

Productivity inquiry into the NDIS : Submission from Broken Rites.

The purpose of this submission is to put before the Productivity Commission several issues that have become a concern to me as an advocate, a member of the organisation Broken Rites, and as a taxpayer. Some issues are based upon personal experience and observations of our members, whilst others have been brought to my own attention by legal guardians and by persons employed (in the past and at present) within the disability sector. It is telling that a number of submissions to this inquiry are being made by anonymous contributors. Such is the apparent power that some providers have within the sector.

A key objective of the Productivity Commission's endeavour is to look at possible ways for the costs of the NDIS to be contained. I note that amongst the submissions that have been made, few have come from not-for-profit companies that are, or anticipate becoming, accredited service providers within the NDIS. I find the absence of comment or suggestion for improvement from these organisations operating in the disability sector perplexing to say the least. The available evidence would point to these organisations being the largest service providers in this sector. The apparent lack of accountability and transparency by these organisations, dealing as they do with the most marginalised people in our society, is the driving point behind my submission.

The initial decision to prepare this document grew out of my experience in giving evidence to the Child Abuse Royal Commission. I prepared a submission to the Discussion Paper on Criminal Justice on behalf of Broken Rites, and was subsequently summonsed to appear as a witness. A serious matter put before the Commission was the predicted increase in risk for men living in residential "care" currently being provided by some not-for-profit contractors. A copy of the transcript of evidence is provided (Case Study #46). I point out that the Royal Commission has requested additional information and this document will be provided to it.

One of the key observations of my submission is that many of the actual and would be providers in the NDIS are the same institutions that have been called before the Child Abuse Royal Commission. They may operate under different names and legal entities in different states, and they may have changed names and morphed into newer and bigger entities, but essentially many of the key service providers in the various states are still operated by the same institutions and organisations that appeared before the Royal Commission. These organisations operate businesses entities that are service providers with government contracts. They include the Catholic Church, the Anglican Church, the Salvation Army, the Uniting Church and Wesley Mission.

Some of the organisations we have identified as worthy of further investigation operate in single states only while others operate in several states. We have chosen not to name all of these organisations at this stage, and confine our submission to of the largest service providers operating in the disability sector nationwide, St John of God Health Services and associated entities.

Efficiency and Effectiveness of Service Delivery in the Disability Sector by Not-for-Profit Organisations

Not-for-profit businesses that are operated by faith-based and charity groups are prevalent in the disability sector. This not-for-profit-related business ethos is desirable as it is a way of containing costs for persons who often have little or no capacity to earn an income and who may have to incur extraordinary costs to attain some quality of life. However, despite this perceived advantage, there are questions that must be asked.

- Are taxpayers and clients getting value-for-money services?
- Are there other ways to engage with a wider group of potential, community-linked, not-for-profit service providers other than faith based organisations?
- Are there adequate transparency and accountability requirements in respect of organisations operating in this sector?

We do not believe that these questions can be answered at present and major obstacle is the lack of real transparency across the sector. This is a critical problem in the disability area. There was the possibility that over time, proper transparency would have been achieved through the operations of the Charities and Not-for-Profits Commission (CNPC), as it was established by the Gillard government. However, this opportunity was removed as a consequence of changes made to the CNPC by the ensuing Abbott Government.

It may be argued that addressing these matters is outside of the scope of the Productivity Commission's current inquiry. However, I submit that it is within the power of the Productivity Commission to recommend an efficiency and effectiveness audit of the key providers in the disability sector. This might be carried out by the Commonwealth auditor General and I expect that this action would identify significant areas where costs could be reduced and the quality of services received by clients would be enhanced. More argument about audits is made in the next section.

We suggest that the Productivity commission might do some commercial modelling, beginning with the fundamental equation that drives every "for profit" enterprise:

$$\text{INCOME less EXPENSES} = \text{PROFITS.}$$

In the case of not-for-profits, the INCOME factor is essentially public expenditure/taxes. Since the PROFIT outcome has to be zero, in order for the equation to work EXPENSES must always rise.

This can be seen in the residential situation where, every time that the DSP is increased, the business increases daily charges made against clients without there being any change in the quantity or quality of the services being provided. In the event of a government grant being reduced in any way, it is common to see a whole component of service disappear immediately and this happens because specific staff are removed from the “coal face”. We know this to be fact because legal guardians have said told us so.

A serious obstacle to bringing about any change is the absence of real consumer power. By and large, legal guardians find such entities as Public Advocates and Disability Commissioners, to be impotent.

Business structures and governance arrangements in the disability sector.

If the Productivity Commission’s current inquiry is to stand a chance of achieving good outcomes for government and for NDIS clients, then it must reach a thorough understanding about how the sector is “managed” by these not-for-profits and also, what management arrangements might evolve as the NDIS rolls out. As an example of the size and power of “not for profit” organisations operating in the disability

and associated health sector, the organisations operating under the St John of God umbrella stand out as worthy of closer scrutiny. Without doubt, this group is the largest provider of health services in Australia, turning over more than \$1.5 billion annually. It provides services across four states and nationally employs over 14,000 employees, making it easily the largest employer in the health and disability sector. It would arguably be the largest recipient of government and taxpayer funding in Australia through a myriad of grants, fees, rental and accommodation charges, and significant other taxpayer subsidies through the various commonwealth and state taxation benefits extended to the religious and not for profit organisations.

The question might well be asked in view of the size of this organisation, at what stage does a not-for-profit organisation become a “for profit” organisation? How is an organisation of this size and importance, in such a critical public sector, able to categorises itself as a “not for profit”, and arguably able to operate outside of the normal checks and balances applicable to commercial organisations? It could be argued that transparency and accountability in this sector are not subject to the same rigorous scrutiny as commercial organisations, many of whom are a fraction of the size. A consequence of the changes made to the CNPC is the difficulty in obtaining information about Directors of not-for-profit companies. Whereas, in the case of a publicly-listed company, all

disclosed information about Directors can be found with ASIC, in the case of not-for-profits, any enquirer must trawl through the Consumer Affairs data in each jurisdiction.

The question might well be asked in view of the size of this organisation, at what stage does a not for profit organisation become a “for profit” organisation? How is an organisation of this size and importance, in such a critical public sector, able to categorise itself as a “not for profit”, and arguably able to operate outside of the normal checks and balances applicable to commercial organisations? It could be argued that transparency and accountability in this sector are not subject to the same rigorous scrutiny as commercial organisations, many of whom are a fraction of the size.

By way of background, for many years Broken Rites has engaged with men who had been placed into the “care” of religious organisations operated by religious Brothers of the Hospitaller Order of St John of God. This order had a high profile as a provider of out of home child "care", disability and health services in NSW, Victoria and in New Zealand. All of these organisations figured prominently before the Child Abuse Royal Commission.

It is not clear what happened to the entities and assets owned and operated by the St John of God Brothers. It would seem that somehow those entities entered into arrangements with the St John of God Sisters

and the marriage produced the entity that we now see as St John of God Health Services, the aforementioned behemoth in the disability sector. It is my submission that this organisation, and many others who appeared before the Royal Commission, currently operating in the disability sector and offering services under the NDIS scheme, should be subject to further investigation to ensure proper governance, accountability and transparency standards are in place. The Australian public, particularly those in the disenfranchised and marginalised disability sector, deserve no less. Documents provided to Broken Rites that detailed the operations of St John of God Services Victoria, suggested that within this religious and business entity was a governance structure where the Trustees of the Religious Order (the brothers?) owned all of the assets and St John of God Services Victoria was in fact a tenant. Men in residential "care" were not in fact clients, they were sub-tenants. These matters were raised in a submission made to the Senate Inquiry into the funding and operation of the Commonwealth–State/Territory Disability Agreement. A copy is attached. At the time, we raised our concerns about this governance arrangement as well as a number of other probity matters. None of them were ever responded to despite the Commonwealth Auditor General at the time, conducting an audit after the Senate Committee's Report was tabled. We note that St John of God Health Care has a company Board with a Board of Trustees above it. What arrangements are in place in regard to reporting and asset ownership is not known.

Rental Arrangements and Property Transactions.

We have concerns about rental arrangements and other types of property transactions are they were conducted possibly by St John of God Services but more likely by the Trustees of the religious order. In Victoria, despite the fact that government funding for Community residential Units (CRUs) was provided, the “clients” (? Sub-tenants) were still required to pay money, presumably as rent, in order to live in the CRUs . A variant of this arrangement appears to continue to this day with money taken from each person’s Disability support Pension as well as the \$90/ fortnight, Commonwealth rent subsidy.

There is another variant of this arrangement that must also be questioned. In some cases a client can inherit the parents’ estate including property. Such properties can then be operated by the not of r profit as a CRU that becomes occupied by its owner and other residents. All can be required to pay rent. Just how widespread this practise extends, is not known.

Two particular property dispersals are known to Broken Rites that are of concern. We understand that the Trustees bought the Yarraview property in 1956 for 46,000 Australian pounds and sold it in 1992 for \$2.7million. Out of the proceeds of the sale they bought a nursery in Mt Evelyn for about \$880,000. Parents have said that they were never able to find out where the rest of the money went. We understand that a similar rental arrangement operated with respect to this commercial enterprise. St

John of God Services Victoria occupied and operated the nursery as a tenant and paid rent of about \$80,000 per year to the Trustees plus an undisclosed “administration fee”. These matters are referred to in the audited accounts.

We understand that when residents in the houses worked in the Nursery, each received \$30-40/week for their work with \$10/person being recouped for transport expenses. Sometimes transport was by a bus, operated by the St John of God Services and sometimes the men were transported by taxis. We understand that the nursery freehold was later sold as a commercial business with the proceeds of this sale also going to the Trustees of the Hospitaller Order of St John of God. When St John of God Services Victoria ran the nursery as a commercial nursery and a wholesale supplier of plants etc and it would have been competing with other wholesale suppliers who were paying appropriate wages to the staff. Under the Commonwealth-funded, Supported Employment Program, that government was providing money for the employment of persons with a disability to the extent that they should receive the legislated minimum wage. The usual arrangement had the employer paying the person a low wage and this could be topped up from the Commonwealth funds that were being provided to the Supported Employment Program. This top-up could be avoided if the employer makes an application to the Industrial Relations Commission for an exemption. It is the case that St John of God

Services Victoria never applied for this exemption, although the new owners of the nursery did so make an application. We point this matter out because as a consequence of such an omission is it possible that other Commonwealth funds have been able to flow through St John of God Services Victoria and to the Hospitaller Order of St John of God. Broken Rites is providing this information as an example of how “creative” a not for profit can be.

A matter that was raised in evidence during Case study #46 is the future use of contract employees who might be working in CRUs. We suggested that some not-for-profits that are already providing residential care services within the disability sector appear to be setting up arrangements where the provider is in fact a labour-hire company. We suggested that if this is the case and such arrangements are allowed to evolve, then this will present a significant risk to clients with serious intellectual impairment. We are aware of a recent communication (?ATO) about a large increase in the numbers of persons applying for an ABN.

Another matter is the operations in some locations of family dynasties. We are aware that there are situations where numbers of related persons are working within the one not-for-profit business. In one case there are eight members of the same family! This matter is raised because it begs the question, whether a service or facility is operating to serve clients or to provide employment and therefore, whether savings are possible or money being better spent.

A KEY QUESTION IN REGARD TO THE MATTERS IDENTIFIED IS WHETHER THESE ARE COMMON OR EXCEPTIONAL PRACTICES ACROSS THE SECTOR.

Essential monitoring arrangements required for the NDIS.

If the NDIS is to operate in a proper way, with services being provided (on behalf of governments) by a whole range of accredited providers then firstly, a set of principles need to be espoused that would govern the operations of not for profits. Secondly, a timeline needs to be developed, so that within a decade there is significant uniformity in matters of governance, how services are carried out, and reporting to government.

This situation could be achieved through the following:

- Link accreditation to public liability insurance requirements
- Establish a set of National Standards – some of which would have to be mandatory
- Establish an independent accrediting authority. This would be self-funding and it would charge the providers for compulsory audits/accreditation.
- In the first six years set the interval between audits at two years, and then allow this to move to four years. The movement of a particular Not-for-Profit to the four year schedule would be dependent upon progress across the first six years. Achieving the four year status will reduce accreditation costs substantially.

- Establish a Visitors Program within the national standards
- Provide for on the spot and random checks
- Provide for a complaints mechanism for both clients and legal guardians
- Provide for penalties, possibly via insurance premiums.

ATTACHMENTS.

ROYAL COMMISSION TRANSCRIPT.

NOTE Chamley evidence begins Page 38341 approx.

ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD
SEXUAL ABUSE

Public Hearing - Case Study 46 (Day 233)

Level 17, Governor Macquarie Tower, 1 Farrer Place,
Sydney

On Monday, 28 November 2016 at 10am

Before: The Chair:

Justice Peter McClellan AM

Before Commissioners:

Justice Jennifer Ann Coate
Mr Bob Atkinson AO APM
Mr Robert Fitzgerald AM
Professor Helen Milroy
Mr Andrew Murray

SC

Counsel Assisting: Mr Jeremy Kirk
Mr David Barrow

MR KIRK: Your Honours and Commissioners, as I outlined in opening, over the course of the week we propose to hear from a number of representatives of survivor groups and groups who have a close interest in these issues.

I now propose to call the first such witness, and it is Dr Wayne Chamley from the group Broken Rites.

(Mr Kirk) .28/11/2016 (233) 23831 [FAA]
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<WAYNE CHAMLEY, affirmed:
[12.51pm]

<EXAMINATION BY MR KIRK:

MR KIRK:

Q. Sir, I wonder if you could begin just by outlining for the benefit of the Commission what your role is in Broken Rites and a brief reminder of what role Broken Rites plays?

A. Yes, look, I'm a member of this organisation, Broken Rites. We see ourselves as an independent group of advocates. We've never been very big, only six to seven to eight people, and we've been on this case for 23 years. We don't have an office or anything. We simply work by telephones, emails and sometimes meeting around coffee shops to plan the next stage.

For my own part, I'd say all of us have had the experience of abuse ourselves in various forms, and we're led by this amazing woman, Christine McIsaac, who runs it all from her kitchen table.

Over the years, we've probably encountered 3,000 to 4,000 phone calls making allegations about new offenders and then serial offenders, and our response is always to make the caller aware that in order for us to be of assistance, we have to maintain contact and they have to make a decision themselves about that. We don't pursue them. We let them start to build up the trust in us.

Q. Through all those contacts and all those years that you've referred to, is it fair to say that you've had some reasonable degree of interaction with the criminal justice system dealing with child sexual abuse matters?

A. Oh, absolutely. Absolutely.

Q. You have prepared a submission on behalf of Broken Rites in response to the Commission's Criminal Justice Consultation Paper?

A. Mmm.

Q. Thank you. Now, I think you have a document you particularly want to draw the Commission's attention to, which hopefully has now been put on the system?

A. Yes, there's the two pages, mmm.

Q. It's a two-page document, which is separate from your submission?

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A. Yes.

Q. Now, I know you want to speak to this, so perhaps you could briefly address it for the benefit of the Commissioners?

A. Yes. What you've been hearing this morning from these people that preceded me is their experience of what happened to them and what processes they went through, but I want to look at it in an abstract, to get away from the emotion and look at how the human develops as an entity, as an emotional being, as often a member of a group. And I've used the word "persona". Some people use the word "spirit". I think that has the wrong connotations. The parliamentarians at times use the word "ticker". Some people would use the word "psyche". I think that's too restricted.

For me, the Persona is what develops - it's the experience of being and becoming a being, and it envelopes everything that happens to us from the day we're born. What I see with so many of these people is they go through these two phases - we all go through this - which are linked to how the human brain develops. The first phase is the first 14 years of life, and that's when the childhood sexual abuse happens. The second phase is the late adolescence to adult life.

If there are interruptions in this development of the persona, it completely truncates the person. Sexual abuse, extreme physical abuse, extreme states of fear, from tsunamis and whatever - these are the big-hit experiences and they live with the person for the rest of their life. So that's the setting of it.

In a child that develops in a healthy way, he or she likely goes on a continuum that doesn't stop. It starts, it seems to me, with the baby in the cradle looking up to its mother, looking entirely into the face of its mother, in the bath looking entirely into the face of the person bathing it. It's completely at the centre, and it's looking out, and all of its experiences go through that form. The judge who talks to the learned society is at

the centre talking out. The musician doing a performance is at the centre. It's this constant process of experience and enjoyment and engagement where they're at the centre. And that doesn't happen in these people, because they strike an

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event in their childhood which completely stops that persona and they have to start again. They're behind for the rest of their life.

Q. Do you think that that can have an effect on the ability of these people to give evidence about events back in their childhood?

A. Absolutely. Absolutely, because as the brain develops, this first point of - the limbic system, it's the part of the brain behind the eyes - it develops to control the expression of emotion and the primary regulation of emotion and, the second thing, the ability to form memory. When these abuses occur, they can no longer form memory as they used to, and so it's no surprise to me that they don't report for 20 years - because they've got to redevelop a persona and be able to report. They're completely shot.

Q. I know you've been sitting here in the Commission. We've heard about the Rafferty example and we've heard the testimony of [FAB] this morning and we've heard what Mr Lungo, the prosecutor, said. Is that sort of experience of having difficulty differentiating particular events over a course of abuse relatively common, in your experience?

A. It's impossible for them. Time after time after time. It is impossible. We spend hours with them trying to get their story and then see if we can validate it with access to government files if they were in institutions or whatever. It's totally impossible for them, because they've lost so much of their ability to form memory.

They begin to get it back, but they're way behind and it takes years. I don't think the police and the legal profession and the judges have understood this enough, that this phenomenon happens. So could I go to these two pages that I want to project?

Q. We can briefly, yes.

A. Yes, yes. The first one is the one about the persona's experience of risk. So the child starts doing things, learning things, going to school, et cetera. All of us can go through the encounter of risk in our development.

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It seems to me that the four factors that determine how the child will react to those risks are the nature of the experience, the duration of the encounter, the severity of the encounter if it's negative, and the sensitivity of the particular child. Some people will react more than others. I have met adults who are incredibly resilient, despite what they had to endure.

But the big thing, then, is to look at the next - let's go down the page - the risk types and some description of some of them and what they are. I use with patients, who I just try to educate about their experience, that they've encountered NAILS, experiences of Neglect, experiences of Abuse, experiences of Insecurity, experiences of Loss and States of fear that are prolonged - the five NAILS. When they're talking to their psychiatrists, they need to go through these experiences of the five NAILS.

And I just give some examples. So you can see with the child, institutional upbringing, dysfunctional parents, toxic. The abuses - sexual abuse, psychological abuse, schoolyard bullying, cyber bullying. Insecurities, all of the above, parental insistence on the child performing well at school - well, he's got no hope. And on we go, the losses. And then the states of fear.

If there's a serial predator in the child's life, they are in a permanent state of fear waiting for the next one. And it's not understood. That's the problem.

The fascinating thing with me is that the adult ones are exactly the same. They just take different forms. I see domestic violence as just another form of abuse in the adult.

MR KIRK: Your Honour, I might tender that document so that it's in the records of the Commission, if I may?

THE CHAIR: Yes. Do we have it?

MR KIRK: We do. I think we have been given a hard copy and it's now on the system.

THE WITNESS: Yes, there are hard copies there.

THE CHAIR: Right. And I think that table is incorporated in the submission?

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THE WITNESS: It was in the submission, but I just tried to bring it all together, mmm.

THE CHAIR: Does the document give us more than is in the submission?

MR KIRK: Q. I think it gives us a little more, doesn't it?

A. No, no, it's lifted exactly from the --

Q. In that case, we need not tender it.

A. It's just two bits of the document put on the same page.

MR KIRK: We don't need to tender it, then.

THE CHAIR: No, we don't.

MR KIRK: Q. Thank you, Dr Chamley. Now, I just want to pick up a few particular points that you raise in your submission, if I may.

A. Yes.

THE CHAIR: Do you think we might take lunch and come back to this, or what do you think?

MR KIRK: I might be another five minutes or so, your Honour.

Q. On page 5 of your submission, under the heading "Third party offences", you refer to what you raise as a major concern in relation to the NDIS, that is, the National Disability Insurance Scheme.

A. Yes.

Q. Would you be able to explain briefly what your concern is about the NDIS and how that might affect the need for third party offences?

A. Our concern with the NDIS, from what we see rolling out, is that in 25 years' time we'll have another Royal Commission. What appears to us to be going on, because it's not being looked at - it's okay at the moment, because at the moment the NDIS is evolving as a joint arrangement between the state agencies and the Commonwealth, but from 2019 the Commonwealth takes over and there will be the sort of various levels.

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There's the big players getting the provider contracts, and a number of them are institutions that have been brought before this Commission - the Salvation Army, Anglicare, Catholic social work, da-da-da-da. They're all there. They appear to be doing it properly.

You've got a second level that are not religious; they're just business entities. To me, they're evolving to be labour hire companies where they set themselves up to use contract staff and no-one will know what is going on, and these people, because of their intellectual impairment, are not going to be able to articulate it, and how is some bureaucrat in Canberra going to find that out?

Q. Can I infer that you suggest that where there was to be the risk of prosecution of the institution itself or the company itself, that may focus minds rather more on the need to ensure that proper safety mechanisms are put in place to prevent abuse?

A. Well, see, I wonder if the company can establish itself in a way that it is at no risk, because it's individual providers carrying out the service.

Q. I see.

A. I'm just amazed that this is allowed to go on, given everything that we've been through.

Q. There are two other points I want to raise with you from your submission. On page 6, in the second paragraph, you refer to the conduct of joint trials being a major problem for survivors, and you say:
... we consider it to be a manipulation of legal process.

Q. Can you just explain why you see it as a manipulation of legal process?

A. Yes, let me just see it. It's the sixth page, the second paragraph, under "Submission".

A. How does it start? Does it start -

Q. It's on the screen, at the top of the screen, do you see, Dr Chamley?

A. Yes.

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Q. Do you see that first sentence?

A. Yes. Well, what we see happening is that the police are engaging with all the potential witnesses to build up a case. I don't understand what happens, but the detectives really get in there and they're no doubt looking at files about the person in care and where they were and all that sort of thing, and looking at the statements given by the persons, and there's an expectation by these potential witnesses that there's going to be a mega-trial and they're all going to be together and this predator is going to take his chances before the courts.

And all of a sudden they're told, "well, no, that's not happening. We're now going to have nine trials", and they're sitting out there for 12 and 14 months wondering what the hell is going on here. With any engagement with another authority figure, their stress levels are

ballistic anyway, and then they're sitting out there for months after months. There's a suppression order, the police can't tell them anything, and they just go into meltdown.

Q. Hence your reference to destroying trust and causing extreme stress?

A. They absolutely go into meltdown.

Q. The other thing I want to ask you about, finally, is in the next paragraph, where you refer to: Collection of pre-trial evidence would probably be a major advance for indigenous people in remote locations

... Could you expand on that a little?

A. It seems to me this whole stress factor and trusting is exacerbated in indigenous situations, because in order to work with these professional people, they have to leave their community and come to a city or a town. Just leaving the community is the biggest problem, and then they've got to face all this.

If the process was able to go to them, they'd feel more secure, but I expect we'd get better evidence, because half their problem in presenting downtown is dealing with the stress of their separation. We'd actually get better evidence.

MR KIRK: Thank you, Dr Chamley. They were all the questions I wanted to ask.

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THE CHAIR: Does anyone else have any questions? No.

Thank you, Dr Chamley. You're excused.

THE WITNESS: Thank you. So am I coming back here or is that the end of it?

MR KIRK: No, I think that's all the questions I wanted to ask.

THE WITNESS: Oh, because I did want to just put up that second page - there is another - of those two pages that I asked to be

THE CHAIR: Could we have the second page --

THE WITNESS: Yes, it exists there. I was told that it would be presented. It's called "The consequences for the victim". It follows on from the first page.

MR KIRK: Q. Is that, again, extracted from your submission?

A. No, it's not. I just brought a lot of things together again.

THE CHAIR: We need that. Can we put it on the screen? Do you have a copy there?

MR KIRK: Q. It's on the screen now.

A. Okay.

Q. Is there anything in particular you want to --

A. I want to go through these points, so people understand it.

THE CHAIR: Q. Yes, sure.

A. When the child is sexually abused and it "recovers", if it can, the object of the new persona developing is to get a stability of identity. That's the primary goal of developing a new persona. In some people, the first eight years, or whatever, have been lost totally. They have to start again. Getting a stability of identity is the key thing.

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As this process starts happening and they get older they develop what is identified as the dialectic. They're the next two dot points. One side of the persona wants love, respect, inclusion, all the things that we all enjoy. The other side is destroying any chance of that happening, through behaviours, anti-social behaviours, self-harming, rebellion, drug use, massive swings in mood. So these two things are competing.

Let's go on. If the survivor becomes identified as a potential witness, well, as I see it, they can have the Goldilocks experience. In their teenage years, because of their behaviours, they are expelled from school, they're into minor crime, overuse of alcohol, speeding cars, stealing cars, and society responds by these authority figures fronting up to try to correct all this. They're the police, lawyers, social workers, magistrates, judges. They're all instrumental in deciding that they'll go to gaol, that they'll be expelled and whatever.

Decades later, after the sexual abuse is reported, the same authority figures turn up again, sometimes in uniform on the first encounter, banging on the front door, and what it's all about is the authority figures seeking the survivor's assistance now to bring about a successful prosecution. It's a total contradiction to that person, a total contradiction.

What it means is that the police and legal people really - there's got to be a huge amount of training about these processes and an understanding of what they represent to this person, because they represent authority, and the person has had a lifetime of trying to trust.

I heard a beautiful description of it the other day, and I wrote it down. Bear with me for one minute. Sorry, bear with me. Here it is.

The person looks upon every situation and every interaction through the lens of their distortion.

They are so distorted and they are so fearful and they are so anxious, and they're wondering, "where is this taking me and I've got no control." Their way of controlling gets back to the experience of the baby. They control by staying outside. "At least I won't lose it." And I give the case of the person in the paper, the whiskey Au Go Go bomber, who had a history of life in institutions, ended up - the last one was that notorious Grafton home. One wonders how many NAILS did he encounter? Then at 17 he's out in society, years of minor

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crime and whatever, going to gaol, coming out of gaol.

It would be interpreted, I think, by some forensic psychiatrists now, given how it's understood, what he was always trying to do was to commit crime to get back in gaol because that was the only place where he could stabilise his behaviours, with regimentation, and it didn't work well enough, so he decided, "I'll go for the big one. I'll bomb a place and then they'll put me away for life."

That's not the same as, say, Martin Bryant. It's not a phenomenon like Martin Bryant. This is a different forensic pattern of behaviour and crime.

MR KIRK: I think I had better tender that document, your Honour.

EXHIBIT #46-003 DR CHAMLEY'S TWO-PAGE DOCUMENT

MR KIRK: I have nothing further.

THE CHAIR: Thank you, Dr Chamley. Of course everyone in the Commission knows you and respects greatly the work

that you've done over now many years. You're now excused, and we'll take lunch.

Submission to the Community Affairs References Committee of Inquiry into the Funding and Operation of the Commonwealth State/Territory Disability Agreement.

Financial arrangements of the Hospitaller Order of St John of God and men in Victoria with intellectual disability and receiving a pension from the Commonwealth government.

This submission is being made to inform Committee members aware of a situation that we believe was able to develop within the provisions of a Commonwealth – State Disability Agreement involving the State of Victoria. Part of the overall story is now historical. Even so, if the analysis and interpretation of events and administrative arrangements is correct, then a substantial amount of Commonwealth funding (taxpayers contributions) passed either directly or via a government in Victoria to the Trustees of a religious order that we consider not a fit and proper one to be a major service provider to government. The submission raises serious questions about the way these agreements and transactions were negotiated and followed through and there appears to have been an instance of very poor public administration on the part of the Commonwealth government department(s) at the time.

Another part of the story overall appears to be ongoing. We suspect that a group of men who are in the “care” of St John of God Services, Victoria, have been subject to financial exploitation for some years and furthermore this situation probably continues today.

In relation to this inquiry by Community Affairs References Committee, we consider that the matters disclosed and the questions raised can be considered within Terms of Reference (a) and (c).

In respect of (a), we believe that the information and documents provided illustrate that one effect of a previous Commonwealth/State Disability Agreement was to enable the Trustees of a religious order within the Catholic Church in Australia to acquire monies for properties that were already owned by those same Trustees and, to set up a financial scam through a landlord-tenant arrangement. In respect of (c) we believe that the Committee must look at the information that we have provided about deductions from Commonwealth pensions provided to men with intellectual disability who are in the “care” of a not-for-profit company set up in Victoria by the same Trustees.

We ask the Committee to then inquire as to whether other, similar situations might be happening for a larger number of vulnerable, ageing and disabled people who are in various care-arrangements across the country. We sincerely hope that this is not the case. Our pessimism is brought about by what we see as poor and sometimes superficial public administration on the part of both Commonwealth and state agencies in their dealing with NGOs that are service providers and working with vulnerable people.

Background.

Over the past six years or so, Broken Rites has been contacted from time to time by men who had spent their childhood in one or both of two institutions that were run in Victoria by the Hospitaller Order of St John of God. These institutions were a Home for boys at Cheltenham and a Farm in Lilydale called "Yarraview" which became a facility for the accommodation of about 50 or so teenage boys and young men with various forms of intellectual disability. Around 1958 the Home at Cheltenham was closed down and the property was sold to the Myer retailing business. In the sixties the Myer-Southland retail shopping complex. Over time boys at Cheltenham (orphans, state wards, abandoned children) were moved to "Yarraview" to join the existing community of boys and men with intellectual disability.

We received many stories from former residents of the Cheltenham Home about the operations there of a ring of paedophiles, most of whom were Brothers in the Order. Two male employees at the farm were also alleged to be paedophiles. We also learned that some of the religious paedophiles at Cheltenham visited "Yarraview" on a regular basis.

A second group of callers to Broken Rites have been parents and relatives of some of the intellectually disabled people who were at "Yarraview". They too were making complaints and allegations about the activities of paedophiles operating at the Lilydale farm. Again the alleged offenders were Brothers in the Order. From our records of interviews etc we now understand that there would have been a religious community of about 30 brothers located across the two homes and at least 12 (and possibly 15) were sexually abusing the residents over at least 2-3 decades. These offences were occurring up to the mid 1980s. In the mid-nineties the Trustees of the Hospitaller Order of St John of God settled out of court in a class action brought against them by at least thirty of the men who had made allegations about sexual abuse.

Another set complaints from parents and legal guardians dealt with financial matters and the running of "Yarraview". There was nothing specific. Usually parents

recounted how some were giving substantial gifts to the Order by way of money, property and family estates. Despite this situation, nothing seemed to ever change in respect of the quality and comfort of the facility and these parents questioned where all of their contributions were going?

We have information that suggests that the Hospitaller Order of St John of God and the “not for profit” company – St John of God Services, Victoria, have been and may be still are engaged in a fraud of the Commonwealth and possibly the Victorian government. As well we believe that these organisations have been, and continue to take money unlawfully from the now adult men that they receive government grants to care for. Many of these same men are the ones that were sexually abused in their earlier lives. The religious Order now acknowledges that this abuse did happen. It is our firm view that, given everything that has gone on and continues to be allowed to go on, neither organisation is a fit and proper one to be a service provider.

Issue No.1 – Purchase of houses using Commonwealth funds.

Our analysis of the financial information suggests that the Order has been operating a financial scam for some years. A key arrangement in the scam appears to be the relationship between the Trustees of the Hospitaller Order of St John of God (NSW) – the religious Order and St John of God Services (Victoria) which is a Victorian-registered company limited by guarantee. St John of God Services Victoria is a major provider of accommodation, training and respite services for the intellectually disabled and on behalf of the Government of Victoria. For this purpose it has been receiving funds in the form of grants from the government of Victoria and possibly from the Commonwealth government. Whether the Order provides services on behalf of other jurisdictions in other States is not known to us.

The closure and sale of the “Yarraview” property is linked to the setting up of this financial scam and the movement of intellectually disabled residents off the farm and into residential accommodation in a number of outer suburbs around Melbourne.

An initial trigger to this opportunity was the awarding of a grant in September 1988 from the Commonwealth department of Community Services and Health to St. John of God Yarraview Inc. by **(Document 1)**. The document indicated that this grant of \$488,000 was to cover a range of things including the purchase of three houses that would be used to provide residential care for the **last-remaining 12 residents with intellectual disabilities** and who were on the farm.

Another key step appears to be the negotiation completed in June 1992 of a Commonwealth/State Disability Agreement **(Document 2)**. This agreement appears to be the mechanism by means of which the Government of Victoria took over responsibility for a range of accommodation services including some involving the Order of St John of God. Item C in **Document 2** identifies six houses either being operated or planned to be operated by St. John of God Yarraview.

It should be remembered that at the time that these financial arrangements between government and a charity/service provider were put into place, governments across Australia were implementing a broad policy of de-institutionalisation in relation to services for the mentally ill, disability services and some aspects of correctional services

Clause 16 (1) of the Agreement talks about equity and it suggests to us that the Commonwealth maintained a continuing interest given that it was providing about 80% of the valuation of the properties. With the Commonwealth government meeting 80% of the valuation, the remaining 20% may have come from either the Government of Victoria or from the Trustees of the Hospitaller Order. This detail is not known to us.

The two documents indicate that government provided substantial monies so that the St John of God Order could purchase and or set up suburban residential accommodation for a number of men with intellectual disability who, up to this time had been cared for and accommodated on the Lillydale farm. This movement of residents off the Lilydale farm then allowed the Order to sell the property for \$2.4 million. The property now exists as the Yarraview Country Club, an up-market golfing complex.

Who owns the properties?

We have always believed that the Trustees of the Hospitaller Order must have been the owners of the property because of the rental arrangement that has been able to be set up. This is the existing arrangement where the Trustees are the landlord and the company appears to be the tenant. However we have always been curious as to how this could be so given that for the six properties that are identified at least, the Commonwealth government appears to claim an 80% interest.

Title searches that were done for two of the properties, No.10 Songbird Ave, Chirnside Park and No.17, The Eyrie, Lilydale. The searches indicated two things. The Trustees for the Hospitaller Order of St John of God, Yarraview Inc., own these two properties and furthermore the Trustees already owned them at the time that Commonwealth government funds were provided for the purpose of the Trustees purchasing the same properties. The historical ownership arrangements may be the same for all of the properties and this could be revealed by further title searches.

We believe that the following scenario is very possible. Apart from acquiring the Lillydale farm, the Trustees over the years were purchasing and in some cases being given houses that they then operated as rental properties. When the government's policy position was announced the Order saw that it could extend its operations to

residential care operations by getting rid of its tenants, putting other intellectually disabled men into the houses and taking the money on offer from government. Thus it would have been able to make a capital gain. Alternatively it may have read the climate of government policy at the time (i.e. to de-institutionalise persons with either mental illness or intellectual disability) and it realised that it could get government money for all or part of a service that it was already providing

Issue No. 2 - *Timing of the purchases.*

The table in **Document 1** lists as an “evidence measure” the purchase and occupancy of the three houses by 30/9/89. If the money granted in 1988 was for the purchase of the three houses to accommodate the remaining 12 residents on the farm what was then proposed as the funding need prior to 1992? Presumably all of the men were by this time already in residential accommodation

Issue No 3 - *The rental arrangements for the current tenants.*

Document 3 is the Financial Report to 30 June 2001 for St John of God Services Victoria. It shows that although the Victorian operation provides accommodation services and care to people with intellectual disability, it appears not to own the properties which these people are housed. It is suspected that the bulk of the “property, plant and equipment” covers motor vehicles and the like.

It appears that because the Trustees of the Hospitaller Order of St John of God own the houses, the Order has been able to set itself up as a landlord with St John of God

Services Victoria being the tenant. On first glance one might say that this is OK. Now enter the residents with intellectual disability. It is understood that each of these people receives some type of Commonwealth Disability Pension. At the time we investigated this situation about two years ago, a pension of this sort provided approximately \$440 per fortnight to the person.

We understand that two major deductions are taken each fortnight from each of the resident's pension. St John of God Services Vic. bills each resident for the two amounts:

- Payment for **RENT** and **ADMINISTRATION**. Up until a year ago this amount was \$160. Last year we understand that the rents were reduced by about \$25 per fortnight.
- Payment (\$175?) for living costs. These include the house account (FOOD ETC), utilities and **maintenance of the house**.

Thus if a resident was receiving say \$440/ fortnight in his Commonwealth pension, he is paying out \$325 of it (approx 75%) to St John of God Services Vic which is in turn paying the Hospitaller Order at least \$160/ resident/ fortnight for the rent of the house.

As already indicated, under the Commonwealth/State agreement, the Commonwealth has already provided funds that give it 80% equity in each house. If the Government of Victoria did in fact provide the rest of the funds, then the residents have been and are still paying rent to stay in houses that government has already purchased for them to use. **Furthermore the landlord meets no maintenance costs!**

The scale of this rip off could be substantial. The number of current residents is not known although it is at least 30 and possibly as high as 50-60. If say the average

number of residents over a ten-year period was 40 men, then the rental income going to the Order would be about \$1.664 million.

There is a second aspect to this apparent scam; it is the scale of the rentals that are charged. A visit to one house at No. 17 The Eyrie, Lillydale indicated at the time that it was clean, comfortable although very basic. At the time, five men with intellectual disability were living in the house. The monthly rental income would have amounted to about \$1600. These houses are in the outer suburbs of Melbourne where rents are in the mid to lower range for Melbourne. At the time of a visit to the house, a check with a local Real Estate Agent indicated that an average rental for such house in such an area would be in the range \$800-1000 per 4 weeks.

The information and the documents that we are submitting suggest that there has been a serious failure in the administration of at least one Commonwealth-State Disability Agreement. Part of this failure must be attributed to a deficiency on the part of the relevant Commonwealth Government Department. We do not rule out the possibility that one or more relevant agencies in within the Government of Victoria may have been deficient also and it is very possible that the respective responsibilities of the two jurisdictions was not clear at the time.

Whether the consequences of this failure are restricted to only one service provider or whether a number of service providers have been involved in similar apparent scams, is not know to us. It is a matter that Committee members may need to make further inquiries about.

The most disturbing feature now, is the fact that a group of men in Victoria may still be being ripped off by the service provider who is contracted to provide for their care. We are aware of actions having been taken with both the State and Commonwealth government ministers to no avail. In November 1999 two members of Broken Rites met with the then Minister for Community Services, Ms Christine Campbell MP about these matters. We were surprised that this Minister was not prepared to follow up the matters in any way. Copies of correspondence between Broken Rites and Minister Campbell's office is

provided as Documents 4 and 5. We are also aware that questions on notice have been put to two successive ministers with the portfolio responsibility (Senators Amanda Vanstone and Kay Patterson). We consider that the responses from each of these ministers at the time to be unsatisfactory.

Matters that need to be explained.

Broken Rites is of the opinion that there remain several questions that need to be properly considered and fully answered. They include the following:

- In entering the 1992 agreement, did the Commonwealth government believe that it was providing moneys for the purchase and fitting out of additional houses?
- If the relevant department believes that the Commonwealth's interest is being maintained, how does this come about when the Commonwealth of Australia does not appear on the titles of at least two of the properties?
- Why are the residents of these houses paying excessive commercial rents to live in houses that were supposed to have been purchased with funds provided from the Commonwealth government through a previous Commonwealth-State Disability Agreement?
- For how long have these rental arrangements been in place and when did the relevant departments (Commonwealth and/or State) first know of them?
- If the Commonwealth government has provided 80% of the costs to provide for the accommodation of these men with intellectual disability, how can the charging of full rent and at such high rates be justified?
- If the rental arrangements cannot be justified, will the Trustees of the Hospitaller Order of St John of God be directed to make restitution of these moneys to the residents?
- How does the responsible Commonwealth department know that similar rental arrangements (or some other forms of financial scam) have not been put in place by other service providers either within Victoria or elsewhere?
- If that Commonwealth department does not know the answer to the question above, does it intend to find out, perhaps using the services of the Commonwealth Auditor General or the Federal Police?

Prepared by –

Dr Wayne Chamley on behalf of Broken Rites.