



REPORT ON

THE INVESTIGATION OF

THE REMOVAL AND PLACEMENT OF A

CLIENT OF INTELLECTUAL DISABILITIES SERVICES

BECAUSE OF ALLEGATIONS MADE BY

FACILITATED COMMUNICATION

FEBRUARY 1994



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THE OMBUDSMAN
VICTORIA AUSTRALIA

& The Deputy Ombudsman (Police Complaints)

Our Ref:

Your Ref:

Contact:

Telephone:

22 February 1994

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 no steps that 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 March 1993 I received a complaint from the family of Gina (not her real name), a client of Intellectual Disabilities Services, about the Department of Health and Community Services. Gina was one of a number of clients attending daily at Sunshine Adult Activity Unit, a funded non-government agency, who were alleged to have made allegations of sexual abuse against family members. The allegations were made by Facilitated Communication..

The Canon Communicator is a small laptop keyboard. The person types with assistance of a facilitator who supports his/her hand or arm.

As a result of allegations of sexual and physical abuse Gina was placed away from home by the Department on two occasions. The second time she spent four months in a crisis centre.

An independent assessment of Gina's cognitive abilities and literacy skills, conducted under a process agreed to by the Public Advocate and the Department of Health and Community Services, has determined that Gina was unable to make the allegations attributed to her. My investigation of the management of the case by the Department has determined a number of serious deficiencies in policy and practice. The Department informs me that my recommendations in regard to policy and practice have been implemented since this case.

I have also recommended to the Department that Gina's mother be reimbursed for approximately \$3,000 in legal costs. The Department has not agreed to my recommendation. Their refusal was expressed as follows:-

"It is not the policy of the Department to reimburse legal costs in circumstances where no orders have been made by a tribunal/body with powers to make orders on costs."

This is the second occasion on which this policy has been used as grounds for refusal of my recommendation.

The family have had no opportunity to seek reimbursement of fees other than by recourse to my office. I am satisfied that their complaint has been substantiated and that the only way to "rectify or mitigate or alter the effects of the action to which the investigation relates" (Ombudsman Act 1973 section 23(2)) is to reimburse these costs.

I further remind Parliament of a Report of an investigation of the dismissal of a Department of Health and Community Services employee, Mr Williams, because of allegations made against him by three clients of a residential centre, again using facilitated communication and of the case of Carla. Carla attended the same Unit as Gina and was removed, together with Gina, because of allegations of sexual abuse, in December 1990. An application to the Guardianship Board found in February 1992 that Carla was unable to make the allegations attributed to her. Her family incurred legal costs of approximately \$40,000. The Guardianship and Administration Board awarded costs against the Department but this was quashed on appeal, on the grounds that the Department was not a party to the application. On this basis, although the actions of the Department may be found to be inadequate and responsible for the lodging of an Application, the GAB may not have the power to award costs. The Department has also refused my recommendation for costs to Mr Williams. The Minister has decided to reimburse the family of Carla for non-legal costs of approximately \$8,000, but legal costs will not be reimbursed.

I further note that the Department is not consistent in the application of this policy. I refer to the well publicised decision by the Department to fund the legal fees of the parents of the children involved in "The Family" (formerly the Children of God) case at very major cost.

I place the report before Parliament for a number of reasons.

The first is that the Department has not accepted my recommendation and this procedure is a normal consequence of such refusal.

Secondly, the Department has adopted a policy of not reimbursing legal costs incurred by innocent parties defending themselves against departmental administrative inadequacies leading to injustices, unless a Court or Tribunal orders the reimbursement of such costs. This policy is a direct affront to the thrust of the Ombudsman Act and negates the instigation by the Ombudsman. Unless Parliament takes action against the Department, the Ombudsman might as well not investigate any complaint where a remedy may be in part, or in full, the reimbursement of legal costs.

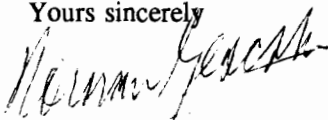
Fortunately no other department or agency has adopted this stance but this terminal disease could spread.

Finally, the three cases have demonstrated the powers of the Department to disrupt and traumatise families without reasonable grounds and in one case, to dismiss a competent employee with justification which relies on unsubstantiated or untested evidence.

I strongly urge that Parliament fully consider the issues arising from these three cases and, particularly, the practice of a Department adopting a policy which negates an Ombudsman recommendation following an investigation and the finding of an administrative injustice.

These are the formal copies to you but I have arranged for the Government Printing Office to provide the printed copies for Parliament and these will be ready before Parliament sits but because of my impending retirement it is probably necessary that you receive these reports from me before the retirement date.

Yours sincerely



(Norman Geschke)
OMBUDSMAN

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REPORT

INTRODUCTION

A complaint was made to the Ombudsman in March 1993 by the family of Gina, a client of Intellectual Disabilities Services about actions of the Department of Health and Community Services. Gina lived at home and attended Sunshine Adult Activity Unit, a day centre funded by the Department of Health and Community Services.

Gina was one of a number of clients at the Unit who purportedly made allegations of sexual and physical abuse against family members. The statements were made by facilitated communication using a Canon Communicator¹.

Gina and Carla, a fellow client at the Unit, were placed by the Department in accommodation away from their families in December 1990. Carla's family disputed her ability to communicate by facilitated communication and made an application to the Guardianship and Administration Board which led to the finding in February 1992 that Carla was not capable of the communications attributed to her. The family had therefore been unjustly accused of sexual abuse. Their legal fees, in excess of \$30,000 have not been reimbursed.

As a result of communications of alleged abuse on the Canon Communicator, Gina was placed by the Department in a residential unit on two occasions, the second placement from November 1991 to March 1992. There was no police investigation of the allegations and no medical or other evidence to support the allegations. The family disputed Gina's ability to communicate by facilitated communication but were not aware of other cases at that time.

The family alleged that failure by the Department to adequately investigate the allegations or the validity of her communication prior to taking action to remove Gina caused great trauma to the family. The family was caused financial hardship by legal costs associated with an application to the Guardianship and Administration Board. Although the Hearing did not proceed, costs amounted to almost \$3,000.

1. The Canon Communicator is a small lap-top keyboard. The person with an intellectual disability is referred to as the client. The client's hand, wrist or arm is supported by an assistant, the facilitator, in the typing process.

* Names have been changed to protect the confidentiality of clients and families.

Comprehensive assessments of Gina's cognitive abilities and literacy skills conducted under the supervision of the Public Advocate, provide evidence that the allegations made by facilitated communication were unable to be produced by Gina. It is further most unlikely that she had sufficient comprehension of the questions put to her by Department staff for her assent to questions, verbally or on the Canon, to be regarded as valid. There is no evidence that Gina was capable of, or did make verbal allegations against family members and the evidence suggests that she could not be seen to be exercising informed consent in verbally agreeing to leave home.

After a thorough investigation, the Ombudsman concluded that there are a number of serious deficiencies in the Department's handling of this matter and that the response by the Department to the allegations contributed to the distress and trauma caused to Gina and the family.

SECTION 1 - RECOMMENDATIONS

The Ombudsman was satisfied that the administrative action, "failure by the Department to properly investigate allegations made by facilitated communication, prior to acting on these allegations," has been substantiated.

He therefore recommended that:

1. Gina's mother be reimbursed for the legal costs incurred by an application to the Guardianship Board. (It is believed to be approximately \$3,000).
2. That the Department take action to review the regional management deficiencies and inadequacies identified in case management highlighted in this report.
3. That the Department review the accountability of funded non-government agencies and the responsibility of the Department to monitor and account for the provision of services by these agencies to clients of Intellectual Disabilities Services.

A tentative report was forwarded to the Department in October 1993. In February Mr Allen, Deputy Secretary, Community Services wrote enclosing a report from the Regional Director, Western Metropolitan Region. (Appendix A).

The Department has refused the recommendation to reimburse Gina's mother for legal costs on the grounds that:

1. The Region's actions were consistent with the Department's policies and practices at the time.
2. Regional staff did inform the family of the processes of the Office of the Public Advocate and the Guardianship Board.
3. It is not Departmental policy to reimburse legal costs in circumstances where no orders have been made by a tribunal/body with powers to make orders on costs.

The Department's response states:

- "1. The Region's actions were consistent with the Department's policies and practices at the time. These were conveyed in the Departmental Instruction on Communication Skills Planning dated 28 May 1990 which came from the results of the IDRPs Report of its Investigation (May 1989) of "assisted communication". In particular, the Region had acted precisely in the manner set out in Dr J. Paterson's letter of 5 April 1990 to the President of the IDRPs on the appropriate way of dealing with dispute resolution involving clients using "assisted communication":-

"Disputes about communication skills are no different to any other dispute between professionals about clients. There is already an established conciliation and dispute resolution system in the Office of the Public Advocate and the Guardianship and Administration Board and I believe these are the appropriate forums, along with the Intellectual Disability Review Panel, for the airing of such disputes."

2. Regional staff did inform the family of the processes of the Office of the Public Advocate and the Guardianship Board, and did discuss the case with personnel of the Office of Public Advocate."

There is no evidence to support this conclusion. Regional management did not demonstrate knowledge or awareness of Department policy and practice and did not provide a structured and systematic framework for

assessment of the allegations by case workers. There was no acknowledgment of the need for dispute resolution or conciliation. There is evidence on file only of verbal contact by telephone to the Office of the Public Advocate by the Department on two occasions. A telephone call of 20 December 1990 to inform the Advocate for the Western Region of the decision to remove Gina and Carla cannot be interpreted as that office sanctioning the move. The Office of the Public Advocate (OPA) had no legal mandate to do so. The Regional Manager of Intellectual Disability Services should have been aware of that and that, unless requested to do so by the Guardianship and Administration Board (GAB), under Section 11.2 of the Act, the Advocate had no mandate to investigate.

Files indicate a telephone call to the Duty Officer of OPA, 7 November 1991, in regard to the second removal of Gina. There is no indication that the Duty Officer was given any information which would have led to advice other than that the Department should follow the least restrictive option. There is no evidence that the Duty Officer was advised that there was a dispute about facilitated communication.

At interview the Regional Manager debated whether there was any dispute over Gina's communication and the Manager Client Services acknowledged that he informed the family that it was regional policy to accept communication by facilitated communication as verbal communication. This advice does not indicate knowledge of Departmental Instructions, 29 May 1990. The Regional Manager acknowledged that he was not aware of the Intellectual Disability Review Panel validation process until the Guardianship Hearing for Carla. There is no evidence that Department Officers were familiar with Departmental policy or implemented it. Had they done so at the appropriate time, the events outlined in this report may have been avoided.

The Ombudsman does not accept that the officers advised the family that they could apply to the Guardianship and Administration Board prior to their application of February 1992. Both Managers believed they would have done so but could not nominate a place or occasion at which this advice took place. The files provide no evidence of the advice being given at the meetings of December 1990 - January 1991 which followed Gina's first removal. There is no evidence of meetings between the family and the Managers from that point until Gina's second removal in November 1991. The family were not aware that the allegations were being pursued in 1991 or that interviews with Gina were being conducted. The Case Manager met with the family in November 1991 and had further contact with the family for the four months Gina

was in residential care. She stated in interview that she and the Assistant Case Manager would have given that advice. The Assistant Case Manager met with Gina's mother on one occasion only and the advice was not given. The Assistant Case Manager could recall only one occasion on which this advice may have been offered to the brother in December 1991 but cannot recall that it was offered. File notes give no evidence of such advice. The family complained in 1992 that they had been unable to contact the Regional Manager for three months. At a meeting of 24 February 1992, called at their insistence and after contact was made by them with Carla's lawyers, no mention is made by Mr Tsingas of applying to the Guardianship and Administration Board or of any previous advice to do so. He states that he will make enquiries as to whether Gina's communication can be assessed.

The Intake file for the Office of the Public Advocate show contact by the barrister for Carla's family on 25 February 1992. This is the first documented contact in regard to Gina. Contact in December 1990 did not give Gina's name. The barrister stated that the family had contacted her instructing solicitor following a media program on Carla. The notes state the barrister advised, "Parents were unaware of any possible acton and believed they just had to wear it." The family are adamant that this is the case.

It appears that the focus of regional management was almost entirely on the Carla case; there may be some confusion in the minds of management between Carla and Gina; regional policy was to accept allegations made by facilitated communication as verbal allegations and there was therefore no acceptance that a dispute existed.

The Department's response further states, "It is not the policy of the Department to reimburse legal costs in circumstances where no orders have been made by a tribunal/body with powers to make orders on costs."

A detailed investigation of case management has identified serious deficiencies in regional policy and practice which led to emotional trauma and financial disadvantage to the family.

There was no opportunity for the family to seek reimbursement of legal fees from a Court or Tribunal. In fact the experience of the Carla case demonstrates that the Guardianship and Administration Board may not have power to award costs against the Department of Health and Community Services where Department action has led a family to initiate an application to the Guardianship and Administration Board.

In Carla's case, the Board awarded costs against the Department. The Department appealed to the Administrative Appeals Tribunal which found that the Department was not a party to the Application and the order was quashed. At this stage, the family are liable for legal costs in excess of \$30,000.

Once the question of communication was resolved Gina's case did not go to a hearing. The only redress to Gina's family has been to request an investigation by the Ombudsman. A detailed investigation of case management has identified serious deficiencies in regional policy and practice which led to emotional trauma and financial disadvantage to the family. The Ombudsman Act 1973 (Section 23(2)) enables the Ombudsman to recommend action to "rectify or mitigate or alter the effects of the action to which the investigation relates." The Department's policy is contrary to the spirit and intent of the Ombudsman Act. I also note inconsistencies in application of the policy. I refer to the publicised agreement to fund legal costs for the families in regard to the hearing of Protection Applications in the case of 'The Family' (formerly the Children of God).

SECTION 2 - A SUMMARY OF FINDINGS

A number of individuals and agencies have been involved in this case. Some contributed to the deficiencies and delays identified in the investigation of the allegations of sexual abuse by Gina and other clients. They may be outside the Ombudsman's jurisdiction in terms of formal investigation of their actions and recommendations. That has not prevented comment where it is critical to an understanding of events or the conduct of this case. Findings indicate a need for greater monitoring of funded agencies by the Department and a clearer delineation of the Department's responsibility for clients of Intellectual Disabilities Services.

There is no evidence to support the allegations of sexual and physical abuse against family members. There is evidence that Gina does not have the skills to produce the allegations attributed to her and that the allegations are the result of facilitator influence. The injustice to the family has been compounded by biased and misleading information and inadequate response by the Department.

THE AGENCIES INVOLVED

A. Sunshine Adult Activity Unit

1. All allegations were made by Facilitated Communication and started after the commencement of an individual counselling program initially for clients with sexual behaviour problems in October 1990. The program was broadened to include clients without overt problems who requested counselling by facilitated communication. There was no questioning by staff of the ability of clients to make the allegations.
2. Seven (7) clients of 20 to 26 clients using the Canon Communicator or some form of augmented communication, from a total population of 80 clients, alleged ongoing sexual abuse by family members.
3. The only allegations made were by Facilitated Communication. There were no verbal allegations. Gina did not make any verbal allegations.
4. Three of the initial allegations including Gina's later allegation about a "cigarette burn" of November 1991, were made to the same facilitator who also facilitated.
5. When informed of the allegations in November 1990, the Committee of Management allegedly appointed the Counsellor "to represent the Centre". The Committee of Management appears to have taken no action at that time to investigate the matter or provide guidance to management apart from that action. The Committee's response indicates later action taken.
6. Unit staff took Gina for medical examination on two occasions with consent by Facilitated Communication only. These examinations did not confirm the allegations. Staff appeared to be misinformed in regard to the outcome of the examinations. No records of these examinations were made available to the Department.
7. Records were not kept of the order of allegations and tapes of allegations were not kept. There was no adequate documentation of the reporting of the allegations.

8. There was undue delay in giving identifying information to the Department. The timing of the information contributed to the Department's difficulties.
9. The facsimile information sent by the Counsellor to the Department was inadequate and in important aspects, inaccurate and misleading. This was critical to the later action taken by the Department.
10. There is evidence of facilitator influence of clients' statements. I refer in particular to identical statements from Gina (3.1.91.) and Carla where Ms Gardner was facilitating. "I noticed my brother was incest in my vagina." p. 24.

Conclusion

The Sunshine Adult Activity Unit had no prior experience of allegations of sexual abuse by clients and no policy or guidelines for handling such allegations. There was an uncritical acceptance of the validity of the communications and a failure to take responsibility for the welfare of clients by ensuring immediate investigation of the allegations. There is evidence of facilitator influence of statements. There appears to have been a failure by the Committee of Management to provide direction to management which contributed to an atmosphere of confusion and near hysteria. Too much responsibility appears to have been given to the Counsellor, a part-time contract employee, who did not demonstrate the experience or the expertise to deal with the situation. SAAU contributed to further difficulties in investigating the allegations by later withdrawing co-operation with the Case Managers and refusing to provide facilitators.

SUMMARY OF RESPONSES FROM THE COMMITTEE OF MANAGEMENT, STAFF AND THE COUNSELLOR (APPENDIX B)

B. The Department of Health and Community Services

1. There was delay by the Department in the initial response to the verbal information provided by the Unit to the member of the Services, Planning and Development Unit who was responsible for liaison with the SAAU.
2. The Department was made aware of a number of allegations without identifying information in early November by contact by the Unit with Mr. Ross. The only action taken by the Department was

the attendance of Mr Pollard, IDS Manager at the Unit, 15 November. A central problem of accountability of the funded agency to the Department is identified.

3. No action was taken to alert other staff to the situation. Mr Tsingas, Client Services Manager, responsible for the provision of services at the SAAU was not informed of the allegations until 20 December.
4. The Department was given information to identify the clients, 20 December in a facsimile from the Counsellor. The Manager, Intellectual Disabilities Services appears to have relied unquestioningly on the validity of the information conveyed by the Counsellor.
5. The action taken to remove Gina and Carla was based on insufficient evidence. Staff did not have access to Unit files. Neither woman had met or been interviewed by Department staff. The lack of assessment is further demonstrated by the fact that the psychologist who attended on both occasions did not leave the car to speak to the family or the client.
6. Documentation of the action at this time is inadequate and misleading.
7. There was no attempt by the Department to seek independent advice on Facilitated Communication. All advice sought was from DEAL. There was no over view within the Department of the use of Facilitated Communication.
8. Stated regional policy was to accept allegations made by facilitated communication as though they were verbal allegations. The origins of this policy were not accounted for. This policy does not appear to be in accord with stated Department policy. (Letter of Dr Paterson to IDRP, 5 April 1990).
9. Regional management and workers in Intellectual Disabilities Services did not demonstrate awareness of the contentious nature of this form of communication. The Report of the Intellectual Disability Review Panel or of the Department response to this in April 1990 did not appear to be available in the region or known to workers.

10. Despite the urgency of the alleged request for case management, a Case Manager was appointed in April 1991, four months later. The initial application for a Case Manager appears to have been filed and overlooked.
11. An application for a GSP was made in April 1991. This did not proceed. The GSP process was not followed when Gina was placed in a crisis centre in November 1991.
12. None of the five clients identified to the Department by the SAAU had a GSP prepared. This appears to be contrary to the Act.
13. The first interviews with Gina with the Case Manager and the Assistant Case Manager were held in October 1991 six months after the appointment of a Case Manager because of problems with gaining a facilitator.
14. Case management was inadequate. There was a lack of direction and strategy and lack of experience in assessing sexual abuse allegations. Information central to an assessment of the allegations was not sought by workers.
15. The workers claim that they had no investigative role. There is confusion even at management level about whether Police were investigating. Police were advised by the Department that the client did not want the matter investigated.
16. As a result of advice to Police by the Department there was no investigation of Gina's allegations.
17. Medical examinations were not conducted for clients. If there was any doubt about the ability to give consent, application should have been made to the Guardianship Board.
18. There was a lack of overview by line management of the allegations emerging from the interviews with the four clients.

If the interviews held with clients were not for the purpose of investigation, it is not clear why they continued. There was no attempt in interview to establish the ability of the client to communicate or to assess the nature of the information provided despite the fact that workers were present at interviews of more than one client. Independent psychological assessment later showed

Gina was not capable of understanding many of the questions asked in interview or of making the allegations attributed to her. She may therefore have been placed under unnecessary stress by the process.

19. Action by the Department and advice by the Department to other units eg. Furlong House, was based on unsubstantiated allegations. These allegations still remain on the Department file as fact.
20. In November 1991, Gina was removed from the family home and was out of the family home for four months. No medical evidence was sought. There was no check of her previous medical history or Unit files. The Department deny the removal was linked to the allegations. The files indicate otherwise. The action taken in December was based entirely on the information given by the Counsellor without Departmental knowledge of the clients or families, without further evidence or any questioning of the clients' ability to communicate.
21. Department staff state Gina was removed at her own request. This demonstrates an assessment by the Department of Gina's competence to make an informed decision despite dispute with the family. Proper processes were ignored.
22. Gina was placed for four months from November 1991 in a crisis centre. The centre was for management problems, clients involved in the criminal justice system and for "victims" although the nature of the residents makes it an unsafe environment for a vulnerable person.
23. Expressed concerns by the family about the inappropriateness of the placement were ignored. Tension between the Centre and the family seems to be attributed by the Department and Furlong House staff solely to the family.
24. The family were not informed of actions being taken to find a permanent placement for Gina and their views were not considered.
25. There was great delay by regional management in responding to appeals by the family to discuss the allegations and Gina's placement and future. A meeting was not held until after completion of the "Carla" case when information had become publicly

available. The family's concerns appear to take second place to the Department's involvement in that case.

26. Despite the fact that assessment was proceeding for Carla at that stage no consideration appears to have been given to assessment of Gina. There is no evidence on file to indicate that the family were advised of their right to appeal to the Guardianship Board.
27. Files have been found to be inadequate and subjective.

Conclusion

The Department did not refer the question of whether Gina could communicate by facilitated communication to the accepted dispute resolution bodies. There is no evidence of advice to the family to contact the Guardianship and Administration Board. Departmental contact with the Office of the Public Advocate was verbal only. There was no correspondence in regard to Gina with the OPA or the GAB until the family lodged an application in February 1992.

The allegations of sexual abuse were made in October 1990. Because of delay by the Unit in providing detailed information to the Department no action was taken until December. This initial delay raises serious questions of the responsibility of funded agencies to the Department and the Department's accountability for the welfare of clients of Intellectual Disabilities Services (IDS). The number and seriousness of allegations should have prompted further action to investigate the nature and quality of counselling and support to clients. Instead responsibility appears to have been left to the Unit until a crisis stage was reached.

The action taken in December was based entirely on the information provided by the Counsellor without knowledge of the clients or families and without further evidence or any questioning of the clients' ability to communicate. Although sympathetic to the dilemma of Management at the time, the action appears hasty and ill-advised. Despite the initial haste, enormous delays followed. The action reflects the inexperience of the management in terms of knowledge of intellectual disabilities and of the workers in dealing with allegations of sexual abuse. The lack of knowledge of management of the disputes about Facilitated Communication is surprising.

The case management for Gina was inadequate and reflected inexperience and confusion about the Department's role. The second removal of Gina and placement in a crisis centre was motivated by the allegation of the "cigarette burn". This was accepted by the Department without any evidence. Gina was placed in an inappropriate and unsafe environment. The family's rights and concerns were ignored. In February, 1992 the family applied to the Guardianship Board. In April 1992, testing was planned, but there were delays because of problems of facilitation and acceptability of the testing to DEAL.

An assessment report was prepared 21 August 1992, a further six months after the application to the Guardianship Board. In October 1992 further testing was recommended. Assessment was not completed and information given to the family until the end of that year. They have therefore had a two year period when they believe they have been subject to suspicion by the Department because of these allegations.

DEPARTMENT RESPONSE (APPENDIX A)

C. The Office of the Public Advocate (OPA)

1. The Counsellor from the SAAU sent a facsimile without identifying names, 14 December 1990 and an Advocate was appointed to contact her.

The files indicate that action was taken in regard to Carla where an application had been made to the GAB. No action appears to have been taken regarding Gina.

2. The first record of Gina in OPA files is contact by her solicitor in February 1992. This may be appropriate since the GAB had not requested investigation and the Office of the Public Advocate is not a service body. However it seems unusual that the OPA did not have concerns for the welfare of Gina and the three other clients and take some action. This information should have been available through contact with the Department workers in the Carla case.
3. There was a level of conflict between the Department and OPA in regard to roles and a number of changes in personnel. OPA staff, at least initially, appear to share the confusion of the Department as to the action to be taken.
4. The Department believed it was the role of OPA to inform the family of the role of the Guardianship Board. They were not given this information.

SUMMARY OF RESPONSE FROM THE OFFICE OF THE PUBLIC ADVOCATE
(APPENDIX B)

DEAL Communication Centre

1. A central question in this matter is the capacity of Gina to communicate on the Canon. DEAL assessed Gina as having the necessary literacy and comprehension skills to do so. The thoroughness of the initial assessments have been questioned. These initial assessments, conducted prior to the allegations, were conducted through facilitation. More comprehensive assessments were not conducted by DEAL until March 1992 when other assessments were proposed.
2. The outcome of the assessment by two psychologists commissioned by the Public Advocate and the assessments of the Microcomputer Application Centre (MAC) are not accepted by DEAL but without entering into debate on the matter, I am satisfied with the thoroughness and independence of these assessments and have accepted the findings. The process of assessment was developed after consultation with the Office of the Public Advocate, with Health and Community Services and with DEAL.

SUMMARY OF RESPONSE FROM DEAL (APPENDIX B)

Further Issues - No Official Medical Examination

Gina did not have an official medical examination at any stage. Proposed medicals for Gina and the other clients were delayed for months because facilitators were not available. However, Gina had allegedly already given consent by Facilitated Communication. SAAU staff believed she gave consent on the two visits they arranged. She is also sufficiently verbal to give verbal consent. I note verbal consent was accepted by the former Public Advocate prior to his examination of Gina's files.

There was debate between the Department and the Police as to what constituted consent and Police were reluctant to accept consent by Facilitated Communication. This could have been overcome by verbal consent and/or consent of the mother who wanted a medical to be performed.

The lack of facilitators seems in part, to have prevented a medical. No application was not made to the Guardianship Board as would be the normal process if there was any doubt about the ability of a client to give consent.

FAILURE TO CONSIDER VERBAL ABILITY

It is significant that the reliance on Facilitated Communication led to an ignoral of Gina's verbal skills, although Gina's mother at the IPP of 1989 had requested speech therapy for Gina. Both assessing psychologists stated that Gina had sufficient verbal skills for the allegations to be explored with her verbally. She can name body parts and people and in testing was able to name objects verbally which she could not name by Facilitated Communication.

MISINFORMATION TO THE FAMILY

In relation to the information given to the family and the truth of that information, Gina was supposedly still making allegations of sexual abuse in October, 1991 but the family had been told that the allegations were no longer an issue and were not being followed up. They were not told that the allegations were still occurring which is what they feared would be the case if Gina continued to use Facilitated Communication without any assessment of her ability to do so.

At the same time although workers were told to pursue the interviews with Gina in regard to the allegations, the Department insists it was not investigating the allegations. Police did not investigate because, for both the sexual abuse allegations and the "cigarette burn" allegation, they were informed by the Department that the client did not want investigation. This places the family in the position of being accused of serious and violent crimes but having no avenue of disproving the allegations. It is noted that the allegations were passed on to Furlong House when Gina was admitted and to the Panel deciding eligibility for permanent housing. The allegations also remain on file although never investigated. This is a grave injustice to the family.

FAILURE TO IMPLEMENT THE GENERAL SERVICE PLAN (GSP) PROCESS

A significant aspect of this complaint is the question of the responsibility of the Department towards clients under Section 9 of the Intellectually Disabled Persons Services Act 1986. Section 9 (4) states, "Every person who is a registered client of the Office of Intellectual Disability Services immediately before the commencement of this Section and continues to receive services, is entitled to have a general service plan prepared by the Director-General, within twenty four months of that commencement."

- "5. The Director-General must prepare a GSP in consultation with:
- (a) the eligible person;
 - (b) the primary carer of that person; and
 - (c) any other persons the Director-General considers appropriate."

Gina had an Individual Program Plan prepared in 1989 between her mother and the SAAU Liaison Officer. At that stage the Unit staff member strongly recommended that a GSP be prepared for Gina because she believed that Gina was missing out on social skills because of her isolated life at home and because of strained relations within the family. This advice was not followed and a GSP was not discussed with the mother.

In April 1991 an application was made by the Unit for a GSP but no action was taken. There was no GSP process when an important life decision was made when Gina was moved out of home in November 1991 and when application was made for a permanent placement in February 1992. Had a GSP been prepared in 1989 the matter of Gina's use of facilitated communication might have been brought clearly to the family's attention. I note that Carla did not have a GSP and nor did the other clients under case management. The Department could be criticised for failing to live up to its legislative requirements in regard to the clients of the SAAU.

SECTION 3 - AN OUTLINE OF THE INVESTIGATION

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

ACTION TAKEN:

An officer met with three members of Gina's family. The following Department personnel were interviewed; I. Pollard, Manager Intellectual Disability Services 1990; C. Tsingas, Manager of Client Services, 1990; M. Skondreas, Case Manager for Gina; A. Dive, Assistant Case Manager; M. Wylie, Co-Ordinator of Case Management; D. Johnstone, Case Manager for Carla's case; A. Gasparis, Psychologist H&CS. Interviews were held with staff of the Sunshine Adult Activity Unit, K. Galati, Acting Co-Ordinator 1990; M. Lloyd, Director SAAU and staff members K. Stebbings; D. Mitchell; L. McDonald, (by telephone) S. Gardner, and D. Pietsch, Counsellor. Also interviewed were A. Catanese, Psychologist; Gary Radler,

Psychologist, H&CS (by telephone); Jitka Jilich, Consultant Social Biology Resource Centre (by telephone); Sgt. M. Mills formerly of Altona North CPS and R Crossley, Co-ordinator of DEAL.

Two Investigation Officers, S Schwarz and R Day attended at DEAL where they were briefed by Ms Crossley and Ms Owen, Speech Pathologist with Prof. Carl Parsons of Latrobe University in attendance.

Files were examined at the Sunshine Adult Activity Unit, the Department of Health and Community Services, the Community Policing Squad, DEAL, the Office of the Public Advocate and of the Guardianship Board. The Office of the Public Advocate was consulted for information and advice. Medical reports were examined and the consulting physicians spoken with. The files of three clients of the SAAU who had case managers at the same time were examined.

Contact was made with H&CS central office staff who were referred to in interview as being consulted for advice by regional case workers.

BACKGROUND INFORMATION

The Department files contain very limited information on the client prior to the allegations of December 1990.

A report from the Royal Children's Hospital refers to Gina's first visit at the age of twelve months in 1958. There are reports of tests including a Binet test in 1965 which indicated an IQ under 50. The report stated she was "severely retarded but warmly attached to her mother." Apart from brief respite care she remained living at home.

Gina commenced attending daily at Sunshine Adult Activity Unit in January 1977. She was referred to DEAL for assessment, 19 August, 1988 because of her limited verbal skills. The SAAU staff were convinced that Gina's mother was informed of Gina's use of Facilitated Communication but there is no documentation to substantiate this. The family claim they were not informed. It is also possible that information was not understood by the mother. Gina's Individual Program Plan of July 1989 refers to group work to improve Gina's speech but there is no reference to her use of Facilitated Communication which had commenced by that stage.

A report of the first assessment of 19 August 1988 is not on the Unit's file but was supplied by DEAL. Ms Crossley stated by telephone that this was only a "screening" and that Gina was assessed by speech pathologist, Alice Owen. However, that assessment took place from March 1992.

THE INITIAL ASSESSMENTS BY DEAL

Gina's first assessment of her suitability to begin on the Canon Communicator took place at DEAL at 10.30 on 19.8.88. Carla and Peter B., two other clients, were also present. Ms Crossley did the assessment. The equipment used was the Talking computer and the Canon. The Progress Notes state:

"Gina completed the Talking Computer assessment.(see sheet.) Canon - used well, though further assessment of language needed. Light sleeve support when sitting. Touch on shoulder when standing. Played a game with Carla, assisted by Peter. Gina appears to have comprehension and internal language greatly in excess of that indicated by her speech. Some perseveration in pointing- prompt Gina to bring her hand back.

Recommendations:

Assessment of speech by Speech Pathologist. Work on Canon for games and X-words and missing letter activities on Talking Lesson one for practice.

Further language and literacy assessment."

The second page of assessment stated: Client's sentence:"I see a tree on green grass and a small car by a dog."

R. Forefinger. Gina has a problem with her fingertip being obscured by her hand (due to low muscle tone). If unrectified this led to inaccuracies with larger, closely set arrays. Sleeve support and reminders enabled Gina to correct the problem."

SPEECH THERAPIST'S ASSESSMENT

In November 1988 Ms Batt, Speech Therapist from DEAL, assessed Gina at the Unit. The assessment notes state:

"Gina was mostly silent so I didn't manage to assess articulation. She was unable to name pictures on an articulation test which was therefore not completed. She did not attempt to say the words after me either but was

willing to try to type them and was able to do several with wrist support and some help in finding the mixed letters once she had started.

She could imitate lip and tongue movements but not easily and could not make them on request.

Another time I would like to be near when she is with someone familiar as I suspect she does talk more than she did today."

The recommendation was:

"Will need to continue to use augmentative strategies especially spelling. Might benefit from inclusion in a speech group, but probably not much."

A second page of assessment under the heading Reception bracketed together, "Hearing, Auditory Discrimination , Auditory Memory Span, Speech Comprehension." The assessment was, "seems sufficient for speech comprehension". The following skills were listed, "Matching Letters and Words, Letter Recognition, Word Recognition, Reading Comprehension, Phonetic Word Analysis, Phonetic Word Building. The assessment was, "sufficient for starting on Canon".

Ms Crossley's response to the Ombudsman states, "This assessment both testifies to Gina's ability to communicate with Facilitation and provided material relevant to the diagnosis of word finding problems and motor-planning problems that would interfere with her ability to perform the tests carried out by Mr Catanese."

FURTHER ASSESSMENTS

Progress notes on file for Gina indicate further assessment took place, 21 November 1988 and July 1990. The assessment on 21 November 1988 was conducted by Ms Crossley. The Progress Notes state, "Gina's" working on communication in a shopping program." "UR not my Teacher" 2 dollars The report stated "Gina's apraxia was obvious in that she had a problem isolating her index finger and sometimes moulded her hand herself. She has had trouble learning to use her fingers to indicate numbers, e.g. 2 because of this. Today Gina used the Canon well especially when it was held up. Cross-word - she did a cube with Linda".

The recommendations were, "Use Canon to augment and encourage speech. Use Canon on stand or hold it. Sound out words as Gina is typing and accept - encourage any completion she offers. Avoid too much pressure on speech. Physically prompt isolation of under-finger and pull back her hand if she's stuck or about to make a typo. Finger pointing program, e.g. poking holes in play etc."

The first three sets of Progress Notes cited constitute the assessment Gina by DEAL which took place prior to the allegations of December 1990. All assessments were facilitated.

Following an assessment, 19 July 1990 Ms Crossley wrote, "Gina was superb. Her typing was excellent and her eye contact perfect. She has an extensive vocabulary and good spelling skills. Her physical problems are relatively slight and confidence building is what she mainly needs. Independence should be fairly rapid given practice. Gina's whole presentation alters when she is typing and she no longer appears intellectually disabled - given the appropriate support at home as well as at AATC very significant life changes could result. Use Canon as much as possible, investigate possibility of home involvement".

Ms Crossley acknowledged that the assessments of Gina at the Unit in 1988 may have been briefer than the standard individual assessment conducted at DEAL, where she stated the standard assessment model was three assessments normally taking five hours. The initial assessment of Gina appears to have been conducted in a group of three clients. The assessment used facilitated communication.

The DEAL assessment determined that Gina was right-handed. She was facilitated with typing with the right hand at the Unit following assessment. The Microcomputer Applications Centre report, October 1992, states, "Gina is left dominant. Gina was able to physically isolate her left index finger and point independently to items in the advisory session room." Her family confirm she is left handed and in videos of assessment of Gina she is seen reaching for objects with her left hand.

There were further assessments in March, May, July, August and December 1991 and March 1992. Progress notes made after the family became aware of the allegations are included in Appendix C.

The files indicate visits from DEAL to the Unit, mainly by Ms Crossley in November 1990, May, August, December 1991. Ms Crossley also referred to another visit to the Unit which because of the context of the allegation must have been in November 1991. Ms Crossley stated that Gina had a sore on her face which she verbally identified to her as a "burn". She has confirmed this in her response to the Ombudsman. There is no documentation of this visit. The files show further visits in March, April (3 times) May (4 times) 1992. Gina was assessed on one of the visits in April 1992 but the notes were not on file.

DEAL Speech Pathologist, Ms Owen conducted an assessment of Gina commencing March 1992, the results of which were made available to the later testing bodies. The testing procedure was videoed and viewed, in part, by the investigators. The testing took place over two sessions and occupied more than two hours.

Ms Owen found, "Gina appears to have good auditory comprehension skills and a reasonable grasp of reading and spelling skills. Her non-verbal language skills are good with usually appropriate use of body language and facial expression. She can sometimes gesture to augment her speech. However, she has significant word-finding problem which is not improved greatly by either phonemic or semantic queuing. In typed mode this word-finding problem is much improved."

An assessment of Gina's motor planning skills was conducted by Ms Bourke, Occupational Therapist of DEAL. (A full report of this test is included at Appendix C).

Ms Crossley provided a summary of DEAL's contact with the Unit and a summary of contact with Gina. (Appendix C)

THE CONTEXT OF THE ALLEGATIONS

In 1990 there were changes to the management of the Unit when Ms Lloyd went on leave in August and was replaced by Ms Galati. Ms Lloyd returned from leave in February 1991.

A Communication Program had been in operation at the Unit since 1988 and staff were required to encourage clients who were not verbal to use Canon Communicators in all their other programs. The majority of staff had participated in in-services conducted by DEAL and acted as facilitators for clients in their individual programs. The Co-Ordinator of the Communication Program stated that there were in service sessions conducted by DEAL about four times a year.

Ms Lloyd attended a two day training session and believed most staff had done so. However, one facilitator stated that she had not had that level of training despite becoming one of the most involved members of staff. The Unit staff appeared to accept Facilitated Communication very enthusiastically. One staff member stated that there was virtually no questioning of its effectiveness although not all staff were effective with all clients. She, for example, had little success with Gina. Staff completed a Canon Assessment Folder at the end of each month to indicate the degree of success of staff with each client. Ms Lloyd stated that there were about twenty six clients using the Canon or other forms of augmented communication in 1990 from a total of eighty clients. There appears to be a high percentage of clients with limited verbal skills.

In March 1990, Gina attended a twelve week Human Relations Course run by a Counsellor who was on a part-time contract for this purpose. The Counsellor has a degree in Recreation (1986) and an Advanced Certificate in Family counselling from Bouverie Clinic and has worked in human relations for ten years. A similar Human Relations course had been held the previous year. However a new aspect was added in 1990 with funding for individual counselling.

From May, the Counsellor was employed to work with clients on individual counselling. Her report to the Committee of Management states "Initially at that time my role was to work with clients at the centre on a 1:1 basis addressing such issues as public masturbation, body awareness, inappropriate affection, gender confusion and relationship training. The clients would attend counselling for a maximum of 10 sessions and after the final session, recommendations were made back to administration about general issues covered and guidelines for staff. Clients were verbal in the most part and came to counselling on a voluntary basis, after parent permission was sought." Clients were recommended by staff or asked for referral to these counselling sessions. Gina was not initially referred to these sessions.

The Counsellor's report continues, "Over the past three months the nature of the counselling and the client's level of disability has change considerably from addressing issues as raised by staff at the centre, to hearing and discussing disclosures about alleged sexual abuse happening in the family home. While some of the clients have a little speech they all work with Canon

Communicators and are facilitated by staff." She states, "The disclosures have happened in a flood and have left us all unsure as to how to proceed in the best interests of the clients."

It was later established that there were a total of seven clients of twenty six clients using Facilitated Communication who made allegations of sexual abuse. Of these clients, three were not referred to the Department, one because the allegation was regarded as substantiated and action taken by the family prior to Department involvement; two because the allegations were regarded as shown to be unsubstantiated. Four clients were given case managers and further action taken by the Department. Two of these clients withdrew their allegations in November 1991 during interview with the facilitator, Mr Allen. One client who withdrew his allegation, does not appear to have made his allegations until early 1991. There were no allegations made by clients who did not use Facilitated Communication. There was no experience in the Unit of dealing with such allegations and no policy for action.

The Acting Director, in interview, could recall only one previous allegation of sexual abuse made to the Unit about two years previously which had been dealt with by discussion with the family. That allegation was made verbally. Her written response stated that many verbal responses have been made over the years, "some factual, many fictional - to my knowledge none that were as serious as the allegations this time." The "flood of disclosures" from October to December and continuing into 1991 all came from clients using Facilitated Communication.

THE SEQUENCE OF ALLEGATIONS

In October, Louis, a client at the Sunshine Adult Activity Unit, was observed to be limping. He told staff that he had pain in the genital area. Contact was made with the family to recommend that he receive medical attention. Some time after, he made an allegation to Instructor, Ms Gardner, that he was being sexually abused at home by his father. Louis then confirmed the allegation to facilitator, Ms Mitchell. It appears that Louis took tapes of his allegations home with him, although he was instructed not to do so. The mother, sister and Louis arranged to leave the family home. The Unit therefore regarded Louis's allegation as substantiated but did not refer the allegation to the Department because action had been taken by the family to

resolve the matter. Ms Lloyd, the Director who returned from leave in February believes that she would have mentioned this allegation to Department officers.

This was the first of a series of allegations. Gina's allegation, 16 October 1990, appears to be the second allegation in the series and also may have been initially made to the same facilitator. Unfortunately, the Facilitator's recollection for the Guardianship Board in 1992 and in interview in 1993 was very poor. She stated at the Hearing that three or four clients had made allegations to her. The Statement of Reasons by the Guardianship Board says, "Carla made her first statement alleging sexual abuse to Ms Gardner. Three other people directly and spontaneously communicated such allegations to Ms Gardner. In evidence Ms Gardner could not recall whether this was the first allegation of sexual abuse that had been made to her through facilitated communication." The Counsellor believed Gina's first allegation of sexual abuse may have been made to Ms McDonald, Gina's main facilitator. She, however, stated she believed it had been made to Ms Gardner. The facts of the initial allegation have not been established.

In interview the facilitator stated that she had received an allegation from Gina about her brother. She was the initial facilitator for Gina's allegation of November 1991 that she had been burnt by a cigarette on her face. She also facilitated for Carla's first allegation of 26 October.

Both Gina and Carla refer to the perpetrator as "Andrew". Another client, Alex, also has "Andrew" as the alleged perpetrator. He later stated his allegation was not true. "Andrew" did not exist. The first three allegations of sexual abuse may not have all been made to the one facilitator, but she was involved in all three allegations. This fact does not appear to have been taken into consideration by Case Managers when the Department became involved.

REFERRAL FOR COUNSELLING

Those clients who made allegations were referred for counselling. The Counsellor states that she "mixed up" facilitators and clients rather than leaving clients with their usual facilitator, in an attempt to establish validity of communication after the allegations of sexual abuse began. She states that she was involved in facilitating for counselling for Louis and on one or two occasions, for James.

Gina was referred 16 October for counselling. The Counsellor states that her initial allegations were about "Andrew" entering her bedroom, penetration, razor blade cuts to the vulva, and the complicity of her mother who knew that this was occurring. Her report, "Overview of Case Notes "states," In Gina's time with me, the allegations were repetitive and consistent - the same abuser and similar situations and circumstances. She was able to verbalise on the Canon the anatomical parts of her body where the alleged abuse was occurring and also identify these same parts on anatomically correct dolls. She frequently spoke of feeling unwell and tired due to the night's events. She often presented as distressed and depressed and as time progressed, a sense of hopeless resignation was expressed on many occasions such as: "No matter what I do he'll keep coming into me." "I just want to get out but nothing is happening."

Ms McDonald who facilitated in counselling sessions stated that her recall of detail is poor but she recalls allegations against the family. She noticed many scars on Gina's arms and legs which, after questioning, Gina stated by the Canon were cigarette burns. She did not recollect allegations of cuts to the vulva.

Gina is recorded on SAAU files as attending five counselling sessions prior to the events of 20 December. She then attended four counselling sessions in February 1991 and one in June 1991. The Counsellor's document states she attended 17 sessions constituting approximately ten hours.

MEDICAL EXAMINATIONS

Gina attended two medicals arranged by the Unit, with her consent by Facilitated Communication but without the knowledge of her family or the Department. On 19 November 1990 a Facilitator took her with the Acting Director's permission, to Richmond Family Planning for a pregnancy and STD test. The Counsellor at Family Planning was informed that Gina had unprotected intercourse and that she was being sexually abused. The doctor states that Gina refused to co-operate with a physical examination. She was terrified. The doctor was not convinced that she understood what was occurring and stated that her body language appeared to be in contradiction to her statements on the Canon.

The Counsellor was unable to recall the allegations leading to this medical but the Acting Director recalled that she was informed that Gina was alleged to have stated that she had intercourse with her boyfriend,

another client at the Unit. The pregnancy test was negative.

In regard to the second medical, the Counsellor stated that Gina stated that she was in pain and she made allegations of razor cuts to the vulva. She therefore asked the Acting Director to have a staff member take Gina for a medical. On 7 December 1990 Gina was taken by the Acting Co-Ordinator to a locum for Ms Galati's doctor, regarding alleged razor blade cuts. There had been no mention of these cuts at the examination of 19 November. Despite the Counsellor's recollection that the razor blade allegation was among the earlier allegations, the allegation can be dated to this visit only.

The doctor confirmed that, although she has no recollection of the consultation, her written records indicate that there was no evidence of razor blade cuts. She did not fill an assault form or provide any advice to the co-ordinator regarding protection of Gina. She identified what she termed a "slit" which she stated was cracked skin causing pain on urination. The most likely causes are hygiene problems or scratching.

The Acting Co-Ordinator cannot recall advising the doctor that there were suspected razor blade cuts although that is clearly written on the doctor's notes as the advice given. She recalls that she left the surgery believing that there was little to be concerned about. She believed that she did not pass on information to anybody about Gina's attendance at the doctor but on further thought realised she had told a facilitator that Gina had been prescribed a cream and that the cream was available in the office. The Acting Co-Ordinator also believed that the facilitator knew that Gina had left classes to go for a medical. The only assumption is that this information was then passed on to the Counsellor. The facilitator was unable to recall the allegations about cuts or the second visit to the doctor. The Counsellor stated that she received no medical report.

MISLEADING INFORMATION

The Counsellor's facsimile to the Public Advocates Office 14 December and to the Department 19 December states about Gina, "Living at home with mother. Alleged abuse from mother and brother who visits almost nightly. Alleged abuse has been sexual and violent and has resulted in medical attention with cuts on the vulva from razor blades. This client is requesting to be placed elsewhere preferably a CRU permanently but indicates a 5 week placement while the Adult Unit was closed would suffice for now."

The Counsellor's overview notes to the Police state, "Gina" was seen by a doctor and Counsellor from the Family Planning Association." She does not add that no physical examination was possible and Gina made no allegation to the Counsellor about razor blade cuts. The counselling was only in regard to the request for a pregnancy test. After the Department became involved no specific information was sought by case workers regarding the nature of the medical attention and no medical report was sought. The information in regard to medical attention is misleading and had a detrimental effect on the investigation as Department workers believed Gina had received medical attention for the razor blade cuts and this affected their view of the validity of further allegations. The Counsellor stated that she only requested that appointments be made. She did not receive reports of the examinations.

The Counsellor states that she consulted a number of agencies for "general advice relating to unspecified general allegations" from when the allegations commenced in October. She lists: CASA Carlton, "for professional supervision"; CSV Footscray (presumably B. Ross) "for resources and protocol"; CASA West Footscray "for professional debriefing for the staff involved in disclosures"; DEAL "for guidance in establishing credibility in the use of the Canon Communicator"; Social Biology Resource Centre and Family Planning Association "for support and guidance"; CSV Child Protection Unit "for CSV structural/legal guidelines". There was no contact with Police. I note that the Counsellor sought advice from many sources but delayed initiating action which might have brought an investigation of the allegations.

DELAY BY THE DEPARTMENT

In regard to contact with Department officers, the Counsellor believed that there was undue delay by the Department in becoming involved with the clients. She stated that she contacted Mr Ross who was part of the Services, Planning and Development Team by telephone and at two meetings in October to ask what action the Department could take. Mr Ross' diary entries indicate that he had contact with either Ms Pietsch or Ms Galati on 7, 23, 26 and 30 November and 3, 5, and 7 December.

The Department response states that rough notes of the meeting were made and given to the Manager, Mr Pollard, but no notes are now available. Ms Jilich confirmed meetings of 3 December 1990 and 30 November 1990. Ms Pietsch has confirmed those dates.

The Counsellor states that she informed Mr Ross that three or four clients were making allegations of sexual abuse and that she wished to know what action the Department could take to deal with this matter. Mr Ross states her information was very unclear. She states that she was informed by Mr Ross on more than one occasion that the Department did not have the case workers or the resources to provide assistance or respite care. He said that there was no respite care and no time left for case work allocation. There was nothing the Department could do. Mr Ross did not believe that was his advice. He stated that his advice was that the Department could not take action unless an Incident Report was lodged. Neither the Counsellor nor the Acting Director was stating clearly and precisely what the concerns were. He states that he took advice from Mr Pollard regarding the process. The Counsellor refers to being advised by Mr Ross to fill out an Incident Report but she said she could not do so as she did not have the client's permission to give names. She believed that even if she gave names, there was no respite care and that she was unwilling to give names until she knew what action the Department could take.

She states that after two meetings with Mr Ross there was a gap of approximately six weeks when she heard nothing from him. This does not appear to be accurate. The SAAU report notes a meeting between Mr. Ross and the Counsellor 4 December and a meeting between Mr. Ross and Facilitators, SAAU 7 December. The next meeting appears to be close to 18 December. This was a chance meeting with Mr Ross at the Footscray Market, near his office. He told the Counsellor that until clients requested a case worker, nothing could be done. She was angry that she had not been given that information at the first two meetings. She states that she should have been advised that this was the first step. Mr Ross believed the Counsellor was so advised although he acknowledges that he had concerns about the management of the Unit and the counselling process and there was some delay.

Mr Pollard was informed of the allegations by Mr Ross on 13 November and attended at the Unit 15 November. "Mr Pollard advised staff to inform the Committee of Management and to report any allegations of physical or sexual abuse to the Police. He advised SAAU staff that it was not the role of CSV to investigate criminal matters." (Chronology of events prepared by Department.) The Counsellor states that she was not present at the meeting as she only worked part-time at the Unit.

Mr Pollard was not given the names at the Meeting of 15 November but was told of the spate of allegations. He passed this information on to the Regional Director but not to Mr Tsingas, Client Services Manager. Following Mr Pollard's visit the Counsellor made a report to the Committee of Management of the Unit. She states in her note to the Intake Officer at the Public Advocate's Office, 14 December 1990, "The Committee of Management has approved of the recommendations made in this report. They have appointed me to represent the Centre in the interim, so feel free to contact me whenever." She sent a facsimile of her report to the Public Advocate's Office but did not provide names. Department files refer to a telephone call from Mr Pollard to the Public Advocate's Office on the day of Gina's removal, 20 December. Police files refer to the attendance of the Advocate at Altona North CPS, 9 January 1991, towards the end of the Counsellor's visit there. There is no record of action on receipt of the facsimile.

The Counsellor stated that she believed the Advocate would conduct an investigation. The former Public Advocate has stated that the Advocate's work was not up to standard at the time. Action was taken in regard to Carla for whom an application to the Guardianship and Administration Board was lodged. No action was taken in regard to Gina. Ms Pietsch had not lodged an application for Guardianship and names of clients were not supplied.

Following the advice from Mr Ross that the clients should request case managers, Ms Pietsch faxed the following note, 18 December: "Please find enclosed requests from clients for case managers. Carla's plea is particularly concerning of course and an incident report is being lodged."

Carla's tape of Facilitated Communication reads, "INSIST ON A CASE WORKER AT ONCE SO I CAN BE SAFE FROM MY FAMILY AND FROM SEXUAL ABUSE I ESPECIALLY SERIOUSLY RESOLVE TO KILL MYSELF IF I DONT GET AWAY"

Gina's tape reads, "I WOULD LIKE TO REQUEST A CASEWORKER TO HELP ME DONT LET ME DIE"

The Counsellor stated that this was the first knowledge she had that a case worker was necessary. She stated, "Both Carla and other clients were requested by me to write letters or make a statement asking for a case manager, as I was informed by Ross after meeting him at the market, that a direct request from a client was the way to start the process for obtaining a "case manager". The clients then obliged by immediately making such a request. The material in the facsimile appears to have been designed to attract attention.

Staff of the Department were aware from early November that a number of such allegations were being made. The number and nature of the allegations, all of sexual abuse and all by Facilitated Communication, should have alerted the Department to the fact that a very unusual and possibly hysterical situation had developed. The Department response is that the Department does not have the power to intervene with funded agencies.

GINA IS PLACED IN RESPITE CARE - DECEMBER 1990

The Counsellor contacted the Manager, Intellectual Disabilities Services, 19 December at 6pm, to inform him that she was sending a facsimile requesting alternative accommodation for clients who were making allegations of sexual abuse by family members. The facsimile arrived 20 December. Mr Pollard states that he contacted Sgt. Smith of Altona North Community Policing Squad and sought advice. He stated that he was told that the Department had no other option if adults were seeking assistance to find alternative accommodation. He stated that the Police would create a file and discuss it with other CPS. He also stated that he was told not to tell the families of the allegations.

Mr Pollard and CSV psychologist, Ms Gasparis, attended at the SAAU at 12.30pm where they found that the clients and staff were leaving for the holidays. Ms Galati was locking up and he was able to obtain very little information. A meeting followed between Mr Pollard, Team Leader, Mr Tsingas and Ms Gasparis. He spoke by telephone to the Counsellor who advised that Gina and Carla wanted alternative accommodation and that the two male clients were satisfied with the situation of remaining at home, although the Counsellor would have preferred alternative accommodation for all four clients. Mr Pollard states that he rang the Advocate at the Public Advocate's office who agreed with the proposed action. He then sent an Incident Report to the Regional Director.

There is some confusion about the sequence of the following events. The files indicate that the three staff members attended first at Gina's home at 5 pm. and then at Carla's family home at 6.15. Ms Gasparis stated in interview that she clearly recalled that they first attended at the Carla's home. She recalls two wrong stops before they found the right house and waiting in the car for the two men because there were fears for the safety of the workers. She recalls that they came out on their own. Mr Pollard in interview stated that they visited Gina's home at 6.15. He stated that he was surprised at the ease of the visit. "It was a completely different atmosphere from the visit to Carla's family."

Mr Tsingias relied on the files in interview. There is conflict between the files and the recall of other participants, some of which is understandable because of the lapse of time. Some of the information on files is also questioned for its accuracy.

Mr Pollard stated that Ms Gasparis attended to provide a female presence and also for professional input. When questioned, Ms Gasparis stated that she did not believe that she attended mainly in her professional capacity as a psychologist and that she had very little knowledge of facilitated communication or of allegations of sexual abuse.

An opportunity for the psychologist to observe Gina and the family's reactions was lost by the decision that the psychologist remain in the car. Gina's mother and one brother, were at home. Mr Pollard stated that he showed an I.D card to the mother and gave her a card and a telephone number. She does not recall receiving identifying information. He told Gina's mother that Gina had requested a small holiday to have the opportunity to live away from home. If Gina would like to go, accommodation was available. He stated that he could not believe the ease with which Gina's mother packed up and that she was quite cheerful. Mr Pollard stated that he then explained the situation to the brother, that is that Gina wanted a holiday.

The Manager appears to interpret Gina's mother agreement to mean that she agreed to her removal. She did so without full information. Gina did not verbally request respite care and did not verbally agree to leave. The action was taken entirely because of the allegations by Facilitated Communication. Gina's mother later explained that she knew Gina enjoyed a holiday and she believed it was for a couple of days. She stated that Gina liked the CRU but wanted to come home after a week.

Mr Pollard stated that Gina's body language was "beaming." When they stopped at the petrol station he asked her if she was pleased to be going to the CRU and she answered "yes". He agreed that he was later told that Gina was very ready to agree even if she did not understand but he states that he had no such information about her prior to the visit.

The file notes state, "On the way to the CRU where Gina was taken she clearly expressed to us that this is what she wanted to do and that she did not wish her mother and brother to know where she will be staying." In interview Ms Gasparis stated that she would have produced the notes close to the time of the event with the

assistance of Mr Pollard and Mr Tsingas since the notes also covered the conversation in the home at which she was not present. She believed that Gina would have been answering questions. She believed the question may have been, "Debbie told us you want to go to a CRU. Do you want to go to a CRU?" She stated that Gina probably nodded her head and said "Yes." She may have asked, "Do you want your Mum to know where you will be staying?" She did not think that Gina used sentences or initiated statements but her non-verbal behaviour was agreeable. She did not have to be forced into the car. At the time she did not know what Gina's levels of comprehension were and she accepted at face value that Gina could understand on the basis of the Counsellor's information. Mr Tsingas stated that he did not hear what was said because he was driving. Mr Radler, psychologist who assessed Gina, referred to the assessment to confirm that Gina would have been highly unlikely to initiate the sort of comments documented, may have had difficulty comprehending questions if they were not simple and concrete and is most likely to be responding to a question. She is also able to be led into a response. The file notes suggest that Gina verbally stated that she wanted to go to the CRU and she wanted the location kept from her family. The impression given is misleading.

Gina's mother attended at the regional office the following day and waited two hours until a meeting with Carla's family was completed. She believes that she was informed of the allegations at this meeting but the file notes suggest and it is the recall of staff that she was only told that Gina wanted to stay at the CRU and did not want her family to visit. Gina returned home for Christmas Day and stayed home.

On 27 December Ms Gasparis contacted Gina's mother and asked her to come in to discuss the placement. There was a meeting between Gina, Gina's mother, Ms Gasparis, Mr Tsingas and Mr Pollard. The Department files state, "Informed family of the counselling Gina was involved in at the Day Training Centre and the allegations that arose during these sessions. Gina's mother appeared very distraught, often stood up and back down again and on one occasion left the room throwing her hands around in the air. During the meeting it was not possible to engage Gina in communication with the Canon Communicator as the facilitator did not appear to be very experienced. Gina does have a few verbal skills which enabled a limited form of communication to occur during the meeting. Gina alleged that her brothers have sexually abused her. She also stated that her mother is aware of the situation and allows it to keep happening. Gina's mother and brother appeared shocked and full of disbelief at the allegations."

Gina's mother was questioned on her recall of this meeting. She was adamant that Gina made no verbal allegations against family members and could not do so. Mr Tsingas could not recall whether questions were put to Gina or Gina verbally stated she was abused. Ms Gasparis stated that she took notes during the meeting and Mr Pollard asked most of the questions. She cannot recall Gina saying more than one or two words. She confirmed that by "a few verbal communication skills" she meant she was able to say "yes" or "no". Handwritten notes made by Ms Gasparis indicate that Gina responded "Yes" to the following questions (it is not clear whether the response was by Canon or verbally): "Are you worried about your mother and Vin?" "Did your mother say stay home?" "Are you happy for us to talk to Vin?" "Let the Police know?" The remainder of the handwritten notes do not identify the questions asked but suggest there was some intermittent communication on the Canon.

In interview Gina's mother stated that she was told that Gina had communicated that her brother, Vin was abusing her. Vin had brought his mother to the interview and was waiting outside. She stated that until that interview she did not know that Gina communicated on the machine. She stated that she was so shocked she lost her senses and was crying. Her son, came in to pick her up and was also shocked. Gina returned home with her mother. The allegations moved from "Andrew" who was the only brother named in counselling sessions to "Vin" and the family were told of the allegations despite the involvement of Police.

Mr Pollard stated that he thought that Gina's communication was not as successful that day and she was not fluent as Carla, who was the only person he had to compare with. He rang DEAL as the funded agency and was informed that both women could communicate quite expertly. Ms Crossley does not recall any information in regard to Gina and stated that she was not aware that Gina had been removed from home in December 1990. DEAL was closed for holidays during this period.

On 28 December a meeting was held between Mr Pollard, Ms Pietsch, Ms Gasparis, Mr Tsingas, Gina's mother, sister, brother and a friend. The notes of the meeting state, "A facilitator could not be found to communicate with Gina therefore she was unable to contribute extensively to the discussion."

A further meeting was held, 3 January between Mr Pollard, Ms Gasparis, Ms Pietsch, Gina's mother, brother and sister and a friend at which Ms Gardner facilitated. The file notes state, "Gina repeated the allegations and

claimed that her brother George is abusing her. When asked if there was anybody else, she mentioned the name Rick." The handwritten notes state that Mr Pollard said that he believes that Gina can communicate but the family has the right to ask questions and have doubts.

The handwritten notes indicate that Gina was asked, "Has your brother George been abusing you?" The answer (it is not clear whether it is on Canon or verbally) is "Yes". The next question was, "I asked you before if anyone else at home who has been abusing you? "Yes." "Who?" "Rick." "Who is Rick?" The answer was, "Expect them to say they don't know." The next answer to who is Rick, was "Andrew." When asked to type one of her brothers' names she typed, "Peter." There is no brother by the name of Peter or Rick. Gina's mother states that she told Mr Tsingas to put all the family names on the blackboard. Gina was able to select her own name as her mother expected but could not recognise any of the other names. Gina was asked for her father's name but was unable to give it.

Gina was asked "What sort of abuse have you had in the family home?" The typed response was "I noticed my brother was incest in my vagina." (Note - The Counsellor's notes to the CPS re Carla includes extract from counselling for Carla. The question is, "What is happening to you at home?" The answer (photocopy of Canon tape), "I noticed my brother was incest in my vagina.") Ms Gardner who facilitated for Gina in this session, was the main facilitator for Carla. The evidence for facilitator influence is undeniable.

Gina's mother asked for the tapes but was not allowed to have them and asked for a Police investigation but was told Gina did not want it. Gina communicated on the Canon that she did not wish to continue with the allegations. Mr Pollard informed Police that Gina did not want any further action. Mr Pollard stated that it was agreed that Gina would stay at home. She was asking by Facilitated Communication for assurance that respite care could be arranged. He believed that the family were interested in learning to facilitate and would contact DEAL. The file notes and the letter to the family which followed suggest this but Gina's mother in contact with the SAAU and the Department, was still expressing her anger at the allegations and the removal of Gina. The family did not accept that Gina could communicate on the Canon.

There is no reference in files and no recall by participants that Gina's family were advised to contact the Public Advocate or the Guardianship Board if they disputed Gina's ability to communicate. Mr Tsingas

believed he would have given such advice at one of these meetings. These meetings were the appropriate time for such advice but there is no evidence that such advice was given.

POLICE INVOLVEMENT

Sergeant Mills, formerly of Altona North CPS, made the files available to the investigator.

The Police file indicates that Mr Pollard attended at 1100 hours on 20 December 1990 and Case Entries were made. Police attempted to contact Ms Pietsch but she was not available.

The Police file notes that contact with the Counsellor is essential because, "only brief details of the disclosures have been forwarded to us however in her report she states she is in possession of full details."

A further attempt was made 24 December to contact the Counsellor and a message left. Contact was made that day with Mr Pollard who informed them, "The other female Gina has been placed in respite care. The family had apparently been told that she wished to have a holiday. The family are happy that she had been placed in respite. It is anticipated that there may be an independent assessment undertaken in relation to this file. This is yet to be arranged, but it is possible that Rosemary Crossley will be undertaking the assessment. In the writer's view it would seem that a high percentage of a small group of persons who have just undertaken this course have alleged sexual abuse. Although it is not unheard of that members of staff have allegations made against them, it seems a little questionable that in each case a member of the family has been nominated. Enquiries to continue." (Notes signed, Bennett CPS)

The next contact with Mr Pollard was 28 December. The file states, "At this stage Gina does not wish to speak to the Police in relation to the matter. She wishes no further involvement in the matter." Mr Pollard's contact with the CPS, from that point, relate to the Carla case only.

CASE MANAGEMENT

I note that although Gina allegedly asked for a Case Manager in December, a Case Manager was not appointed until April 1991. This was as a result of a notification from the Counsellor about another client who was making allegations and her information that Gina had

communicated that she had not had access to respite care as had been promised by the Department in December. Interview with Mary Jane Wylie, Acting Case Management Co-ordinator in 1991, raises even more concern about delay. She states that she received a new referral for Gina dated 22 March and she was shocked to find on file the original application of December 1990. "I WOULD LIKE TO REQUEST A CASEWORKER TO HELP ME DONT LET ME DIE." She was not able to establish what had happened to that request as there was no record on the waiting list of this client.

Under the circumstances she would have expected the allocation of a Case Manager as soon as possible but the request seems to have been filed and forgotten. The Case Management Co-ordinator did not believe she saw the whole of the Counsellor's facsimile although she had spoken with Ms Pietsch who she recalls was concerned about the clients and angry with the Department for delay in taking action.

However, when she raised the matter with Mr Pollard he appeared to believe that all necessary action was taken with the provision of respite care for one week for Gina and the referral to the Police. (Note that referral was effectively withdrawn when Police were notified by Mr Pollard, 28 December that Gina wanted no further action on the allegations.) A letter of 4 January 1991, prepared by Ms Gasparis and signed by Mr Pollard informed Gina that she had been placed on a waiting list for a Case Manager and a General Service Plan. A file note on a meeting with the SAAU to discuss the Carla case makes no mention of Gina's situation.

This delay in any further action is in significant contrast to the rush to remove Gina from home when the information was first received. Gina was removed from home for the week preceding Christmas and returned home for the rest of the holiday period. There was no investigation by Police because of Mr Pollard's advice to Police and no action by the Department until the end of April. If the Department believed Gina's allegations to be true as appears to be the case such delay is extraordinary.

Ms Skondreas, a qualified Social Worker, Soc 1, with one year's experience at that stage, was appointed as Case Manager for Gina. Anne Dive, registered nurse, with a number of years experience in intellectual disabilities and four years experience as a Case Manager was her co-worker and herself managed the case of one of the other four clients of the Unit. Neither worker had any experience in dealing with allegations of sexual abuse or

any knowledge of facilitated communication. Their first experience of its use was in interview with Gina in May, 1991. The initial referral was to develop a General Service Plan for Gina but this did not proceed. Four clients from the Unit were allocated case managers, the Case Management Co-ordinator, Ms Wylie handling one of the cases and each worker managing a case and supporting with another client. This model should have allowed for an overview of the cases.

The Case Manager stated that her initial briefing was from the notes on file by Ms Gasparis referring to the meetings held with the family after Gina's removal. These notes are inadequate and misleading and suggest that allegations against her brothers were made verbally. Ms Pietsch's facsimile, her other main source of information, is also misleading.

The Case Manager confirmed that she interpreted the Counsellor's statement to mean that there was an identifiable injury to Gina which had received medical attention. This gave some validity to the allegations. She stated that she was advised by regional management that allegations by facilitated communication were to be treated as verbal disclosures. She was made aware at a later stage that the method of communication was contentious but she had no knowledge of the IDRP Report or of the Department's response to that. Ms Dive also referred to allegations on file of violence by a family member against Gina. The only such report is concern expressed by Gina's mother in 1970 of sibling resentment of Gina illustrated by one brother hitting Gina when they were aged thirteen and fifteen years.

The Case Manager was present when Police and CSV met to clarify roles and responsibilities and she believed that the Police were investigating Gina's allegations. She appeared to believe that the role of case management was to gather information at interview and take that back to management for further direction. She became aware of inconsistencies in the allegations but she believed it was not the worker's role to investigate. She believed the Police and the Department were in constant contact and the Police were informed of the allegations and she cited the Police contact with the Department in regard to medical examinations. She did not appear to be aware that Police had been told that Gina did not want Police involvement and that no investigation was occurring. It is noticeable that in interview the Manager of IDS continued to refer to delay by the Police in investigating when on both occasions when reports were made to Police, Police were informed within days that the

client wanted no further Police involvement. It is understandable that workers may have been confused on this matter if management was confused.

INVESTIGATION OF THE ALLEGATIONS

The Case Managers appointed met with Gina in May. The Unit provided a facilitator for a very limited time. The notes suggest that Gina typed that she would like a new home. The family were not informed of the interview. The decision was made that there was no need to inform them. The family were not involved until Gina moved into residential care in November 1991. They had no opportunity therefore to question the method or nature of the communications. The Unit was reluctant to provide facilitators for interviews and in the opinion of the worker were not co-operative with the Department.

The first interviews with Gina to examine the allegations using an independent facilitator from DEAL, were not arranged until October, 1991, almost twelve months after the initial allegations. Mr Allen from DEAL was appointed as facilitator and facilitated for Gina, Anna, Alex and Luigi. This was arranged through a Funding and Service Agreement with DEAL. Western Region provided \$3000 funding to DEAL. Mr Allen was to provide 22 sessions of four hours duration or equivalent at a cost per session of \$133.60. The worker stated that these interviews were held one after the other, on the days on which Mr Allen attended.

Ms Dive, Assistant Case Manager, states that CSV personnel were not investigators but they were instructed by their Department to attempt to assess the disclosures and to see if any action was required. Ms Dive states, "We weren't in there and no point did we believe we were in there to prove anybody guilty or anybody innocent. We were in there to devise what it was that Gina would want to do - service planning for Gina in the future according to what she wanted to do. We were clearly telling the Department we weren't investigators. We didn't have the knowledge to be able to be the investigators of sexual abuse. We needed to have other people involved, e.g. CPS about gathering information." However, central to any conclusions about Gina's future would be some assessment regarding substantiation of these allegations.

Ms Skondreas acknowledged that the workers did not have basic information required for assessing the allegations. She stated that there was confusion as they sought direction and waited for answers to come down from management. The workers had not been to the family home

and did not attend until November, immediately prior to Gina being moved to a residential unit. Although the allegations were about sexual abuse by family members they did not know where Gina slept in relation to other family members (Gina's mother stated that she has always shared a room with her); what the names of family members were and who lived at home except for limited information on file. They had been informed in the facsimile to the Department that Gina had medical attention to razor cuts on the vulva and this affected their view of the allegations but they did not have a medical report. When an allegation that a sore on Gina's face was a cigarette burn they did not seek information about whether Gina had received medical attention for previous sores. They did not know the identity of the facilitator providing the initial information. Basic information central to any assessment of the allegations was therefore ignored.

INCONSISTENCIES IN ALLEGATIONS

The nature of the information emerging in interviews should have raised questions with management. Although the workers stated that specific details of the client's allegations were not discussed with the facilitator, DEAL, his employer, had been contacted for advice by the Unit in October 1990. DEAL has emphasised that allegations were not discussed and that Mr Allen had no knowledge of the allegations.

The interview of 9 October 1991 in which Mr Allen is a facilitator for the first time, has a "disclosure" (marked with exclamation marks on file) that Gina has been sexually abused by her father. "DAD IS PUTTING IN HIS DICK PENUS IN MY VAGINA". The worker present stated that there had not been discussion with the facilitator of the individual backgrounds or allegations of the clients although she believed he would have been aware that these were complaints of sexual abuse. The Department worker then stated to Gina, "I thought you did not have a Dad. Is that right?" "Y ONO YES." (Her father has been dead for many years.) Following a number of leading questions, e.g. "Can you think of a name? It is not your Dad?" "ONMSAVD EN JTND DY "" "Does this person live in your home? "TERYPUTRSNDE" Does this person live with you? (No response) Is it a brother? "YES" After a series of questions to which no name is given, attempts are made to have Gina verbally state the names of her brothers and sisters. "What do you want us to do?" "AUVE SUUSOUTEEJEO M LEYBN UNDERSTAND ME I NEED HELP TO STOP TONY PUTINH HIS DICK IN ME".

This communication was interpreted to mean that Gina has been sexually abused by one of her brothers. The name she gave is not one of the brothers living at home. There is very little evidentiary worth in this interview. On file the worker states "Gina disclosed that one of her brothers has sexually assaulted her." The summary on file is misleading.

The facilitator's notes state, "Gina became a little uncomfortable and a bit anxious during the interview. I have no doubt that her spelling skills are good and that she is able to express herself quite well using facilitated communication. Confidence appears to be a major problem for pointing accuracy ... I am not confident of the validity of what she did spell out." This was his first session with Gina and much of the communication was nonsense.

Other inconsistencies which should have attracted attention included the fact that the first allegations referred to "Andrew", as with Carla's communications to the same facilitator and Alex's allegations. Ms Pietsch's notes state that Gina consistently gave this name. At the meeting of 27 December which Gina's mother attended the name of the offending brother was "Vin". (Coincidentally he brought her to the meeting and waited outside.) At the meeting which the family attended Gina communicated that it was brothers, George and Rick. There is no Rick in the family.

In Gina's allegations she refers to "George", also identified by staff as her special friend at the Unit and in the October - November 1991 allegations to her father and Tony. When asked whose responsibility it was to check inconsistencies the workers stated that they raised concerns regarding inconsistencies and lack of evidence with the Coordinator and with the Regional Manager, but nobody seemed to have the responsibility to deal with that. It appeared that their responsibility was to take the material to line management. The Manager of IDS states that he did not see the tapes although they were being kept by that stage or have an overview of the interviews being held. However he had consulted with Ms Crossley when he became concerned after an early meeting, that Carla could not name the family dog. He accepted the explanation that both women communicated quite expertly and this failure was explained by apraxia.

Mr Pollard believed that inconsistencies were discussed but the Department workers were not investigators. He stated that regardless of the information, the problem was why the person was bringing this information out.

They were there to assist the client not to investigate the allegations. Mr Tsingas also insisted it was not the Department's role to investigate the allegations.

INTERVIEW OF OTHER CLIENTS

At this stage workers were attending other interviews conducted with clients of the Unit with Mr Allen as facilitator. The need for an overview and analysis of allegations as part of a mass phenomenon is supported by the allegations coming from these interviews. The case managers would have benefited from such an approach. Reference has already been made to the fact that Carla and Gina are alleged at times to have made identical communication, " I noticed my brother was incest in my vagina."

The reporting of these communications does not suggest an acceptance of the validity of the communications. They provide an insight into the context in which the Case Managers were working. The clients referred to had not completed assessment as to whether they could use Facilitated Communication when this report was produced.

The Department's response, February 1994, (Appendix A) states that clients from the SAAU have been assessed under the new Communications guidelines. "Assessment of an individual's communication needs is now conducted by independent speech pathologists funded by Health and Community Services, but operating under the auspices of Yooralla, from the Micro-Computer Application Centre. None of the communication assessments completed to date have recommended the use of Facilitated Communication."

Alex refers to "Andrew", supposedly a cousin living at home as the main abuser, the same name used by Carla and Gina. He alleges that his mother is active in sexual abuse and colludes with the abuse by Andrew and "Barry". Basic investigation would have established that no such persons existed. Alex also wants to move out of home because, "Families do bad things to me." He later communicates, "Andrew doesn't exist." Alex is asked how his story began. An explanation is offered. He communicates that "Debbie not Jim, she help me innocently by directing my hand to letters and the lie started." "Debbie" could refer to one of the Unit facilitators but she stated in interview that Alex did not communicate with her. It could also refer to the Counsellor. Alex states that he is bored at home and this is the reason for the "lie."

Luigi, who by earlier reports has considerable verbal language, both in Italian and English, states that he is being abused by his brother, Stewart. Again, basic investigation would have established that no such person exists. The notes of the first interview with the case manager at the Unit in May, indicate that Luigi is angry about the delays and feels unsafe at home. His terminology is similar to Alex's. In his third interview he communicates, "Please will you forgive me for telling lies." Again, the reporting of these allegations does not indicate the acceptance of the validity of the communication.

Anna allegedly communicated in a facsimile from Ms Pietsch, 18 December 1990, " I would like someone from CSV to help me stop Henry and Mum please." Anna is described in that facsimile as living with her mother and step-father. The facsimile states, "Main alleged abuser is stepfather but mother is actively involved from time to time." The Acting Director of the SAAU stated in interview that she believed that the Counsellor informed Anna's sister of the allegations, and was informed that her mother did not have a boyfriend. Unit staff therefore decided the allegations were not true. She stated that the Assistant Director had disbelieved the allegations from the beginning and that staff were angry at Anna for telling lies. The files suggest however that the abuse occurred but has discontinued. A file note, 29 November 1991 states, "Anna's mother's boyfriend is now living elsewhere." It is equally likely that there never was a boyfriend as there appear to have been no checks made.

No information was sought from Anna's mother by the Ombudsman's Office because of respect for confidentiality. Further, it is most likely that, as in other cases, the mother was not aware that these allegations were being made or that Anna had been allocated case management by the Department. Enquiries should have been made by the Department at the time. The one available Canon tape made no sense. In the record of interview Anna makes more sense verbally than on the Canon and it is not clear why the Canon is used.

In all these cases the Department accepted the competence of the client solely on the basis of the facilitated communications. This was despite the fact that Mr Tsingas who supervised the case managers stated that he was aware of the debate about facilitated communication and of the Report of the Intellectual Disability Review Panel and the Department's response regarding disputes about communication. There is no evidence on file of questioning Gina's ability to communicate or questioning the ability of the other clients.

At the same time, Mr Tsingas informed staff that it was Department policy to treat communications by facilitated communication as verbal allegations. The Department file states that, in a meeting with Gina's family, 24 February 1992, Mr Tsingas "indicated that Gina communicated through Facilitated Communication and that it is Department policy to take this as if the person was communicating orally. There was substantial discussion around this issues which obviously could not be resolved." This was 10 days after the Guardianship Board finding in regard to Carla. Workers stated that regional management seemed to be convinced that the clients were validly communicating. This is substantiated by the view presented by the Department to the GAB in Carla's case that Carla was communicating by Facilitated Communication.

SUPPORT FOR CASE WORKERS

It is apparent that there were no Departmental guidelines regarding the investigation of allegations of sexual abuse of intellectually disabled persons. These were not available until April 1992. There were also no regional guidelines regarding resolving disputes over allegations made by facilitated communication. The workers stated that there appeared to be no knowledge of Facilitated Communication other than from DEAL and that was where the workers were referred. There was no acknowledgment that this was a controversial and untested method of communication.

Reference was made to a lack of line management support and a lack of regional knowledge in regard to case management of these clients. Ms Wylie and Ms Dive, both of whom are no longer working in the Department, contacted the centre to ask for case management support and expressed the view that they were receiving little direction. Ms Nicholls, engaged at that time on a project on case management, took the request and explained that she was not the appropriate person and that support should be sought in the region, but agreed to meet with them. Ms Jilich, working in the area of sexual abuse attended that meeting at Ms Nicholl's request. Ms Nicholls recalls that the impression was of "incredible frustration, lack of direction, general mismanagement." She believed the workers required direction in regard to the assessment information required; what data they had and what they needed; how to gain the information; what to do with it. She advised that the case should be dealt with on an individual level and also as a mass phenomenon because of the number of cases. She stated that there had to be some level of

investigation of facts. In any case work situation the worker had to have some idea that the information fitted together and made sense. She recalls being informed that there was some medical evidence of abuse and she advised caution in dealing with facilitated communication. She agreed that there has to be an investigative role in any assessment. The impression she gained was that there was no direction and no strategies. It appeared that no structure had been provided which might have enabled the case worker to move to questioning the information.

This meeting illustrates the level of frustration and stress felt by the workers dealing with a complex and unfamiliar case without adequate support. This frustration and confusion was expressed to the investigator in interview.

The Case Management Co-ordinator explained that the emphasis was on the clients as adults with responsibility for their own decisions. This was combined with a reliance on the validity of the facilitated communications. Further, there was very little experience in the region in handling allegations of sexual abuse of intellectually disabled people. There was even less experience of allegations made by facilitated communication. The Manager of IDS did not have case management experience or experience in intellectual disability. The Case Management Co-ordinator, on the advice of regional management, attended DEAL to gain further information on Facilitated Communication.

The Unit sought information from DEAL from October 1990. Initially when allegations were made facilitators took tapes to the Acting Director who kept the tapes. Following advice from Ms Crossley that the tapes should not be kept the tapes were destroyed. A memo to Unit Staff confirms this. Department officers initially followed this practice but tapes of interviews commencing in October 1991 were kept. The Departmental officers also sought advice solely from DEAL. Mr Pollard stated that DEAL was appropriate as the funded agency. The Case Managers and the Manager of Intellectual Disabilities Services, stated they were not aware of the Intellectual Disability Review Panel Report of March 1989 or the Director-General's acceptance of the recommendations in April 1990. This material was not located on regional files and is not reflected in records of meetings.

The Manager acknowledged that he did not become aware of this information until the Guardianship Hearing. He was therefore not aware of a Department response on disputed communication but he questioned whether there could be said to be a dispute over Gina's communication.

There appears to have been no regional overview of the use of Facilitated Communication in institutions or overview of a number of cases occurring at the same time. I note that a number of workers overlapped in terms of working on cases which should have made communication simpler. Ms Dive assisted Ms Skondreas in managing Gina's case and herself managed Louis's case. Ms Dive expressed frustration about the lack of support provided for workers and the lack of information coming from the Centre or from the regional management.

The response of Department on policy on facilitated communication was, "In 1990 the Office of Intellectual Disabilities Services was aware of the controversy associated with the use of facilitated communication and followed a position of neither supporting nor advocating its use with clients." Regional management did not demonstrate an awareness of the controversy.

PLACEMENT IN RESPITE CARE NOVEMBER 1991

Gina is alleged to have communicated to Ms Gardner, facilitator at SAAU that she was burned by a cigarette by her brother. Ms Gardner states that this was the result of a casual conversation in the dining room where she asked Gina about the sore on her face. Ms Gardner passed that information to the Director who contacted the Case Manager, 1 November 1991. An interview was held with Gina with the DEAL facilitator, 7 November. Gina stated that Tony did it deliberately but she did not want Police involved. She just wanted to leave home.

The facilitator's notes of this interview state, "Gina was most definite with letter selection today. She talked about the burn on her face and spelt out the name of the person responsible. She has decided to leave home and this will happen next week." Ms Crossley refers to verbal statements by Gina in regard to the burn and to information from Mr Allen that Gina discussed verbally leaving home at an interview where she was very assertive in her speech. Ms Skondreas who was present at all interviews does not recall any verbal allegations by Gina in regard to the burn allegation, the sexual abuse allegations or leaving home. She believed the predominance of her verbal communication was yes/no with "yes" a more frequent response. She also stated that Gina was likely to repeat words used by the questioner. Ms Skondreas' statement is in accord with the assessment of Gina's verbal skills and comprehension by the independent assessment.

Ms Crossley states, "Ms Crossley reiterates that she has a clear recollection of Gina discussing this matter (at a session at which Ms Skondreas was not present. The version of the events given by Mr Allen and Ms Crossley are in accord with the assessment of Gina's verbal skills and comprehension carried out by DEAL's experienced professional therapy staff." Ms Skondreas' case notes which cover all Departmental interviews do not refer to any verbal statement.

Earlier reference had been made to cigarette burns. Ms McDonald, Gina's facilitator in counselling sessions in 1990 stated that Gina had alleged that scars on her arms and legs were burns. It is most likely that Ms Gardner, as one of the three facilitators mainly involved in counselling, was aware of these allegations. The allegation was reported to the Police, 4 November but Police were then informed, 7 November, that Gina did not want their involvement.

The file states, "On close examination by one of the Case Managers, mark appeared to be consistent with Gina's allegation". The worker denies that she confirmed that it was a cigarette burn. She is a registered nurse and states that she said it was a round sore some days old with a top on it. There is evidence on file at the SAAU that Gina had a history of similar sores for which she had medical treatment. The worker recalls some reference to earlier sores by the Director and SAAU, as did Ms Johnstone Case Manager for another client. The Director believed she gave that information but there was no check of Unit files where the information was available.

The investigator was informed that the workers would have no right to access to Unit files and it would not be appropriate to request them. However, it would not be unreasonable for them to make such a request and to make enquiries about previous "sores" and to expect co-operation from Unit staff when a serious allegation is involved.

Ms Dive and Ms Skondreas visited Gina's mother 13 November to inform her that Gina wished to move into respite care. The files state, "Mother did not object to Gina moving out and saw it as a break for her as well as for Gina. Gina's mother became very upset when the Christmas episode came up and also with the injuries on Gina's face. She apparently knew what caused the injuries but would not say unless we told her who Gina said did it." The files suggest that Gina's mother knew it was a cigarette burn. This implies some knowledge of abuse. Ms Skondreas confirmed that she believed she had told Gina's mother that Gina had said it was a cigarette burn and agreed that the file note could be misleading.

Ms Dive stated that the Case manager discussed the fact that it was alleged to be a cigarette burn with the mother who suggested that it could have been one of Gina's sores, which are well documented, or if a burn, someone from the Unit could have done it.

Gina's brother, Andrew who was present when the workers telephoned stated that he wished to ask Gina whether she wanted to move. He did not live at home and had not been told of the sexual abuse allegations by Gina's mother who stated that she was ashamed and did not want them discussed outside the family members at home. He was surprised that Gina wanted to move but acknowledged that she was sometimes unhappy. He verbally confirmed with Gina that she wanted to move out. She answered "yes " to each question. This has been cited to mean that Gina was removed because of a verbal request not as a result of a reliance on Facilitated Communication. Without the allegations by Facilitated Communication the Department would not have been involved in arranging accommodation for Gina and the particular trigger was the allegation in regard to the cigarette burn. Had Andrew been aware of the allegations the family response would have been different.

Gina was in Furlong House from 14 November 1991 to 16 March 1992. The Department files suggest that she was happy in the placement. The family state that Gina wanted to go home with family when they visited and became distressed when they left and when she had to return from weekend visits. After one such visit in March the family refused to return Gina.

In interview, regional management and workers were adamant that Gina's placement in Furlong House was not because of the allegations but because she wished to move out of home and requested a placement. The Case Manager confirmed that Furlong House was a Crisis Centre where the majority of residents were transient and involved in justice issues and where the maximum length of stay was three months. Gina exceeded that length of time.

When questioned whether such a centre was appropriate accommodation she stated that it was not but was the only option and it was "also for victims." The investigator was informed that clients who were management problems in other centres as well as people facing charges were often held there. If the Department believed that Gina was a victim of sexual abuse it seems extremely inappropriate to place a vulnerable person there. The family believed it was inappropriate and cited the fact that at one stage Gina was the only female resident, they were concerned about a violent resident and the majority of staff were male.

There were frequent family visits and a degree of tension between the family and staff at the residential unit. The staff tended to attribute any upset to family visits. The Case Manager confirmed that the staff at the Crisis Centre were informed of the allegations against the family. This no doubt affected relationships on both sides and Gina was continuing to use Facilitated Communication within Furlong House.

A number of issues arise from the placement at the CRU. The most significant issue is that if there was no crisis Gina should not have been placed in a centre where she may well have been in danger from other residents. If it was a matter of life choice, a General Service Plan should have been prepared for Gina which would have provided a proper process to address all the issues of placement out of home. The Department appears to have ignored the proper process and to have reached a decision in regard to Gina's capacity to give informed consent. In addition, despite contrary information to the family, the workers appear to accept the substantiation of the allegations and used that information to gain a placement at Furlong House and later a permanent placement.

The transient and possibly violent nature of the residents was not appropriate particularly if Gina was believed to be a victim of sexual abuse. There was considerable tension between the House and the family. The House Policy at Furlong House did not allow for young children of the family to visit and if Gina's sisters attended with their children the visit had to be conducted outside. Family were restricted by having to phone prior to visits and on two occasions were informed that other appointments came first. There is also a cultural issue where the family concern for Gina living away from home is not necessarily different from their concern for any single female family member not living in the family home. That may be an expectation of their culture which should be respected.

In regard to finding permanent placement for Gina the files suggest that family were not informed that this was being investigated until the mother had a chance meeting with a worker 13 February 1992 and was told that Gina would not be returning home. This came as a surprise to her and the family took immediate action to question this decision. The Case Manager, however, believed the family were aware that a more appropriate permanent placement was being sought.

Gina was accepted for the Community Placement Package, 10 February 1992. The Case Manager stated that the Panel did not believe involvement of the family was appropriate as Gina was able to express her views. The Panel were told of the allegations against family members. The notes state, "Gina requested assistance to move out because she made allegations of sexual assault by family members and presented with burns on her face which she alleged were done by a family member." The notes of the meeting state, "Gina expressed to the Human Relations Counsellor that she was being sexually abused. Regional Manager and Team Leader went to the home and removed Gina. Resided at Marigold Ave. Then returned home. Requested case management. Mary allocated in April. Moved to Furlong House two and half months ago after presented at Sunshine ATC with a burn on her face. Said this had been done by her brother. Presented this to her family and Gina removed Appears intimidated by her family when they visit ... If aggressive incidents at Furlong House leaves situation and takes herself away to her room." The form states, "Cannot return home and is now in temporary accommodation."

Gina's mother then visited the IDS office, 14 February
The file note states:

"Explained to Gina's mother that Gina had been accepted into the Community Package and that will probably be set up by Mary. Gina's mother on the one hand was positive but on the other saw this as Gina not being allowed to return home because of the allegations. Explained to her that this is not the case that Gina had expressed that she would like to continue living away from home and that we are assisting her to do this. The sexual assault allegations are not being investigated and no further action has been taken. (I have tried to reassure her of this many times.) Understandably Gina's mother has a lot of questions about what happened in relation to the Communicator/sexual assault allegations and wishes to prove her and her family's innocence. Gina's mother is very distressed because Ian Pollard has not contacted her with the information she has requested. The family have been waiting for three months ..."

Gina's mother continued to contact the Department in regard to her concern that Gina was not happy at Furlong House although the files suggest that the worker believed that she would accept Gina living away from home if that is what Gina wanted. On 20 February she rang the worker

to have note taken by the staff of Furlong House of the fact that Gina had a sore on her leg prior to Gina coming home for the weekend. She expressed her fear that the family would be blamed for the injury to Gina. The file documents that Gina's mother and sister became hysterical when discussing the allegations against the family and that her brother accused the Department of "destroying the family". This level of distress was still evident when the family attended for interview and Gina's mother's state has been likened by a psychologist familiar with her, to post traumatic stress. This phone call also suggests the family had no knowledge of their right to apply to the Guardianship Board to resolve the dispute on communication.

On 24 February 1992, ten days after the GAB finding in regard to Carla, Mr Tsingas and Ms Skondreas met with the family following family requests for explanations and their complaint that they had been unable to gain a response from the Department to their queries. The family raised the following concerns: why Gina could not come home; clarification of the allegation regarding the cigarette burn; the allegations of sexual abuse. They were informed that she could come home if she wished to; that the Department accepted communication by Facilitated Communication as the same as verbal communication; and that an independent psychologist could assess Gina for her ability to make an informed decision which was one of the areas of dispute between the family and the Department.

When asked by the family why Police were not involved in an investigation when they had been informed that Mr Pollard had reported the matter to the Police, Mr Tsingas states, "Ian sought advice from the Police on how to proceed with this matter but did not ask the Police to take any action because Gina had not indicated at that stage that she wanted any action taken. I would like to re-iterate that CSV could not investigate any allegations and that this was a matter for the Police and at no stage has CSV accused the family of any allegations."

When asked why Gina was not taken for a medical examination he stated, "That is a matter that the Police pursues. Police surgeon also indicated that unless sexual abuse has occurred within 48 hours it would not be possible to determine whether abuse is taking place."

The file states, "Considerable discussion followed on issue of Facilitated Communication with the family insisting that Gina cannot communicate through Facilitated Communication and they wish someone to establish independently whether she can communicate

through Facilitated Communication. Mr Tsingas is quoted, "I will try and find out what's the best way to ascertain whether Gina can communicate through Facilitated Communication." The family informed the workers that they had contacted Patrick Dwyer's office (Carla's lawyer) and would apply for guardianship.

The family allege that Mr Tsingas deliberately misinformed them when he attended at a meeting at the family home, 24 February 1992, and they questioned whether there had been other complaints about allegations at the Unit made by Facilitated Communication. He stated that there was no other complaint. This is not recorded in the Minutes and Ms Skondreas stated that she had no recall of the meeting other than the information on file. Mr Tsingas relied entirely on the file for his recollection. The Guardianship Board decision in regard to Carla was made 14 February. The family became aware of this through the media and applied for Guardianship soon after. In interview Mr Tsingas could not recall whether he advised the family to apply to the GAB, as is his usual practice. He stated that he would have done so and later stated that he believed this had been in the meetings of December 1990 to January 1991. There is no evidence on file that the family were given this information. The action taken by the family indicated that they did not have this information until after publicity of the "Carla" case.

The following day the Department, after discussion with the Public Advocate, decided that "a cognitive assessment will be undertaken rather than a validation and will be done by a female psychologist." The file states the concern was to prevent the adversarial situation that had occurred in regard to Carla's case. The Public Advocate visited Gina and verbally gained Gina's permission to see the files and to her involvement in assessment. He stated that she understood what was being said.

SECTION 4 - SUMMARY OF ASSESSMENTS

Following an application to the Guardianship Board by the Spiteri family, "Gina" was referred for assessment by the former Public Advocate, Mr Bodna. The terms of the testing were set out in a letter of 11 March 1992 from the Director, Legislation and Legal Services Section of the Department of Health and Community Services to Mr Bodna.

The following process was agreed; the Department would nominate a neuropsychologist to be consulted; the Public Advocate would outline to the nominated Departmental psychologist and Mr Catanese, the psychologist nominated

by the family the process of testing to be followed; this process would be checked with the Intellectual Disability Review Panel chairperson "to ensure that it reflects the procedure which is required in validation testing as set out in the IDRP Report on this issue;" "the testing will be of cognitive and communication ability, it will consider apraxia and aphasia and if necessary will recommend further testing by, for example, an occupational therapist, speech pathologist, etc."

In a letter of 15 April 1992 Ms Crossley wrote to Mr Bodna with a number of concerns in regard to the testing process which had commenced. She concluded; "DEAL will undertake to provide a facilitator if -

1. The assessment procedures are discussed with DEAL's therapy staff and appear appropriate.
2. "Gina" and her facilitator are given proper opportunity to trial the validation technique(s) before the test, with provision to amend the methodology it turns out to be impractical or inappropriate for some reason.
3. "Gina" consents to the procedure and the facilitator.
4. Sufficient notice is given to avoid disaccommodating DEAL's other clients."

Ms Crossley provided facilitation for "Gina" at sessions on 25 May and 3 June 1992.

The Ombudsman has had access to a detailed report provided to the Public Advocate and to Summary Report written for the purposes of the GSP which covers all assessment sessions. Extract from Summary Report (Appendix E).

Mr Catanese, independent forensic psychologist and Mr Radler, Department Psychologist at the request of the Public Advocate and by arrangement with the Department, conducted nine assessment sessions between 9 April 1992 and 5 June 1992. Consultation took place with Dr. Kinsella for assessment of aphasia and apraxia and with staff of DEAL. Written and verbal reports were provided by DEAL of the assessments conducted by Ms Owen and Ms Bourke and the proposed assessment procedure was amended to take into account the advice offered by Ms Crossley.

Assessment was very comprehensive and included interviews with the family, observation of Gina within the family and at the Unit, administration of a number of tests and controlled validation assessment. Following this period

of assessment, Gina was referred to the Microcomputer Applications Centre which confirmed the findings of the assessment.

The findings of the assessment are relevant to this investigation, in particular in regard to Gina's comprehension of the questions asked of her in the various interviews and the statements attributed to her both by facilitated communication and verbally.

The assessment states that observation of Gina indicated that she reliably follows one concept instruction. She can reliably respond with a yes/no response to simple questions about facts or preferences. She recognised her written name but not that of other family members.

Gina was able to write her name and copied ten letters of the alphabet. In terms of her expressive language it was found that her speech is limited to one and two word utterances at a concrete level. She was not observed initiating any communication. Her response was always a response to others.

The controlled validation assessment - "On at least six occasions where the typed output was incorrect she correctly named pictures when asked to by saying, "a hat" (twice) "Nina", "house", "car", "dancing". On a seventh occasion she stated, "known" with gesture to ear for a picture of a phone. Finally she indicated by pointing at her facilitator's watch when she failed to type a correct response. Finally, during the validation trials some pieces of typed output were in contradiction to Gina's choices as indicated by subsequent spoken interactions. For example, after EATCAKE was typed she was offered a piece and asked if she wanted some. She said "nuh" in definite manner."

The results of the Weschler Adult Intelligence Scale and the Peabody Picture Vocabulary Test indicate a moderate to severe range of intellectual disability. "Gina demonstrates an ability to recognise some symbols and reproduce them. However the results suggest that she would have considerable difficulty either comprehending or producing detailed language, either written or spoken."

In regard to her use of facilitated communication it was found that "At no stage did facilitated communication lead to a cue-free communication output which was more advanced than her speech and gestures." Further, there was no physical reason for facilitating Gina's typing. Her fine motor skills enabled her to type selected letters on the Canon without facilitation. "That she

needs the emotional support to communicate that "facilitation" affords cannot be given as a credible reason given her ease in communication with us using speech on the very items which were used in the controlled validation trials ... Some observations suggested the possibility that Gina's clear choices were at odds with the typed output resulting from the facilitated communication."

Ms Crossley has provided a response to this assessment, in which she refutes the methods and findings of the assessment. (Appendix B).

At a meeting of 5 October 1992 Gina's family were informed of the outcome of assessment. The Minutes state, "Mr Bodna informed the participants that Ms Crossley Program Co-ordinator of DEAL was not satisfied with the process or the results of Gina's cognitive abilities and communication skills assessment. Mr Bodna said that the process will be evaluated by an independent person." "Mr Bodna stated that any major life decisions in the future must involve other forms of communication and not facilitated communication." Questions were raised by the family and the lawyer about the sexual and physical abuse allegations in light of the findings of the assessment and Mr Bodna suggested that those matters be taken up with the Department.

The MAC assessment which followed in October 1992 confirmed that Gina is unable to read and spell. In terms of speech the assessment stated, "Gina is able to use speech successfully with her family. She tends to use single words and two word phrases. Her family understands what she means, say the whole sentence and Gina verifies it with a nod or by saying 'yes'. Gina used speech occasionally during the advisory session and the MAC staff understood the single words when used in context."

Conclusion

The findings of the assessment indicate that there is no evidence to support the allegations of sexual and physical abuse against family members. In light of the assessment results the mode of questioning of Department staff was highly inappropriate to Gina's skills and comprehension and no credibility can be given to information coming from these interviews. Gina's limited verbal ability would have enabled verbal exploration of the allegations by a skilled practitioner. This opportunity was missed. The assessments confirm that, in all probability, Gina was unable to make the

allegations attributed to her. There is evidence to support the view that the allegations were made because of facilitator influence. There is no independent evidence to substantiate the allegations.

The family have suffered an injustice by the acceptance of the allegations by the Department and the actions taken to remove Gina.

SECTION 5 - FURTHER ACTION IN TERMS OF SECTION 23(5) AND 23(6) OF THE OMBUDSMAN ACT

As my recommendation regarding financial compensation has 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."

The Department response is included in full (Appendix A). My response to the case presented by the Department has been dealt with in Section 1 of this report.

Summaries of responses from the Sunshine Adult Activity Unit, Committee of Management, staff and the counsellor; from the Public Advocate and DEAL, together with my response to the matters raised are included at Appendix B.

I now make my recommendation to Parliament in accordance with the provisions of the Ombudsman Act. I request that Parliament give consideration to implementation of my recommendation that the family be reimbursed by the Department for the costs caused by deficiencies in Department policy and practice.

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APPENDIX A

The Department's response is included in full. (The names of client and family have been changed):

"SUBJECT: OMBUDSMAN'S REPORT ON MS AND ALLEGATIONS OF SEXUAL ABUSE MADE BY FACILITATED COMMUNICATIONS

1. Introduction

The Ombudsman forwarded his tentative report on the above matter to the Minister for Community Services and the Deputy Secretary, Community Services on 5 October 1993, and sought comment.

2. Overview

The complaint arose from a situation in late 1990 when Gina, an intellectually disabled client then aged 33 years, who attended the Sunshine Adult Activity Unit (SAAU) on a daily basis, was alleged to have made accusations of physical and sexual abuse against family members, by means of a Canon Communicator at SAAU. Gina was one of five clients who made similar accusations prior to December 1990. A counsellor acting on behalf of SAAU requested the Western Region to arrange alternative accommodation for Gina and one other client, the remaining three did not wish to leave home. The Ombudsman has investigated the complaint that the Department failed to investigate properly the allegations made by Facilitated Communication (before acting on those allegations).

Some general comments should be made on the report as a whole.

- The report does not reveal an understanding of the intense pressures or the complexity of case situations with which the regional staff were operating at the time. A regional service is not able to provide case management to all people requesting the service at any one time. Gina was not known to regional staff prior to December 1990.

- The report fails to convey the nature of the relationship between H&CS and funded agencies. Agencies are managed independently of the Department. The operation of agencies is monitored through the Funding & Service Agreements. These agreements do not give departmental staff the right to direct staff or management from funded agencies.
- It is noted that Mr Bernie Ross has not had an opportunity to discuss details of the case from his perspective as he is on leave interstate until January 1994.
- The report misunderstands the report of the Intellectual Disability Review Panel (IDRP) (1989) and the Director-General's response dated 5 April 1990. Regional staff did refer the case to OPA and suggested using GAB processes. This was consistent with the Director-General's proposal to the IDRP. It is clear that the OPA's handling of the case was less than adequate.

3. Ombudsman's Recommendations

In his report, the Ombudsman has made three tentative recommendations:

1. That Gina's mother be reimbursed for the legal costs incurred by an application to the Guardianship Board.
2. That the Department take action to review the regional management deficiencies and inadequacies identified in case management highlighted in this report.
3. That the Department review the accountability of funded non-government agencies and the responsibility of the Department to monitor and account for the provision of services by these agencies to clients of Intellectual Disabilities Services.

The Region recommends that the Department accepts the second and third recommendations contained in the Ombudsman's report. The issues raised in the report have been addressed by management in Western Region and have also been addressed by Disability Services Division.

The Region recommends that the Department should not agree to make a payment to the family as reimbursement for their legal costs. The reasons for this are as follows:

1. The Region's actions were consistent with the Department's policies and practices at the time. These were conveyed in the Departmental Instruction on Communication Skills Planning dated 28 May 1990 which came from the results of the IDRPs Report of its Investigation (May 1989) of "assisted communication". In particular, the Region had acted precisely in the manner set out in Dr J. Paterson's letter of 5 April 1990 to the President of the IDRPs on the appropriate way of dealing with dispute resolution involving clients using "assisted communication":

"Disputes about communication skills are no different to any other dispute between professionals about clients. There is already an established conciliation and dispute resolution system in the Office of the Public Advocate and the Guardianship Board and Administration Board and I believe these are the appropriate forums, along with the Intellectual Disability Review Panel, for the airing of such disputes."

2. Regional staff did inform the family of the processes of the Office of the Public Advocate and the Guardianship Board, and did discuss the case with personnel of the Office of Public Advocate.
3. It is not the policy of the Department to reimburse legal costs in circumstances where no orders have been made by a tribunal/body with powers to make orders on costs.

4. General Observations

There are a number of areas which require a more detailed response from H&CS in relation to the Ombudsman's relative recommendations 2 and 3.

- Facilitated communication using the Canon Communicator was suspended by the Sunshine centre during 1992. This decision was strongly supported by the regional office.
- Disability Services, Western Region is responsible for monitoring SAAU. The monitoring arrangement is formalised through a Funding & Service Agreement. The regional staff responsible for supporting and monitoring the SAAU have, for some time been concerned about the quality of the programs and the competence of the Committee of Management. On 5 October 1993, the Minister, the Honourable Michael John signed a notice of intent to appoint an Administrator to SAAU. The Committee of Management has exercised its right to object. A hearing of the objection is currently being established.
- In July 1992 Disability Services Division H&CS released the IDS Client Services Manual. The manual prescribes a model of intervention for people registered as having an intellectual disability. The manual outlines departmental standards, procedures and processes for case practice with registered clients. The manual was fully implemented in the Western Region by December 1992.
- Departmental policies and guidelines on Clients' Communication Needs, Human Relations and Sexuality, Health Services For People with Intellectual Disabilities and Policy on the Law of Negligence were also released during 1992 and early 1993. Disability Services staff from Western Region have participated in training programs relating to each of these policies. The policies and guidelines are being adhered to by staff in the Western Region H&CS.

- The "Clients' Communication Needs Policy and Guidelines" (February 1993) requires completion of a two-stage communication assessment if augmentative communication systems are to be considered. The system which provides the client with the most effective and functional communication must be selected as part of this process.
- Implementation of the Communications guidelines was piloted in the Western Region, with clients from SAAU who had been using Facilitated Communication. Assessment of an individual's communication needs is now conducted by independent speech pathologists funded by H&CS, but operating under the auspice of Yooralla, from the Micro Application Centre. None of the communication assessments completed to date, have recommended the use of Facilitated Communication.
- The Department has increased the accountability of Non Government Adult Training and Support Services through the manual of procedures published in 1993.
- Implementation of the Client Services Manual has resulted in significant improvement in case management by Disability Services staff in the Western Region. Current management staff in Disability Services in the Region have a great deal of experience in case management standards and practice.
- The following changes have been made to the delivery of client services:
 - regional intake procedure has been revised to ensure all requests for service are recorded, dated, allocated or followed up at four weekly intervals;
 - a system for determining the priority of each client has been developed by the Region. Each client is now allocated on the basis of a priority determination;

- individuals referred must consent to the request for service, primary care givers/next of kin are informed of the request;
- each case is assessed prior to case planning. The individual needs of each client are assessed in accordance with policies and guidelines. All assessments are checked by a supervisor;
- the waiting list for eligibility assessment is under 10. Applicants therefore are assessed for eligibility within a month of an initial request;
- waiting lists for case management have been more than halved during the last twelve months. Allocation of a case manager for high priority cases occurs within 4 weeks;
- Client Service workers receive two (2) hours supervision each fortnight;
- case files have been audited twice in the last twelve months. There has been a significant improvement in the standard of case recording during that period.
- the Department has developed guidelines with OPA. These are adhered to in the region.

5. Comment by Former Staff

The Ombudsman's report on Gina was read in full by Mr Ian Pollerd, Mr Con Tsingas and Ms Anastasoa Gasparis. The report was read in part by Ms Mary Skondreas, Ms Anne Dive and Ms Mary Jane Wylie. Ms Wylie, who no longer works in H&CS, is the only person who has chosen to respond. (See attached letter).

6. Conclusions

Senior regional staff are available to discuss issues raised in this report with the Ombudsman.

It is requested that this report be endorsed and forwarded through the Legislation and Legal Services Section to the Deputy Secretary, Community Services for referral to the Ombudsman."

Signed by

Vic Gordon
Regional Director

FURTHER RESPONSE:

**"SUBJECT: OMBUDSMAN'S REPORT ON MS AND ALLEGATIONS
 OF SEXUAL ABUSE MADE BY FACILITATED
 COMMUNICATION**

Following receipt of the Region's Report in the matter, the Ombudsman's Senior Investigations Officer has been in contact with the Manager, Ombudsman Review, seeking additional material as a matter of urgency. Mr B. Ross and Mr J. Leatherland were interviewed by the Senior Investigations Officer on 7/2/94.

The Region has been requested to provide additional information in relation to 3.2 (Page 3), concerning the Region informing the family of the process of the Office of the Public Advocate (OPA) and the Guardianship and Administration Board (GAB) and discussing the case with personnel of the Office of the Public Advocate.

The following additional comments are made on this matter:

Mr C. Tsingas confirmed that he would have informed the family of the availability of the services of the OPA and GAB in late December 1990/early January 1991. The fact that the family does not recall receiving this advice could indicate that they did not understand or absorb the information provided. Furthermore Mr I. Pollerd did confirm that he discussed the case (as indicated in the Ombudsman's tentative report) with Mr J. Gadsden of the OPA on 20/12/90 with the expectation that it was the responsibility of the OPA to inform the family further in relation to their right to apply to the Guardianship and Administration Board. The Ombudsman has noted that the

Public Advocate stated that the Advocate appointed would normally take up that role but because of ill health the matter was not handled as it should have been.

Subsequently, in November 1991, Ms Skondreas did discuss the case with OPA and it was agreed that intervention by the OPA would be inappropriate as had asked to leave home. During subsequent discussions with Gina's mother it was believed that Ms Skondreas again told her about OPA/GAB processes.

Unfortunately, a further examination of client files has not located any additional case notes on these matters and communication was purely verbal. It has been acknowledged that there were inadequacies in case management which included the lack of detailed file recording on such matters. However, on the information available to the Region, it is concluded that Regional Staff did inform the family of the processes of the OPA and GAB and did discuss the case with personnel of the Office of the Public Advocate.

As indicated in the previous Regional Report, the second and third recommendations are accepted. Case Management practices and the relationships with funded non-government agencies have been reviewed regionally and centrally and positive measures put in place."

Signed by

Vic Gordon"

ADDITIONAL RESPONSE:

In addition to the Department response, Ms Wylie, formerly Acting Co-Ordinator of Case Management provided a response which raised the difficulty after a considerable lapse of time of conveying "a sense of the difficulties under which we worked". She included the enormous case-loads; the lack of a clearly defined relationship between Intellectual Disability Services and the Office of the Public Advocate; the complexities of working with adults who have an intellectual disability and the sensitivity required when working with alleged victims of sexual abuse.

Ms Wylie questioned the objectivity of the investigation by the Ombudsman's Office. She also stated "Whether to use and trust facilitated communication was always a vexed question, however, in the absence of knowledge that our own Department questioned its validity, in view of the Department's funding of DEAL and because of its potential for allowing for free-text comment by clients rather than a limited yes/no verbal response, we felt it was the best means we had of working with these clients." The response interpreted the reporting of alleged withdrawals by clients of allegations as an acceptance by the Ombudsman that the communication itself was validated. This was never intended and has been clarified in the report.

Finally, Ms Wylie stated that the report should have focussed on the need for clear protocols for and between the various organisations rather than on the details of regional practice. The Ombudsman's response is that the Department insisted that it was following the agreed process in regard to disputes over facilitated communication. A detailed examination of regional practice, while acknowledging the difficulties for staff and not attributing blame to "hands-on" staff, does not support the Department's case. The role of Case Managers would have been far easier had the Department's policy on dispute over Facilitated Communication been made known to them.

APPENDIX B

Response to an Interim Report.

In October an Interim Report of the investigation and tentative findings and recommendations was provided to the Department of Health and Community Services. Relevant sections of the Report were provided to the Sunshine Adult Activity Unit for examination by the President of the Committee of Management and Staff who had been involved including the Counsellor, to the Public Advocate's Office and to DEAL.

The **Committee of Management** advised the Ombudsman that:

"On behalf of the Committee of Management I must advise that the following actions (rather than a lack of action) were in fact taken.

- (1) Debra Peitsch was not prepared to divulge full details to Committee at their last meeting in December 1990 and due to the closing of the Adult Unit for holidays until the end of January 1991, was told to check with Community Services, Police etc. Debra Peitsch withdrew her reports from this meeting.*
- (2) Use of the "Canon" was put on hold subject to investigation.*
- (3) Discussions were held with Health and Community Services Western, Ms Margaret Wagstaff and Mr Ian Pollard regarding our concerns re: the use of "Canon" Communicators.*

I have enclosed copies of,

- 1. D. Peitsch's report Dec. 1990.*
- 2. Advice to Parents, Guardians re: suspension of use.*
- 3. Copy of letter to H & C S*
- 4. Staff letter re: use of Canon."*

Documents were sighted which supported this statement. The Secretary of the Unit further verbally stated that the Committee was poorly informed and had no control over programs in place in the Unit.

The former Director of the Unit and one staff member read the report but stated that they had no response.

The **Acting Director** who was in place at the time of the allegations questioned, the basis of the Ombudsman's belief that Gina was unable to communicate in the manner attributed to her; confirmed that she was advised not to keep tapes of the allegations; stated that the Unit would provide facilitators to the Department if no other facilitators were available and stated that a staff member who did provide facilitation at the Department's request in another case, became a target of abuse from the family.

The Counsellor provided a response to the report. She stated that facilitators were on leave and not present to provide facilitation; she was not provided with a medical report; there was contact with the Police by her (acknowledged in the report); she requested clients to write letters or make a statement asking for case management following advice from the Department.

She stated:

"The report sums up and gives an overview of an extremely complex situation and turn of events.

I was employed at SAAU to work 1:1 with clients of all types of disabilities - some who communicated on the Canon. There was no talk of whether this system worked or not - it was presented as 'another form' of communication. Therefore what was 'said' on the Canon had validity because it represented where a client was at the space in time. We all say things without considering the long term consequences. Many clients - most in fact - wanted their 'tapes' put in the bin after their discussions.

1:1 counselling is a way of clients being able to contextualise their thoughts and experiences.

The situation that occurred at SAAU came about as a result of too little guidance, policy, support and case workers to really know the client's needs and wants.

At no time were these allegations put to the Committee or the Department as the absolute truth, but as a series of discussions and 'cries for help' - as stated in my report.

Delay by the Unit occurred as a result of confusions over how to establish consent, and by lack of trust in the processes of the Department. As our client had no case workers and no GSP's it made it very difficult to believe individual needs would be taken care of.

The comments of misleading information and lack of details is a valid one, and is partly due to there being no 'manager' of the situation (and I absolutely shunned that role), and my lack of experience in judging what was professional obligation to report in contrast to what was the client's right to keep to themselves."

The facilitator wrote in response that she was not one of the staff members who received a two day training session in facilitated communication

"As far as I can recall I was placed in a communication group as instructor where facilitated communication and Canon was the main form of communication with no prior experience in this field."

"I was placed in this programme with an instructor who did not wish to work in the programme and therefore was not keen to work with the Canon and clients and not keen to train me in this mode of communication.

If, as has been stated, I influenced communicator's communications it was not by design and I most certainly was not aware that this was happening - if it was happening.

I reiterate the written comments of 24 November. I was not the instructor who facilitated Gina's first allegation."

The Public Advocate's Response

In response to the Interim Report the Public Advocate wrote:

"If the Department believed, for example, conflict existed between themselves and the Spiteri family and that conflict compromised IDS' case management responsibility and/or Gina's best interests, then it

would be in OPA's view, incumbent upon the departmental workers to contact OPA requesting advocacy for Gina. Alternatively, they may have made an application to the Guardianship and Administration Board to ensure that Gina's best interests were protected, or indeed have referred the Spiteri family to OPA for information and advice.

As you have noted, OPA received a facsimile without identifying names and allegations made against an unidentified family member. OPA would not under these circumstances make direct contact with a family regarding an application to the Guardianship and Administration Board.

The Office of the Public Advocate was aware after initial enquiries that a Regional Manager was actively involved in the matters raised, that case manager/s had been appointed for the individuals, that police involvement and recommendation had been sought and that the Committee of Management of the Day Centre had been informed of the allegations and were addressing policy/protocol issues.

The Office of the Public Advocate believed that proper processes were underway and assumed that if conflict arose which compromised the interests of clients then the department would make contact with OPA. This would appear to be an entirely reasonable assumption, given the department's knowledge of OPA's involvement in the Carla case.

As you have noted, the Gina's family through their solicitor first made contact with the Office of the Public Advocate in February 19892 - after the Guardianship and Administration Board's determination in the Carla matter. At that time, information was given on the role of the Guardianship and Administration Board and assistance provided to the family in making application to the Board."

DEAL's Response

A detailed response of 20 pages has been received from Ms Crossley, Director of DEAL.

Ms Crossley states:

"The most serious error in the Ombudsman's findings is his rejections of the communicative capacity of "Gina" and other people with disabilities mentioned in his reports.

"Gina" has given clear demonstrations on a number of occasions of her ability to read and spell and would have been able to provide further evidence if sufficient resources had been available for extended assessments. The assessments relied upon by the Ombudsman were inappropriate, unsatisfactory and inadequate."

Ms Crossley criticises this investigation for bias in reception and evaluation of evidence and pre-judgement in regard to "Gina". She states that DEAL staff are highly qualified in their speciality areas and can be considered "expert" in the area of communication. She details those qualifications.

Ms Crossley specifies a number of tests administered to "Gina" by DEAL on 20/03/1992 and questions why the Ombudsman did not report these in full. The main body of the report covers all the testing conducted 1988 and 1990, that is, prior to the allegations.

In response, further progress reports are included and reports of Ms Owen's and Ms Bourke's assessments are included. (Appendix C). The total documentation of DEAL assessment has been included.

Ms Crossley questions the Ombudsman's acceptance of the assessment by two psychologists and the MAC Centre in preference to the DEAL assessment.

Ms Crossley provided a detailed criticism of the assessments arranged by the Public Advocate. She included her contemporary record of an incident where she stated "Gina" clearly demonstrated her ability to communicate through facilitation information unknown to the facilitator.

Ms Crossley states:

"If the full report as submitted does not include any information on this point, it is incomplete, and misleading".

It is confirmed that the assessment report covers this incident in detail. Ms Crossley's notes of this part of the assessment have been examined as have the notes of the assessing psychologists which provide a counter view of the validity of the communication obtained in this test.

Ms Crossley raises a number of objections to the methodology of the assessment and the conclusions of the assessing psychologists and to the conclusions of the MAC Assessment. She states:

"Again, no reasons are given as to why the opinions of therapists working for the MAC Centre are regarded as different and superior to the opinions of therapists working for DEAL. This, too, is an unacceptable gap in the Ombudsman's argument. Why is it that negative assessments "confirm" other negative assessments but positive assessments do not "confirm" other positive assessments. The Ombudsman is prepared to accept only evidence that confirms his initial prejudices."

In answer to this question, the assessment process was established by the Public Advocate for the purpose of meeting "Gina's" communication needs. The Ombudsman is satisfied with the independence and expertise of the Public Advocate in establishing an assessment process that is comprehensive and reliable. The Ombudsman accepts the findings of that process.

In regard to other aspects of the case, Ms Crossley affirms that while DEAL had been contacted by staff from the SAAU, she was not informed of the substance of the allegations or the names of the alleged perpetrators. Mr Allen, DEAL facilitator was therefore independent in his facilitation of clients. Ms Crossley also reiterates that "she has a clear recollection of "Gina" discussing this matter (at a session at which Ms Skondreas was not present)." She is here referring to an alleged verbal statement by "Gina" about a "burn" on her face.

Ms Crossley raises a number of arguments in regard to the validity of the communication method which it would be more appropriate for a review of Facilitated Communication to consider. If her response was printed in full, the Ombudsman would then be bound to give other professionals who are mentioned by name in her response the opportunity to answer her criticisms. The report would become a debate between professionals on the validity of this form

of communication. The substance of this report, the conduct by the Department of Health and Community Services, of an investigation of allegations of sexual abuse by a client of Intellectual Disability Services, would be overwhelmed by the debate on Facilitated Communication. The emphasis of the report has been on a detailed examination of Department policy and practice including case management and support to case workers by regional management.

No comment adverse to Ms Crossley has been made although a view has been accepted in regard to "Gina's" communication abilities which is in contradiction to the view of DEAL.

APPENDIX C - 1

Gina

Contact with DEAL Communication Centre.

Gina was first seen in late 1988, having been referred by Sunshine Adult Activity Centre for speech/communication augmentation assessment because her very limited speech was not meeting her communication needs.

Assessment by a Speech Pathologist and Teacher showed:

1. Severe word-finding problems.
(Too little speech was produced to allow an articulation assessment).
2. Problems with index finger isolation and extension.
3. Problems with perseveration.
4. Some literacy skills.

It was recommended that Gina work on literacy skills, using a Canon Communicator "to augment and encourage speech". A finger pointing programme was provided.

Gina was not seen for a review appointment till mid-1990 when she used the Canon very well with shoulder contact, and an overall improvement in presentation was noted. Efforts to involve her family resulted in her sister Anna attending a session in March 1991 and her mother and sister attending a session in May 1991. Further family involvement was left to the ATC to arrange.

During these and other contacts it was noted that the amount of support needed continued to reduce overall, with Gina finally typing a few words without physical contact in March 1992. Her degree of independence was affected by the height of the Canon, with extra support being needed if it was on a high table, and her nervousness. Several facilitators comment on her apparent nervousness or reduced self-confidence when observers were present (that is, observers or strangers who were specifically directing attention at Gina, not the regular staff and client group at the ATC whose presence didn't seem to bother her).

Rosemary Crossley
21.5.1992

APPENDIX C - 2

DEAL ASSESSMENTS

NAME: GINA DATE: 04.03.1991
LOCATION OF SESSION: ATC TIME: 2:30
DEAL STAFF INVOLVED: RC
OTHERS PRESENT: ANNA (SISTER)
EQUIPMENT USED: CANON
CLIENT'S POSITION AND MEANS OF ACCESS:

Sitting, r. index finger, forearm.

COMMENTS:

Anna and I discussed facilitation before Gina came in. Understandably, Anna does not understand why Gina needs support and I explained some of the factors involved.

Gina didn't seem at her best - perhaps she was nervous or perhaps she's getting the flu her mother and sister already have. She rubbed her face a lot which Anna said usually happened when she was nervous. She used the Canon well with arm support but was unhappy when I faded to shoulder pressure. She started a X-word c. Anna (with my hand under Anna's). Interesting Anna could feel me pulling her away from the Canon, but couldn't feel Gina pulling her back. (Given that Gina was successfully using the Canon), I was not pulling her towards the Canon (or Anna would have felt that too) only two choices were left - Anna was helping Gina, or Gina was doing it).

I suggested that Anna or her mother attend a number of sessions at the Activity Unit to practice facilitation and gave Anna handouts on structuring success and word-finding problems.

RECOMMENDATIONS:

Set up sessions for mother and/or Anna to work ATC staff.

Confidence Building.

FORM COMPLETED BY: R Crossley.

APPENDIX C - 3

DEAL ASSESSMENTS

NAME: GINA DATE: 06.05.1991

LOCATION OF SESSION: ATC TIME: 1:00

DEAL STAFF INVOLVED: RC

OTHERS PRESENT: MOTHER, ANNA

EQUIPMENT USED: CANON

CLIENT'S POSITION AND MEANS OF ACCESS:

R. index finger.

COMMENTS:

Gina's family have not yet had a communicator on loan. Gina's brother might be the best person to work with Gina. He currently has a broken leg so it would be necessary for an instructor to visit and show him how to work with Gina. Anna is very sceptical and Gina "confirmed" this by typing rubbish with Anna while I was out of the room.

It was a pity none of the family attended last week's workshop. Gina does not seem to know much about the program.

RECOMMENDATIONS:

Lend Canon to Gina to use with her family - supply structured worksheets and explain choice making.

Concentrate on fading support. Invite family to communication group(s).

FORM COMPLETED BY: R Crossley.

APPENDIX C - 4

DEAL ASSESSMENTS

NAME: GINA DATE: 19.07/1991
LOCATION OF SESSION: SAAU TIME: AM
DEAL STAFF INVOLVED: RC
OTHERS PRESENT: GROUP - CONTRACTS, GINA & MIKE
EQUIPMENT USED: CANON
CLIENT'S POSITION AND MEANS OF ACCESS:

Standing, r. index f. shoulder/elbow.

COMMENTS:

Gina was great and enjoyed repartee with Stephen and Bernadette.

Pragmatic skills good.

RECOMMENDATIONS:

Family - how are they going?

Community use.

APPENDIX C - 5

DEAL ASSESSMENTS

NAME: GINA DATE: 15.08.1991
LOCATION OF SESSION: ATC TIME: 10:40
DEAL STAFF INVOLVED: RC
OTHERS PRESENT: -
EQUIPMENT USED: CANON
CLIENT'S POSITION AND MEANS OF ACCESS:

Sitting at high table R.i.f. Sleeve/elbow.

COMMENTS:

Gina required only light support despite table being high. She has finger wobble (not a true tremor). This may be due to depth perception problems or, more probably, to muscle weakness. Feedback from partner is important.

Typing without looking - when I looked away Gina typed recognisable approximations to words asked, with the errors being letters below those required e.g. CAY for 'cat' and DUWA for Gina. Obviously 'free' typing would rapidly become incomprehensible.

RECOMMENDATIONS:

On-going contact with Gina's family by ATC.

Finger exercises.

FORM COMPLETED BY: R CROSSLEY

APPENDIX C - 6

DEAL ASSESSMENTS

NAME: GINA DATE: 12.12.1991
LOCATION OF SESSION: SAAU
DEAL STAFF INVOLVED: ROSIE
OTHERS PRESENT: GROUP
EQUIPMENT USED: CANON COMMUNICATOR

CLIENT'S POSITION AND MEANS OF ACCESS:

R index finger - elbow - Canon on table
- shoulder - Held low

COMMENTS:

Gina told me orally she'd moved to a house. She's very happy about this but typed that she feels isolated from her mother (and showed some distress).

Otherwise the house is great.

RECOMMENDATIONS:

Check family contact.

Independent Users Group.

FORM COMPLETED BY: R CROSSLEY

APPENDIX C - 7

DEAL ASSESSMENTS

NAME: GINA DATE: 05.03.1992

LOCATION OF SESSION: ATC TIME: 2:00

DEAL STAFF INVOLVED: RC

OTHERS PRESENT: -

EQUIPMENT USED: CANON

CLIENT'S POSITION AND MEANS OF ACCESS:

Sitting, Canon held low - shoulder
- some words independent

COMMENTS:

Gina seemed a bit nervous. I don't know why. We only had a brief chat.

She has a tan and looks fine - the marks on her arms appear to have gone.

Margaret told me that there had been some word of guardianship proceedings.

RECOMMENDATIONS:

All facilitators try and fade support as much as possible.

Speech and O.T. assessment.

Video reading test and PPVT.

FORM COMPLETED BY: R CROSSLEY

PEABODY PICTURE VOCABULARY TEST

APPENDIX C - 8

Speech Pathology Report

Date of Assessment: 20 March 1992

Gina was seen for a screening assessment of speech, language and reading skills to establish new baselines.

The following items were administered.

1. Edwards Reading Test (Silent Reading 4).
2. La Pointe Reading Comprehension Battery for Aphasics (Items I and VI).
3. Peabody Picture Vocabulary Test.
4. Apraxia Screening - Oral & Motor (dev. by J E Troot).
5. Confrontation naming test - P E S P (50 items).
6. Western Aphasia Battery
 - * Word fluency
 - * Sentence completion
 - * Responsive speech
 - * Auditory verbal comprehension.

Gina was able to use the option of typing with facilitation at the shoulder for some tasks and gesture was also accepted when a pointing response was the only mode required. Consequently, her oral communication problems did not disadvantage her in some tests.

Results were:-

1. Edwards Reading Test - unaided recall 4/6.
- aided recall 6/6.

Gina typed her answers on the Canon. (N.B. Test extract enlarged to 18pt print). The two errors made were related to the correct answers and could reflect typing difficulties as much as reading comprehension problems, e.g. 1 Jon/Jill 3 12/2.

2. La Pointe Reading Battery.
I - Word Visual Score 7/10
VI - Sentence Picture Score 7/10
(3 incorrect items scored correct on the 2nd attempt).

(N.B. In order to get started, Gina needed a physical prompt from Rosie - a nudge then could point independently to choice of three items. There appeared to be some preservation of the response position, so test order was changed to minimise this.

3. Peabody Picture Vocabulary Test.

(Unfinished) - We did not establish a ceiling in the time available, however starting from Item 100 (aged 14) Gina scored 11/18 items correct (needs completion).

4. Apraxia Screening Test.

Gross Motor Apraxia	21/24
Oral Apraxia	16/24

These scores do not indicate a severe apraxia however Gina has significant problems with fine-motor skills such as handwriting and typing.

5. Confrontation Naming. PESP (Picture Elicited Screening Procedure).

Oral	7/50
If gestures included	18/50

Typed response 10/11 (time constraints discontinued testing). Gina has significant word-finding difficulties in a confrontation naming situation. Use of gesture can improve her score but still leaves her with a moderate-severe problem.

The typed mode however improved her score very markedly from 14-36% to 91%.

6. Western Aphasia Battery.

- Word fluency (name as many animals as you can in 1 minute).

Oral response 1/20
Type response 5/20

Given that typed responses take a much greater time than spoken responses, if the time limit was extended Gina may well have done better.

- Sentence Completion

Oral response 0/10
Typed response 10/10

- Responsive Speech

Oral response 0/10
Typed response 10/10

- Auditory Verbal Comprehension

Gestural response 42/60

Summary

Gina appears to have good auditory comprehension skills and a reasonable grasp of reading and spelling skills.

Her non verbal language skills are good with usually appropriate use of body language and facial expression. She can sometimes use gesture to augment her speech.

However, she has a significant word finding problem which is not improved greatly by either phonemic or semantic queuing.

In a typed mode this word finding problem is much improved.

Suggestions for further testing

- Complete Peabody P V T
- Investigate dyspraxia further

N.B. On 10.4.1992 in another setting our Occupational Therapist, Anne Bourke, found Gina had a more significant degree of dyspraxia than on 20.03.1992.

- The Gardiner Motor Free Visual Perceptual Test should be administered.
 - When testing allow for various response modes
e.g. gestural
typed
 - Watch for perseveration and rearrange test items if the correct response is in the same position twice or three times.
 - Allow for an expansion to time limits as Gina needs more time to make responses.
- Typing is also much slower than speech and this needs to be allowed for.

Oral Language

- Video recording of a 'normal' conversation about a topic of Gina's choosing and a set topic.
- Disclosure analysis of the above.

(Signed) A. Owen
Alice Owen
Speech Pathologist.

APPENDIX C - 9

NOTES ON GINA

10/4/92

* Investigation of Motor Planning.

Gina undertook two tests of apraxia to identify any motor planning difficulties. Firstly, she was tested on an Apraxia Screening Test. This standard apraxia test asked Gina to imitate the tester in a series of 10 representational mimes, i.e. without an object, e.g. scissors, key, comb. She executed these actions without many significant problems. She was asked to execute these actions on command and was only successful with miming scissors, comb and waving goodbye. The final part of the test required Gina to show me the use of the object with the real object. In this area she had no problems at all. The significant part of this test was the section that required Gina to respond on command in the absence of the object. It may be argued that she failed in this part of the test due to receptive language problems. This may need further investigation but as she followed other instructions readily it may be argued that the motor memory involved in this task is the problem in this case.

The second test for apraxia was the Imitation of Postures Test from The Southern California Sensory Integration Test. This has been developed for children but it has interesting information to give for motor planning problems. In this test a non-representational body posture is held by the tester and the person being tested is required to imitate, i.e. no motor memory is involved.

Please see attached testing and result sheets. I have not scored these as yet. However, even without a formal score it can be seen that Gina had great difficulty with this test. This highlights the problems Gina has with motor planning. This would indicate that she would have difficulty with learning new motor tasks although is not impossible as can be seen by the first apraxia test. After lots of practice new motor tasks are learnt but presumably it would take longer than average and the tasks may always remain clumsy.

Anne Bourke, B.App.Sc. (O.T.).
Occupational Therapist.

APPENDIX C - 10

SUNSHINE ATC

DEAL's contact with the staff and clients of Sunshine ATC began in February 1987. In that year DEAL staff paid three visits to the ATC and two ATC clients each made six visits to DEAL. At this time DEAL staff concentrated on training one instructor at the ATC and the parents of these two clients.

In 1988 DEAL's involvement with the ATC intensified. Many more clients were referred to DEAL, and rather than have a larger number of clients come to DEAL for training sessions, DEAL staff made seven visits to the ATC. Three ATC staff were particularly involved in the 1988 communication program, and for them training took two forms - hand-on training with individual clients, and group discussions and in-services with DEAL staff after the clients had left for the day. Gradually more instructors became involved as clients from their programs were referred to DEAL. Clients met once or twice a week in ATC-based communication groups. By the end of 1988 DEAL staff had seen eighteen clients from the ATC.

At this stage it was clear to the ATC that if communication was really to become an integral part of the lives of the clients the existing program delivery system based on communication groups would have to be changed. First one and then two special groups were established for clients who needed intensive communication training. The ATC purchased a considerable amount of communication equipment for use both in the intensive communication groups and for clients involved in other programs. Low-tech aids - ABC and yes/no boards - were placed in every room at the ATC. This led to a greater use of augmentative communication and the involvement of an increasing number of ATC staff (supported by the staff working in the intensive communication program).

During 1989 DEAL staff spent five days at Sunshine ATC reviewing old clients, seeing eight new clients, and continuing receiver training sessions for individual staff with individual clients. DEAL provided a display of communication aids for the ATC Open Day and were available to answer parents' questions at that time.

In 1990 DEAL staff made three all day visits, during which old clients were reviewed and three new clients seen, and gave an all day workshop on Facilitated Communication at Sunshine ATC to ATC staff and interested training and resident staff from other facilities. In the second half of 1990 Sunshine revised their programs again. Some of the trainees and instructors moved from the special groups in order to spread skills in augmentative communication through the ATC by allowing those instructors who had had most experience with it to move into other groups and support other instructors and clients in its use. As a result of discussions with DEAL Sunshine introduced a monitoring form for each client involved in the communication program to be filled in each month listing the staff with whom the client was communicating and the degree of support provided.

Since the beginning of its involvement with Sunshine ATC DEAL has worked with those parents of trainees who attended their children's assessments and review appointments. Obviously, not all parents were able to do this. DEAL contact with parents was through ATC staff, who appeared to have a close relationship with the families of most trainers. Each year staff discussed with DEAL appropriate communication goals for each trainee in the context of his or her IPP. These review meetings were usually held in the evening at the home of the client to allow their family or care givers to be involved.

DEAL's goals for the Sunshine clients have changed over the years. In 1987 the program was starting off and was attempting to get non-speech communication accepted and used by a small number of clients, families and staff. In 1988 client numbers increased dramatically and DEAL concentrated on the assessment of clients, the training of staff, and the establishment of appropriate programs. 1989, when equipment had been bought and programmes were in place, was a year of consolidation. In 1990 two new needs appeared - the need to fade support to those clients who were facilitated, and the need to expand aid usage outside clients in the special programs. The first need was addressed by introducing the monitoring form and purchasing appropriate therapy equipment¹. The second was addressed by the change in program mode mentioned above.

As I said to the Program Director in a letter written after my last 1990 visit "In 1991 I hope more family members will be involved" - to this end the ATC has arranged a parent evening to take place shortly. - "and we

can start looking at the quality of communication as well as just independence" and "one goal will have to be to establish some functional communication for home use by those clients whose parents have difficulties with written english."

APPENDIX D

Assessment

Dates of Assessment: 9 April 1992
10 April 1992
15 April 1992
16 April 1992
19 May 1992
22 May 1992
25 May 1992
3 June 1992
5 June 1992

Date of Report: 21 August 1992

Assessors: Mr Anthony Catanese, Private
Psychologist
(B.Sc., Dip.App Psych., M.Psych, MAPS)

Mr Gary Radler, Psychologist, CSV
(B.B.Sc., Grad Dip App Ch Psych,
M.Psych
MAPS)

Consultant: Dr Glynda Kinsella,
Neuropsychologist,
La Trobe University
(PhD, MAPS)

Tests Administered:

Wechsler Adult Intelligence Scale -
Revised
(Part Only).

Stanford-Binet Intelligence Scale -
Fourth Edition (Part Only).

Peabody Picture Vocabulary Test - Form
L.

Reynell Development Language Scales -
Second Revision.

Screening tests for apraxia based on the "Supplementary Nonlanguage Tests" from Goodglass, H. and Kaplan, E. (1972) The assessment of aphasia and related disorders. Lea and Febign, Philadelphia; and Strub, (2nd Edition). F.A. Davis Co., Philadelphia.
Validation of the client's use of facilitated communication.

Hearing: Normal.

Reason for Referral

Gina was referred for assessment by the Public Advocate, Mr B Bodna. He requested that an assessment of Gina's cognitive abilities and communication skills be conducted. the latter was to include an assessment of the validity of Gina's use of facilitated communication.

Summary of Assessment

April 1992

A family interview was conducted at Gina's family home.

10 April 1992

Assessment took place at the CSV Early Intervention Office in Footscray.

15 April 1992

Assessment again took place at the CSV Early Intervention Office in Footscray.

16 April 1992

The same assessment venue was used. Also present was Ms P Campbell, a Speech Pathologist, who conducted some screening of language abilities.

19 May 1992

Gina was observed in her pottery program at the Sunshine Adult Day Training Centre.

Administration of subtests from the Stanford-Binet Intelligence Scale was then continued in an adjoining room in the Centre.

22 May 1992

Assessment took place at the CSV Early Intervention Office in Footscray.

25 May 1992

The validity of Gina's use of facilitated communication was assessed. This took place at the CSV Early Intervention Office in Footscray with Ms R Crossley from the DEAL Centre acting as facilitator.

3 June 1992

This was a continuation of the assessment session of the 25 May 1992.

5 June 1992

A final assessment session took place at Gina's family home.

Consultations

Neuropsychology Issues - We consulted with Dr Glynda Kinsella regarding neuropsychological issues. Specifically, she provided advice on how Gina should be screened for the presence of aphasia and apraxia and assisted in the interpretation of the results of these screening tests.

Consultation with DEAL Staff - Consultation occurred with staff from DEAL who have had contact with Gina in the past. This consultation consisted of a meeting with Ms Rosemary Crossley, the Director of DEAL; Mr Jim Allen, a DEAL worker; Ms Alice Owen, a DEAL Speech Pathologist; and Dr Kinsella.

Previous Assessments

According to Ms Skondreas (CSV Case Manager), no previous cognitive assessments of Gina are on her CSV file. The results of previous assessments conducted by DEAL concluded that Gina "appears to have good auditory

comprehension skills and a reasonable grasp of reading and spelling skills. Her non-verbal language skills are good.....However, she has a significant word-finding problem which is not improved greatly by either phonemic or semantic queuing. In a typed mode this word-finding problem is much implored." Administration of the Apraxia Screening Test did not indicate a severe apraxia problem, though it was reported that she, "has significant problems with fine-motor skills such as handwriting and typing".

A further occupational therapy assessment concluded that Gina may have motor memory problems and problems with motor planning. (At the meeting with DEAL it was agreed by the participants that these higher order motor planning problems would not effect Gina's performance on the procedures proposed to validate he facilitated communication).

Results of Family Interview

This interview revealed that Gina is fairly independent with the activities of daily life.

Of note, she demonstrated skills (opening a jar and peeling potatoes) which showed well developed neuromotor functioning.

Finally, she communicated with us by saying and gesturing "yes" and "no" and was able to name photos of members of her family.

Screening for Apraxia

Method

This consisted of asking Gina to show, "how to comb your hair", "how you drink from a cup", and "how you blow out a candle". For each question the objects were not provided and the correct action was not modelled. This is the most difficult level of request for a person with apraxia (Strub and Black, 1988).

Results

Gina responded correctly to these commands, with some imprecision in her movements showing that Gina did not have a significant apraxic problem.

Assessment for Aphasia

Throughout the assessment, Gina's ability to name people and objects were tested. She demonstrated an ability to name family members in real life and photos, to name toys and to name photos and pictures of common objects.

However, there were also many occasions when she appeared to be searching unsuccessfully for a word which was of a similar level of difficulty to those that she could name. She sometimes did produce it when given a cue however, queuing more often was of little benefit. She also occasionally said, "oh yeah" when told what the shown object was.

This evidence combined with the assessment findings of Ms Owen and Ms Campbell, suggest that Gina has limited speech which presents as word finding problem. However, whether this is due to aphasia or to developmental delay is not clear. The fact that her receptive and expressive skills, as determined by our assessment, were at similar levels would suggest that the latter is more likely.

(N.B. The possible presence of aphasia was controlled for in the testing undertaken to validate Gina's use of facilitated communication).

The report continues under the following headings: Language Comprehension, Expressive Language, Assessment of the Validity of Facilitated Communication, Result of the Controlled Validation Assessment, Message Passing Test, Results of the Message Passing Test, Outcome of Final Assessment Session in the Family Home, Intellectual Assessment, Behaviour during the Assessment. Conclusions and Recommendations:

"We make the following two major recommendations:

- 1. Because of the doubt that this assessment raises about the suitability of the facilitated communication method, that she be referred to the Microcomputer Application Centre (MAC). The goal of this would be to provide her with an augmentative communication system which will place her at her best advantage and in which she could be trained. Her ability in this assessment in naming pictures and*

recognising and matching some symbols suggests that some pictorial/symbolic method would be suitable (eg Compic). The results of our assessment and those of Ms Campbell's should be made available to hasten the work of the MAC given the time that has passed and the battery of assessments Gina has already participated in.

2. Those communicating with Gina should be advised of her limited short term auditory memory ability. This means that spoken messages should be brief, repeated and accompanied by gesture and visual cues where possible.