If I have had any role in Mr Williams dismissal because of my assessments it was absolutely unknown to me and thus I feel it is extremely unjust to publicly name me as an individual instrumental in his dismissal. To summarise, I was under extreme pressure from management to provide the assessments, had little regional support or direction regarding this most crucial matter, and the more senior regional psychologist agreed it was appropriate to assess the women in this way. Overall, it was not my decision alone to conduct the assessments using the Canon Communicator although I was of course, the person who administered the tests.

I trust that you will give consideration to this response and again ask you to please reconsider your individual criticism of me."

I do not believe that these responses affect my findings or recommendations. There is no suggestion in my report that Ms Bowman was involved in the allegations against Mr Williams or in the events prior to the allegations. My criticism is not of the individual's role except in so far as she was part of the uncritical acceptance by professionally trained personnel of a controversial method of communication in a matter which had serious consequences. I have also emphasised that at this time, the findings of the Intellectual Disability Review Panel were known to the Department. However, as Ms Bowman points out she was given a specific task within a set time line and the system at the time, fully supported the steps she took.

Further Action in Terms of Section 23(5) and 23(6) of the Ombudsman Act

As my recommendations regarding the reinstatement and financial compensation of Mr Williams have not been implemented, my further action is in terms of section 23(5) of the Ombudsman Act which provides:

"Where it appears to the Ombudsman that no steps that seem to him to be appropriate have been taken within a reasonable time of his making any report or recommendations under sub-section (2) he may, after considering the comments (if any) made by or on behalf of the principal officer to whom the report or recommendations were made, send -

- (a) to the Governor-in-Council; and
- (b) where the report relates to the complaint concerning an administrative action by an officer or employee of a municipality, to the mayor of the municipality -

a copy of the report and the recommendations together with a copy of any such comments."

and Section 23(6) which provides:

"Where a copy of any report and recommendations together with a copy of any comments has been so sent to the Governor-in-Council the Ombudsman may cause to be laid before each House of Parliament a report on such of the matters to which they relate as he thinks fit."

I have seen fit to also raise in this Report, my wider concerns about the implementation of the process of Facilitated Communication in agencies servicing persons with disabilities and to make recommendations for a review of the process. It will be noted that I have not attempted to make any assessment of the merits of the method of Facilitated Communication except in relation to the complaints under investigation and to report the opinions expressed to me, or in the literature, which relate to the investigations. I am most concerned however, that this system must be properly evaluated and until this is done such communication should not, without validation, be admitted as evidence or relied upon as an expression of the person's wishes.

I now make my recommendations to Parliament in accordance with the provisions of the Ombudsman Act. In relation to Mr Williams' complaint I request that Parliament give consideration to implementation of my recommendations.

I also ask Parliament to consider my recommendations in respect of the further issues arising in relation to Facilitated Communication.

APPENDIX A

CHRONOLOGICAL SUMMARY

The chronology of events is highly significant to an investigation of this complaint. It has been compiled largely from the records of interviews by the CSV panel and by the Police.

- Aug 1988 Mr Williams commenced as a casual worker at a number of Latrobe Valley Community Residential Units.
- Apr 1989 The Acting Supervisor at Traralgon CRU replaced the Coordinator who was suspended due to sexual abuse allegations.
- Jun 1989 Mr Williams gained a temporary position mainly at Traralgon CRU.
- Aug 1989 Ms K. moved to Moe CRU. Ms C. replaced her at Traralgon CRU. Ms C. has a Canon Communicator.
- post-
Aug 1989 The Co-ordinator attends Life Skills classes and begins to facilitate for Ms C.
- 20 Nov Ms C. alleges that Mr Williams raped her 18 November. No medical checks.
- 21 Nov Mr Williams was interviewed by, Ms. McMahon, Program Liaison Officer, LVRSA. Ms C. also interviewed.
- 21 Nov Ms C. withdraws allegations but makes a further allegation re Mr Williams hitting her and using drugs ("needle").
- 24 Nov Ms McMahon interviews Ms C. in regard to allegation re "needle". No investigation.
- 27 Nov The Co-ordinator spoke to Mr. Roberts, Manager, LVRSA re Mr Williams and drugs.
- 28 Nov The Co-ordinator spoke to Mr Williams re drugs. He denied this.
- 2 Dec A Staff member informs the Co-ordinator that Mr Williams was seen going from the Supervisor's bedroom to the kitchen with a sieve in his hand. No action.
- 3 Dec Mr Williams became permanent part-time.
- 10 Dec Ms J. used the Canon Communicator with the Co-ordinator as facilitator, to request cake.
- 16 Dec Neighbour reported loud sobbing about 9pm. Mr Williams recorded "Ms. J. upset" in Day Book.

- 18 Dec Ms C. alleges to the Co-ordinator that "Rob was fucking 'Ms.J.'"
- 18 Dec Ms J.'s allegation of abuse to the Co-ordinator in presence of K. T. in response to question, "Does Rob do anything else to make you angry."
- 20 Dec Mr Williams suspended on full pay. Ms J.'s parents contacted.
- 21 Dec Ms J. makes statement to Police.
- 22 Dec Ms C. makes statement to Police.
- 31 Dec Ms K. brought to Traralgon CRU by a staff member, Ms S. for excursion. At a party that night Ms J. alleges to the Co-ordinator that, "Rob hurt 'Ms. K.'." Ms S. saw Ms K. several times between New Year's Eve and interview of 6 Jan (CSV Report)
- 5 Jan 1990 Ms S. visited Ms J. at Traralgon CRU and spoke with the Co-ordinator.
- 6 January 1990 Ms K. makes allegations about Mr Williams to Ms S. No one else is present. Statement of Ms S.'s fellow worker, "S. said she had known 'Ms. K.' for two and a half years before she had come to Lincoln St. and if (she) had been abused she wanted to know about it." Ms S. stated she had been informed of Ms. C.'s allegations by Mr Williams in November when she visited Traralgon CRU. She was aware Mr Williams was suspended in December.
- 8 January Ms S. gave Incident Report to Manager, LVRSA and the tape from Canon.
- 9 January Ms K. makes Police statement: The Co-ordinator is the facilitator. Ms S. stated that Ms K.'s responses are normally one or two words. She made much longer statements in the interview of the 6th and 9th.
- 16 Jan Mr Williams' home searched: interviewed and charged by Police.
- 17 Jan CSV sought response from Mr Williams
- 31 Jan CSV investigation
- 31 Jan CSV interviews staff members
- 1 Feb CSV interviews with staff members
- 2 Feb CSV Report to Regional Director.
- 7 Feb Further interview of the Co-ordinator and interview of the second facilitator
- 7 Feb Mr Williams' employment terminated.

- 27 Mar Interview of a former employee
- 15 May
1990 Committal Hearing at Moe Magistrate's Court.
- 7 Dec 1990 Office of Merit Protection Hearing Process. Appeal dismissed.

APPENDIX B

STATEMENT TO POLICE

The following statement was made to an officer of the Community Policing Squad. Ms K. communicated via the use of a Canon Communicator with the assistance of the Co-ordinator. This statement was made approximately two weeks after the other two statements. (Ms K. has been assessed and shown to be unable to use the Communicator.)

- Q1. (Preamble) What is your name?
A. K.
- Q2. How old are you?
A. 39
- Q3. Can you remember when you left this house?
A. Along time
- Q4. How long ago last year or the year before?
A. Last year.
- Q5. Do you remember which month?
A. Yes August.
- Q6. When you lived here which room was yours?
Ans With M.
- Q7. (preamble) Can you tell me what used to happen when
A. Yes Rob laid on top of me
- Q8. Can you remember the first time he lay on top of you?
A. Along time ago
- Q9. What did he do when he lay on top of you?
A. Put his dick in me
- Q10. In which room were you?
A. Supervisors room
- Q11. Was it night time or day?
A. Night
- Q12. Where was everyone else in the house?
A. Asleep
- Q13. How did you go to the supervisor at night?
A. He took me
- Q14. How did he take you into the room?
A. By my hand I didn't want to.
- Q15. What did he say to you?
A. Yes he said he would make me feel good.
- Q16. What did he do in the room?
A. He took my clothes off.
- Q17. And then what did he do?
A. He laid on me.
- Q18. What did he do when he lay on you?
A. He put his dick in me.
- Q19. Do you know what he was wearing?
A. No
- Q20. Where did he put his dick in you?
A. In my vagina
- Q21. Would you like tea or coffee or cordial we'll have a short break?
A. Tea.
- Q22. Did M know that Rob had taken you into the Supervisors room at night?
A. No.
- Q23. Did anybody know?
A. J.
- Q24. How does J know?
A. She saw us.
- Q25. How often did Rob put his dick in your vagina?

- A. When he was on sleepover
- Q26. How many times did he put his dick in you can you tell me how many times?
- A. Lots.
- Q27. What did he do after he put his dick in you?
- A. He gave me chocolate biscuits
- Q28. Do you know what type of chocolate biscuits?
- A. TV snacks
- Q29. Why did he give you the chocolate biscuits?
- A. To make me stop crying
- Q. Break for lunch at approx. 1.00 pm till 2.20 pm
- Q30. (Preamble), Why were you crying
- A. He hurt me
- Q31. How did he hurt you?
- A. He put his dick in me.
- Q32. Did he often give you biscuits?
- A. Yes.
- Q33. When would he give them to you?
- A. After sex.
- Q34. Did he ever give you the biscuits any other times?
- A. No.
- Q35. How do you tell Rob what you want?
- A. I don't
- Q36. How do you tell or let Rob know what you don't like?
- A. I cry
- Q37. What does Rob do when you cry?
- A. He hits me.
- Q38. Where does he hit you?
- A. On the bumb.
- Q39. Do you know what sex is?
- A. Yes it is when you sleep with someone they put their dick in you.
- Q40. Do you know what rape is?
- A. yes when you don't want it.
- Q41. Did Rob have sex with you?
- A. Yes he did.
- Q42. Did you want to have sex with Rob?
- A. No I did not.
- Q43. When Rob had sex with you did he have any clothes on at all?
- A. Yes stockings
- Q44. Can you tell me what type of stockings?
- A. Black one
- Q45. Where does he get the stockings from?
- A. In his bag.
- Q46. Do you see him get them and put them on?
- A. No
- Q47. When you stockings do you mean pantyhose?
- A. Yes.
- Q48. Is there anything else unusual about him?
- A. He has a tattoo
- Q49. Where is his tattoo?
- A. On his tummy
- Q50. What does the tattoo look like?
- A. A Lady with no clothes
- Q51. Does he put the stockings over his dick?
- A. Yes Rob does
- Q52. Is his dick up or down hard or soft?

- A. Up
- Q53. Do you know what a condom is?
- A. No
- Q54. When he puts his in you vagina are the stockings over his dick?
- A. No.
- Q55. What does he do?
- A. He ejaculates in them
- Q56. I don't understand how does he ejaculate into his stockings?
- A. He puts them over his dick.
- Q57. Is that before or after he puts his dick in you?
- A. After.
- Q58. When does he take his stockings off?
- A. Before he puts his dick in me
- Q59. Does he put his dick anywhere else or just your vagina?
- A. In my mouth
- Q60. Anywhere else?
- A. No.
- Q61. Does he do anything else to you that you don't like?
- A. He gives J. needles?
- Q62. Does he give you any needles?
- A. No I won't let him.
- Q63. How do you stop him?
- A. Hit him and cry.
- Q64. You said he gives J. the needle how do you know?
- A. I saw him
- Q65. Can you tell me exactly what you saw?
- A. Rob put the needle in J.'s toe.
- Q66. What does Rob do before he puts the needle in her toe?
- A. He puts it in a sieve.
- Q67. You said he put it in a sieve what else do you see him do?
- A. He holds it over a candle in a spoon he then puts in a needle
- Q68. What is it that he puts in the spoon what does it look like, what is it?
- A. Powder.
- Q69. When does he give J. the needle?
- A. When she is watching us.
- Q70. When she is watching you do what?
- A. Sleeping with eachother.
- Q71. Why does J. watch you sleep together?
- A. Rob makes her.
- Q72. How does he make her?
- A. I don't know
- Q73. Why do you think Rob gives J. the needle?
- A. I don't know
- Q74. Where does Rob keep the needle?
- A. In his bag
- Q75. Where does Rob keep the candle?
- A. In his bag
- Q76. What about the spoon and sieve?
- A. In the kitchen
- Q77. Does he use the same candle all the time?
- A. No a new one.
- Q78. How does he light the candle?
- A. With a lighter.
- Q79. Where does he get the lighter from?
- A. It his

- Q80. Does Rob smoke?
A. Yes Kool
- Q81. What about the powder where does the powder come from?
A. Under the mattress.
- Q82. Do you know what the powder is called?
A. No.
Can you show me where he keeps the powder. Ans. Yes and showed me under the doonah
- Q83. When he uses the candle in which room is he?
A. Bedroom
- Q84. What are you doing when he gives J. the needle?
A. Crying
- Q85. You said that J. saw you and Rob how many times did she see you together?
A. A lot of times
- Q86. Does Rob have sex with J.?
A. Yes
- Q87. Did you see him do this
A. Yes
- Q88. How many times did you J. and Rob having sex?
A. Alot of times
- Q89. Can you remember the last time you and Rob had sex?
A. Just before I left.
- Q90. Can you remember which day was the last day he did it?
A. No
- Q91. Did he have sex with you every sleep over or just sometimes?
A. Yes not when I have my period.
- Q92. Did you tell anyone at the house what was going on?
A. No I didn't
- Q93. Did you ever see Rob give himself the needle?
A. Yes
- Q94. When did Rob use to give himself the needle?
A. Before Sex.
- Q95. Did he give J. the needle first or himself?
A. Himself.
- Q96. Was that before sex with you?
A. Yes.
- Q97. Was it before sex with J.
A. Yes.
- Q98. Did he give J. the needle first and then sex, which way?
A. No.
- Q99. Who did he have sex first with?
A. J.
- Q100. Then who?
A. Me
- Q101. Have you ever had sex with anyone else?
A. Yes
- Q102. Who?
A. (name deleted - former staff member)
- Q103. How long ago?
A. Along time
- Q105. Have you had sex with anyone else?
A. No
- Q106. Did you tell anyone about (former staff member)
A. No
- Q107. Did he have sex with any other residents?
A. (name deleted - former male resident)

- Q108. Did you want to have sex with (name deleted)
A. No.
- Q109. Do you talk or have you ever talked with the residents here?
A. No
- Q110. Do you know what a lie is?
A. Yes not telling the truth
- Q111. Have you been telling the truth to me?
A. Yes
- Q112. Do you know what happens when you tell lies?
A. You get in trouble

APPENDIX C

The Department's response to the Ombudsman's Report of Tentative Conclusions (Note there are some deletions to preserve confidentiality of clients. * marks deletion)

Report of 15 September 1992

The Ombudsman has written to the director General on 7 July 1992, forwarding a report on the investigation and requesting a response from CSV. The Director General wrote on 27 July 1992, advising that the Public Advocate had been asked to arrange for a validation process to occur.

On 20 August 1992 the Ombudsman asked for confirmation of when the validation process will be completed.

Subsequent to previous correspondence in relation to this matter, the Public Advocate has attempted to gain the consent of one of the alleged victims to undergo this process. Despite several attempts to gain this consent, it has not been successful. In addition, CSV have asked that another alleged victim be requested to give consent to this process. Again this client has indicated that she is not prepared to undertake this testing procedure.

In view of the fact that the third alleged victim of Mr Williams' actions has chosen not to use the 'Canon' communication device for some considerable period, a position has arisen where the clients' ability to communicate via this device cannot be tested.

I am of the belief that although it is not possible to test the validity of the clients' ability to communicate, substantial evidence is available to justify the Department's actions in dismissing Mr Williams.

The Report on the investigation forwarded on 7 July 1992 contains several errors and omissions which are pertinent to a correct finding in this matter. In addition, I believe that the report does not present an objective analysis of all information available and subsequently comes to an erroneous conclusion regarding the Department's response to the allegations made against Mr Williams.

I bring to your attention the following:

The report states that 'The psychological assessment of the women which determined that they had sufficient understanding of the concepts of truth and or right and wrong was based entirely on facilitated communication with the Co-ordinator as the facilitator.'

This statement is incorrect. The Co-ordinator facilitated during the psychological assessment of Ms J. and Ms C. Ms Juliana Kaik, Instructor, Cooinda Hill Adult Training Support Service (ATSS), facilitated during the assessment of Ms K. The tests indicated that the three women possessed receptive language and comprehension ability at a much higher level than expected of severely retarded individuals which they had been labelled in childhood.

The report states 'There was no assessment of the skills of the three women prior to their use of the Canon Communicator.'

While this statement is correct, it is important to consider that intelligence testing of non-verbal persons is unreliable on the basis that credible and standardised testing procedures require verbal responses.

In relation to the your comments regarding the Department's investigation of the allegations of the report states 'The reference to chocolate biscuits used as a bribe conforms with the limitations on Ms J.'s diet.'

The restrictions placed on Ms J.'s diet are, by virtue of her condition, necessarily strict. While allowances are made for Ms J. to consume a prescribed quantity of food, Ms J is predisposed to sweets, including chocolate in particular. Ms J has often used physical attacks on staff and family members to obtain this type of food. It is reasonable to expect that chocolate biscuits could most certainly be used to coerce her to behave in a manner she otherwise would not.

The report states that ... 'Ms J.'s statement that " Rob hurt K", which allegedly took place just prior to Ms K's statement.'

Ms K.'s disclosure was in fact made five days after Ms J.'s statement. Ms K. had three opportunities to communicate this information to Ms S. and only did so after staff had observed her in a distressed state. It is significant that Ms K.'s allegations were communicated to a different facilitator and that the women are not able to communicate with each other to the extent indicated by the specific nature of the allegations.

The report states that 'Mr Williams stated in interview that the Co-ordinator had been communicating sexual statements allegedly made by Ms C. to him and about him over a number of weeks prior to the allegation.'

The Co-ordinator has clearly denied this and maintains that Ms C. first made allegations on 20 November 1989 and not before.

The report states that 'The context in which these allegations were made appear to be one of rumour and suspicion.'

While it can be established that various staff were aware of Ms J.'s allegations against Mr Williams prior to Ms K.'s disclosure, there is clearly insufficient evidence to substantiate that Ms K.'s statement was contrived by Ms S. (the second facilitator).

The report states 'All three women made allegations regarding a tattoo on Mr William's stomach. There is no tattoo. This has never been explained.'

The Psychologist involved in the assessment and counselling of the women maintains that on 12 May 1990 a meeting was conducted with the Barrister to review the police statements. During the process of this meeting, the Barrister put to Ms J. that Mr

Williams did not have a tattoo. Ms J replied that he did. The Barrister asked her how she knew and she replied 'I saw him put it on'. The Barrister then asked how he did this and Ms J. replied 'He wet it'. On this basis, there is not reason to conclude that Mr Williams did not have a tattoo.

The report states 'Ms J. had used the communicator only once to the Co-ordinator's knowledge prior to the allegations.'

The Cooinda Hill Adult Training Support Service had support Ms J. in attending DEAL since June 1987. Ms J. had received training in the communicator's use and used facilitated communication at Cooinda Hill on a regular basis leading up to the time of the disclosure.

The report states 'M. who shared a room with Ms C. is verbal and according to the Co-ordinator was aware of what is going on the CRU. She was never interviewed.'

The assessing Psychologist had ascertained from M. that she had not witnessed any of these events and had no knowledge of their occurrence.

The report states 'No attention appears to have been given to the substance of the parent's observation.'

The assessing Psychologist is strongly of the view that Mr and Mrs J. were, at the time of these events and subsequent to them, convinced that the allegations by her daughter were true. On one occasion Ms Regina Kalb, Administrator, Cooinda Hill ATSS maintains that Mrs J. asked Ms J. about the events and Ms J. had pointed to her toe when asked where Mr Williams had put the needle. In addition, Mr and Mrs J. and Mrs C. were in support of charges being laid against Mr Williams and the pursuit of the matter to Court.

The report states that '... there appears to have been no question of where the women acquired the skills to communicate at the level of the police statements, no checks with the Training Centre where the women attended as to their assessment of the individual's skills or communication ability and no requirement for non-verbal psychological testing.'

This is not correct. Departmental records indicate that Ms C. has used the Canon communicator at least since February 1988. Ms J. commenced using this device in June 1987 and Ms K. some time prior to June 1989. It is a fact that Departmental staff liaise with Adult Training Support Service (ATSS) and Community Residential Unit (CRU) staff on a daily basis in relation to individual client matters. In relation to the three women, their ability to communicate using the facilitated communication technique was well known among the direct service staff prior to the allegations being made. It was commonly accepted that the women could communicate effectively with the assistance of ATSS and CRU staff. Mr Williams himself has assisted in this communication process and has been present when facilitation has occurred. There is no evidence of Mr Williams raising concerns regarding this technique prior to the allegations against him being made.

The report states that 'The CSV Investigation Panel failed to question the basis of the communication or the validity of psychological assessment based entirely on facilitated communication. They appear to have relied entirely on staff opinion that the women were communicating independently and on their judgement that there was no conspiracy against Mr Williams.'

*The analysis that the women were communicating independently was not based on staff opinion alone. There is substantial documentation to support the position that the women were able to effectively use the facilitated communication technique. Departmental records confirm that Ms C. has utilised the Canon Communicator in several residential and day program settings *. In addition, Ms C. required extensive psychological support following the alleged abuse by Mr Williams and communicated effectively with the psychologist via this device. Previous to this, Ms C. had alleged sexual abuse * (18 February 1988) via this device to staff of Moe Life Skills Centre. The Police were notified, but did not pursue the matter due to the lack of corroborating evidence. * (The Report then refers to corroborating evidence for Ms C.'s first allegation of sexual abuse.)*

In relation to Ms K., communication using this technique has involved a number of staff as facilitators employed at two CRUs and Cooinda Hill ATSS. Ms K has received counselling regarding the alleged incidents from Ms Jacquie Bowman, Psychologist. Ms Kaik facilitated these sessions and both have indicated that Ms K became emotionally distressed when discussing the details of the incidents. Ms Kaik was initially unaware of the full details of the allegations against Mr Williams prior to the commencing these sessions.

In relation to Ms J., various staff have assisted in facilitated communication process. These staff have been employed at the Traralgon CRU and Cooinda Hill ATSS. In addition, a video-tape recording was conducted in March 1990 in which Ms J. is using the Canon Communicator without the assistance of a facilitator.

The Public Advocate has recently had access to the department client files regarding this matter. Although he has not provided a conclusive response to his investigations, he advised me that he is in no doubt that substantial support exists among the professional staff involved with these clients regarding the reliability of facilitated communication. The Public Advocate is the advocate for Ms K. and I am aware that he has relied upon the facilitated communication technique in advocating on her behalf.

In the report, considerable veracity is placed on Mr and Mrs J.'s opinion of their daughter's disability and their scepticism regarding facilitated communication. In contrast, the professional opinion of Psychologist staff, and the results of tests undertaken in relation to the clients' psychological functioning, is dismissed as being inconclusive.

It is considered that the Department has acted responsibly and reasonably in dismissing Mr Williams. the following information is provided to further support this position:

Despite the lack of corroborating medical evidence, the Morwell Criminal Investigations Bureau and the Department of Public Prosecutions considered that the degree of corroboration between the witness statements and the extent of specific detail contained in the statements was sufficient to pursue charges against Mr Williams. Mr Williams was charged with Rape (3 counts) and Sexually Interfering with an Intellectually Disabled Person (3 counts). These charges constitute serious and criminal matters within the regulations of the Victorian Public Service and at law. The Victorian Public Service regulations allows for the administration of the maximum penalty in these circumstances.

Mr Williams was immediately suspended on full pay and asked to respond to the allegations. Mr Williams offered no explanation other than a denial of the allegations. A departmental investigation was conducted with concluded:

'That on the information available it is believed that Mr Williams has engaged in serious and wilful misconduct. This is based significantly on the allegations made and evidence provided by the three clients concerned with substantial corroboration evident between all statements. There is no information to suggest that the clients' claims are false. Staff interviewed have provided information which supports the clients' statements being taken as accurate and truthful.'

On the basis of this information, the information contained in the police statements and Mr Williams' response, Mr Williams was notified of his dismissal. The fact that collusion between the women was not possible and that the women knew the difference between right/wrong and truth/falsehood was a significant determining factor in this judgement. In addition, the decision was made in accordance with Victorian Public Service disciplinary requirements in which the burden of proof is on the balance of probabilities.

On 15 May 1990 at Moe Magistrates Court the matter was discharged without verdict. The Magistrate resolved that the key witness, Ms J., was unable to present evidence in court. In his summation of proceedings the Magistrate referred specifically to the problems inherent in the Evidence Act in allowing a disabled person reliant on an alternative communication device giving evidence in a court of law. The requirement to substantiate the validity of evidence 'beyond reasonable doubt' is a substantially different basis than that required in considering disciplinary action pertaining to a Victorian Public Service employee.

Mr Williams later (7 December 1990) appealed to the Office of Merit Protection against the Department's decision. On the basis of the information presented by the Department and Mr Williams, the Office of Merit Protection concluded that:

'It is considered that the decision by the General Manager, Community Programs to terminate Mr Williams' employment for serious and wilful misconduct was not unreasonable.'

It is distressing to note that since these allegations were made Mr Williams allegedly

has persisted in his harassment of departmental staff. Numerous incidents have occurred where staff allege that Mr Williams has attempted to run an employees private vehicle off the road; shouting abuse and confronting staff in public (shopping centres, outside private homes); following staff as they left work or conducted their private business affairs; unsolicited telephone calls to employee's residence; unsolicited telephone calls to work locations (Latrobe Valley Residential Services Association offices and Community Residential Units); telephone calls to the parents of the clients concerned and, on several occasions, attempted calls to the clients themselves.

Such is the seriousness of these allegations, Mr Williams was charged in April 1992 with Threats to Kill and Threats to Cause Serious Injury. Mr Williams was released on bail and subject to stringent reporting conditions to appear at Moe Magistrates Court on 25 September 1992.

RECOMMENDATION:

It is recommended that the Ombudsman be advised that CSV rejects the view that it has acted improperly in this matter.

*MARK DIAMOND
Regional Director
Gippsland Region*