
TRANSCRIPT OF PROCEEDINGS

COMMISSION OF INQUIRY INTO THE TASMANIAN GOVERNMENT'S RESPONSES TO CHILD SEXUAL ABUSE IN INSTITUTIONAL SETTINGS

At Kannenner Room, Mövenpick Hotel
28 Elizabeth Street, Hobart

BEFORE:

The Honourable M. Neave AO (President and Commissioner)
Professor L. Bromfield (Commissioner)
The Honourable R. Benjamin AM (Commissioner)

On 18 August 2022 at 10.09am

(Day 25)

PRESIDENT NEAVE: Good morning, everybody. I'd like to take the opportunity to acknowledge and pay our respects to the Tasmanian Aboriginal people as the traditional and original owners and continuing custodians of this land, and to acknowledge elders past and present. We celebrate the stories, culture and traditions of Aboriginal and Torres Strait Islander elders of all communities who live and work on this land.

Before we start, we also want to acknowledge all victim-survivors of child sexual abuse. We recognise the profound and lasting harm caused by the sexual violation of a child and the hurt and sense of betrayal that is experienced by children and their families when child sexual abuse is not adequately or appropriately prevented, recognised and responded to with action and empathy.

We acknowledge the strength and determination of those parents and others in seeking to make the world a safer place for all children.

Before we come to Counsel Assisting's opening address I'd like to speak to the orders that we have to make in advance of this hearing. During previous hearings I explained that it will sometimes be necessary for the Commission to make an order which restricts the publication of certain information.

The Commission is committed to being open and transparent, respecting the preferences of victim-survivors, and considering the impact evidenced from these hearings may have on other investigations, legal proceedings and the wider community.

This week and next the hearings are focused on a particular institutional setting, namely Youth Justice, and the Ashley Youth Detention Centre. During this week the evidence will explore the conduct of a range of people. In order to protect the identity of certain people the Commission has decided to make a restricted publication order.

The Commission makes this order because it is satisfied that the public interest in the reporting on the identities of certain people who may be discussed during this hearing is outweighed by the legal and privacy considerations.

I will now briefly explain how the order will work. The order will apply for the duration of the hearing this week and next week. The order contemplates the use of pseudonyms in relation to a number of people who will give evidence. Any information in relation to the identity of those people must be kept confidential.

This means that anyone who watches or reads the information given by these witnesses must not share any information which may identify the people who will be referred to by the following names: Simon, Warren, Jane, Eve, Alysha, Max, Fred, Erin or Charlotte.

This information is not limited to their real names and may include other information which may identify them, such as where they live or work.

There are also a large number of other individuals who may be referred to during the evidence during the hearings this week and next week. Some of them were children who were detained at Ashley Youth Detention Centre, while others are people who have worked there.

The order contemplates the use of pseudonyms in relation to these people as well. This means that anyone who watches or reads the information given during these hearings also must not share any information which may identify the individuals who are listed in the schedule attached to the order. Again, this information is not limited to their real names and may include other information which may identify them, such as where they live or work.

I make the order which will now be published. I encourage any journalist wishing to report on this hearing to discuss the scope of the order with the Commission's media liaison officer. A copy of the order will be placed outside the hearing room and is available to anyone who needs a copy.

Thank you. Ms Ellyard.

MS ELLYARD: Thank you, Commissioners, and good morning. In the hearings this week and next I appear with my learned leader, Ms Bennett SC, and with my learned friends, Ms Norton, Ms Darcey and Ms Rhodes to assist you by calling

evidence about the ways in which allegations of child sexual abuse at the Ashley Youth Detention Centre have been responded to by the Department of Communities.

I would like to begin by paying my respects to the traditional and original owners of this land, the Muwinina people. I pay my respect to those who have passed before us and acknowledge today's Aboriginal people of Tasmania who are the custodians of this land.

The Ashley Youth Detention Centre is Tasmania's only place of Youth Detention. Late last year the government announced that it would close in three years. As this hearing opens, there continue to be young people detained there.

The Commission has heard through its work in the lead-up to this hearing about both past and recent practices and responses that are of concern; all of these have implications for whether the community can presently be satisfied that children who are presently detained in Ashley are safe from the risk of sexual abuse.

It's important to note the role that Ashley plays in the Youth Justice System in Tasmania. In Tasmania, when children and young people are over the age of 10, although that's soon to be raised to 14, and are charged with a crime they may be placed on an order to be supervised in the community or in detention facilities.

As in other Australian jurisdictions, Tasmania has a preference that children and young people should be placed on orders in the community wherever possible with detention seen as an option of last resort.

When placed on a custodial sentence or if refused bail and placed on remand, children and young people are currently placed at the Ashley Youth Detention Centre. The facility can accommodate up to 51 children and young people across five units but the number of residents housed at any one time is generally low but in the past years it's generally been between 10 and 15 people.

Recent statistics indicate that in 2020 and 2021 on an average day there were a total of 118 Tasmanian children and young people aged 10 or over who were under juvenile justice supervisions, and 8 per cent of those were in

detention at Ashley. Of those who were detained, 71 per cent of them weren't sentenced, they were either awaiting the outcome of a court matter or they were not yet sentenced having pleaded guilty.

The median length of a completed period of detention in Tasmania is 18 days. Similar to other jurisdictions, there are three times as many males as females engaged in Youth Justice, and Aboriginal and Torres Strait Islander people make up a third of people under supervision orders and are over-represented as well in the number of children in detention.

Thinking about the cohort of children in Ashley, the Commission has heard in earlier evidence that children who find themselves in the Youth Justice System or in Youth Detention are overwhelmingly children who have experienced a background of trauma and disadvantage. Prior maltreatment not only affects children and young people's emotional and psychological wellbeing but it also increases their risk of sexual victimisation and assault once they are in detention.

It's trite to note that children who are placed in detention are in the care of the state. As we've noted, many children in Ashley are on remand and have not yet been found guilty of a crime, but even where they have been found guilty and are sentenced the state has an obligation to keep them safe while they're in detention and to treat them in a way which promotes their rehabilitation.

It's clear that some of these children present with very complex behaviours and needs, some pose a risk to themselves or to others, they're very challenging to manage. The Commission's received evidence that some of them pose risks to other children and some of them have been violent towards staff. There can be no doubt that meeting the needs of the cohort of children in Youth Detention is a very complicated job and one with which many jurisdictions around Australia may struggle.

This group of children requires a trauma-informed and rehabilitation-focused response. The evidence over the next seven days will suggest that many in Ashley have not been receiving it, despite many recommendations for reform over the last two decades and multiple reports provided to government which have drawn attention to gaps and concerns.

In its earlier hearing weeks the Commission has been concerned to investigate institutions, like schools and hospitals, into which sexual predators have been able to enter. The focus has been on how the institution was able to identify the risk of abuse and respond to abuse where it occurred. In those earlier case studies there was an analysis of how and where systems broke down and enabled predators to enter and abuse to occur. There was no suggestion in those earlier hearings that the whole institution was itself of its nature a threat to the safety of children.

The coming days of hearings are different. In considering child sexual abuse at the Ashley Youth Detention Centre we're considering much more than the way in which an institution responds to isolated incidences of offence. We're considering much more than gaps in policy or deficiencies in practices that have permitted a few abusers to enter an otherwise safe institution.

A review of Ashley's history over the past two decades invites the possibility of a finding that Ashley the institution is itself abusive, it is inherently unsafe for children and it has defeated every attempt thus far that has been made to make it safer.

Rather than it being about monsters who have been able to enter an institution which was otherwise serving the interests of children, here you may find that it's Ashley that's the monster.

While the primary focus is Ashley as an institution, at this stage we cannot rule out the possibility that the evidence might also support findings of misconduct in relation to individuals, and under your Act, Commissioners, it's relevant to note that misconduct is defined as:

> *Conduct by a person that could reasonably be considered likely to result in criminal charge, civil liability, disciplinary proceedings or other legal proceedings.*

We cannot advise you at this stage that a finding of misconduct will be open to you, we'll carry out a rigorous and fair examination of the evidence that is available to you.

A partial explanation for why Ashley, it seems, has been able to perpetuate itself as a toxic and damaging institution can be found in its origins. Before Ashley was a Youth Detention Centre it was a boys' home. A large number of claims have been made by former residents of the Ashley Boys' Home to redress schemes alleging physical and sexual abuse when they lived at the home. Those claims and that time period are beyond the scope of this Commission's work, but we acknowledge those who have come forward to tell their stories from those earlier days and who still live with the impact of the abuse that they suffered.

It's clear from the evidence that we have received and from the large number of those claims which have been made under various schemes to the state that practices in the former Ashley Boys' Home were punitive and violent and that some children were sexually and physically abused.

The Ashley Youth Detention Centre operates on the same land as the former Ashley Boys Home. A number of staff from the boys' home transferred to work at the detention centre once it started and have remained working there for many years since.

The evidence and material available to the Commission, including a number of reports and reviews conducted over the last two decades, invites the conclusion that some of the practices and culture of the boys' home were incorporated from the earliest days into the culture and practices of the detention centre; not only because the detention centre took over the buildings, but also because of the engagement of staff previously engaged at the boys' home, some of whom, as I have noted, still work at Ashley or did until very recently.

When Ashley became a Youth Detention Centre in 1999 that change coincided with the introduction of the Youth Justice Act and a changing of responsibility for older young offenders. Prior to the Act youths aged 16 and 17 were held at Risdon Prison. After the Act came into effect they were placed at Ashley. Their more challenging behaviours were not able to be dealt with by staff from the boys' home who had remained on staff but weren't prison guards and didn't know how to run a prison, and so adult prison staff were brought in to help. From the earliest period then it seems that this approach solidified a

culture of violence, brutality and no consideration for rehabilitation or therapeutic responses to children.

Reports written about Ashley as early as 2002 noted that Ashley was not staffed in a way which permitted it to respond to the complex needs of the children who were detained there. Although as a Youth Detention Centre it was intended to operate with the rehabilitative focus of the Youth Justice Act, it was increasingly staffed with a combination of former boys' home employees, and prison guards and then later security guards. These workers weren't trained in youth work and it appears from the earliest time the culture and practices of Ashley have fallen short of what the Youth Justice Act intended and what the rights of the detainees would have required.

Children at Ashley have always been children from a disadvantaged cohort with multiple risk factors such as unstable home environments, being victims of physical or sexual abuse, lack of education, cognitive issues, disabilities and homelessness. However, it appears that over time, whilst the rate of young people in detention has decreased through the use of diversion practices, recidivism rates for those who enter prison remain high. Some detainees come into Ashley with serious offending and behavioural issues because diversion hasn't worked and rehabilitation hasn't worked, and that means over time the cohort of children in detention is becoming smaller but they are displaying more and more complex needs.

I have mentioned that there have been a number of past reports into Ashley over the last two decades. The evidence to be called over the next seven days will focus on a number of examples that have been drawn from a combination of document reviews and from statements made to the Commission of practices which have placed children at risk of harm and which are evidence of Ashley being an institution in which children are not safe, children are not respected, and children are not treated in the way the community would expect.

Some details of what young people have experienced at Ashley have become public through media reporting or in foreshadowed legal proceedings, but we expect that the Tasmanian community will be horrified by some of the evidence that is to be called over the coming days. That evidence will be that children have been harmed in

significant and preventable ways. There will be evidence that successive governments have been unable to achieve meaningful change to how children are treated while in detention.

It'll be shocking for the community, but it has to be said that very little of the evidence that we're going to call will be new. It's instructive to read reports written about Ashley Youth Detention Centre from 2002 onwards and to see how the concerns and issues that are raised in those reports are reflected in what we hear today about Ashley.

Many of those concerns read as if they could have been written in 2022, not in 2002, and they're concerns that have been raised consistently in reports to government over the past two decades.

So that means that, as shocking as the evidence might be to the community, none of the evidence should come as a surprise to the government. None of the evidence should surprise anybody who has worked at Ashley or who has been alert to the contents of reports and reviews that have been prepared over the last two decades.

The themes which emerge again and again through those reports include a culture of brutality towards and the dehumanising of children; the increasingly complex needs of children in detention; staffing practices; nepotism in recruitment and promotion of staff; the overuse of strip-searches; a lack of programs out-of-school hours and on weekends which mean children are left bored with greater risk of behavioural issues and violence; detainees being violent towards each other; the lack of an effective complaint mechanism for detainees; the location of Ashley which makes it hard to recruit staff and have professionals and family attend and makes it difficult to re-integrate children into the community; the lack of through-care and step-down accommodation and community services; the lack of programs that are designed to address the causes of offending; the lack of security, including blind spots in CCTV; the lack of proper searches for visitors; non-compliance by staff with policies and procedures; high numbers of children on remand; the improper use of isolation; bad record-keeping; lack of systems data in the Youth Justice System as a whole to identify patterns and so improve the system; lack of cooperation and information sharing between operational staff, Health Services and

Education, and a terrible culture with attitudes to children more like those in a prison with poor relationships between staff and management.

It's striking and concerning how closely these themes drawn from the reports reflect the evidence that you have gathered and that we will be presenting about the current state of affairs at Ashley.

The reports reveal that since 2015 the number of young people in detention has continued to drop but the recidivism rate remains high. Ashley is not rehabilitating children, it's not turning children away from criminal offending.

In 2016 a report by Noetic recommended two smaller centres close to population centres in replacement of Ashley to assist with the delivery of a therapeutic approach and better through-care and integration into the community. The report wasn't taken up at the time by the government.

In 2017, the government did commit to a therapeutic approach with the introduction of an approach called the Ashley+ Approach and the Ashley Model of Care, but the evidence will be that those frameworks were not well understood and not taken up so that by April 2020 a report recorded very low levels of understanding of those frameworks amongst staff.

During this period of discussions about therapeutic change it seems that there was very little done to actually improve conditions for detainees and there was a noted resistance to change observed amongst staff.

It appears that over time the deficiencies, vulnerabilities and risks at Ashley which have been referred to in report after report have come to be accepted as an inevitable part of the Youth Justice System.

Although over the past two decades there have been reforms in Youth Justice which have reduced the number of children entering Ashley and which have made a number of other positive changes for the benefit of children in the Youth Justice System, Ashley has remained a place of punitive, dangerous and damaging practices. Successive proposals for reform have not taken root. The accounts of

abuse the Commission has received from detainees who were in Ashley in 2000 are distressingly similar to accounts from detainees who were there a year ago.

Against that backdrop may I summarise the themes which are going to be pursued in the evidence to be called.

The first theme is the theme of culture. Commissioners will recall that in our first week of hearings in May evidence was called from a number of witnesses who spoke about the importance of culture in institutions and the ways in which institutional culture could make the risks of abuse inside those institutions more or less likely. There was evidence that policies and procedures are important and training matters, but culture eats policy for breakfast. It's the culture of an institution far more than any carefully written policy which will determine whether the institution is a safe one for children. That culture can be so pervasive that it corrupts otherwise good people. It can be so pervasive that it resists well meaning attempts at reform.

The Commission has received materials and received statements which indicate that Ashley has had for many years a culture which has included the inappropriate use of isolation and segregation, the use of unnecessarily invasive personal searches and a hierarchical and toxic culture in which incidents are not properly reported and children are threatened and dissuaded from making complaints.

There will be evidence that those practices do not reflect the therapeutic and rehabilitative goals of the Youth Justice Act. Isolation and placement decisions are made to punish or to intimidate children. Behaviour management systems appear to be unnecessarily punitive and open to misuse if workers have a personal grudge against, or a personal preference for, particular detainees.

Former detainees and staff members will give evidence over the coming days of Ashley staff being verbally abusive, being physically violent and in some cases being threatening or abusive to fellow staff members.

The evidence will suggest that, not only is Ashley not child-focused and not child safe, Ashley has had a culture over many years which can almost be described as

anti-child, a culture in which children are not valued, their needs are not regarded as important and harm done to them is not taken seriously.

The second thing we'll be pursuing is the way in which the department and management have responded, it appears poorly, to allegations of abuse when they have been made. It appears from the materials we've received that at a government level there's been no action taken on information received through abuse in state care and redress schemes about the conduct of employees which meant that staff were permitted to remain at Ashley working with children despite allegations of serious physical and sexual abuse being made against them, in some cases being made by multiple complainants.

There will be evidence of a nepotistic culture in which staff were more likely to back each other up if a complaint is made rather than to act on a young person's complaint. The evidence we call will examine whether children are able to complain about their treatment and how they are treated if they do complain; whether appropriate notifications to police were made where allegations of abuse were raised; whether the police conducted appropriate investigations; why in some cases young people did not wish to participate in investigations or give evidence in court, and whether there was timely notification to the Registrar for Working With Vulnerable People or Child Safety Services where allegations of sexual abuse arose.

Linked to this theme is the question of disciplinary action when an Ashley staff member is alleged to have engaged in child sexual abuse. The Commission has heard evidence in earlier weeks of the hearing about the way in which the Employment Direction 5 process works and the extent to which it is a suitable or not suitable tool for ensuring that persons who pose a risk to children are prevented from working with them. That issue is a live one in the case of Ashley because many workers over the years have been subject to ED5 processes which mostly didn't result in any outcomes against them, but in the recent past many workers have been stood down because of historical claims which have been made and accepted through the Redress Scheme.

A third theme and an important one in the evidence over the coming days is the question of harmful sexual

behaviours and the way in which Ashley management and departmental management have responded to harmful sexual behaviours displayed by detainees. There are a number of former detainees who have come forward to the Commission, some of whom will give evidence, who have described being the victim or threats of sexual violence or harmful sexual behaviours from other detainees. Their evidence suggests that harmful sexual behaviour was and may remain common in Ashley and that management failed to respond to either protect those being harmed or to provide support and treatment to those engaging in the behaviours.

Staff who previously worked at Ashley have told the Commission that they've observed practices of sexual hazing of younger residents by older ones which was, if not condoned, then not sufficiently acted on by management and staff. Several former detainees have shared their stories confidentially of being sexually assaulted by other detainees and of a lack of care and support from staff when the assaults became known.

The Commission will examine this question including through how staff at Ashley responded to a particular incident of harmful sexual behaviour engaged in by two older detainees and how management responded when that incident was investigated by the Serious Events Review Team. The Commission will hear evidence about attempts by professional and clinical staff to address harmful sexual behaviours of the older detainees and the attitude of Ashley management to those attempts.

And that brings us to the question of staffing. A significant theme which emerges both from the observations of those with past or current professional connections to Ashley and from the many statements that have been obtained from Ashley staff, is the state of the supervision, training and support that is or is not given to Ashley workers and the qualifications that they were required to have, if any, before taking up their roles.

What emerges from past reports and from the evidence that the Commission has gathered is that, with some exceptions of course, staff at Ashley have always been underqualified and undertrained for the complex and difficult work that they are required to do.

When Ashley turned from a boys' home to a detention

centre the staff weren't trained to manage the children, including older children with serious and challenging behaviours, in a therapeutic and rehabilitative way.

Throughout the entire period of this Commission's terms of reference reports and reviews record staff complaining that they are not properly trained, that they don't have time for training, that they're not told about new policies, that they have a bad relationship with management and feel unsupported.

One person provided information to the Commission on a confidential basis through the analogy of a hospital. Imagine hospital orderlies being the ones operating on patients: there's a complete mismatch on one view between the skills required for the work and the skills of those who are being called upon to do the work.

Ashley's located near Deloraine, a small town remote from Tasmania's larger cities. Historically it would seem that much of the workforce has been drawn from that small local community of Deloraine and its surrounds, and from a cohort without specialist training or experience in youth work.

The Commission heard from Elena Campbell during its Launceston hearings about the complex nature of work in Youth Justice, and of the high degree of training including trauma-informed practice that those who work with young people in detention should receive. The statements of current and former Ashley staff suggest that many of them have not had that training, many of them are aware of the limits on their own skills. It appears from the evidence that the levels of WorkCover claims and sick leave at Ashley are high and that there's an over-reliance on casual staff or security staff.

Historically, until recent stand-downs, there was a lack of turnover in staff so that old attitudes to children carried over in some cases from the boys' home days remain and are taught to new staff, perpetuating old practices.

The Commission is also aware of a perception that local sporting connections and associations are the means by which many staff at Ashley have obtained their positions. Ashley's location has over the years been identified as the reason why it's been hard to attract and

retain suitably qualified staff, but at the same time its status as a significant employer in a small town has seen Ashley become a focus of political advocacy or debate.

The Commission will hear evidence of a concern in parts of the community that Ashley has been left open because its closure would be politically unpopular rather than because it's fit for purpose and meeting the needs of the children who are detained there.

This brings me to the question of oversight. Who is monitoring how children are being treated at Ashley and who has power to take action in response to complaints or concerns? Can children make complaints at all in a meaningful way? Are their complaints taken seriously and acted on? The evidence to be called, including from very recent detainees, suggests that there continue to be real barriers to children being able to assert themselves and raise concerns about their treatment, and if they can't raise concerns about even minor things it's not to be expected that they'll feel able to complain if they're the victim of sexual abuse.

We'll hear from both the current Commissioner for Children and Young People and a former holder of that role and from the Custodial Inspector. In that regard it's important to note comments that were offered by detainees who participated in the Commission's research on children's perceptions of safety which included relevantly children with experience of Youth Justice.

One 17-year-old child said:

Usually we use a complaint form that goes up to some high up people or we're allowed to call the Commissioner, but sometimes they don't let us call the Commissioner for Young People.

Another child said:

That's another thing that Ashley hates as well, they put all these posters up and that but deep down they hate it if you say, "I want to call the Commissioner". They're just going, "Oh, you're going to do that are you?" Because most times people do it

to complain about a certain staff member, and then that staff member doesn't do shit for you. They say, "Well, if you're going to call the Commissioner then I'm not going to do shit for you". They say, "I'll give you what I have to, I'll give you your food and that but only because I have to by law but I'm not going to sit there and like you. If you do that you're just a scumbag". The amount of times I've had that said to me, and then they say, "No, I'm only joking".

At our opening hearing in October 2021 we noted that at that time a concerning number of staff members at Ashley had been stood down as a result of allegations made against them by former detainees through the National Redress Scheme and some had been stood down since the Commission's work started. Others had left the State Service but were still subject of allegations made to the Commission that they failed to act responsibly and appropriately in response to child abuse, or that they were themselves people who had engaged in inappropriate sexual behaviour towards children.

Since October last year we understand there have been more stand downs and senior state servants will be called to give evidence about the nature of the investigations that are undergoing into those stand downs.

It's important at this point to note that it is not the role of this Commission to investigate the truth of individual complaints or to make findings that any particular person has been a perpetrator of sexual abuse; that's not the role that this Commission has been charged to perform. Our focus is on how allegations once made have been responded to and how Ashley as an institution protects or does not protect children from the risk of child sexual abuse.

We said in October 2021 that the number and consistency of the allegations which former detainees have made demanded a careful examination of Ashley's guiding principles and practices and how they've responded to abusive and harmful behaviours. With the benefit of the evidence gathered since October 2021 it can be clearly said that those principles and practices have failed to protect

children from the risk of sexual abuse in Ashley and in some cases have facilitated that abuse or been indifferent to it.

There can be no doubt that many children in Ashley were sexually abused by workers and that many others were victims of harmful sexual behaviour from other detainees. The evidence implicates a group of workers, not all, in the sexual abuse and a broader group in associated physical abuse and emotional mistreatment. To say that of course is not to say that every worker at Ashley was an abuser or an enabler of abuse. There have been and no doubt continue to be those who have worked with a high degree of integrity and who have done their best to carry out their duties at Ashley in a proper way.

The Commission has received many statements from current and former Ashley staff members who tell a story of trying their best to work hard in challenging circumstances. There will be evidence that morale at Ashley is low and has been made lower by recent stand downs and negative media articles. We are very conscious that there are workers at Ashley today as we open these hearings who may feel that they are being tainted by evidence that will be called about the alleged conduct of others.

We are aware that many who are the subject of historical allegations of abuse deny those allegations.

The case examples we examine will be anonymised to protect the interests of those concerned, including both the detainees who are the alleged victims and the alleged perpetrators. It must be said that there are a number of current or recently retired staff members who would otherwise have been called to give evidence about Ashley but who are not being called because they are the subject of allegations of sexual abuse. However, those staff members have been afforded the opportunity to make written witness statements which the Commission will consider.

In addition to the evidence to be called this week and the next and statements which have been obtained from additional witnesses who are not being called, the Commission has also received information from a range of persons, including former Ashley detainees, former Ashley staff members, and other persons who have had a professional connection with Ashley. Those people didn't

wish to make statements or, if they did, they did so on the basis that their material would be kept confidential. In varying ways they expressed a fear that they would be subject to retribution, either professionally or personally, if they were known to have assisted the Commission.

In some cases they feared damaging their ongoing professional connections with Ashley and, through that, losing their ability to support children and young people who are detained there. In other cases their concern was that speaking out would place them at risk of harm. Of course, the Commission has respected their wish to remain confidential, but it is a concern that so many have felt unable to speak to the Commission publically. What can be said about that information received in confidence, though, is that it is entirely consistent with the evidence that is going to be called and only serves to corroborate that evidence about practices and culture at Ashley.

I want to say something now about the scope of these hearings. The Commission's terms of reference direct the Commission's attention to allegations of child sexual abuse at Ashley and related matters. The evidence to be called this week will consider the broader context of Ashley Youth Detention Centre, its policies and practices generally.

You will hear evidence about how children are treated, how those employed to care for them are trained and supervised to paint a whole picture of what it's like to be a detainee at Ashley.

Some witnesses and some interested persons have queried whether this is properly within the scope of your terms of reference and queried whether matters such as behaviour management systems, staff training and policies or therapeutic practice are inside or outside your terms of reference. It's been suggested that it's not within the Commission's remit to consider broader questions of culture and practices in institutions and that you should focus merely on the way in which allegations of child sexual abuse have been responded to.

I invite the Commission to set those queries and concerns to one side. As the Commission has heard in earlier weeks, there is a clear link between the culture and practices of an institution and the risk that a child

will be harmed in that institution. An institution which does not respect children, which treats them as less important or less worthy of care and attention is one in which children will not feel safe to complain and one where perpetrators may feel safe to offend, and it appears that Ashley may have been such an institution.

It also needs to be said that children and young people who experience one form of maltreatment are at greater risk of other and different forms of abuse in the future. Similarly, children who have experienced previous maltreatment sometimes come to accept that such treatment is normal; they don't know that they can complain, and if they have had their expectations to what they're entitled to lowered, their confidence in the world will reduce and they won't make complaints when they could.

Turning to a couple of specific issues that are important to keep in mind as we continue the evidence this week. I've already mentioned the over-representation of Aboriginal young people in Youth Justice generally and in Ashley. It's a matter which often is mentioned and mustn't be ignored.

The Commission will recall that during the Out-of-Home Care week Tasmanian Aboriginal Centre CEO, Heather Sculthorpe, spoke about the need for different and better Youth Justice options for Aboriginal children, including community-led options. The Commission has also held a number of community forums in a number of locations around Tasmania which have provided an opportunity to hear from Aboriginal elders and community members about their concerns for the safety and wellbeing of Aboriginal children. The comments that they've offered have included comments about Ashley.

One elder said:

A very high percentage of our young people have been to Ashley. Those young people then started getting into trouble as adults. Once they came out they should have been proud of who they are and have aspirations of what they want to do but they were so mistreated in there it's another layer of abuse: layer upon layer.

Another said:

Our children go in as a mess and come out ten times worse. If someone goes in angry and you can't control them, they'll come out more angry.

Another said:

You might have five white kids and one black in there and he'll be on the outer already. People enter an environment where they know they'll be brutalised.

And another:

Every time I drive past Ashley I feel sick. It hurts me to know our children are locked up. Nearly every staff member in Ashley has been put off for sexual misconduct. I talk to one staff member frequently who is very frank about what happened there. We all know that inside that institution and others this is what happens. We have got to stop our children being abused.

And another said:

When our children are in Ashley they've got nowhere to go, nothing to do, no follow-up, it's a real big problem, they re-offend and go back in there again.

Participants in the community forum spoke about their concerns for children losing their culture and their community and that for some children the effect of intergenerational trauma and disadvantage meant that, to quote one elder:

It's all they know. Their parents probably had so much trauma that they didn't know what else to do. That's why those children are that way. Some kids would get themselves in trouble so that they could go back there because they didn't have anywhere else to go. They just home to drugs and abuse. For some of them it's a

roof over their heads, it's meals three times a day.

In addition to hearing those voices of the Aboriginal community it's important, as in earlier weeks of the hearing, to hear the voices of children and to hear their stories and experiences. The Commission has the benefit of a number of statements obtained by your investigator, as well as the sessions conducted by Professors Moore and McArthur with young people, including young people in the Youth Justice System. I've quoted from them already with respect to the Commissioner for Children and Young People. Let me refer to a number of other things that they have said which they would wish you to hear.

They spoke about physical violence. One young person said:

I have had a few restraints because I was young. Back then I was having fun. Got restrained a heap of times, got taken to my room. I got bashed multiple times by the staff and just thrown around. Obviously they had to restrain me but they're trained to restrain people in a certain way, not sit there and lay knees into you and that and hit you in the back of the head. And there have been times where they stripped me of all of my clothes and left me in my room.

Another described the treatment of a friend:

They dragged my mate back to his room and bashed him. I think he got kicked in the guts by one worker. He got bashed by a worker in his bedroom, he got choked by an older worker. They make it look like they're not doing something, but they are.

The Commission has heard stories from a number of detainees about the practice of strip searching, a practice which has also been described in claims made to the National Redress Scheme. One participant in the Commission's research said:

They're supposed to put me in a cell with a

camera and not strip me of me clothes but they done that anyway. And that was really awkward, having three blokes, they're looking at you. Why? You're young, naked, standing there, and then making jokes saying, "Oh, you've got a little one there", and I'm sitting there bawling my eyes out because I've just been fucked up and I've just got my clothes stripped off, a full invasion of your privacy.

In this context the Commission will remember the evidence given by Mr Robinson about his experiences in Ashley when he gave evidence before you earlier. He described how he was strip searched when he first arrived at Ashley. He said to you:

I got down to basically my boxer shorts. I had already been searched at the police station and I didn't have to take my boxer shorts off so I didn't think that I would have. So basically I got down to me boxers and then I went to pick me clothes up and he said, "No, you need to take your shorts off".

I basically pretended that I didn't hear him. I went to continue to try and get me clothes and he slammed me to the ground, pretty much ripped my shorts off me and then he said to me, he said, "You're not listening", then he ran his finger basically through between my butt cheeks and inserted a finger in and said, "Welcome to Ashley boy, you do as you're told".

Many of the incidences of physical and sexual abuse which former detainees have described to the Commission involve other detainees. Concerningly, there appear to have been instances where adults witnessed violent and abusive behaviour but they didn't intervene or they allowed the violence to escalate. One participant in Professor Moore's research said:

I told them multiple times over the years about being physically assaulted, not just when I was younger, but I have been bashed

by lots of people. They're like, "You've been a cunt to us so why should we protect you?" That's what really pissed me off with the whole centre, they're supposed to be there worrying about our safety but they're sitting there and they let us get bashed and stuff and they sit there and watch you get bashed. They laugh about it. They say, "Oh, I reckon you won that fight" or "He won that fight", what the fuck's that shit? That's wrong.

The Commission will hear evidence about how placement decisions, that is the placement of children in particular units, are made at Ashley and how in some cases those decisions exposed children to the risks of violence including harmful sexual behaviours.

One 16-year-old child said to Professor Moore:

I reckon they should separate young boys from the older boys because it's hectic in there. They get out thinking they're big fucking Terry tough nuts because they hang around with the big boys, they think they're massive when they get out and they just end up doing more crime because they're been hanging around those boys when they get out.

Another child said:

Why put the 13-year-old up with all the people that are like 17 and 18-years-old. But now they've got one 13-year-old in there, he's trying to get up with all of us and then he says something wrong and then he ends up getting himself bashed.

You will also hear evidence about the use of isolation. Mr Robinson described being in isolation to you when he gave his evidence. He said:

The longest that I was isolated in my room was for about six weeks, it happened quite regularly. It was no certain unit, it was called ISP, which stood for individual

support program. Every Wednesday they ran a meeting to discuss your overall weekly behaviour and they'd come around and if they decided that your behaviour wasn't up to standard they'd put you on ISP for a week which meant that I'd just be in my room and seven days later they'd come around and if I'd been behaving they'd let me out. But if you'd go to officers that didn't like you, they'd just basically write a book and stuff and say that you'd abused them and write to a friend and that was enough to keep you in ISP for another week.

There will be evidence that many young people at Ashley experienced verbal abuse and disrespect and they were made to feel worthless, as Mr Robinson said to you in his evidence in June:

To be honest, it was horrible. Basically you were made to feel like an adult and you were just treated like shit, you were belittled. I lost track of the number of times that I was told that I was a drug baby, that I wasn't wanted and that this was all I was ever going to be and stuff like that. It was continuous. It was just how they spoke to you. Don't get me wrong, there were a couple of nice ones that worked there and they wouldn't treat you like that and when they were working they would basically keep officers in line, so there was only one or two of them.

In the light of all that may I turn to consider the evidence that's going to be called before you. Today the Commission will hear the evidence of two former detainees, one who will give evidence remotely and one whose statement will be read.

Then we will hear the evidence of former Commissioner for Children and Young People, Mark Morrissey, some evidence from two current Ashley employees, the evidence of Professor Rob White, and then the evidence of experts Mr McGinness and Ms Mitchell on best practice for the new facilities which are intended to replace Ashley.

Tomorrow evidence will be called from two parents of former detainees who saw the terrible impact that the conditions at Ashley had on their children. Then we'll hear evidence from the Aboriginal Legal Service and Tasmania Legal Aid, from the principal of the Ashley School, and from the Health Department, before calling a senior Department of Communities official whose role was the head of custodial youth services.

On Monday, evidence will be given by a number of current and former Ashley and departmental employees about their observations and experiences of practices at Ashley, including responses to harmful sexual behaviour.

On Tuesday and Wednesday evidence will be called from a number of senior practitioners and managers at Ashley and from senior police and we'll also hear from other former detainees about their experiences of abuse.

On Thursday and Friday, the Secretary of the Department of Communities and other senior executives will answer questions about the themes, case studies and issues which are being examined and evidence will also be called to assist you in considering how to make recommendations for culture and practice change.

Commissioners, we're conscious that the evidence over the coming days will be confronting and distressing. We're pursuing that evidence though to enable you to make the findings and recommendations that will best protect children in Youth Detention from the risk of sexual abuse in future.

Thank you, Commissioners, may I invite you to take the morning break before the first witness, who will appear remotely.

PRESIDENT NEAVE: Thank you, yes, we'll take the morning adjournment.

SHORT ADJOURNMENT

MS ELLYARD: Thank you, Commissioners, the next witness wishes to give evidence to you under a pseudonym but to not be live-streamed, so may I ask that the Commissioners direct that the live stream be turned off?

PRESIDENT NEAVE: Yes, could the live stream be turned off, please? And, we've already made orders relevant to the pseudonyms.

MS ELLYARD: Yes, thank you. I'll ask the witness and those assisting him to turn their camera on because the live stream's been turned off. This is the witness who's being known by the pseudonym, Simon. Simon, can you see and hear me?

SIMON: Yes.

MS ELLYARD: The next voice you'll hear will be the Commissioners' clerk who will take you through the Commissioners' affirmation Process.

<SIMON, affirmed and examined: [11.27am]

<**EXAMINATION BY MS ELLYARD:**

MS ELLYARD: Q. Simon, you've made a statement which you've signed that has described for the Commission some of your experiences during the times that you were a detainee at Ashley Youth Detention Centre?
A. Yes.

Q. And you are going to answer some questions now about the things that you've described in your statement?
A. Yep.

Q. Now, you've said in your statement that you first went to Ashley when you were around 10 years old. Can you tell us about why it was that you went to Ashley then, when you were so young?
A. Well, I got a call from my little cousin, oh, a little friend, that I was doing the wrong thing.

Q. And --
A. Stealing, I was breaking into people's cars, yeah.

Q. And usually someone that young would get bail perhaps and they wouldn't go to Ashley; do you know why it was that you were sent to Ashley?
A. I don't know, but it was a pretty - a bit of a ride going there, you know what I mean. I went there because, I don't know, they opposed bail on both of us.

Q. So, the police opposed bail so that you were both sent to Ashley on remand?
A. Yes.

Q. And, as I understand it, that first time you only spent two days there but they were very difficult days; can you tell us what made them difficult?
A. Well, shut in the room, they were shoving me and my little mate in the room together, chucked us a teddy and told us to sleep with each other, it was pretty wrong, you know what I mean. That was the first couple of days, they were just treating us like shit.

Q. And when you were a little bit older around 11 or 12 you went to Ashley a second time?
A. Yeah.

Q. And you stayed there for about two months that time; is that right?
A. Yeah, about two, two and a half months, yep.

Q. Were you treated differently that second time from the way you had been treated the first time?
A. A little bit differently. Not really, yeah, I got treated, yeah - yeah, I did.

Q. What was different? Can you describe what was different about the way you were treated that second time? Was it better or worse?
A. Worse, I think.

Q. Yeah? It's a difficult question and I don't want you to say things you don't want to say, but can you give us some examples of the way they behaved that made it bad?
A. Just disgusting, um, I don't know if it was my second or third time where I had that visit where they were strip searching me, I don't know, I can't recall, but yeah, that was no, I don't know if that was another time or not, but it was just disgusting the way they treat kids, you know what I mean, there was no need for it, they can't stick up for themselves.

Q. So, do you mean that they would treat you badly in the way they would speak to you?
A. Yeah, they speak to me like "You're a [redacted] little scum", and just stuff like that, you know what I mean. It

does affect kids, you don't do that, you know what I mean, you don't do that.

Q. You've described strip searching, you've said in your statement that you were strip-searched each time you came into Ashley and each time you went back and forward to court and sometimes for random searches?
A. Yeah.

Q. I know there was a particular search that you've told us about, but the usual search, what did that involve?
A. You used to have to bend over and squat and spread your arse kids, like a kid, they shouldn't have to spread their arse cheeks and all that sort of stuff, that's another disgusting, you know.

Q. And would you be allowed to keep your clothes on during the searches?
A. No, you have to take all our clothes off naked and spread your arse cheeks and squat, you know what I mean.

Q. And would they give you any kind of shirt or anything like that to cover yourself up while you were being searched?
A. No, you had to be fully naked in front of them.

Q. You've described one occasion where you were going back through the admissions section and the guards wanted to search you for drugs, it was after a time that you had had a visit and you were still quite young, can you tell us what happened on that occasion?
A. Um, I didn't have no drugs, they obviously thought I did, I said no, I'll do a normal search, they wanted me to spread my arse cheeks and all that and then they'd hold me down, it was pretty disgusting, I still remember it from this day, there's just no need for it, you know what I mean, like, hold me down and spread my arse cheeks apart. I didn't even have nothing, they didn't even get nothing out of me, you know what I mean. I still sit there and think about it from this day, you know what I mean, it's disgusting, you know, don't do that.

Q. I don't want you to say their names but there were three different guards who held you down on that occasion, is that right?
A. Yes, and I shouldn't be sitting here saying it now, I'm older man now. If I ever see them on the streets - you

just don't - just brought memories back in my head that shouldn't be there, you know what I mean?

Q. You've also described, and again I don't want you to use his name, the way another older guard used to behave when you guys were showering. Can you tell us about that?
A. He's a dirty old man. Because there used to be this viewing panel about that big (indicating), and they used to undo this and have a little look if you, like, they can't find you and you're suicidal, you know what I mean. There used to be a really old guard, I know his name but you know I won't say it, but he used to sit there and he used to watch you shower, you know what I mean: what the hell?

Q. And did other kids ever talk about that with you, about him doing that?
A. Yeah, yeah, he got - I'll sit there and say it, he got called a dirty old dog for doing that, that was his nickname, you know what I mean, dirty old dog, you know what I mean, he used to sit there and watch kids. And the girls side was right beside my unit, so I don't know what he did to the - how he looked to the girls, I don't know.

Q. Did you ever complain to other people, perhaps the manager or the supervisors, about the fact that this guard was watching you in the shower?
A. That's a different story. If you used to complain about it, that's why I haven't said nothing, so I used to complain about it, no-one believes you, you just get locked down for lying, you know what I mean, and it's not a lie, it's just wrong.

Q. Simon, you've also described in your statement being hit by the guards?
A. Yeah, I used to cop some hidings off them, I've copped some big hidings off them, like.

Q. What kind of things happened that they said you'd done that would lead them to hit you?
A. Just not going to bed on time, or just slipping up doing something simple like a kid does, you know how kids slip up and do things wrong, just doing something simple wrong and bang, just be gone, smashed up.

Q. And you said in your statement that you would get belted up and you would have bruises and grazes, did that happen quite often?

A. Yeah, that happened a bit. All the people that was in there around my time they'll all tell you the same story I'm telling you. It all matches up, you know what I mean.

Q. That was going to be my next question, did you see other children get treated the way you were treated?
A. Yeah, I've seen some children treated some pretty bad ways in that place. I had a good mate there, his name was Craig, he's dead now, he died in that place, he got treated pretty bad too, you know what I mean.

Q. And again, maybe you've already answered this, but why didn't you ever complain or try to tell anybody about the fact that the guards were belting you?
A. I'll sit down and say it right now: at the time I'm just a criminal, that's the law, they're going to believe the law before a dirty old criminal. That's how I seen it in my eyes, sorry to say it.

Q. You've also described in your statement being placed in isolation at Ashley, what did that involve, being put in isolation?
A. I'll tell you this right now, I still remember the room, I think it's cell 9 isolation, they chucked me a horse blanket and I slept there for days. I'm telling you it was the coldest thing in my life I've ever been through, it was so cold, and I was cold.

Q. So you were put in cell 9 with a horse blanket and just left by yourself?
A. Yeah.

Q. And what would happen about getting food?
A. Bring you food once a day or so, yeah.

Q. What was the longest time you were ever left in isolation like that that you can remember?
A. I don't know, I think it was a week or two weeks.

Q. In your statement you said that you thought that once it was two and a half weeks; does that sound right?
A. Yeah, probably that's about right, yeah.

Q. And it was cold?
A. It was freezing, I'm telling you, it was freezing, it felt like it was snowing. I was freezing.

Q. What had you done, the times that you were put in isolation, what did the guards say was the reason for you being put in isolation?
A. Just, you get DOs up there, that's what they get injury reports for, like, DOs; just not listening to them, not listening to staff, simple things like that.

Q. So, it would be a punishment?
A. Yeah. Yeah, that's what it is, it's meant to be a punishment.

Q. In your statement, Simon, you say that you went to Ashley at least seven or eight times and it would always be that you'd go in on remand and then get sentenced while you were in there; is that right?
A. Yep.

Q. Then you said that when you were 17 you were remanded and you asked to go to Risdon instead of Ashley?
A. Yeah, it was about 17, I'm pretty sure it was, it was in Launceston, it was.

Q. It might seem strange that a child would ask to go to an adult prison rather than go to a child's prison. Why did you request to be sent to Risdon?
A. Because the way I've been treated there all my life, you know what I mean, it was disgusting, and I got all my uncles and all that down here treated a bit better, you know what I mean, just treated bad.

Q. And when you got to Risdon, can you remember, was it different to the way you were treated at Ashley?
A. I can sit here and tell you right now the guards at Risdon Prison are a lot better than the Ashley Youth Detention Centre ones, they treated people like shit. You shouldn't be doing that, you know what I mean, they're children at the end of the day. There should be more better help for children and that. And another thing, that jail - Ashley shouldn't be put into a jail. What about people with memories, they're going to lay their head down and think they've been abused, you know what I mean?

Q. I think what you're saying there, Simon, is you're referring to the fact that the government has suggested that once Ashley closes as a Youth Detention Centre they might build an adult jail there instead?
A. Yeah.

Q. And you're saying that a lot of the people who might be sent there would have bad memories of being at Ashley?
A. Of course they would. Just saying if I went back there right now I'm telling you right now I would have real bad memories. I wouldn't be myself. Just be doing different. I know I can't say nothing about it, but there shouldn't be a jail there, you know what I mean, people who have been sexually abused have gotta go back there. Imagine their heads laying down at the end of the day. It's not good, it's not good. If I sit down and lay on my bed right now I still think how they did that, even though it wasn't actually them, but it was, they still touched me, you know what I mean, they shouldn't be doing that.

Q. One of the things you say in your statement is that you feel that what happened to you at Ashley has really affected you?
A. (Indistinct words) Yeah it did, I've been locked up all my life, you know, it probably made me being locked up all my life, you know what I mean, I don't know about it; it's just - I dunno. And, what about the next poor kid that gets treated like that? It's not just about me now, what about the next poor kid, you know I mean? I've been there, I've done it, I know what happens.

Q. What do you think Ashley should have been like? How should the guards have behaved with you?
A. They should behave with me good, but they should be behaving - and if I, like, not belt me up and that, just proper discipline and that, not belt me up and that. They should work with kids, you know what I mean, help them.

Q. And so, help you to change your behaviour instead of just punishing you?
A. That's right. That's right, that's what they should have had, they should have for kids, shouldn't be coming back there, you know, they're being punished, not punished in that way.

Q. We know that there's still kids at Ashley right now. What do you think about that, that there's still kids there now at Ashley?
A. I reckon they need better help or something to help them, something - I don't know what youse could do, just something, I don't know, to help them.

Q. You've already mentioned your friend Craig, Simon, who died and the Commission know about Craig and they've read a lot of documents that tell us about Craig's experiences and what happened to him before he died, but I know that it's something that's important to you; can you tell us what's important, what is it about that that's made you want to speak to us?
A. I was in jail at the time, here's another story, when he got hit and he had blood clots and that, I've been told this off heaps of people so I believe it's the same story, this is another thing that went on. When he got hit - he had a car accident he got hit, when he went to Ashley he got hit. And he complained about his head for weeks and weeks, for about a week, complained about his head's sore and he spewed everywhere and all they did was go and chuck him a towel and say "clean up the spew" and that was the last time anybody seen him alive. Imagine that, you being alive, right, and someone - and you're spewing everywhere and someone come and chuck you a towel at you and go "clean your mess up, you little shit" and walking out and then you drop dead. That's not nice. It's bringing a tear to my eye now, it's not nice.

Q. I think what you're saying, Simon, is that you didn't observe that, you've been told about it, but it sounds like you're sure it's true because you saw the way guards at Ashley behaved?
A. They treated me like that, you know what I mean, they treated me like it, so I believe it, and all different people are telling the same story about that too and I believe it. I've been treated like that - worser.
I believe it; me too.

Q. Part of the role of the Commission, Simon, is to make recommendations to the government about the kind of Youth Detention facilities that should be built to replace Ashley. What are the kinds of things that you feel should be part of - if there's going to have to be a jail for kids in the future and perhaps there does need to be for a few kids, what should it be like and how should it help the children who are sent there?
A. Courses, um, in saying that, I don't know where you're gonna put them: courses, programs, just heaps of things to help us rehabilitate ourselves, you know what I mean, just try to help them. I know some kids don't listen, but at least try; I don't know.

Q. Do you think if there had been programs and rehabilitation help for you it might have made a difference to your experience when you were in Ashley?
A. That would help me, yeah, bloody oath it would have, I probably wouldn't be sitting in jail when I was from this day, you know what I mean, I'd be normal. I can't blame anyone else, I'm the silly one that done it meself, but at the end of the day I probably would be normal, yeah.

Q. Thank you, Simon, those are the questions that I wanted to ask you but I'm just going to ask you to wait because the Commissioners who have been listening carefully to your evidence may have something they want to say to you or ask you?
A. Yeah.

COMMISSIONER BENJAMIN: Q. Yes, Simon, Robert Benjamin here. When you were talking about courses and programs, I've been to a couple of other detention centres in other states and territories and they sometimes have football teams, senior football teams and athletes, would that be the kind of thing you'd be looking at?
A. That would be lovely, even something like that, you know what I mean, something fun for the kids, that would be lovely.

Q. The other thing I saw some of them do, they have simulators there where they teach kids how to drive and allow them to get their hours up for their driver's licences, is that the sort of thing that may be of some value, do you think?
A. Oh, just depends really, probably see a silly little kid go out and think they can drive a car.

Q. I'm not suggesting that we give kids cars, but 17 and 18-year-olds, because I think you've got to get a couple of hundred hours, don't you, to get a driver's licence?
A. Yep. No, that probably would be good for kids too, an incentive in front of them, you know what I mean, so not doing the wrong thing, I reckon that would probably be, you're probably right on that too, mate.

Q. Thank you, Simon.
A. Thank you.

PRESIDENT NEAVE: Q. Simon, I wanted to ask you, was there a school there when you were there?

A. Yes, there was a school, yes, yes.

Q. How was that school, was the school helpful to you?
A. No, not really. All they give you is 20 minutes of program a day, that's all they give you, 20 minutes. By the time you get your work out, you're out. That's all they give you, 20 minute programs.

Q. So you mean, you wouldn't go to the school from 9.30 till the afternoon?
A. No, no, you'd probably only do about 20 minutes a day.

PRESIDENT NEAVE: I see, thank you.

COMMISSIONER BROMFIELD: I didn't have any questions for you, Simon, but I did just want to make a comment about something you said. You said that, you know, it wasn't up to you or it wasn't something you really had a right to say what should happen to Ashley, but I just wanted to say that the things you've got to say are really important and they do help us to think about what should happen at Ashley. You are an expert because you were there and so thank you for sharing your story?
A. That's okay, have a lovely day.

MS ELLYARD: Thank you very much.

PRESIDENT NEAVE: Thank you very, very much.
A. Thank you, have a lovely day. Thank youse all.

MS ELLYARD: Thank you, Commissioners, we can turn off the link to Simon and restart the live stream. My learned friend, Ms Rhodes, is going to read the evidence of another witness.

PRESIDENT NEAVE: Thank you, Ms Rhodes.

MS RHODES: Thank you, Commissioners. I'm reading the evidence of a former detainee at Ashley Youth Detention Centre who is going by the name "Warren". Warren has kindly given permission for me to read out his statement and also a statement that he prepared for the National Redress Scheme. I'll be reading both to make a story, so I will be going between the two, I hope you can follow, but I do thank Warren for allowing me to read his story:

Before Ashley Youth Detention Centre I was

living with my mother until I was made a ward of the state. At age 3 I was diagnosed with ADHD and was prescribed Ritalin to help with my symptoms.

During my childhood my mother struggled to cope with parenting me and frequently physically abused me from a very young age. I often had bruises on my face which spread all the way down to my ribs.

On one occasion she smashed my face into the kitchen bench. I believe she did this so that when I went to school the staff could see that I had bruises and hoped I would be taken away from her.

Following this incident I was taken into state care and removed from her care completely. I was then placed into numerous foster homes which I often ran away from. I received some care from an organisation but I kept stealing from them in the hope that I would be sent home. I ran away from this organisation many times as well.

I was first admitted to Ashley when I was 13 years old. I was arrested and charged with stealing some clothes from What's New and assault. I was on bail for prior offences which included conditions like a curfew. I was sent to Ashley on remand and stayed there for four months.

I didn't think the conditions at Ashley were too bad. Some of the workers were alright and I got along with them really well. They would treat me like I was a human being and not just a criminal. They would help me out, pull me aside if I was doing badly, and try to keep me out of trouble.

Other guards would bring their bad mood to work. If they didn't like you, they would be physical with you. If you gave them a

little bit of lip they would restrain you and nearly snap your arm behind your back.

While I was at Ashley I mostly tried to keep to myself. I stayed in my cell a lot so I didn't have to interact with other people. There was a fair bit of violence among the kids. It was mostly for stupid shit. If the other kids saw you talking to the workers they could start something. I tried to keep out of this stuff.

There was some goods parts of being at Ashley. When I got there I didn't know how to read and write. The teachers at the school at Ashley taught me how to read and write. I also did things like a barista course and woodwork. They gave us the opportunity to play sport. They taught me life skills that I hadn't learnt prior to coming to Ashley.

In total I went to Ashley around 21 times. Usually I was there for a couple of months a time. The longest time I was there was for a year which was from just before I turned 18 until I was nearly 19. About half the time I was in Ashley I was on remand. The rest was under sentence, this includes when I spent the year there.

I was a victim of sexual assault when I was placed in Ashley Youth Detention Centre. I am a father and would never want any of this to happen to them if they were to take the same road in life that I did. I hope they don't.

It is so sad that this stuff happens in an institution that is run by the Tasmanian Government. They are trusted with looking after young people and children who have not coped well in the community. I have a hard time trusting people because of what I experienced at Ashley.

The strip-searches conducted on me at

Ashley were degrading and abusive. During the strip searches I was forced to get completely naked in front of the guards. The majority of the time there were two guards present. One would sometimes stand outside the door while the other one was in the room with me.

During the strip-searches the guards forced me to bend over with my backside towards them to check for contraband. They never found anything. The proper procedure at the time was to either have your top or bottom half closed at all times. During these searches I was forced by the guards to masturbate myself, which I was watched by the guards. The guards would sometimes also force me to touch their penises with my hands and force me to perform oral sex on them.

Due to my ADHD diagnosis I was prescribed Ritalin. It was necessary for me to take this medication under supervision of the guards. The guards were required to give me medication in my cell. This is where the abuse occurred.

When it was time for me to have my medication the guards, named Reuben, Clyde and Lionel, would restrain me by grabbing my arms and pinning them behind my back to the point where it felt like my arms were about to break or my shoulder would pop out of the joint. Lionel would ram my head into the walls on purpose and because I was restrained I couldn't do anything to protect myself.

I also already had a head injury due to another accident where I fractured my skull. The guards were aware of this injury. During the time that the guards were in my cell they would then make me touch my penis and masturbate myself. The guards would also force me to touch their penises and masturbate them. They would

make me masturbate them until they ejaculated. They made me put their penises into my mouth as well. The abuse alternated between oral sex and masturbation, depending on what they could get away with on that day.

All three guards perpetrated sexual abuse against me. The three named guards were constantly working on the same shift, rotation, at Ashley, meaning all three were working at the same time on the same days.

In addition to the forced oral sex and masturbation, Clyde would also penetrate my anus with his penis whilst another restrained me so I could not move. I was anally raped over 20 times over the course of my stay at Ashley. I was supposed to take Ritalin twice a day, once in the morning and again in the afternoon. The abuse often occurred in the morning. Reuben and Clyde would often enter my cell together, Lionel would come alone. None of them would give me my medication until I did the sexual acts on them. The abuse happened a total of 50 occasions.

The first time I was sexually abused was during my second admission when I was about 14 years old. This was the first time I had been placed in this particular unit. It occurred while I was being searched. The first time I was abused in my room was when I came back to Ashley the third time. I think I would have been 15 by then.

The abuse continued right up until I left Ashley when I was 18 years old. I never told anyone what was happening to me. The workers that were abusing me would threaten me if I did say anything. They would tell the other boys in Ashley that I was turning them in so that I would get bashed. They would also make threats against my family saying they would go and smash my mum's house up and burn it. They would tell me

that no-one would believe me anyway because I'm just a little criminal. I didn't want to say anything because I was afraid of what they could do.

I never made a complaint about anything that happened while I was in Ashley. The process of making a complaint was to write it down and give it to the workers. If someone ever complained about something it would always get back to the workers and they would tell each other about it. They would make your life hell and you suffered more. Because of this, no-one really made any complaints. I didn't know if there was anyone outside Ashley we could make a complaint to.

Now I know I can make a complaint to the Ombudsman but I didn't know that when I was at Ashley. The first person I ever spoke to about what happened to me at Ashley was my girlfriend and we spent time in Ashley together and I knew her all my life. I told her when we first got together when I was about 28 years old. Since then I have also spoken to my mum and told her what had happened.

After I told my girlfriend about what happened to me she suggested that I go for redress. I contacted a lawyer and told them what happened at Ashley. I am currently going through this redress process with my lawyer. I found this process very good. My lawyer has also arranged counselling which has really helped me.

I have a hard time trusting people. This makes it really hard for me to keep relationships and friendships. I tend to keep to myself and distance myself from people.

Since leaving Ashley I have made very few achievements in my life. The first time I

went to Risdon Prison I was aged 22. I had accumulated 150 charges at the time and I have been in and out of prison ever since. My longest time out of prison is one year and my longest sentence is 18 months.

I started using ice around the age of 23. I have now been clean for one year. I attributed my problems with drug addiction to my experience at Ashley. Ever since being in Ashley I have suffered with my mental health and battled substance abuse. I have felt suicidal since leaving Ashley and have tried to commit suicide.

I have children of my own, all very young. As a result of my abuse I am extremely cautious and protect my children. I will not allow them to be smacked and I will not trust anyone to care for them.

Ashley or any other Youth Detention Centre that replaces it needs more security cameras. When I was at Ashley there were places with no security cameras. This was where things always happened.

The workers need to treat kids in detention better. They need to be better trained to deal with kids and not take their problems out on them. The workers in the adult prisons are better than the ones that are at Ashley. I hadn't had the sort of problems with workers in adult prisons that I did with those in Ashley.

There needs to be a way for kids in Ashley to make complaints safely. This needs to be someone who is from outside Ashley that comes into the centre for the kids to speak to.

That is the statement of Warren.

PRESIDENT NEAVE: Thank you very much, Ms Rhodes.

MS RHODES: I believe we need to take a short recess.

PRESIDENT NEAVE: Yes, just briefly.

SHORT ADJOURNMENT

MS ELLYARD: Thank you, Commissioners, the next witness is Mr Mark Morrissey who appears via video and I'll ask that he take the affirmation.

<MARK BARRIE MORRISSEY, affirmed and examined: [12.04pm]

<EXAMINATION BY MS ELLYARD:

MS ELLYARD: Q. Mr Morrissey, could you tell the Commission, please, your full name?
A. Yes, my full name is Mark Barrie Morrissey.

Q. And you reside presently in Western Australia?
A. Correct, yes.

Q. You've made a statement to assist the work of the Commission. Do you have a copy of the statement with you?
A. I do, I've got it here on the screen.

Q. And it's signed by you and dated 9 August 2022. Are the contents of that statement true and correct?
A. They are to the best of my memory, yes.

Q. And you've attached a number of attachments which you would wish the Commission to look at as well as part of their consideration of your evidence?
A. Yes, I have.

Q. You're giving evidence because for a period of time you held the role of Commissioner for Children and Young People in Tasmania. Can I ask you, prior to taking up that role in 2014, what was your professional history as it related to child safety and related matters?
A. Yes, I have spent much of my career working in the children and young people space. I worked as the Director of Policy For Child Protection in Western Australia, and for around a decade I headed up child and adolescent community health and also for a period child and adolescent mental health, but most of my career has been in the area of children and young people. Also, I have worked in Youth Justice as well.

Q. When you took up the position of Commissioner for Children and Young People, what was your intention in taking up that role? What was it that you hoped you would be able to achieve for the benefit of children?
A. Yeah, I was very interested in being able to make a contribution in some of the areas that I've seen needed - needed work; reforming child protection, how we treat and manage young people in the Youth Justice System, and more broadly children and children's rights.

Q. This particular session of the Commission, as you are aware, is focusing on experiences of children in the Ashley Youth Detention Centre.
A. Yes.

Q. At paragraph 26 and following of your statement you make some remarks about the cohort of children who enter Ashley and their particular needs; could you tell us about that, please?
A. In essence, I believe that most if not all of the children and young people who enter Ashley have significant developmental disorders. I think, in regard to the available evidence, that's not an uncontested viewpoint. They've suffered lots of trauma, often from birth and right through to their admission, and I feel putting young people in a detention centre with significant developmental delay and damage is not the appropriate response.

Q. And instead you make the comment at paragraph 29 and following that a therapeutic environment is what's required for this cohort of children. What do you mean by "therapeutic environment" and what would it look like?
A. Yeah look, that's a big question and I would ultimately defer to the experts in this space, but my understanding is, it has to be an adequately and thoroughly therapeutic environment. How it was structured was not, in my view, representative of really any reflection of what a therapeutic environment should be.

If I could probably start with the - I'd call them the guards there: I think their skills needed to be quite different than they were equipped. I believe there needed to be a much different environment, physical environment for them to be in.

In my witness statement I refer to the treatment we give children and young people in the general healthcare

system, which I won't detail now, but essentially we accord children who are injured in other ways a much more professional response with specialists and paraprofessionals working with them. In no way was this really being delivered to the young people at Ashley. There were sessional professionals attending, but not to the adequacy and breadth required.

Q. One of the other things that you say at paragraphs 36 and following of your statement is, you comment on the ways in which Ashley perhaps didn't just not help children but perhaps harmed them by acting as a conduit towards them becoming more serious criminals. Can you tell us how you came to form that view?
A. I'll answer that question with one example. I was speaking to a child, he was 12 or 13 years of age. His first admission - and as you develop, I guess, a relationship to these children by visiting them they start to disclose, and he was very happy to share how he was becoming much more upskilled in crime and the ability to steal a car and to commit crime, and he was also forming networks that he would have connected into once he was released from Ashley.

So, aside from the lack of a therapeutic context, these children often build networks that tragically would be their trajectory for life.

Q. You comment at paragraph 45 and following that the absence of a therapeutic and trauma-informed model of care at Ashley resulted in what you've called a generational revolving door, which as I understand it meant that children were likely to be incarcerated and ultimately to have children or other family members who are incarcerated in turn?
A. Yeah, look, this is not just a Tasmanian issue, but families often - these children, and usually boys, lack role models and the only role models they have are often the bigger boys of Ashley who they try to emulate and often older people in the community who are involved in crime, so their career is established from the networks they make at Ashley right through to the community where they often end up in an adult jail. So, they often would have children who have no more opportunity than they did, yeah, and not always but I'm talking about a general trend.

Q. One of the things you describe in the statement is a

view you formed from your visits to Ashley that there needed to be a mechanism by which children could complain or raise concerns about the ways in which they were being treated, and you deal with this at paragraphs 78 and following of your statement and you offer some reflections of what, in response to your concerns, the institution did to create what you saw as an ineffective complaints process.

Can you tell us, firstly, what's the significance of children being able to complain and what are your reflections on what the capacity was at Ashley during your time to make complaints in a meaningful way?
A. Children having a voice is fundamentally one of the most important child safe mechanisms. The children at Ashley, and I think the last evidence made that very clear, often and pretty well universally don't have the voice they need. There's many factors that mitigate against them being able to speak up, and I guess, if young people can't speak up they can't report abuse, they can't get their needs met, and they become highly vulnerable to ongoing abuse.

Obviously, when I was the Commissioner we had quite a small team, so endeavoured to focus on the issues that may have made the biggest difference, and I formed a view that it was giving children a voice and that included the children at Ashley. I think as the Commission is hearing, that was a very difficult task to actually reach out and actually gain the children's voice; there were so many factors preventing that occurring.

Q. You mention at paragraph 87 of your statement a complaints box that was instituted by Ashley management ostensibly so that children would have a means of making complaints; what was your view about whether that was meeting the need of a complaints mechanism?
A. I would suggest that a complaints box is never going to work in any context; particularly, it's never going to work in a Youth Detention Centre where the young person, firstly, had to write something down - a number were illiterate - in public view, and then going through often complaining about the very people that they had concerns about, those complaints would go to them.

I did persevere/advocate that it was a futile endeavour. It's always a fine balance between alienating

the people in management who are trying to do their best and encourage them to keep thinking, but also just seeing the futility of some of the - I suppose that it probably wasn't intentional, I think it was probably well meaning by management but absolutely misguided.

Q. And it wasn't a solution which took account of the barriers that children would face in making the difficult decision to make a complaint and to come forward?
A. Not at all, for several reasons it was never going to work.

PRESIDENT NEAVE: Q. Can I have a follow-up question on that? I think we've heard in a number of contexts that there is, quite apart from the absurdity of having a complaints box where you've got to write a complaint and put your complaint in, in the view of everybody in the dining room, which was the situation you describe; that there may well be a culture among the children of not complaining, not just because of fear of what will happen to them if they do, but because they're seen as being dogs or something along those lines.

Have you had any experience of how you would overcome that particular culture, that issue of, "I can't complain because other kids will penalise me" perhaps as well as prison officers?
A. I believe that the culture in a Youth Detention Centre is adversarial to children speaking up.

Q. Yes.
A. So, one potential solution is to actually have a therapeutic safe environment where children are given the skills and permission to have a voice, in many cases for the first time in their life and, in the absence of a therapeutic model, I don't think children are ever going to talk up and speak up.

One thing I observed: often the culture that existed in an adult prison would reach back into the young people at Ashley. So, some of these children came from the generational situation where other family members had been in jail and they learnt the culture and the rules of a prison and that was seen to be something that was desirable and they actually tried to live by those rules, which meant not being a dog or speaking up, yep.

PRESIDENT NEAVE: Thank you.

MS ELLYARD: That brings us to the question of the culture that you observed to be in place at Ashley, Mr Morrissey, and you deal with this at a couple of points in your statement, but one of them is at paragraph 50 and following, and there's been some things said today already about evidence of culture.

I'm sorry, I'm just pausing there, I'm told that there are audio issues and I need to ask Mr Morrissey to stand by and the Commissioners to stand down for five minutes so that the audio issues can be corrected.

So, excuse us, Mr Morrissey, but might I invite the Commissioners to leave the bench shortly.

SHORT ADJOURNMENT

MS ELLYARD: Q. Thank you, Commissioners. Mr Morrissey, are you with us?
A. I am here, yes.

Q. Thank you very much for your patience. Before we had to stand down, I was moving to the topic of culture which you deal with at a couple of points in your statement, but including at paragraph 50. And, before asking you a question, I wanted to refer you to the fact that the Commission's received a statement from John Corvin, who was the manager of Ashley in its very early days, around 2002 to 2004. And one of the things he observed during his time at Ashley was that the staff group were, to his view, uninvolved and unaware of what they should do, struggled to understand the concept of restorative justice and good staff were disempowered by those who wanted at that time to turn Ashley into a prison.

That's some evidence the Commission has about the picture at Ashley in about 2002 to 2003. Can I ask you, what were your observations of the culture at Ashley during the period of time you were carrying out your role as Commissioner for Children and Young People?
A. The comments that you have just mentioned then from 2002, I think in my witness statement I talk about culture remaining status quo or being frozen, so I think the culture has largely remained as is and unchanged for decades, yep.

Q. And that culture, as I understand paragraph 50 and following of your statement, relevantly included, effectively, prioritising government and staff interests over the interests of children - perhaps not overtly but in practice?
A. That's a view I formed when I was there, and I don't think I've changed that view. I used the term "adultism", and it really was focused on the needs of the adults and not the best interests of the children, in my view.

Q. You make some observations at paragraph 53 of your statement of seeing some staff coming in and then leaving within a short space of time because they couldn't or wouldn't adapt themselves to that culture. Can you tell us about that?
A. Yeah. In my years there I often met new staff. I don't know the exact data on staff turnover but there often were new staff were coming in, and they'd often come in with energy and great ideas, but I think they were often overwhelmed with the existing and long-standing culture, and I think they often had a choice of adopting the prevailing longstanding culture or moving on. It was a very - culture, as we know, is very critical, but the culture at Ashley was a very powerful culture that was very difficult for just a few people to overcome and change, yep.

Q. At paragraph 72 of your statement you refer to a view that you formed, as I understand it, based on the work you did at Ashley and the advocacy in which you engaged, that there was a community that had accepted the status quo and that incarceration as the solution wasn't questioned and that Ashley just shouldn't be discussed. Can I ask you to unpack those observations?
A. Yes. To the best of my recollection it was, in my experience, discussions on Ashley changing significantly were a closed issue. It was, as anyone observing at the time, an issue that I chose to limit in the public forum, although I did make quite a few comments around the need for an adequate model of care there, but it was something that never got a particularly warm reception whenever I brought it up. It was often seen, "Well, it is what it is and we actually don't really want to change." That was my reading of the responses I were getting. Although there were some public statements that we were going to implement a new model of care, I never saw that transpire.

Q. Indeed, at paragraph 120 of your statement you refer to receiving contact from a politician in response to the advocacy, whether public or behind the scenes, that you were engaging in; can you tell us about that?
A. Yes, I received a phone call, sort of unexpected, just asking me to understand that any, I guess, challenges I had to the existing system would affect employment, that it was a very important employer for the Deloraine district, and essentially asking me to back off. I wasn't surprised, but at another level I was surprised that a politician was willing to actually say that to me, yep.

Q. You've mentioned in your statement and in your oral evidence a decision that you made to limit some of your public-facing advocacy. The Commission's considered in other weeks of the hearing the delicate balance that people in roles such as yours sometimes need to find between advocating in accordance with their duties on the one hand and preserving relationships with management and senior bureaucrats on the other. Was that a balance that you found it necessary to consciously strike during your time in the role?
A. It was. I think it's important not to, I guess, use an expression, "burn your currency too quickly", so I endeavoured - I realised early on it was a very sensitive issue, it was a very long-standing issue, and I was endeavouring to use persuasion and evidence and good argument around the need to change, yeah. Essentially, I don't think I would have gained very much traction on going any more public than I did, although I did go public on other areas such as out-of-home care and child protection and others, yeah.

Q. And so, thinking particularly about Ashley, was it your view that success in achieving any kind of change was more likely to be found through private or behind-the-scenes persuasion?
A. That was my strategy at the time, but like all strategies we reflect and we wonder maybe a different strategy may have been more effective. It's not science, a hard science in regard to how to tackle these things; you have to go with your best guess and your EQ on that situation.

Q. And, of course, part of the calibration will depend on the powers that you have to hand under your governing

legislation and the funding that you have to hand to pursue and carry out the powers and functions that you have been given.

In your statement, you have offered some reflections on the extent of the powers that were available to you, but the levers perhaps that were open to be pulled by government, if they had wished, to limit you in the exercise of your powers.

Can I ask you firstly, what's your view on whether the powers granted to you under the legislation were sufficient for you to be able to carry out the role of acting as an advocate for children in Ashley and monitoring, in an appropriate way, the conditions of their treatment?
A. As the Commissioner, you have - probably one of the few areas that you have a responsibility for advocating for individual children, so I was able to do that. The ability to ensure follow up action occurred was not within the role. I won't comment whether it should be or it shouldn't be, but there should be an expectation that, if concerns are brought to the attention of the department and government, that real change will occur. You would hope that there would be that shared passion and care and kindness from everyone involved in regard to very vulnerable children.

Q. You say that you would hope that would be the case. Was it, in your experience, the case that there was a shared commitment between you and relevant government officials to the wellbeing of children in Ashley?
A. I will probably respond there wasn't the shared understanding of the need to have a stronger, different, more thoroughly rehabilitative restorative approach, yep.

Q. May I ask you about the question of Child Safe Organisations. You refer in your statement to the fact that this was something that you felt strongly about, but that perhaps you had a mixed response from various government departments to the advocacy and efforts that you engaged in to comment Child Safe Organisational principles in Tasmania.
A. I held a view, which I still hold, that one of the most powerful ways to keep children safe in any institutional context is through the full adoption of the Child Safe Organisation framework. Whilst there was acknowledgment that that was a good thing, I really in my

time there couldn't observe - was unable to observe very much progress in regard to adopting and implementing those recommendations which did come out of the Royal Commission.

Q. I think you say in your statement that the Department of Education was perhaps more open than others.
A. Yeah, I had warm reception from the leadership at the time about Child Safe Organisations. I can't comment on why they didn't progress as rapidly as - I actually understood or believed that these - I guess, the principles, the framework of a Child Safe Organisation made such a compelling case that there would be momentum to begin adopting them right across all organisations, but that wasn't the case.

Q. As I understand it in your role, whilst you could recommend and advise and direct attention to relevant resources, it wasn't in your power to compel the taking up of those practices by government?
A. No, the role is that of an advocate and to provide advice; it's up to departments and governments as to whether they take that advice or not.

MS ELLYARD: I'm sorry, Commissioner Benjamin. Did you have a question?

COMMISSIONER BENJAMIN: No.

MS ELLYARD: Q. Turning back to the question of the role that you performed as Commissioner for Children and Young People, you offered some reflections at paragraph 166 and following of your statement, Mr Morrissey. And some of these things we've touched on already, but can I draw your attention to paragraphs 177 and 178 and ask you to offer any reflections you would wish to offer to the Commission on how to approach the question of making recommendations for change and dealing with what might be quite entrenched attitudes within departments that are resistant to new ideas and change?
A. In my observations it has been a common, I guess, occurrence right across Australia since Commissioners for Children were put in place; I think they are valued, but they are often required to, you know, criticise, and usually in a very positive constructive way offering a way forward, but sometimes this will challenge governments and departments in regard to their understanding of the message in regard to their capacity to do something.

But also, we talk about Ashley having a culture: departments and governments also have cultures, so to actually work out a way forward for the Commissioners nationally to be more, I guess, influential and act with stronger advocacy, I think that issue does need exploring in regard to the reception of messages, yep.

Q. And when you say "that issue needs exploring", might that include, for example, increased or different powers in the Office of the Commissioner for Children and Young People that might strengthen their capacity to speak firm truths, where appropriate, to government?
A. Yeah, in my witness statement I talk about a number of areas that - I talk about consideration of the need to review the current CCYP legislation, but also to look at issues that may be quite subtle in regard to performing the role that can also, I guess, be a factor that also constrains the role as well. Sometimes the influences can be subtle but powerful in regard to being effective.

It's very easy, I think, for an advocate in any context to be subject to influence from endeavours to establish relationships and an effective communication. Also too, I guess there's an implicit message to try to be part of the bigger team, which is important, but you've also got to keep outside of that team if you're going to advocate strongly for children and young people. So it's a very - at times, quite a tricky relationship.

PRESIDENT NEAVE: Q. So, is this a bit equivalent to the notion of regulatory capture? I know the Commissioner is not a regulator, but it's the same sort of idea, is it?
A. I agree fully: it is around regulatory capture. I've had some recent experience of that, and yes, it is quite a good, I guess, parallel example, yeah.

PRESIDENT NEAVE: Thank you.

MS ELLYARD: Q. I started my questioning, Mr Morrissey, asking you what you had hoped to achieve or had envisaged for yourself in taking up the role in 2014 as Commissioner for Children and Young People. As I understand your evidence, you ultimately remained in it for three years and didn't continue after that. Can I ask what you felt you achieved - did you feel that progress had been made in your three years and, if not, why not and perhaps why didn't you

stay in the role longer?
A. I believed that we made good progress in regard to children in out-of-home care. I'm not familiar with the, I guess, the granularity of what's occurring now, but I understand the government has committed significant resources in endeavouring to, I guess, improve the standards and I guess monitoring of kids in out-of-home care.

We commenced some significant reform in Child Protection, but at the end of my witness statement I talk about the need to adopt a public health approach. We're often dealing with after the fact, after the damage has occurred, and for this to ever change and to stop, I guess, the harm and suffering that occurs as a result of not early intervention, we need to actually be more actively involved in preserving families, supporting children younger; keeping them out of Ashley, keeping them out of out-of-home care, out of the Child Protection System and, until we switch to that, I believe we'll still be confronting these same issues we've been facing for decades.

PRESIDENT NEAVE: Q. Can I just ask: having regard to that difficulty of doing that, would you have preferred to continue with this struggle, that is, to continue to contribute to the Tasmanian situation or did you decide that it was all too difficult really?
A. I was finding it very difficult to increasingly have my message accepted and listened to and I made a decision, a very clear decision, that it would have been in the best interests of the role to let someone else give it a go. I think there are times when you realise that your currency is not being accepted where it should be and I think I made a decision to retire and to do it as quietly as I possibly could; I didn't make any comments at the time because I wanted the focus to stay on the needs of children and young people.

Q. Am I right in thinking that your two predecessors also seemed to make a similar decision or didn't continue in the role of Commissioner for Children and Young People?
A. I guess that's an example of what I was alluding to earlier: these roles are very tricky and often, you know, the longer people are in them the tougher they are to continue in.

Q. Yes.

A. And so, I would never want to be in a situation where I was in the role and not gaining - not continuing momentum and leading reform. So, I think by their nature within the current context and the impediments they may be a shorter term than ideally they should be, yep.

PRESIDENT NEAVE: Thank you.

MS ELLYARD: Commissioner Bromfield, did you have a question?

COMMISSIONER BROMFIELD: Q. I did, actually, it was in relation to your comments about early intervention. I was reflecting on the complexity of the children and young people who are detained at Ashley, and I'm aware that when we talk about early intervention that sometimes there can be a perception that that is low intensity intervention and I just wanted to reflect on, when you talk about early intervention, do you think that's a low intensity intervention for these kids?
A. It's absolutely high intensity for the children and their families; it needs to, I think, be a whole family approach. Just trying to work with one child is probably going to be futile. The small numbers of children going into Ashley actually, I think, facilitate the ability to have a high intensity approach to the families, in my view. I would defer to experts who know much more about this than me: that's just the view I've formed.

MS ELLYARD: Q. The last question that I have, Mr Morrissey, is that from the evidence in your statement it's clear that you didn't yourself receive and you didn't become aware of complaints on behalf of any child in Ashley that they were being sexually abused. The materials available to the Commission tends to suggest that during the period of time that you held your role there were allegedly children being abused who have since come to the Commission's attention or otherwise made their stories known, and so, my final question to you is, what are your reflections on what more could be done to create an opportunity for children if they're being abused, as it appears during your tenure they were, to find their way to you or to find their way to someone else to make a complaint?
A. I think a lot more consideration needs to be given to a child safe reporting mechanism at Ashley. Right away the children first understand they do have a voice, they do

have a right to speak up, and there's some strategies developed where they can speak up without it coming to the attention of their peers, particularly the staff there, but I think firstly they have to understand that they will be believed as well. You know, it's a common theme throughout all of this whole area of abuse that children often haven't been believed.

I think as adults and professionals we understand that it's critical they are believed, but I'm not sure children are getting that message. And that, once again, I'll go back to, it needs to be a therapeutic model where they're working with a team intensively that helps them understand that it's safe to report and something will be done. Look, it's a big answer, I'm not going to try to cover it all now, but that's just my off-the-cuff --

Q. Certainly, and clearly part of that will mean a system which involves those working at Ashley being open to the possibility that complaints might be made and being open to and accepting of the proper scrutiny of authorities including people like you. And it's in that context - I note in your witness statement you refer to an incident that occurred when you attended Ashley for a visit and you were locked in. Can I ask you to tell us about that and what your reflections were at the time as to why that might have occurred and what the attitude of Ashley management was to the work you were doing and the role that you had?
A. Yeah, I think 2014/15, it was reasonably early days in my regular visits. I have managed to negotiate that a guard wasn't with the child or the young person when I was talking to them. We arranged for a room in another part of the facility, went into that and, for whatever reason, they locked the door. Now, I will never know the reason for that, so I'm sort of benignly ignorant whether it was intentional or an accident. It was quite a while before someone returned.

It raised some issues of supervision, and I guess literally oversight of where people were. I found it quite intriguing that I could be in there alone for so long, and it raised issues of, what about the young people here? Are they ever in this same situation? Also a reflection: it could have represented a lack of interest in someone talking to the young people alone; you know, there's several areas that you could actually reflect on which could raise concerns. That's the story in short, unless

you have any more questions.

MS ELLYARD: Thank you, Mr Morrissey. Thank you, Commissioners, those are my questions unless you had any further.

PRESIDENT NEAVE: I have one follow-up question and I think my fellow Commissioners have.

Q. In some organisations, often not dealing with children, often dealing with young adults, there's provision for some form of anonymous reporting; I don't know whether that has any relevance or usefulness. It can be a source of data if you get more than one report about a particular person, for example, and I'm familiar with it in university contexts where they've had some university colleges and other bodies have had this provision for anonymous reporting so that patterns can be discerned. Would that have any relevance to this situation?
A. If it could be effectively administered, and anonymous reporting, I think it would be an excellent idea to see implemented. You know, you'd have to sort through - I won't go into what you have to do - but I think that is, like, an excellent suggestion, yeah.

PRESIDENT NEAVE: Okay, thank you. I think you had some questions?

COMMISSIONER BROMFIELD: Q. Yes. Mr Morrissey, in paragraphs 59 to 62 of your statement you make the observation that in your view the Ashley Youth Detention Centre was in breach of several articles of both the United Nations Convention on the Rights of the Child, and perhaps even more troubling, the Optional Protocol to the Convention Against Torture. They're extraordinary things to read in a statement about a Youth Detention Centre in Australia and I wondered if you wanted to make any further statement or provide examples about what led you to that conclusion?
A. Yeah, could you just give me the number?

Q. Yes, 59 to 62.
A. Okay. Sorry. Okay, so one example, and a child right is the right to healthcare. Based on the assumption that these children have developmental damage, they have brain trauma, I believe they have a right to adequate care and not be put in the situation where they're further damaged.

That's an example of one of the breach of rights.

The children's right to participate in decisions that affect them, and this is something we've been talking about in the last hour: the ability to make a complaint, to be consulted over their daily lives, I think that's another breach of child rights. Does that answer your question?

Q. Yes, and I believe in paragraph 62 that you gave examples of where you felt the treatment of children at Ashley was in breach of the Optional Protocol to the Convention Against Torture.

A. Yep. So, I understand within the OPCAT context, which I don't think has been finalised in Australia yet, it's still a work-in-progress, the use of isolation to some people's minds would actually be a form of torture, and young people were often - and we've heard evidence, I think, when I've been listening, of young people being locked in their cells for a week or two or longer alone, often on weekends due to staffing, short staffing, whatever reasons they were locked in their rooms as well. For a young person to be locked in a room, in my view, that does constitute a form of torture, yep.

Q. Thank you. I have one more question. We've seen repeatedly in our statements from former detainees that one of the things that have prevented them from speaking up was the view that they were criminals and no-one believed them.

Given your experience in speaking with the children at Ashley in the role of Children's Commissioner and your experience in the field I just wanted to invite you to offer any views on the credibility of particularly children who have been in detention when they speak up.

A. Often the young people aren't seen as the person they are, they're seen as the criminal. We look at the symptoms of their - I guess, their psychopathology, their damage, and we don't look past that to actually see the young person who's sitting in front of us who we're talking to.

I had many a long conversation with the young people at Ashley. The first few meetings were often chaotic and symptomatic, they were quite florid in their behaviour and bragging about doing dreadful things, but when you actually got to know them and started to form some trust you realised that those young people had many of the same needs and desires and hopes and wishes that our own young

children have; that that is often ignored in a place like Ashley. You know, they want to feel safe, they want to feel loved, they want to feel cared for, they want all the things that they aren't provided with.

So we so often - and I make a comment in my witness statement, the stories of these young people need to be shared with society more broadly, that whilst they committed crimes and at times done dreadful things, it doesn't define them who they are and, given a different opportunity, there is an ability to rehabilitate back to mainstream society and live successful lives.

MS ELLYARD: Q. Mr Morrissey, there's going to be some suggestion in evidence that the Commission receives that children in Ashley make false allegations and that the accusations that have been made, whether in the past or more recently, are false. Of course, you can't speak to individual cases, but do you have any reflections based on your observations and understandings of the extent to which the Commission should take the view that there's a pattern or a habit of false accusations on the part of young people in Ashley?
A. Yeah, I can respond with, I guess, some experience and a best guess. Of course at times there may be false accusations made, but also I think one thing we do know about young people is, they also tell the truth and we need to in the first instance believe them until we can find evidence to the contrary: that's my personal view based on my experience over many years. So, I think it's really up to the experts to drill down the truth or not of what they're saying, yep.

MS ELLYARD: Thank you, Mr Morrissey. Thank you, Commissioners.

PRESIDENT NEAVE: Thank you very, very much indeed, Mr Morrissey, that was very helpful, and we'll now break for lunch.

LUNCHEON ADJOURNMENT

PRESIDENT NEAVE: Ms Bennett.

MS BENNETT: Commissioners, the next witness is Professor Robert White, who I'd now ask to be sworn or affirmed.

<ROBERT DOUGLAS WHITE, affirmed: [2.13 pm]

<EXAMINATION BY MS BENNETT:

MS BENNETT: Q. Professor, could you please tell the Commissioners your full name and professional address?
A. I am Robert Douglas White, I am Emeritus Distinguished Professor of Criminology at the University of Tasmania.

Q. And you've made a statement to assist this Commission; is that right?
A. Yes, I have.

Q. Have you read that statement recently?
A. Yes, I have.

Q. And are its contents true and correct?
A. Yes, they are.

Q. Thank you, Professor. Could you tell the Commissioners about how you came to be involved with Ashley Youth Detention Centre?
A. I became involved in two different capacities: as a Professor of Criminology, obviously I was teaching Juvenile Justice and so I was familiar with the institutions of Juvenile Justice in Tasmania.

The specific way in which I became familiar with Ashley was, I was a member of a special investigation team at the end of 2010 and 2011, and it was to investigate the death of a young boy at Ashley, and that's when I became very familiar with aspects of Ashley Youth Detention Centre.

Q. And as part of that very familiar association, you visited Ashley Youth Detention Centre?
A. We visited and we interviewed, I think, 29 staff - as a team we interviewed 29 staff and we had multiple visits of Ashley, yes.

Q. So, when was this?
A. This was mainly in 2011.

Q. And, who asked you to do this?
A. This was an investigation initiated from within the Department of Health and Human Services.

Q. So, it was with the full cooperation of the department and the staff?
A. Yes, it was established by the department.

Q. Can you offer some reflections based on your observations of the physical space at Ashley; what's it like?
A. The physical infrastructure of Ashley is, to put it crudely, is awful. It's incredible to think that we would house children and young people in that kind of a place. It's physically unattractive, it's basically a prison and we need to get beyond the euphemisms of calling it a detention centre, it really is a prison. It looks like a prison, it smells like a prison, it feels like a prison, it's physically unattractive and very oppressive. The colour scheme is such that basically there is no visual stimulation, and it's basically one large lock up; very cold and imposing kind of place.

Q. What do you mean by cold and imposing? Can you tell the Commissioners about what causes you to use those descriptors?
A. It's basically, it's basically a prison, that's all I can say, but it's not a modern contemporary prison, so in fact it doesn't incorporate any prison design or architectural design of a modern contemporary prison.

COMMISSIONER BROMFIELD: Q. I believe in your statement you actually say that another person on your committee who was an officer in adult prisons was appalled by the state of Ashley.

MS BENNETT: I think the Commissioner is referring to paragraph 13 of your statement, you say there you worked with an officer who said he had visited prisons all over the world, especially in the United Kingdom. Can you tell the Commissioners about that observation?
A. He had been an adult prison corrections officer for over 30 years, he had visited the United States, Canada, all through Europe and other places, including the UK, and basically the moment he walked in the door he turned to me as an aside and said, "This is the worst institution that I have seen", and it's worst of any of the adult institutions that he had visited on his various study tours and so on. So, basically physically it was particularly uninviting, and when you think it's meant to be the home for children, it becomes even worse, but it's also a place where people

work, so as a workplace as well as a place to live, it was oppressive.

Q. These are observations that you made in 2011 and 2012, have you had any cause to go back since?
A. No, not since. So, these are retrospective and they're very much directly related to that incident, and I was a member of both the special investigations team. After we submitted our report they put together a review steering committee to look at the implementation of the recommendations, and that group that I was part of, we kept going out to Ashley for another 18 months and our job was actually to try and review and assist the implementation of the recommendations, particularly around standard operating procedures.

Q. While we're speaking about physical infrastructure, you mentioned the colour scheme and it being a dull environment; is that fair?
A. Yes. So, there might have been some colour, but the colour itself was drab, it's sort of hard to describe. So, it's not necessarily that it was all grey, but even if there was a reddish colour, it would be a drab reddish colour. So, the colour scheme was just visually unexciting.

Q. Was there anything that reflected a cultural safety for First Nations or Indigenous children?
A. In 2010, 2011, 2012, I don't recall anything like that.

Q. You say in your statement, around paragraph 12, that the atmosphere was one of cold indifference on the part of those living and working there. Can you tell us why you say that?
A. I need to qualify that a little bit. I'll say that, from the point of view of the support staff, the therapeutic staff, the education workers and so on, I got the sense that there was a - a mission and there was some enthusiasm about the work that was being done. That sense of coldness and indifference was really amongst what I would consider the custodial staff. Again, a misnomer, they were called youth workers but I think again that's a euphemism that describes basically people who lock people up, and I found that there was the sense that, "Well, this is a job".

Q. You speak in your statement about social infrastructure, what do you mean by that concept?
A. Well, that's what I mean in terms of the workforce, and obviously any institution's going to have multiple components to that workforce. Most of my negative comments and remarks have to do with the so-called youth workers. We interviewed 29 different people, most of whom were amongst the youth workers, but also included medical staff, the nurse, for example. But the sense I got - and later as part of the review team the sense we got, there's quite a bit of resistance to having outsiders talking to them or questioning how they did their job, and certainly a resistance to some of the implementation of new standard operating procedures and so on.

Q. I think you say in your statement that there was an orientation towards control and a lock-up mentality; how did that manifest itself?
A. Well, basically that's how the so-called youth workers saw their role: it was basically to provide security and, in their terms security meant basically to make sure that the kids are locked up and that there's secure movement through the institution. So, there's nothing particularly innovative or progressive about the role of the youth worker: again, it's a misnomer to call them youth workers because the usual sense of the word youth worker means it's a professional youth and community worker who works to support children and to address their immediate needs. This is by no means what we mean by youth worker in the case of Ashley.

PRESIDENT NEAVE: Q. Could I just follow up on that? We know now that some of them have, I think it's a certificate qualification, I think it might be Certificate IV. Were the people that you talked to then qualified in that way? Is that an improvement, and do you have any views about that particular qualification?
A. Well, it depends on what the qualification is and what it's for.

Q. Yes.
A. So, usually a Certificate IV is a basic qualification and often, but not always, it's a tick and flick exercise.

Q. Yes, okay.
A. So, it's substantively not particularly onerous and doesn't really do much more than provide minimal training,

but it's not training as a youth worker, it's training as a custodial, and there's a big difference. There was additional training and in-service training relating to, say, first aid, but then the question is, how do you professionalise that workforce to incorporate a whole range of their skills and knowledge into a supportive rehabilitative process, and certainly that wasn't part of it.

Q. And is that possible when you're taking people whose level of qualification is not very high at the time and not oriented to being a youth worker, you could take this group of people and bring them up to the level, or leaving aside the cultural issues which I think you were talking about, is that possible?
A. Well, I think it is, but you have to have the proper training and education scheme in place, and it has to be both in-service and pre-service, so that you have to couple it, and it has to be ongoing, because issues and our concepts are changing, so you need continuous education of any workforce, but particularly when you're talking about Human Services, and that's how I'd construct this activity, it's Human Services, but it's actually in practice comes simply as lock-up and corrective services, but not a Human Service as such.

MS BENNETT: Q. Do you have any observations you can offer the Commissioners about how accountability was perceived within the staff at Ashley at the time that you were involved?
A. Okay, again, mainly concentrating on the custodial staff, that is the youth workers, the impression we got was basically a lot of people coming up with rationales and reasons for why the particular event happened, but nothing that directly squared with taking responsibility and accountability amongst themselves, either individually or as an institution.

So, the general response tended to be along the lines of, "Well, this is the first time this has happened with us, it's never happened before", rather than saying what are the specific conditions, and without going into details of this particular death, the specific conditions were horrendous and for those who have looked at this case there's absolutely no excuse why this event should have happened, but beyond that, there's also that notion that, "Well, we've been doing this kind of stuff for a long time

and that's just how we roll".

PRESIDENT NEAVE: Q. And "we haven't had any deaths before"?
A. Yeah.

Q. "This is unfortunate"?
A. Yeah, "This is an accident". The underlying premise is that, "Oh well, this is an accident, this is an unforeseen accident", rather than, "This is something we could have stopped if we'd engaged in risk adverse kind of professional activity".

MS BENNETT: Q. And that kind of professionalism that you're talking about, as I understand your statement, you think that was lacking as a mindset and as a cultural approach; is that a fair observation?
A. Absolutely, and in fact it's not just my opinion, it's the opinion of the special investigation team. There are six of us on the team and basically the report itself, that's one of the key things that we point out is the lack of professionalism. And even in cases where people appeared to be well meaning, there is a demonstration of that lack of professionalism.

Q. Can you give the Commissioners an example of what you mean by that?
A. What I mean by that is somebody talking about this young boy who died and saying, "Well, as a mother I know that, when I deal with my kids, this is how I deal with them", so talking as a mother rather than as a professional about how they would deal with these issues and that manifests in certain types of practice. And the practice in this case was that the custodial officers were outside the cell asking the boy if he was okay and he was saying, "Yeah, I'm okay", and they're accepting that at face value, and this is a boy who had been vomiting and vomited all over himself and a few hours later was dead.

Q. You made a number of observations --

COMMISSIONER BROMFIELD: Sorry, Ms Bennett, can I just?

MS BENNETT: Please.

COMMISSIONER BROMFIELD: Q. I appreciate the example in terms of a lack of professionalism, but you also speak in

your statement about more than a lack of professionalism, you talk about a lack of empathy.
A. Again, I wouldn't want to generalise across all of the youth workers because I think that's unfair, but there were some where, if you look at the transcript you're not gonna pick that up, right; but if you're talking face-to-face with somebody, then you pick up the vibe and the vibe in this case was that they just didn't care. The lack of empathy struck me, and this was by somebody who was a senior youth worker at the time, and I was just astonished and appalled actually. And, of course, as we were doing the interviews you can't challenge that or you can't give anything away, but afterwards we as an investigation team discussed that at length and that's reflected in some of our comments in the report that we submitted to the department.

Q. Given it was in the context of a formal interview, did it strike you - I'm trying to phrase this question - I suppose it strikes me that that is the kind of context where you'd be motivated to put your best foot forward. So, is it more striking then to demonstrate a lack of empathy in the context of a formal investigation?
A. I was astonished, and really, the sense I got was, that the person wasn't even being defensive, so there was none of that defensiveness that was coming across in their body language or their voice or anything, they were just trying to state it matter-of-factly, that "this is how we do stuff around here", it was presented back to us that this was, "Stuff happens, it's an accident". They didn't use the word "accident" but that's how they were sort of - the feel of what they were saying was along those lines. And the abrogation of both specific responsibility for the case happening and also the transfer of responsibility to the young person implicitly and saying, "Well, basically they died because they were saying they were okay". So, yeah, amazing stuff actually.

PRESIDENT NEAVE: Q. So, is this to do with the fact that these children were regarded as "other", they weren't really real children, they were - is that what it's about? Is that why there's a custodial mentality?
A. No, again, different youth workers present in slightly different ways.

Q. Yes.
A. So, a couple of them said, "We've known this kid, the

kid's spent a lot of his life in Ashley and they actually quite like the kid, they said that explicitly, they felt comfortable, they felt sad that he'd died and so on, so there was feelings of empathy amongst these people but it was in a sense misplaced because it was personalised rather than professional.

Q. Yes.
A. But on the part of this particular person, the senior youth worker it was like, "Well, it happened, we've been here for 10 years, this is how we do things around here". Then some of the chickens came home to roost a bit later when we were doing the review and implementation of recommendations, and you could just see the resistance to the idea, "Well, this is extra work for us" --

MS BENNETT: Q. I wanted to ask you about that, if I could pause you there, if I could ask you to silence your phone for me.
A. Sure.

Q. How did you perceive that resistance to manifest itself? What did it look like? Well, perhaps we should go back, sorry, let's do this chronologically. You did your review, you spoke with these people, you made your observations and you did a report; is that right?
A. Yes.

Q. I think you've summarised the key findings and key observations from that report, paragraph 21 of your statement, and importantly there's a lack of risk-based decision-making, the youth workers were not professional and there was a lack of formal approach to the delivery of care, a failure to provide humanitarian conditions, and training provided to staff was inadequate, they were trained to lock kids up and perhaps they were given a bit of first aid training but little or inadequate training was provided in the area of critical incidents. That's a summary of your --
A. (Witness nods.)

Q. You provided that report to the department?
A. To the department, yep.

Q. What happened next? After you provided that report you were provided - what happened next?
A. There was four of us then asked to be part of a review

committee to monitor and review the implementation of recommendations; most of that work involved advising on the introduction of new standard operating procedures and to go for visits, periodic visits to Ashley and talk to the manager, to talk to some of the workers and get a sense of, are new things being put into place, and for 18 months we did that.

Q. And that's the standard operating procedures that you were just saying to the Commissioners you felt there was resistance to the implementation?
A. Yes, we got the sense, by some of the youth workers, that it was a burden, that it was an additional workload, that basically, if you're doing lock-up work, why are you getting us to do all this other stuff? So, there was that sense in conversations and also, again, body language, stuff that sometimes is not tangible but you're picking it up.

Q. So, you monitored that implementation of the new standard operating procedures for 18 months; is that right?
A. My estimate was around 18 months that we were involved, and then it stopped.

PRESIDENT NEAVE: Q. And, how did it stop? Sorry, I may have anticipated you, do you want to follow up with that, Ms Bennett?

MS BENNETT: Q. Just before we get to why did it stop, I just wanted to ask you further about the resistance. Did you observe that resistance to change at all levels?
A. Well, in fact, we discussed it with the manager because he was concerned about that issue as well.

Q. What was the nature of his concern?
A. Well, the resistance and just that, if you're trying to undertake cultural change, then sometimes there are sections of the troops who are resisting that change, and that was clear to senior manager as well as to us when we were discussing it with people.

Q. And, among the youth workers who were resisting change, were they junior, were they senior, what was the general profile? Was there a general profile?
A. No, it would be a mix, and it's not every - not every person would be resisting but there was certainly resistance.

Q. I think Commissioner Neave then asked you, what happened towards the end of your review, you continued these reviews, you reported back, I take it?
A. We reported back to another section within the Department of Health and Human Services, and we'd been doing this I think it was around eight - it might have been 12 months but I think it was around 18 months, and then the communication stopped and there was no explanation, we just --

PRESIDENT NEAVE: Q. So, you were communicating but not getting anything back from the department or?
A. We were having regular meetings as a monitoring group and they were set up through the department and then we would go to Ashley and do some stuff there, but we could do some stuff remotely because of standard operating procedures and that kind of thing. Then to me it appeared suddenly and all of a sudden there was no more contact and when we were asking about it they said, "Well, the group's no longer in existence", and it's partly because the person who we were reporting to, she was moved somewhere else within the department, somebody else moved in to oversee the monitoring and review group, but that meant the end of the group because we never met again.

MS BENNETT: Q. So, it was a reform steering committee, was that your committee as far as you know, comprised of oversight the implementation of recommendations from the CAT and SRI reports?
A. Yes.

Q. And that was chaired by the Deputy Secretary for Children, was that your recollection?
A. Our group was chaired by the Director of Nursing, I think, [redacted].

Q. And, who did you report to?
A. We reported to [redacted] --

Q. [redacted]?
A. [redacted], I think, yes. Again, I'm trying to remember all the --

PRESIDENT NEAVE: Q. And she was then moved, have I got that right?
A. That's my recollection, yes.

MS BENNETT: Q. Had your recommendations been implemented at the time you finished carrying out your monitoring function?
A. They were being implemented, so it was a process.

Q. What I'm asking is: did you stop doing it because the job was done and done properly?
A. No. No. And, in fact, one of the clear things that - and we were quite keen to keep the monitoring going - one of the clear things was that it had to be a continuous process well into the future, because that was the way to have culture change and to make sure that - you can have a whole bank of new standard operating procedures, but if you don't do your monitoring and auditing, then they can just be ignored like the previous ones were.

PRESIDENT NEAVE: Q. Can I ask you who was head of the department at that time, do you remember? We can find out, but I'd be interested to know?
A. I know the name but I'm --

Q. It's gone.
A. It's gone, yeah.

PRESIDENT NEAVE: That's all right, we can follow up on that, thank you.

MS BENNETT: Q. You say in your statement that there were no alternatives to Ashley as a detention facility. Tell us about the significance of that in the context of remand. Was remand treated as a different category, in your observation?
A. Well, in Tasmania we've had a longstanding issue with putting juveniles on remand and then putting them into detention, in part because of the lack of alternatives for young people, depending on which part of the state they're living in. So, if you're not living at home and you're in a vulnerable situation, you would often be put into remand which means that you're put into detention. And over time, I mean, as a criminologist we know that often it was well meaning police and magistrates doing this because they were concerned about the kids because the kids had nowhere else to go, but we've had series of reports from the Criminology Research Council from the Children's Commissioner's various reports and so on that I have looked at the use of remand and unfortunately it's mainly due to the lack of adequate

housing or alternative places to put kids.

Q. So there's a relationship there between out-of-home care and intersects with the Juvenile Justice System; is that fair?
A. That's another issue.

Q. What is it about that issue?
A. So, you can have - there's a lot of crossover, we know nationally a lot of crossover between children in out-of-care child protection type systems who end up being put into the juvenile system for a variety of reasons, partly because of background and activities, but also, it's part of the movement from one silo to another, so there's a lot of crossover.

Q. Then there seems to be another relationship you identify in your statement at around paragraph 52 about the relationship between Ashley and Risdon; can you tell the Commissioners about what the flow-through is like between those two?
A. Yeah, I've reflected on this and I think the key question is, is there anybody who's been at Ashley who hasn't ended up at Risdon Prison? So, invert the question, because when I've looked at this in the past it was very hard to find any of the young people who have been at Ashley who haven't ended up in the adult prison system, so it's really an indictment of the pipeline.

Q. Speaking as a criminologist, is that in any way normal, that a youth facility would have, it seems, such rates of recidivism?
A. Um, no, not really. The fact is that coercive institutions like prisons, whether it's a youth prison or an adult prison, have a tendency to fail precisely in this way. So, if you put somebody into, say, a youth prison there is a whole bunch of things that accompany that, detachment from home, from school, a whole bunch of things, but also the stigma that's attached to spending time inside, all that then generates a track record which makes it more difficult for young people to succeed into the future and a similar process with the adult prisons as well.

PRESIDENT NEAVE: Q. Just to follow up on that, would you say that statistically it's worse in Tasmania than in some of the other states? I understand the relationship

between being in Youth Detention and ending up in an adult prison; is that more likely to happen here, less likely, about the same, do you have any feeling for that?
A. I'd probably - okay. It's very difficult to do direct comparisons of Tasmania with other states and territories.

Q. Of course, yep.
A. Because we have, relatively speaking, a small population of both young people in detention and the adult prison compared to many other jurisdictions.

Q. Yes.
A. We are unique in the sense, though, that because of our size that, when you've only got one Youth Detention Centre and one adult prison in essence, or a prison system, then that pipeline becomes more clear. So, it's a very clear relationship and it's virtually 100 per cent.

MS BENNETT: Q. Tell the Commissioners, you speak in your statement about green criminology, I'd like to ask you to explain what you mean by that and what its role might be in preventing that re-offending?
A. Green criminology refers to taking into account issues relating to the environment. And, in the specific case of rehabilitation, for example, green criminologists and mainstream criminologists would be interested in looking at how young people can do meaningful, creative, energising activities associated with the environment: it could be partly about learning about the environment. So, there are Indigenous programs worldwide which are not simply about connecting the country but also doing environmental related activities.

There are various programs that involved - a particularly good one is the skill mill based in the UK where they have young people engaged in a series of reclamation projects and cleaning up the waterways in the UK. People are learning about plants and botany and all that kind of stuff, so they're developing a whole bunch of different kinds of knowledge. It's physical, a lot of it, so the physicality of this kind of activity.

The analogy as well, not just the environment as such, but would be, when we've had various kinds of natural disasters, whether it's cyclones in Queensland or bushfires here in Tassie, when prisoners have gone out and done volunteer work they've been regarded really differently by

the local community because they're doing something and they're doing something that's physical and they feel good about doing that, they're outside breathing fresh air and basically providing something back to the community, so there's a whole bunch of benefits associated with environmental projects specifically and just giving back more generally.

Q. And in the context of Indigenous children and young people, that involves consultation with local First Nations communities, I assume?
A. Yes.

Q. And is that something you saw any evidence of in your time working in the Ashley context?
A. No, we didn't deal with that specifically, but there has been a longstanding program of Indigenous young people who spent time at Ashley going to an island and going through cultural education and stuff with Indigenous elders.

PRESIDENT NEAVE: Q. That's the Clarke Island program?
A. Yep.

Q. I'm sorry, I can't remember the Aboriginal name for it. Is that still going, that program, do you know?
A. I'm not sure.

PRESIDENT NEAVE: Okay, thank you.

MS BENNETT: Q. My learned friend for the state tells me it was defunded a little while ago. I want to ask you a final question which is, what would you say to the Commissioners about how to change Ashley? What needs to shift, in your view, coming from your perspective and with your experiences? What needs to shift?
A. I know I've only got limited time. Okay, the negative is, I would raze Ashley to the ground. I would destroy the physical infrastructure tomorrow, I wouldn't wait, and we don't have three years of transition: I would get rid of it immediately and transfer the children to other places, houses, secure houses or whatever, but I would certainly knock it down.

On the positive side, I think that what we need is a rethink of the philosophy and the mission of Juvenile Justice, and we know worldwide that the best Juvenile

Justice practice is driven by about six key propositions: one is justice re-investment, so don't put your money in physical infrastructure, bricks and mortar of a prison, put your money into community and housing and projects at the community level.

Restorative justice is about repairing the harm and bringing people meaningfully into the process of accountability, so restorative justice, but making restorative justice not simply at the front-end but make it the centre of your Juvenile Justice system, so the most problematic and troubled and vulnerable and marginalised children are often those who don't get a chance to go through a juvenile conferencing system because that's only dealing with trivial offending and first-time offenders. What we need is to put restorative justice at the centre.

A third thing is a trauma-informed approach because many of the children that we're describing in places like Ashley come from extremely vulnerable backgrounds and we need to talk about issues such as drug and alcohol use and mental illness and cognitive impairment and brain injury, and trauma-informed care is really important as part of this approach.

Another component is mentoring. Mentoring for me is huge for young people, and the mentor doesn't have to necessarily be a member of their family but somebody who they respect: it could be a sportsperson, it could be a musician, it could be other people who want to go back in and work with young people, but it's all about respect. So, that's another component.

Two other things in passing I would say as well: the age of criminal responsibility, let's align ourselves to the United Nations Convention on the Rights of the Child and make it 18. Does that mean we're not going to deal with children who commit crimes under 18? No, of course it doesn't, but it means that we approach it very differently. So we take it out of the punishment regime and put it into a rehabilitation and restorative regime.

The sixth thing I would do is talk seriously about therapeutic jurisprudence, which basically is a fancy way of saying, many of the children that we're talking about need support. We have a Drug Court in Tasmania, we can learn from the example of the Drug Court, and deal with

underlying issues rather than the superficial issues of the offending itself. So, take a deep dive into, why do people act out in the way they act out.

What we need in essence is a holistic multi-pronged approach that puts relationships at the centre, and we have to always remind ourselves that we're dealing with children and we're dealing with the most vulnerable marginalised children in our society. That's the short answer to all this.

And, I'll complete the answer with one final comment: that more than simply restorative justice as conflict resolution, we need to have a restorative ethos ingrained in our institutions. We can do it, we have examples here in Tasmania of some primary schools that have got a beautiful restorative ethos where basically it's premised on three ideas: respect yourself, respect others and respect our place. If you get everybody on-line doing that, so the teachers, the groundskeepers, the accountants, the youth workers, if we can instil that, then you have a restorative ethos and it works way much better.

MS BENNETT: Please the Commissioners, those are the questions I had for Professor White.

COMMISSIONER BROMFIELD: No questions, but thank you very much for your evidence.

PRESIDENT NEAVE: Q. I just wanted to ask, there are always difficulties in transposing models from elsewhere into a particular context, but if we were to be looking at other models, where would we look, within Australia, let's say?
A. I think that we can establish the Tasmanian model. We are a small jurisdiction, we are in a sense a self-contained island; we're not talking about a huge number of children, and I think that we can learn from many jurisdictions on the mainland and worldwide, but those propositions that I've just put forward, if you distil the essence of that, what we need is community-based, what we need is small institutions.

So, if we're going to have an institution where we need some kind of secure accommodation, make it a house; and rather than isolating and segregating our children who are in trouble and who are troublesome, we need to surround

them with professional support and with mentors. That's the way to do it.

MS BENNETT: Please the Commissioners.

PRESIDENT NEAVE: Thank you very much, Professor White, that was very helpful.

MS BENNETT: Commissioners, the next witnesses, we might need a moment to re-arrange the room. I'm conscious of the time and I'll minimise the disruption, if it please the Commissioners.

PRESIDENT NEAVE: Is it worth us staying here, should we just stay here? Do you think we should - we're happy to sit while you rearrange?

MS BENNETT: If the Commissioners are content, that might be convenient, thank you.

PRESIDENT NEAVE: Yes, we are.

MS BENNETT: In which case I'll ask that Ms Ray and Ms Spencer come to the witness area? Commissioners, one of the witnesses has asked if they might be permitted to appear with a support person?

PRESIDENT NEAVE: Yes, of course.

SUPPORT PERSON: Good afternoon.

PRESIDENT NEAVE: Afternoon.

COMMISSIONER BROMFIELD: You can remove your masks if you'd like to.

MS RAY: I've got a virus, so I'd better not.

<COLLEEN RAY (SUE), sworn: [2.51 pm]

<SARAH SPENCER, sworn:

<EXAMINATION BY MS BENNETT:

MS BENNETT: Thank you. Can you both hear me well enough?

(Witnesses indicate "yes".)

MS BENNETT: Ms Ray, you've made a statement in response to a notice to this Commission; is that right?

MS RAY: Yes.

MS BENNETT: You've made a statement to this Commission; is that right?

MS RAY: That's right, I was asked to do it.

MS BENNETT: That's right. And you've read that recently?

MS RAY: Yeah, I had a quick look through it the other day.

MS BENNETT: And it's true and correct?

MS RAY: Yes, it is.

MS BENNETT: Ms Spencer, you've made a statement to assist the Commission, haven't you?

MS SPENCER: Yes.

MS BENNETT: Have you read that recently?

MS SPENCER: Yes.

MS BENNETT: Can you tell the Commissioners if it's true and correct?

MS SPENCER: Yes, it is.

MS BENNETT: Thank you, Ms Spencer. I just want to identify for the Commissioners both of your respective backgrounds and how long you've worked at Ashley. So, starting with you, Ms Ray, can you tell the Commissioners how long you've worked at Ashley?

MS RAY: I've been there approximately 20 years, went there as a youth worker, did various other positions at the centre, and currently was a youth worker when I went on long service leave. So ...

MS BENNETT: So, that's since about 2002; is that right?

MS RAY: Yes.

MS BENNETT: Ms Spencer, can you tell the Commissioners about how long you've worked at Ashley?

MS SPENCER: Since 2011, in April.

MS BENNETT: What roles have you held at Ashley?

MS SPENCER: I worked as a youth worker, I did a few months in case management, on contract, and I filled in in programs, but generally my job was a youth worker.

COMMISSIONER BENJAMIN: 2011.

MS SPENCER: 2011.

PRESIDENT NEAVE: Thank you.

MS BENNETT: Ms Spencer, starting with you then, what was involved in the role of youth worker at Ashley?

MS SPENCER: Taking young people through the daily routine, looking out for their wellbeing, performing pro-social behaviour for them and encouraging them to, ah, basically, um, potentially, regardless of their outside lives, try and perform better for themselves basically; escorting them from place to place safely, looking out for the other people within the centre, the staff and other visitors within the centre, looking out for the safety and security within the centre. So, our job was basically dynamic security.

MS BENNETT: Ms Ray, can you tell the Commissioners about what you understand to be the role of a youth worker?

MS RAY: Taking children as individuals or young people and working with those individual traits to give them self-esteem for the future and being able to make informed decisions, so taking them through those processes. Every time there might be a hiccup, how do I go about making an informed decision. And also, rehabilitating them to what it says in the Youth Justice Act as community acceptable behaviours. That's basically what it is, so it's role modelling, you know, what the community is expecting from our young people.

MS SPENCER: That's better than what I said.

MS BENNETT: Starting with you, Ms Ray, tell us about the sort of training and induction you got when you started working at Ashley?

MS RAY: Well, I was supposed to have two weeks but I only got four days because there was a riot. So, after day 4 I got put into a unit with 15 boys and three staff. So, there was me and two other senior staff, and 20 minutes later it all kicked off. So, it was, yeah, quite a first day. However, I got through that first day and I'm still here 20 years later.

MS BENNETT: Did you ever get back to the induction program?

MS RAY: No. No, the riots would have - over in Bronte, because the whole building was trashed, there was no time for that and there was staff injured, staff away due to stress, so they needed all bodies on hand.

MS BENNETT: And what about training after that? So, induction got curtailed?

MS RAY: Yes.

MS BENNETT: Was there some follow-up training?

MS RAY: Yes, I read all the books and everything just to make sure I was on par with what - where we were going and what we were doing. I was already a trained youth worker in New Zealand.

MS BENNETT: So, did you have some qualifications from New Zealand?

MS RAY: Yes, I did.

MS BENNETT: What were they?

MS RAY: I was a youth worker with the YMCA and also was part-time Phys Ed teacher at the Gisborne Girls High school for six months while they were waiting for their exchange teacher to come out, and I also was part of the Youth at Risk Program with the police, so I had quite a lot of experience before I went there.

MS BENNETT: And so, then you arrived, you had four days of your two weeks, then you read your documents.

MS RAY: Yep.

MS BENNETT: Was that pretty much on-the-job training after that?

MS RAY: Well, it was because I had to get up to par very quick. So, I read the SOPs religiously, that's the operating procedures to make sure I had then down pat, and from then on I always kept up with them to make sure I knew when there were changes made.

MS BENNETT: Did you rely on the people who worked there a bit longer than you to tell you how things were done?

MS RAY: Well, you can rely on people to a point only and that's the point where you'll say, "Oh, I think I'll get somebody else's opinion on this". So, I didn't know anybody when I went there, so I wasn't under anybody's influence, and I went there with the good intention of trying to make the lot of a young person better.

MS BENNETT: Ms Spencer, turning to you, can you tell the Commissioners about your experience starting at Ashley, about the training and induction process as it was for you?

MS SPENCER: So I had, I believe it was three weeks training; part of that was buddy shifts. So, from memory, actual training in a room was about 11 days and the rest were buddy shifts. I had come from a previous detention centre where I had six weeks training up there and I had my Youth Justice certificate before I came down, my Certificate IV.

MS BENNETT: I think you did some further training after you started at Ashley; is that right?

MS SPENCER: Yep.

MS BENNETT: Tell the Commissioners about that.

MS SPENCER: I did a diploma in Community Services, specifically in drug and alcohol and mental health.

MS BENNETT: Was there further ongoing training provided at Ashley about the Ashley environment?

MS SPENCER: There was, we had a training day set one day per every three months, and then we had essential training, so first aid, things like that that were required every 12 months. There were definitely gaps.

MS BENNETT: What sort of gaps do you feel like there were?

MS SPENCER: We didn't have restraint training consistently. We should have had it at least every 12 months and I think I had it three times in eleven and a half years.

MS BENNETT: Why was that a matter of concern for you?

MS SPENCER: Because I was injured at work in a restraint.

MS BENNETT: Can you tell the Commissioners about, not that specific incident, but what was it you feel you didn't know about restraints?

MS SPENCER: I think it had more to do with the physical aspect of it. So, my previous detention centre in Townsville, we had extensive training. We had, like, a week of theory and a week of physical. The training that I received down here was very minimal and it wasn't resistive. So, when you have to restrain a resident who is resisting, it's very different than saying, "Please put your hand here, please put your hand there and I'll comply", so there was very much a lack of understanding or experience around how to take - to intervene where two young people are assaulting each other or to defend yourself if someone was assaulting you: we just didn't get that, ever.

MS BENNETT: What about you, Ms Ray, was that your experience as well?

MS RAY: We did it on and off, but the problem was, was that towards the latter part of our time there they were iffing and erring about what model to use, and I did take over the training role there for a little while, because during COVID and just before COVID we got behind in our training, so for the three months that I was on that

position I made sure that everybody went through all their mandatory training, but I could not get an answer on the restraint training, what model they wanted to do. Up until then we'd used the universal one that's used in the hospitals and throughout government areas, which is the non-violent crisis intervention.

What Sarah's referring to, unless you're actually practising it all the time you forget how to apply equal pressure, and that's the thing in it: it's about equal pressure. And, if you're not training all the time, you do forget stuff; it's not, you know, one, two, three, four, okay, we've got him under control, now we can talk to him, see where we're going, see if he's going to calm down, see if he does have to go to his room or see whether or not we can resolve this, yes.

There's a lot in it because there's various stages of escalation and de-escalation and, unless you're actually going over the training all the time, a physical response that is required from you all of a sudden means that you have to be in a position where you can remember what all the steps are fluently, straight away, and so, everybody comes in to play.

MS BENNETT: It's a pretty busy centre and there have been staffing issues over time; is it fair to say that it's difficult for everyone to get to their scheduled training?

MS RAY: Yes.

MS BENNETT: Would you say, Ms Ray, that that causes some risks?

MS RAY: Of course it does.

MS BENNETT: Tell the Commissioners about what risks you perceive arising from that.

MS RAY: Well, the risks that I perceive is that staff are very unsafe. Young people are very, what we call streetwise. They know on a given day, hello, here's a couple of new ones and there's only one old one here today, we might play up today. They're very, very good at reading situations. Now, if you want the best out of a young person you need to nearly have one-on-one staff ratio to residents, right, that's the only way that you can actually

have a therapeutic centre.

Now, there was always constraints over budget, over staffing, they never did enough recruitment, we couldn't keep enough people, so for a whole period of four years there was quite a cohort of staff who were working three and four 12-hour shifts a week. Now, under those circumstances, in a 24/7 alert level situation, that's a lot for the human brain to take on for a long period of time.

At that stage the government didn't even want to recognise vicarious trauma, PTSD, those sorts of things. They've finally come round to it, but by golly it's been a long slog

MS BENNETT: Ms Spencer, I think I heard you say "no breaks", can you tell us --

MS SPENCER: Yes. Sorry, no breaks. We didn't get allocated breaks. The only time there was any room for a break was when we didn't need one.

MS BENNETT: And how often did you not need a break?

MS SPENCER: Very rarely. We couldn't even get to a toilet, and that's not a joke.

MS BENNETT: What do you do?

MS SPENCER: Take spare underwear to work.

MS RAY: Always.

MS SPENCER: That's embarrassing but that's true. That's how bad it was. Under-staffed and the government just kept deciding - we've always been a political football, always. Ashley has always been a political football: close it down, shut it down, it costs too much to run, cut the staffing numbers, you don't need that many people to run the scenario, and then took our measures of authority away from us so we couldn't actually manage these challenging behaviours with the young people that were working.

MS BENNETT: So, what are the measures of authority that were taken away?

MS SPENCER: So, when young people used to be play fighting when I first started, because that obviously turns pear-shaped quite quickly, we'd be like, "Right, 10 minutes in your room, cool down. Cool off, come back out". If it happened again, okay, 20 minutes, yep, no worries. If it happened again they might be in for an hour or for the night depending on what time of the day it was, and it worked, it worked. We had a lot of - everyone keeps referring to them as children, they're young men in a gym working out and very hard to manage, and without the proper workforce to manage them physically, we had other measures which we are now not allowed to do due to the isolation - and I do not get the fact that it - there's definitely been issues with that not being managed correctly, but when it was managed correctly it worked.

MS BENNETT: And so, when kids are sent off to their room effectively, so they're --

MS SPENCER: Yep, so at home if I had to send my child to their room as a, "Go to your room for a few minutes, cool off". Come back out, start again, reflect on what's just gone on, you know, de-escalate, let's go again, let's start again.

MS BENNETT: And so, they go to their room and they stay in their room for the 10 minutes.

MS SPENCER: Yep.

MS BENNETT: And they're told they are allowed - are they locked in?

MS SPENCER: This is going back 10 years.

MS BENNETT: 2011, 12. So, they're looked in their room for the 10 minutes.

MS SPENCER: Yep.

MS BENNETT: And then they come out and they might still not be compliant and they might be sent in for 20 minutes?

MS SPENCER: Yeah, not necessarily straight away though, if it amps up again. Because we were dealing with a lot higher numbers then and the boys were a lot generally - well, was particularly usually boys, older, stronger,

physically fit, not unfit like they are nowadays, and yeah, we had to have measures to - and then when I started that's what everybody did and it worked: it worked.

MS BENNETT: Was that part of your training or did you pick that up on the job?

MS SPENCER: Um, I think it was both, to be honest. It would have been mentioned in training. I don't know - yeah, but it was definitely an on-the-job thing, yeah.

MS RAY: It was one of the measures that we used to have, yeah.

MS SPENCER: It worked back then, yep.

MS BENNETT: Was there any limit on how long the kids might be sent back to their room for?

MS SPENCER: I don't think it was ever very long, like, it worked; like, the 10 minutes normally worked or the 20 minutes worked, like, it wasn't something that ended up usually where they - unless a fight broke out. So, if that third time the play fighting turned into an incident, then they were isolated and that was more of an official thing than a leading up to that, but that was rare because it normally worked.

MS BENNETT: Is that the sort of thing that got documented back then?

MS SPENCER: I don't know about the 10 and the 20 minutes scenario, but obviously if they were officially isolated due to an actual incident because it ended up being a fight and we had to document everything, then it would have been.

MS BENNETT: So, there's this sort of - I don't want to put words in your mouth, just check if I understand - so there's this informal isolation.

MS SPENCER: There was back then.

MS BENNETT: And then there's the sort of more formal that would be a response to an incident and more formal would probably get written up?

MS SPENCER: Yeah, definitely, 100 per cent.

MS BENNETT: And less formal might not?

MS SPENCER: Well, the play fighting could potentially be documented - it would have been documented in the diary potentially, the daily diary, like, the shift handover, so that the other shift were aware that there was tension between particular residents and to keep an eye on them and, like, be mindful of that.

MS BENNETT: Ms Ray, you've been nodding along there; anything you need to add to that?

MS RAY: You talk about formal and informal. Regardless of whether a young person is in their room, there's always observations made.

MS SPENCER: Yep.

MS RAY: So it depends on the risk factors. So, if we have somebody who's on a SASH and they're on 10 minutes or on constants and we have to pop them in their rooms, then we will be watching them according to the risk factor that is down, they're not just put in there and forgotten about.

MS SPENCER: Yep.

COMMISSIONER BROMFIELD: Just for the purpose of the transcript, can you tell us what SASH is, for people that read it later?

MS RAY: It's a suicide risk assessment that takes place with young people. So, if you had somebody who was of risk of that, obviously you'd want to be watching them fairly constantly to make sure that they were okay and they didn't become disorientated and dysfunctional in their room and hurt themselves.

MS BENNETT: I'll go back. Ms Spencer, you told us that this was back in 2011/12. When did that practice of formal/informal isolation stop?

MS SPENCER: I believe we had a young person in their room. One of our processes used to be, due to a serious incident, that there would be a lockdown procedure that went with that and they would need to come out to - they could come out and do a conference and go through whatever

the issue was and then they'd move from what we used to call "the Blue Program" and that involved a lot of isolation.

And I recall a young person being in their room for quite some time because they refused to go to conference. Loved reading books, were quite happy to stay in their room, he just said, "I don't wanna come out, I don't want to go to conference". We also saw a lot of self-isolation as well where kids refused to come out: had nothing to do with us, they chose to, and that became an issue. It was notified, from what I understand, to the Commissioner, I can't remember what year it was; I want to say 2012 or 2013 maybe. Yeah, and then from what I understand that's when our Blue Program was diminished, and because they didn't want him in his room, so they were doing everything to get him to come out but he didn't want to because he knew he had to go through the conference and conferencing process. He'd assaulted a staff member quite badly.

And then I think he loved reading books, he was really happy in there, and we're like, this isn't healthy, you can't stay in your room, mate, you need to come out, and yeah, from that was my last memory of a long isolation period and I believe that from then that's when all of the practices and procedures changed around isolation. I just don't remember the dates.

PRESIDENT NEAVE: How long did you say that was? I missed when you said?

MS SPENCER: I believe he was in his room for four weeks, about that, roughly, that's from memory, yeah.

MS BENNETT: Was there a Blue Program that was reintroduced more recently?

MS SPENCER: I don't know that I'm officially aware of that. I don't think so. As in, how recent?

MS BENNETT: 2019 or so.

MS SPENCER: Where are we now? So --

MS RAY: No, that's not a Blue Program.

MS SPENCER: I don't think so. I think there was some

isolation around a riot, but I don't believe that it was an official Blue Program. People around the centre may have used that word just because that's what they related it to because of their previous history, but I don't think it was officially called that, I think it was just in regards to managing these particular young people that had a pretty serious riot.

MS BENNETT: I see, and where perhaps there weren't other strategies available?

MS SPENCER: No, I don't - I wasn't involved in that.

MS BENNETT: Ms Ray, do you have any (indistinct).

MS RAY: There's a risk factor associated with these young people that kept them in the unit, not necessarily their room all the time because they were rotated through their rooms into the unit, and they had a program for them each day: it might be, they would have education, modules that they had to use. They would have phone calls, they would have physical education, all sorts of things. It was a program revolving around the members.

MS SPENCER: Keeping them separated.

MS RAY: Keeping them separated from one another, because once they got together they became unmanageable, and so this is what they did until they could get to the bottom of what was going on and get these young people conferenced properly and get some agreements from them to come out and, you know, carry on as normal and not do those types of behaviours and they went back to school. It came out to orange the following week and was back at school.

MS BENNETT: So, these are colours you're talking about there?

MS RAY: Yes.

MS BENNETT: And these colours denote a risk rating?

MS SPENCER: They would have been red.

MS BENNETT: And orange is quite high a risk?

MS RAY: Red, orange, yellow, green. Green's the top.

Green's a young person who's travelling very, very well managing programs, schooling, their responsibilities inside the unit, and generally doing well in case management and case assessment.

MS BENNETT: And the restriction of a child with a blue rating - sorry, the movement of a child with a blue rating isn't restricted at all, but the movement of children with an orange rating might be restricted to a degree?

MS RAY: It could be because it may be also that Johnny has decided that when he sees Harry out in the courtyard he's going to belt him, so the restriction might be that those members can't cross. So, we would have to do a program where these two young people weren't crossing until we got to the - you know, resolved the issue that was going on with them.

Our main thing is the safety of everybody inside that centre, the safety and security, and so we take that part of it very, very seriously. We don't want young people assaulting one another, we don't want to be assaulted either. So, you know, there is a lot more risk assessment done - probably not seen by a lot of people, but it is done.

MS BENNETT: And that risk assessment, in your statement, Ms Ray, I might be confusing the two statements, I think in your statement you say that you're not given additional time to reduce all of these matters to writing. Is that - let me put it in a positive question, are you given enough, are you given some space?

MS RAY: No. Because we're short on staff and an incident may have happened at 12 o'clock during the day, and because you've got young people coming in and out from school into the unit, you don't get time to sit down and write your actual incident reports. You might get your book done, your communication book, and you've got to stay after 3 o'clock and do it, find somewhere quiet where you can sit down and actually type it up. Sometimes you get paid, most times not.

MS BENNETT: Ms Spencer, is that your experience as well?

MS SPENCER: Yes.

MS BENNETT: Tell the Commissioners about what difficulties that presents for you.

MS SPENCER: So, on my last shift that I did I could have written multiple detention offences, and I didn't get a chance to. I could have written an SRLS for myself but the moment my shift finished I just wanted to go straight home because we're not safe.

MS BENNETT: Tell the Commissioners what you mean by that, what's not safe?

MS SPENCER: Well, when you're working with staff who can't restrain aggressive young people, who at the moment due to the fact that we're in restricted practices, so rolling lockdowns because we don't have the staff when they do come out, obviously they're heightened, and we get that, but we can't - the few people that were managing them couldn't manage them, and so, the whole shift was just horrific, and it was only four females on the floor. One left with one person in one unit who shouldn't be left with that - no-one should be left alone with him at all, let alone a female, and then the three other females, including myself, on work cover restrictions who also can't restrain, with two units of boys just absolutely out of control.

MS BENNETT: Tell the Commissioners about the rolling lockdowns.

MS SPENCER: So, at the moment due to the lack of staff we've had to keep the young people in their room for longer periods than normal and let them out at different times rather than all together. And, the Children's Commissioner requested dates and times of when they were out and so then we were under pressure to make sure that that was happening - I'm assuming that's what happened that particular day, because we let them out with less staff than the day before, which didn't make sense to me. And, yeah, it was just extremely unsafe for everyone: for them and for us.

MS BENNETT: I'm going to conclude this examination, but I just wanted to give you the chance, I wanted to ask you one last question and then to offer any reflections that you might have to the Commissioners.

Ms Ray, can you tell the Commissioners what's been the trajectory in your 20 years there? Has it gotten better or

worse?

MS RAY: When I first went there we used to do lots of things: we used to go fishing, we used to go caving. We were always, at least once or twice a week, out with a group of people, young people.

We had a few boys run away, got in the papers, as it does, and then they decided that we had to do more risk assessments and that we couldn't do these off-site activities, which is therapeutic practice, as we used to. So, it meant that there had to be longer periods of a young person being on green before they could go outside the fence, whereas before, you know, kids were taken on camps, yeah, they used to do some pretty awesome stuff.

So, community expectations were, you know, goodness me, these kids are running around, you know, taking government cars and getting away from the area where they were supposed to be, we need to do something about it. So, pressure was applied for us to apply a different risk criteria, and that's what happened. We used to go to the movies, or I remember filling my car up with kids and going off to the movies.

MS SPENCER: Baseball, sport.

MS RAY: Take kids to soccer, I might take --

MS BENNETT: Where did that pressure come from?

MS RAY: From the department. We're just the minions, we can only do - we can only work by the operating procedures and policies in front of us. Until such times as those policies change or the interpretation changes, we have to maintain what we're doing. So, if the interpretation comes through that it's changed, that we're not reading it properly, we change and we work a different way.

So, you've got horses for courses here, certain things have happened at certain times during the evolving process of the centre and its policies and its processes, and how that's been overseen by the department and the Attorney-General's department as to how the SOPs are perceived.

MS BENNETT: Ms Spencer, would you like to offer any

observations of your own?

MS SPENCER: Oh, yeah, I would. I'll try and keep it short. Staff are assaulted on site regularly, consistently, not supported to charge young people with assault because it looks bad on paper, and that is happening all the time, constantly. Brand new worker couple of days ago, punched in the face. Any assault charge? Like, that's his first day. We're trying to get more staff: we're not supported.

We don't get debriefings after critical incidents, we don't get breaks as I've already said. We do not get clinical supervision. I feel like there's been a lot of - well, I know - we have had a lot of work colleagues, like, targeted instead of actually the institution and how this has actually come to be. There's a lot of allegations and I'm not diminishing the fact that there would no doubt be some of those would be legitimate, but there are massive amounts that are not.

So, we've lost a huge wealth of experience off the floor. We've got inexperienced staff who are not trained properly, who are only going to make more mistakes, and then it's going to be their fault again, and it shouldn't be.

The government gave these young people, ex-residents whether they went to Risdon, payouts when they said, "Oh, so and so interfered with me or did this". No investigation, just gave them 10 grand there, 20 grand there, 30 grand there. We knew about it because they told us all the time. They would leave the centre saying, "I'm going to say this when I leave, so and so got this much money for saying this". Constantly we've lost valuable workers through a lot of unproven allegations with no investigations whatsoever. Why would anyone want to work at Ashley Youth Detention Centre?

MS RAY: The instrument of delegation.

MS SPENCER: It just doesn't make - it's horrific, because they just kept handing them money with no investigation, and now we've got this flood of allegations, and there would be a percentage, I'm not diminishing that, but all of these false allegations take away from the legitimate ones.

MS BENNETT: Commissioners, those are the questions that I had, unless there are other matters?

COMMISSIONER BROMFIELD: What would you like to tell us about what you think we should do? We have the obligation to make the recommendation.

MS SPENCER: I think the government and the department need to be held accountable, and I believe that the pressure from them onto the centre managers, whoever it was at the time, to make sure this box looks ticked and that box looks ticked, and we'll pretend we didn't have a thousand staff assaults and all that rubbish because they felt pressured due to the fact that, oh, we're going to close it down and we're going to do this and we're going to do that and they all had to perform in a certain way and look a certain way, and I feel like what is at the top flows down and they need to be held accountable, and instead of being held accountable at the top they're pointing fingers at the plebs.

MS RAY: Yep, the minions.

MS SPENCER: It's not okay. People's lives have been affected, like there are whole families and lives have been affected by some of these accusations that are completely and utterly false and it's not okay. No support, nothing. It's disgusting, in my opinion. We all got into this business, into this job because we cared about vulnerable young people, and to end our careers after all of this lack of support and all of the lack of - everything is just disgusting.

People gave up times with their own families, they did extra hours, they came in on their days off, they didn't get breaks, they didn't get the training and everything, and now they're sitting at home under these investigations, like, with all this scrutiny absolutely devastated, and some of them are so outlandish, it's not even physically possible, some of them, it's just so - what? And there's no-one supporting these people, and there's no proper investigation. Like, just --

MS RAY: I just think that --

MS SPENCER: Was that enough?

MS RAY: -- to go into the work being a caregiver and to end up coming out with children coming home from school and saying to their mothers and fathers who work there, "Oh, the kids at school says you're a paedophile, mum".

MS SPENCER: Yep, a house of paedophiles, that's what we are.

MS RAY: How is that after 20 years? How is that after 20 years? Because there's been no muting of the government, the politicians or the media leading up to this, and we're the ones, the workers on the floor - not management, not those people up the top - that appear to be copping it in the media and I don't think it's right.

MS SPENCER: I reported misconduct. There is no way I would not report it. I've done it more than once and I work closely with a lot of these colleagues: there is absolutely no way that I would have turned a blind eye, ever, and it's just appalling, in my opinion.

COMMISSIONER BROMFIELD: Thank you.

PRESIDENT NEAVE: I had a question that's hopefully a little bit more positive.

MS SPENCER: Sorry. Enough with the negativity.

PRESIDENT NEAVE: My question 's this: the government has announced, and you may disagree with this decision, but has announced that Ashley will go and that there will be two centres, probably one in Launceston and one in Hobart, although I don't think that that's necessarily been decided. What would you do to make those places work better, from the point of view of both the workers and the children?

MS SPENCER: Well, they need to be staffed correctly.

PRESIDENT NEAVE: Yes, and what does that mean?

MS SPENCER: Like Sue has already said, in our opinion when it comes to therapeutic care, they need one-on-one, and no staff member should ever be left with a young person on their own, ever; and then that will, like, you know, avoid any allegation either way, something happening, but also someone being accused of something that didn't happen.

I believe that, depending on the risk factors, there should be a lot more off property experiences for these young people, which is what the centre has actually been trying to do recently, you know, to their credit, so that they can have different life experiences and realise that there is other stuff outside of their criminal behaviour.

Diversionary programs, I think, would be ideal. Unfortunately, when that ends it's just whether or not they're on their feet enough not to return to their same environment that they came back from, because we were just discussing that we have a young person who went away and was doing really well, but now he's back in Tassie and he ended up straight back in Risdon, but he was doing awesome, which is sad for us because we like to hear the good stories, we don't hear many. So, yeah, that would be a few things definitely.

MS RAY: There's got to be support.

MS SPENCER: Definitely, support and staff, staff need support too. Because, if we're not looked after, we can't look after them.

MS RAY: No.

MS SPENCER: Like, as you know, if our cup's not full, what have we got left? We have not had the support, we have not had the care that we have required or the professional training or the professional supervision or anything that we needed, and so, when staff - you know, when we fail at work we're under scrutiny. Where's the accountability for the centre? Where's the accountability for who's above them that says what they should and shouldn't be doing?

MS RAY: Where's the accountability when they leave Ashley and sit in a shelter, get evicted from the shelter because a younger child has come in and they're back on the streets again?

MS SPENCER: Or they get bailed to a tent. We had one child bailed to a tent in winter. That's not us.

MS RAY: And we get them back again and then we have to start all over again. We've gotta ...

MS SPENCER: Yeah.

MS RAY: So it's about starting at the very beginning, not at the end. The very beginning of the process starts as a small child: parenting. If the parents aren't doing the right thing, they should be sent to parenting school for a start, and we have a lot of those parents who don't parent very well, because they've come from --

MS SPENCER: The same scenario.

MS RAY: -- the same scenario, so it's all learnt behaviour. But there's nothing. If it doesn't get picked up at school they just get suspended, so they're on the streets straight away. It's got to go right back to the very start.

MS SPENCER: More youth work support for education for disengaged kids.

MS RAY: Yep.

MS SPENCER: Of which I think there are a few programs, but that could probably be amped up a lot more in the community.

MS RAY: Because that sort of comes and goes depending on what's being pushed at the time.

MS SPENCER: Yep, definitely.

PRESIDENT NEAVE: Thank you. Have you got any questions?

COMMISSIONER BENJAMIN: No, I'm just trying to reflect on what you've said, which is important. But you're saying, from what I've heard, there's a lack of proper training?

MS SPENCER: Yep, definitely.

COMMISSIONER BENJAMIN: There's a lack of time, because I was trying to work out when I was listening to your evidence carefully, that you finished, I think you said at 3 o'clock and you had to go into your own time to write up about what happened at that time.

MS SPENCER: Yep. Oh, yeah, if I stayed anymore, yep.

COMMISSIONER BENJAMIN: Presumably, the young person that you're writing up about is then under the supervision of somebody else who have the same problems in terms of time.

MS SPENCER: Yep.

COMMISSIONER BENJAMIN: So you don't then have time to reflect before you go on as to where the issues may be. Is that a fair assessment of your evidence?

MS SPENCER: Absolutely, time constraints, lack of staff, and the massive amount of pressure.

MS RAY: You don't get the time to sit down with the young person and say, "Look here, mate, look at all this. Does this look good or does this look bad?" Try and teach them, a few lessons in amongst it, and get them to reflect on their behaviours, and maybe the next time they might think, even if it's only for 2 seconds it's better than the last time because it wasn't at all, and it's about building that process all the way through so that they can make a decision based on what's happening around them in a positive way; the best, you know, decision possible.

MS SPENCER: When we do have the numbers and we do have a lower - like, we have lower numbers of the residents and we have more staff, you get that opportunity to say, once everything's sort of de-escalated and calmed down, "Okay mate, how did this happen? How did this start? Okay, this is what you did, this is what happened, what will you do differently next time?" You get to have that conversation. We don't get to do that anymore, there's no time: it's hectic, it's crazy, it's out of control really.

MS RAY: I guess too we're in a no win situation with COVID. Who wants to come and work at Ashley Youth Detention Centre? However, what do we do in the meantime to make the place safe? I've got people falling over everywhere that I know. I'm not at work at the moment, I'm trying to take some of my leave, look after my husband, and I'm just astounded about the people that are there and have gone about their mental health and the fact that they haven't really been looked after the way they should have been and that, to me, is so poor.

The WorkCover says that you can go to work and come

home safely: well, that's not what's happening because staff at Ashley Youth Detention Centre are having their mental health damaged every day without the right procedures in place to help maintain a healthy lifestyle because it's all work and no play.

COMMISSIONER BROMFIELD: Can I ask: what, if any, supports or check-ins you've had about giving evidence for today? It's a tough process.

MS RAY: Nothing.

MS SPENCER: Nothing.

COMMISSIONER BROMFIELD: And time off to prepare your statements?

MS SPENCER: I did mine at work while I was supervising kids, and I wasn't even supposed to be a number on the floor because I was on return to work, and I had workers walking around me when I got an opportunity to get on the computer, and it's supposed to be a private and confidential document, so that's how that went.

MS RAY: And I did mine at home in between looking after my husband because we were waiting for a pacemaker to be put in and, because of COVID it kept getting cancelled, and yeah. So, there was extra stress there too.

COMMISSIONER BROMFIELD: I'm sorry that you both feel so let down in your role.

MS SPENCER: Thanks.

MS RAY: Thank you for that because you'd be the only person who said that.

MS SPENCER: I reckon.

PRESIDENT NEAVE: Thank you very much for speaking to us and I'm sorry you received no support in preparation of your statements.

MS SPENCER: Oh, we had support from the union. I have to say that, definitely. Lucas was great, yep.

PRESIDENT NEAVE: Thank you very much.

MS SPENCER: Thank you.

MS BENNETT: Commissioners, I note the time and I wonder if we might have a slightly shorter break in order to hopefully finish the evidence today.

MS SPENCER: I talked too much.

MS BENNETT: No, no, I don't mean any criticism at all.

PRESIDENT NEAVE: Yes, of course we can, thank you.

SHORT ADJOURNMENT

MS BENNETT: Commissioners, the next two witnesses appear in panel: they are Ms Janise Mitchell and Mr Anthony McGinness. Could I ask that they be sworn or affirmed?

<ANTHONY DANE MCGINNESS, affirmed: [3.55 pm]

<JANISE LEIGH MITCHELL, affirmed:

<EXAMINATION BY MS BENNETT:

MS BENNETT: Q. Mr McGinness, could you tell the Commissioners your full name and professional address?

MR MCGINNESS: Anthony Dane McGinness. I work for Future Friendly in Canberra.

MS BENNETT: And you've made a statement to assist the Commission?

MR MCGINNESS: I have.

MS BENNETT: Are the contents of that statement true and correct?

MR MCGINNESS: They are.

MS BENNETT: Ms Mitchell, can you tell the Commissioners your full name and professional address?

MS MITCHELL: Janise Leigh Mitchell, I work for the Australian Childhood Foundation based in their Melbourne offices.

MS BENNETT: You've made a statement to assist the Commission; is that statement true?

MS MITCHELL: It is.

MS BENNETT: Ms Mitchell, could you tell the Commissioners your professional background and area of expertise, please.

MS MITCHELL: I can. I am a social worker by trade, I've been in the child and family welfare service for more than 30 years. I did a masters in therapeutic out-of-home care in 2008. I'm currently the Director of the Centre for Excellence in Therapeutic Care and I'm an Adjunct Associate Professor at Southern Cross University.

MS BENNETT: Thank you, and Mr McGinness, could you tell the Commissioners your professional background?

MR MCGINNESS: Sure. So, for the last five years or so I founded a product design and service studio, but it's really before that I worked for the Noetic Group as a management consultant where for about 10 years I provided consulting services and a lot of that time was providing sort of strategic advice in Youth Justice, including the Custodial Youth Justice Options Paper here in Tasmania, the foundational review of the New South Wales Juvenile Justice System and a range of other program evaluations and strategic advice projects.

MS BENNETT: So I'll start with a broad question around Youth Justice and the approach over the time you have each been working in the space and I want to ask you about the trends that you've observed at a macro level and I'm going to zoom in after that.

Generally, starting with you, Ms Mitchell, can you tell the Commissioners what are the broad areas of change in terms of the trends that you have seen over the last decade or so in Youth Justice.

MS MITCHELL: I think there's been a growing trend internationally, probably over the last 15 to 20 years around the growing recognition with the body of knowledge around interpersonal neurobiology and developmental trauma to recognise that an adult corrections approach to young people who require custodial settings is just not fit for

purpose, and that most of the young people who require detention because of their criminal behaviour are nine times out of 10 no different to the young people that are walking through Child Protection's doors, through Mental Health doors, through Disability doorways, and it's just through bad luck that they end up in a Corrections door and are dealt with with a Corrections response.

And I would say that, you know, this population is a highly disadvantaged, highly traumatised group, you know, they would tick most of the boxes on the ASIS study, they have many undiagnosed vulnerabilities and additional needs as a result of their adverse early childhood experiences, and they need a response that recognises all of their needs, not just focuses on what they have done.

And so, I think internationally there's been a growing recognition of that. I think nationally jurisdictions are getting their heads around that in different ways at different speeds. I think Tasmania's had an appetite for it, and certainly in discussions that I've been involved in for a decade; I don't know that it's necessarily found the right mechanism to deliver on that idea to date.

MS BENNETT: Mr McGinness, does that track with your experience in this area?

MR MCGINNESS: Yeah, I'd agree that there is a growing recognition of some of those underlying principles: the need for therapeutic approaches, trauma-informed approaches. Justice re-investment as a concept was relatively new back when we conducted the review of the New South Wales Juvenile Justice System. Unfortunately I think reform and adoption of those principles has been sort of slow; too many reviews and reflection on these sorts of issues, without probably enough progress on the implementation of those sorts of recommendations and reforms that are necessary to truly embed those principles.

MS BENNETT: Is that an observation that you make in respect of Tasmania or?

MR MCGINNESS: Nationally, I'd say.

MS BENNETT: Nationally. Let's focus into Ashley a little bit. Ms Mitchell, you were part of an advisory group that was established in 2012. Can you tell the Commissioners

what the role of that advisory committee was?

MS MITCHELL: So, that advisory group was a whole-of-government response, I think led by the Deputy Secretary of the department, and it arose out of the report that was referred to in the earlier testimony by --

MS BENNETT: Professor White.

MS MITCHELL: Professor White, and the purpose of that at that point was to look at what was some minor capital works programs that could be undertaken relatively quickly to improve the physical environment at Ashley, taking on board the recommendations of that review. And, as part of that group I came to quickly see that changing some of the aesthetics at Ashley was not really going to change the experience for the kids, and so suggested to the department at that point that they would be well served by developing a fit for purpose practice model and operating framework that drew on best practice evidence thinking at the time around trauma-informed Youth Justice and made the most of the capital investments and modifications that they were trying to undertake at that time.

MS BENNETT: You tell us in your statement, at about paragraph 12(a), that you formed the view around that time that it was important to shift Ashley away from an adult justice oriented detention approach. Was that the approach you understood was in place at Ashley at the time?

MS MITCHELL: Very much so. I think that most of the work with children with complex needs tends to devolve from adult ways of thinking: harmful sexual behaviours is another field of endeavour that has devolved from an adult perpetrator criminal framework and that paradigm is slowly shifting.

I think that, at the time it was very much about containment, it was very much using traditional methods of points and rewards systems. We heard in the previous testimony from the staff the different gradings that kids were given that gave them more or less liberties and freedoms, so it was very much operating as a traditional, very adult-centric (indistinct).

MS BENNETT: And what's the problem with that?

MS MITCHELL: It fails to recognise that first and foremost these are children. I think the concept of justice for children in the Youth Justice System is a really complicated one and I struggle at times with the idea of restorative justice and the centrality of that as an organising principle for children who, by no fault of their own, have been dealt a hand in life up to that point that has seen them experience significant disadvantage, trauma.

I know some of the kids at Ashley personally through other roles that I've held and I know they've got serious histories of having been physically assaulted in the community; they are the victims of many, many crimes, sexually, physically, neglect, parental abuse, and so, I think the system has let these kids down.

But they end up in a setting where, suddenly at the age of 13, 14, 15, when their cognitive brain development isn't at a point where they have the capacity yet to - for the executive function that the sorts of cognitive processes around responsibility taking and making sense of, no-one has said sorry to me, no-one has had to take accountability for anything that has been done to me, adults or anyone else, and at the ripe old age of 13 or 14 I'm being put in this position where I have to say sorry for something that I've done, and I think it's really hard for a child to make sense of how that is justice and how that is fair.

And I think we've got to understand that these are first and foremost kids and that adults have let them down, systems have let them down, and they are where they are because they've done the best they can to survive the hand that they've been dealt by life to date, and that in many instances has caused them to run foul of the laws, but I think kids in the main are doing the best they can with what they've got to work with and they're just in the business, a lot of them, of surviving and we need to understand that and look at the meaning of what this behaviour is telling us. It is criminal behaviour, it's not okay, it needs to be addressed, but I don't know that a traditional approach to Youth Justice derived from adult justice changes the trajectories for these kids.

MS BENNETT: And this is the tenure of your recommendations and interactions back in 2012; is that

right?

MS MITCHELL: That's right.

MS BENNETT: And then, following from that advisory group, there was a proposal in 2013 for the development of a practice framework; is that right?

MS MITCHELL: There was. So, out of the reflections that I made as part of that panel that I was on, there was an appetite within government to progress the idea of a practice framework. We were asked to put a proposal forward; that proposal was accepted. We were issued a contract to undertake the work, but in the early stages of that contract the project was terminated, I believe because there had been a decision to undertake a wholesale review of Ashley, and they just didn't see that running that project whilst that review was happening was (indistinct).

MS BENNETT: So your project was to be - what was your project to be, the one in 2013 that you were getting the contract for, what was that to be?

MS MITCHELL: So, it was to develop in the first instance a practice framework, and then translate that into an operating framework. Alongside that we were looking at the workforce capability needs, and by that I'm not talking about training, that's just one part of it, but we heard in the previous testimony, unless you've got enough staff to deliver the intent of a therapeutic model of care, it's not possible unless you've got the capacity for staff not to be on the floor all of the time but to have professional supervision, to have opportunities for reflective practice, to come together as a team, to do effective handovers, all of these have staffing implications and rostering implications.

So, part of what we were going to look at as well was workforce capability needs both in terms of how rosters and staffing levels worked, as well as a capability matrix from the leadership down to the floor.

MS BENNETT: What happened to the contract, what happened to that work in 2013? It got terminated, I think you said?

MS MITCHELL: Yeah, it got terminated.

MS BENNETT: And nothing further heard about it?

MS MITCHELL: Nothing further heard about it, no.

MS BENNETT: All right, Mr McGinness, I think the story then picks up again with you in 2016. Can you tell us about what work you and your organisation undertook then.

MR MCGINNESS: So, on the back of some of the work we had done previously with New South Wales and also the ACT Government, we were asked to do a custodial Youth Justice Options Paper for Ashley; it was an opportunity to look at what options are available. I think there was a recognition of some of the operational and probably more systemic challenges that existed, but also growing financial pressure. As numbers of young people in the centre went down, the proportional cost to run that centre per young person was under scrutiny, and so, I think there were questions being asked around, is this the best model both to meet the needs of young people, but also, you know, the most cost-effective option available to the state.

So, we led a review effectively speaking to a range of different government stakeholders, non-government service providers, staff at Ashley, children in Ashley; we worked to sort of co-design and develop those options with stakeholders, analyse them and ultimately landed on the recommendation that they move from Ashley to smaller home-like facilities in the north and south of the state.

MS BENNETT: In doing that work, you worked with some of the kids at Ashley; is that right?

MR MCGINNESS: Yeah, we spent a day there at Ashley and spoke to, I think, five - five young people.

MS BENNETT: What were you hearing from the young people at Ashley at the time?

MR MCGINNESS: They really enjoyed the education program that was there. For them, it was, you know, often their first opportunity to really meaningfully engage with education that was suited to them, that was contextualised to them and their needs, but there wasn't enough of it. They were often bored and a lot of the incidents that might occur, sort of aggressive or otherwise, they felt, were often a product of boredom, not enough programming and, you

know, for them more broadly it was an opportunity for them to engage with education, to sort of get their life on track and, yeah, that was some of the themes that came out of it.

MS BENNETT: What were your recommendations arising out of the work that you did in 2016?

MR MCGINNESS: So we looked at a number of options, and the paper sort of outlines those in terms of what's involved in them, the benefits, the costs, the social impact and the like. We looked at, like, a do nothing option: what would happen if we stayed on the current trajectory? What would happen if we just made some minor improvements? What would happen if we refurbished Ashley? What would happen if we built a new purpose-built facility? And what if we went to the two smaller facilities? And ultimately through that analysis for a variety of reasons, including some of the existing issues that are pretty well documented and discussed today with Ashley, but also really fundamentally the location: we recommended that they move to two smaller facilities.

MS BENNETT: And what was the issue about the location?

MR MCGINNESS: It's - there's multiple issues. I think fundamentally you've got this dynamic where a young person starts to push up and interact with the Justice System, and there's a pretty swift or, you know, steep graduated response from some of the diversionary practices that they might have and all of a sudden they find themselves in some instances dislocated and removed from one corner of the state to the other; they're disconnected and dislocated from family, from community. Often the cost and the impost that would come in terms of maintaining that contact is prohibitive.

It means that, while they're in detention, it's really hard to provide experiences and support that mean that, when they are eventually released - remembering all these young people will eventually be released - that none of that sort of good through-care support can happen in terms of reconnecting them with education, with service providers, whether it's Health and the like. It has challenges in terms of the workforce, in terms of attracting/retaining talent. So, yeah, from before, during and after there's all sorts of issues that really make it a

less desirable option.

MS BENNETT: And what happened after that Options Paper was finalised? What was the next thing that happened from your perspective?

MR MCGINNESS: From our perspective nothing, you know, our involvement ceases when we hand over the report and watch with bated breath as we await a government response. My understanding was that they rejected that recommendation and decided to make some improvements to Ashley, until very recently when it appears as though someone, you know, might have picked it back up or through other means is moving towards a similar direction to the one we recommended.

MS BENNETT: Moving then to 2017 and back to you, Ms Mitchell, you were in 2017 asked to join an internal process to develop an Ashley practice framework; is that right?

MS MITCHELL: Yeah. We were approached in May 2017; the department had indicated that it was their intention to apply some internal resources to the development of a practice framework for Ashley, that they were wanting to establish an expert advisory group around that process, so I was asked to participate on that.

MS BENNETT: How did that link to the work you'd done in 2013? Was it the same thing or was it new?

MS MITCHELL: It read as if it was going to be similar, its intent was similar, but it was an internally-driven process, but it wasn't as expansive as what we had proposed, it was really just looking at the practice framework and then a learning and development framework that would sit alongside it. So, it wasn't looking at organisational reform, staffing, structural change.

MS BENNETT: So it was a narrower set of issues than you had?

MS MITCHELL: It was looking very much just at practice.

MS BENNETT: Just for those who are following along at home, what's a practice framework?

MS MITCHELL: So, a practice framework is the set of

principles, the agreed knowledge or theoretical frameworks and the ways - the agreed ways of undertaking all aspects of the work, and so, very often now we talk about a common elements approach in the evidence community as opposed to some of the, kind of, the models that are available for licence.

So, a common elements approach would look at a range of models that are out there and would look at, what are all the common features of models that are seen to be effective? So, it could be from the principles that underpin the theoretical orientation to, how are you going to undertake an assessment and why. How planning and intervention occurs, what your theory of change is, how you're going to involve young people and families and staff.

The role of organisational congruence; you're looking at an entire picture around, how does the organisation live and breathe and approach to understanding and responding to the needs of the children and young people that are cared for or detained within Ashley, and how, regardless of who it is on shift, can we make sure that children receive a level of care and a way of responding that is consistent so it's not left to the idiosyncrasies of the individual staff member on shift.

MS BENNETT: I'm sorry, Commissioner.

PRESIDENT NEAVE: Yes, I just wanted to understand that clearly. So, it's a philosophy, it's the way everyone at Ashley commits to doing what they're doing, and then presumably for the people who are on the ground doing the work, it sort of gives them guidance about how that philosophy is put into practice; is that right?

MS MITCHELL: Well, it's more than a philosophy. So, a practice framework will generally say, we need to set this organisational culture as a starting point.

PRESIDENT NEAVE: Yes.

MS MITCHELL: That needs to be mirrored, there needs to be organisational congruence, so from the executive through to the cleaner everyone is working from the same understanding; they share a language, they share concepts, they share ways of thinking about how the work needs to

happen; they share an orientation or a theoretical basis around, that behaviour is happening because I'm going to look at it using these ways of looking at it rather than that way of looking at it, and we're going to make sense of it and respond to it this way; we're going to undertake assessment of kids' needs using this lens to look at them; we're going to use planning processes using this approach.

So, it provides the theoretical and the conceptual map for how we're going to make sense of the needs of children and young people that are here, how we create safety, how we create change, and then what the roles and the capabilities of the staff are in that process.

So, you heard earlier that relationships are central. So, a relationship-based approach would be part of a practice framework. It says to the youth workers or the custodial staff, your job is not to stand back and watch; your job is to be engaged with and use your relationship as a vehicle for change, your job is not to stand back and do nothing until you have to intervene to de-escalate something, so it sets the tone and the orientation for how change happens, for how learning happens and how we set goals and measure success.

You then develop an operating framework which are the policies, the systems, the processes that will enable the practice framework to be put into operation.

PRESIDENT NEAVE: Yeah, that's the step that I was trying to understand.

MS MITCHELL: So that's the operating framework, that brings the practice framework to light.

PRESIDENT NEAVE: So leaving aside questions about recruitment and all of those things which are obviously really important. I'm working on the floor, I'm a youth worker: what it will eventually, quite apart from what we're trying to achieve, having an agreement on what we're trying to achieve, does it when combined with an operating framework tell us what we should be doing in certain situations?

MS MITCHELL: Yes.

PRESIDENT NEAVE: So the guidance that it might give to

somebody where they walk into the place and they know that things are brewing, and they're nervous and they're frightened perhaps, as we heard, how they might think about that and how they might respond to that. I mean, I'm not suggesting it's a one-off exercise.

MS MITCHELL: That's exactly right. How do you make sense of what you're seeing; is what I'm seeing all there is to know, or do I need to understand what's gone before or what's driving this behaviour because, if I want to change the behaviour I need to understand the drivers for it. A trauma-informed lens would say, children have a range of unmet needs, behaviour is an expression of them, so we've got to understand the needs that the child has, the young person has, if we want to extinguish the behaviour. A behaviour modification approach won't work for kids with high levels of trauma.

So, it gives that orientation and then the operating framework provides them with the tools, the systems, the processes, including training, including professional supervision, including opportunities for reflective practice, good handover, because we become more cognisant of the need for really high levels of consistency predictability for these kids to help them feel safe and, if they're feeling safe, then you're less likely to get escalations in their behaviour.

MS BENNETT: I just want to understand about, you've talked about including training, including reflective practice, including understanding de-escalation. Now, you heard the evidence of the youth workers that immediately preceded yours; are you able to offer some comments about what barriers there might be or how consistent are what we're hearing from those youth workers on the ground with the implementation of that kind of a model?

MS MITCHELL: I've sat with those youth workers and others in the process of doing the work that I did in 2020. There's a range of barriers. There's no authorising environment sitting within the leadership and management for them to try to do things differently. There's no unity of vision at the operational level, within the operations staff - which is what the youth worker group are called, operations. There are the "old guard" as some would call them, and then there's the new guard. There's people who are more up for giving something different a go, and then

there's the died in the wall, "This is the way we've always done it, this is the way I'm going to keep doing it, this is what's going to make a difference", so you've got no --

COMMISSIONER BROMFIELD: Sorry, just out of fairness to the Ashley youth workers, when you talk about old guard and new guard, I presume that's not solely based on years of service?

MS MITCHELL: No, it's not at all, and that's their language, that's their language that they have used.

So, there's division within that workforce around who wants to change their practice. Management aren't supporting any change of practice. When things escalate and the system's put under stress it reverts back to the old ways of doing things. So, staff who had tried to do something differently feel unsupported and targeted at times by their colleagues for having - maybe be seen to have contributed to things having escalated.

So, the testimony that was given around staff not feeling safe is a very real one; it's a very real one because they in the main in my experience and in the conversations I had with them in 2020 know they need to do something differently, they want to do something differently, they want to be resourced to be able to do it differently because their reason for being there is what you heard them say: "we want to make a difference in the lives of these kids, we don't want to be jailers". But they end up feeling unsafe with the kids and they feel unsafe with their operational management, and they're very much kind of in what they've told me, feel like the meat in the sandwich much of the time.

MS BENNETT: So those are the matters that flow into, I think what you describe in your statement as the Ashley Model from 2017.

MS MITCHELL: Yeah, so the outcome of the process that was engaged in in 2017 was what was called "the Ashley Model". The advisory group process kind of fell away during that, so we weren't involved to see that project through to its end point, so I really have no sense of what the outcome of that was.

PRESIDENT NEAVE: So this was another advisory group;

because, we've heard about quite a number of advisory groups, but this was an advisory group set up specifically in relation to your work; is that right?

MS MITCHELL: It was an advisory group set up in 2017 to support the internal efforts of the department to develop a practice framework.

PRESIDENT NEAVE: Right, thank you.

MS MITCHELL: Which became known as the Ashley Model.

MS BENNETT: And that, as I understand it, fell away at some point?

MS MITCHELL: That advisory group process fell away and then I heard nothing more until 2019.

MS BENNETT: What did you hear in 2019?

MS MITCHELL: I was contacted in December of 2019 by the department, suggesting that there was a need to review the work that was done in 2017; that the Ashley Model and a further iteration of it that was referred to as "the Ashley+ Model". There were questions that the department had themselves around its fitness for purpose and how comprehensive or robust it was, and we were asked, would we be interested in almost doing what we were going to do in 2013 but starting with, review the Ashley and Ashley+ Models to see if they could be built on or whether they needed to be scratched and we needed to start again.

So, that was at that point I said, there's been a lot of work happen in the intervening years that I didn't really have a strong handle on, so before we could kind of do a scope of work and try and work out what this project would involve we would do a rapid discovery process, which is what the Through the Fence and Into Their Lives Report was.

MS BENNETT: And that report, you contacted and spoke to people at Ashley for the purposes of that report?

MS MITCHELL: I spent two days at Ashley, yep.

MS BENNETT: Can you tell the Commission about your observations arising from that research?

MS MITCHELL: At the time of these conversations there was a significant change of leadership; so, there was a lot of instability in leadership and a new manager was on his way in, or had started within the preceding week, so there had been some significant change. The department had a view at that point that they hoped that that would drive some cultural change. There was a recognition at that point that the culture at Ashley was not what they would want it to be and held promise in this new manager coming in to be able to drive some of that change.

The workforce at that point was very much as described today by the staff that gave testimony: they felt overworked, undersupported, under-resourced. They had very little awareness of the Ashley Model or the Ashley+ Model. So, one of the questions I had as part of the review was, "What do you know about it", and, "What do you think about it?", and very few had any awareness of it at all. Those that did knew something about it but didn't see how it related to their work. Others knew it a little bit better, liked the ideas, but didn't feel supported to use them for the reasons I referred to earlier. So, the issues raised by the staff were very much contemporary with what was talked about today.

I interviewed the clinical team and I interviewed the Ashley School staff. I interviewed Education Department staff from outside of Ashley and some of the non-government providers, Child Protection and a range of others, and it really felt like the fence was the wall between everyone and everything. There was very little working together happening between Ashley and Communities, Justice, between the Ashley School and Education more broadly around educational pathways for kids coming out of Ashley; there was very little transition, through-care planning back into Community Youth Care, Justice, or beyond for kids, so the wall was a metaphor for a lot of the barriers.

Equally, there were a lot of silos between the Health and the clinical team, the Ashley School team, and the operating team, the youth workers: they all worked in silos and really didn't understand what each other was doing or have a shared language or shared way of thinking about the kids, talking about the kids, planning for the kids, there were no processes that really supported that well.

MS BENNETT: Mr McGinness, it sounds a lot like what you were discussing earlier, or the antithesis perhaps of what you were discussing earlier as a model as the current trend. Can you tell the Commissioners about how that measures with what the current trends are in this area?

MR MCGINNESS: Yeah, I suppose it comes back to my opening remark about the pace of reform or lack thereof. I mean, we just heard and example where, in 2013 a need was identified and then a decision was taken to defer that, because another view was going to happen, and then another review, you know, it's a bit saddening and a bit maddening to hear these sort of issues over and over again.

And, you know, a lot of the issues that we heard from evidence earlier from the youth workers is very consistent with what we heard in our consultation. And, yeah, I suppose it's, on this side of the fence, a tad frustrating to see the lack of action and momentum on putting some of the recommendations in practice.

MS BENNETT: You were involved in New South Wales in implementing some reforms around Youth Justice in the that jurisdiction in the ACT.

MR MCGINNESS: Yep.

MS BENNETT: Why not just pick up that model and put it in Tasmania?

MR MCGINNESS: Yeah, there's a lot of parallels to be drawn between the ACT and Tasmania in particular given very similar numbers in terms of number of young people in detention at any point in time, but it's a very different context. So, I think geography is a huge factor here in Tasmania compared to the ACT, where one centre is perfectly appropriate in the ACT where I live, and you can drive from one edge to the other in 30 minutes; so, we can't just pick up and take what works in one place and move it into another, but we can learn from that experience.

ACT, certainly there are some examples of good practice there in terms of their investment in bail support programs, in sort of through-care, in terms of some of the challenges they face with a really high fixed cost involved in maintaining that big centre but having to have that ability to surge.

So, I'd absolutely hope and expect that jurisdictions would be willing and wanting to learn from one another, but certainly not just pick up and sort of (indistinct) --

MS BENNETT: What do you see as being the key, kind of, the core components in what's been successful perhaps in the ACT that you think might be applicable in the Tasmanian context?

MR MCGINNESS: I think a lot of the principles that have been discussed. I think, if they put a very strong emphasis on therapeutic practice, thinking about how that can move from sort of a blueprint for reform in that case through to practice.

There has been quite a significant investment in through-care in particular, which I'd strongly advocate.

MS BENNETT: What's through-care?

MR MCGINNESS: So really, from the moment a young person comes into custody, we should be thinking about and planning for their eventual release. So, that's also why, in the context of Tasmania, it was one of the key reasons why I think having two centres more closely situated to Launceston and Hobart is so important, is because you can then be forming those bonds and relationships with service providers, with education providers, with organisations, with individuals, with family, that are going to allow them to sustain the improvements that they often make when they're in detention. So, making sure that we're putting those plans and actions in place from the outset and actively sort of supporting them in their transition back into the community.

It's not about walking out at the end of their custodial sentence and sort of waving them goodbye and wishing them good luck but making sure that they're continued to be supported, because often there are incredible gains when there is that opportunity to inconvenient in terms of education, in terms of health and in terms of alcohol and drug abuse that might have happened in the past, so it's about making sure we don't lose that momentum.

MS BENNETT: I think I left off, Ms Mitchell, in the

narrative in about 2019, I want to return to it now. You did a review in which you found - I think you summarise in about paragraphs 20 and 43 of your statement some of the outcomes from that review, and you found there wasn't a high knowledge of the Ashley+ Model, there was poor understanding, significant turnover, staff feeling excluded. What happened next?

MS MITCHELL: So, as I said earlier, there was the request for us to undertake the larger piece of work that had been the intent in 2013, and so, the discoveries phase was supposed to enable us to scope that full project.

We agreed that we would then undertake a literature review and a file audit, because I think that the opportunity in Tasmania is that, if we really understood this population, the population of Tasmania is not that big, the population of kids that cycle through Ashley is not that big, and I think that anecdotally we can all think of kids and young people that have been through Ashley that have touched multiple tertiary systems, multiple secondary systems, and we could really - if we interrogated the histories of these kids and looked at where, if we had intervened earlier, and intensively, that we may have changed the trajectories of these kids.

These kids aren't unknown to the system and systems around them, they are --

PRESIDENT NEAVE: We're only talking about a tiny number really, aren't we, too?

MS MITCHELL: We're only talking about a tiny number and it wouldn't be that difficult to do a really comprehensive file audit and pathway analysis of these kids to look at where, had we done something different earlier, might we have changed the trajectories and what could we be doing differently now in terms of the through-care planning. Because there is such a volume of these kids that are just cycling through on very short periods of remand, there are very few there on lengthy sentences, and so, there is a failure in the system that we just cycle kids through.

And, I know anecdotally as well that a lot of kids will offend again to get back to Ashley, because it's the closest thing to a bed and food that they have. And so, we know that there are challenges for these kids when they're

released from Ashley, there are challenges for these kids before they get to Ashley in having their basic needs met, their relational needs met, their need for care and support met, and I think if we really had a good look at some of these kids, most of them I would hazard a guess will have been known to Child Protection at some point in their life, if not currently. Many of them will have undiagnosed disability, FASDs never looked at.

There will be a range of quite significant developmental needs that these kids will have that won't be picked up before they hit Ashley, so I think doing something like that will be incredibly instructive not only to think about what the future of the youth justice reform needs to be, but the role of Ashley in meeting the needs of the population that actually need to spend some time in a contained environment.

PRESIDENT NEAVE: One of those elements could conceivably be supporting parents who are dealing with disabled children?

MS MITCHELL: Absolutely.

PRESIDENT NEAVE: Or children with undiagnosed disability so that their behaviour, which is hard to manage for the parents, doesn't end up with some other intervention; is that right? Do I understand you correctly?

MS MITCHELL: That's right. You know, it would be my view that if we did that work, we would find that these families have a range of vulnerabilities themselves: the parents have a range of vulnerabilities that really mitigate their ability to meet the needs of their children and the trajectory starts.

MS BENNETT: So that was a scoping review that led to this report, Through the Fence, that was a scoping document.

MS MITCHELL: So that was the discovery phase. But there we did - I put a proposal in to do the file audit, to really understand who this population of kids was and to do a really comprehensive literature review with a view to coming up with a common elements framework around which a practice model could then be built.

MS BENNETT: And, has that happened?

MS MITCHELL: We put that proposal in and we heard nothing beyond that. So, that was in May 2020.

MS BENNETT: Can I just pause there. I just want to make sure I understand. So, in 2013 there was a review and some recommendations and you heard nothing, or didn't proceed? And then --

MS MITCHELL: It started and stopped.

MS BENNETT: Started and stopped, thank you. Then, Mr McGinness, you came in in 2016 and you made a series of recommendations.

MR MCGINNESS: Yep.

MS BENNETT: And those recommendations you made were not taken up at that time; is that right?

MR MCGINNESS: Correct.

MS BENNETT: Then it reverted to you in 2017 with a review that I think you said --

MS MITCHELL: No, so there was a --

MS BENNETT: Advisory committee, sorry.

MS MITCHELL: To do - the department, to drive the development of the practice framework.

MS BENNETT: And that's the advisory committee that sort of --

MS MITCHELL: Tried to support.

MS BENNETT: Yes, and it ended up going away?

MS MITCHELL: Yeah, it kind of fell away from the process.

MS BENNETT: It kind of fell away? And then in 2019 you did a further discovery, and recommended further work to develop a practice framework, and that didn't go anywhere?

MS MITCHELL: Well --

MS BENNETT: At the time?

MS MITCHELL: At the time.

MS BENNETT: And what's happened now?

MS MITCHELL: So, in July of this year I was contacted again by the department, who told me that there had been a literature review done internally by the department. So, some of the works that I recommended needed to happen had happened and had been undertaken internally.

So, my understanding is that two staff were tasked with the project of coming up with a practice framework and a learning and development framework, which are now what I think the Commission has. They were developed and released in December 2020. So, that was the outcome of not progressing with what we suggested, and they undertook some internal processes.

The contact that's been made with me now is not dissimilar to that that was made back in December 2019 as to a desire to review the work that was done in 2020 around the practice framework and the learning and development framework, and to look at its fitness for purpose moving forward into the re-imagined Ashley or Youth Detention programs in the separate facilities and what that might look like and is there a need to do further work on that.

So, we're in discussions with the department about that; nothing's been agreed to at this point.

MS BENNETT: Mr McGinness, can I ask you this: how do you know when a model is successful, a model of Youth Justice is successful?

MR MCGINNESS: It's not simple. I mean, ultimately if we had no Youth Justice Centres that would be a good measure of success, but I'm not sure that's possible. I think it's probably important, and I talk in my witness statement, of probably having different horizons of what success looks like, having some short-term measures in place around what "good" looks like in a centre itself. Do we have through-care plans for 100 per cent of our residents? There might be more of that output-level sort of measurement around how we're functioning at the moment.

Moving towards in the medium-term, hopefully starting to see what happens when young people leave Ashley. You know, recidivism is but one measure and not a perfect measure, but it's certainly something you'd want to look at, and obviously in the long-term you'd want to be making sure that the investments we're making are paying off in terms of these young people are on a better trajectory: they're reengaging with education, they're going into employment pathways, and ultimately not continuing that intergenerational transmission of offending that they're caught up in. So I think it's important to understand the complexity of measurement, but probably have that sort of time-horizon view.

MS BENNETT: Are you able to tell the Commissioners of, in your experience in other jurisdictions, the proportion of people in the Youth Justice System who go on to be part of the adult Justice System?

MR MCGINNESS: Yeah, I don't have the figures on hand, but it's a huge, you know, huge percentage. I think, from memory, the moment you come into contact with the Youth Justice system, you're something like 26 times more likely to end up in the adult Criminal Justice System. So the more that we can be doing, the more that we can be investing at that front-end to divert people away from formal Youth Justice interventions, the better, because it's a very strong pool and pipeline to adult Corrections and then ultimately, as I as well, that intergenerational impact that cycles through.

PRESIDENT NEAVE: Can I just have a follow-up question on that, and it may be outside your expertise or the expertise of either of you, but I was thinking about the children who are, while they're in Ashley, engaged in harmful sexual behaviours. Do we know how many of those children go on to offend as adults?

MR MCGINNESS: No, not something I've got visibility on.

COMMISSIONER BROMFIELD: No. Ms Mitchell might have, I think.

MS MITCHELL: The data is overwhelmingly that children who engage in harmful sexual behaviours as children and young people do not progress to adult offending. The behaviour in and of itself is not unlike any other challenging

behaviour that children have.

PRESIDENT NEAVE: I suspected that was the case. Thank you.

MS BENNETT: Ms Mitchell, do you have any theories as to why there's been such a history of review and without implementation?

MS MITCHELL: I've got --

MS BENNETT: You may not.

MS MITCHELL: I've got a view. You know, I look at the context of Youth Justice nationally and internationally, and I think young people who do wrong things in community are very quickly labelled as a problem to be fixed, and very often what we have is young people displaying a range of behaviours that represent a whole lot of things that we're not paying attention to, that is wrong within their families or in the community more broadly. And so, we're very quick to blame the kids, and I think that that attitude sits in the community.

People don't like kids graffiti-ing, they don't like kids busting their letterboxes, they don't like kids nicking stuff. It gets in the way of our civil freedoms. And I think because of that these kids - the issue of Youth Justice is a very political one, and I think the politicisation of Youth Justice and the interface between these kids and Joe Citizen in the community is a really complicated one for government and it gets in the way of good reform.

MS BENNETT: Let's address that complexity head on. What about children who are dangerous? We heard one of the witnesses earlier say, "We say 'kids', but they're pumping iron. They're men really," They're scary, basically. What should the response be?

MS MITCHELL: There is no doubt that there are some kids who are dangerous and they are scary and they need containment; that doesn't mean they need detention. Containment can be provided in a range of ways. I've visited Youth Justice facilities in Europe where there is very little more than a cyclone fence; kids could get well away and are in there for serious crimes, and they don't

because it's the relationships and the programmes that hold them; it's the relationship and the programs within which they feel safe, so they don't escalate into dangerousness.

If you look at a lot of what developmental trauma theory would tell you, escalated behaviour is the response to a lack of safety, an internal sense of feeling safe. You are primed to survive. You don't think before you run away from a car that's just about to hit you, you just run. And so, we've got to orient ourselves to what is dangerousness about, what is safety about, and we've got to find a pathway to promote safety and see that that will mitigate dangerousness in most instances.

You absolutely have to have really sound risk assessments and protocols in place to deal with high levels of dangerousness that aren't mitigated through other means, but for most children and young people it is possible to mitigate dangerousness through addressing safety and providing a relational and physical environment and activities, and having a clear sense of what they need so that they don't have to engage in these survival-based behaviours that are all about not feeling safe.

MS BENNETT: Does incarceration ever lead to better outcomes for children? Using the term "incarceration" quite deliberately there.

MS MITCHELL: I don't think so. I think it's an indictment on a system that we haven't been able to do better earlier, and it's the last resort. These kids don't wake up engaging in the level of offending that requires them to be incarcerated overnight. We've missed so many opportunities to intervene earlier with these kids, so I don't think they need to be locked up. It's a question of who is responsible? You know, if you say children need to be locked up because of what they've done, what that's saying is that all the responsibility sits with that child. I don't see it that way.

MS BENNETT: Mr McGinness, how does that fit in with your understanding of this framework?

MR MCGINNESS: Yeah, look, I'd say in response to your question, it can, but it's not the best way. I think it's really important that, whatever we do, we do take a good assessment of risk and as we've heard there are examples

where we do need to contain, but if we have a disproportionate response to that risk, it can have the opposite effect; so that can increase the risk, it can lead to negative outcomes.

And so, if we apply a blanket approach, we can have a very negative impact overall. So I think if we can look at alternative ways to get the same or better outcomes, and we can, then that's what we should be pursuing, and that is through community-based responses, through better integration of services and the like.

COMMISSIONER BROMFIELD: Can I just check in, just a plain language check-in here really. Can I confirm that what you're both saying here is that essentially a punishment model is going to make things - escalate children's behaviours and potentially make both their outcomes worse, but their behaviour more dangerous? Is that what all those words meant?

MS MITCHELL: A punitive approach is not going to meet the needs of children.

COMMISSIONER BROMFIELD: It doesn't meet their needs. Does it potentially make their outcomes or their behaviour worse?

MS MITCHELL: I think it has the potential to make their behaviour and their outcomes worse, absolutely. I think it also doesn't meet the interests or the needs of the community, because what they're offered while they're in detention is no guarantee that the community's any safer in the long run either. So, it's not meeting the young person's needs and I'm not sure it's meeting the community's needs, because we don't have a way of conceptualising the purpose of incarceration as part of a change process; we just see it as a "time out".

MR MCGINNESS: And I think there is a reasonable community expectation that young people are held accountable for their actions, but our response to that can be different. It can be through a more therapeutic approach where, you know, we do protect the wellbeing of those individuals and the community, but we also deal with the underlying causes of the offending. And if we sort of lean too heavily in the other direction, it can have very negative impacts or that individual and ultimately the community.

MS BENNETT: What's the role of leadership in changing a culture of a system that's been entrenched for a long time? Can I start with you, Mr McGinness?

MR MCGINNESS: Yeah, it's huge. I think, you know, you asked about the challenges of implementation and why do we keep reviewing, and I think we can often underestimate just how hard change is and what is truly required for the sorts of reforms that we're talking about. It does require more than a list of recommendations and a Gantt chart and, you know, a few fund recommendations.

We do need to recognise, and again I think that this again is one of the reasons that the model that we recommended is so important; it represented, like, a step-change opportunity, an opportunity to reset, to open two new centres that would come with fresh practice frameworks, with new leadership, with fresh faces. And yeah, I mean, leadership is critical.

MS BENNETT: Ms Mitchell?

MS MITCHELL: You can't do it without leadership. Leadership sets the environment within which the work happens. So, if you don't have leadership that is on board with what you're trying to achieve operationally, then you are doomed to fail. Particularly in the space of Youth Justice, because of the very political nature of it, it is always something that has a very high profile either through the media or because there's been issues.

Victoria at the moment, Western Australia, you know, every jurisdiction - Don Dale - they're all struggling with it; no-one's got the answer. So, leadership is absolutely key, and I couldn't agree more with the lack of understanding around, how do you move from a business-as-usual approach to a new business, embedded business-as-usual approach? And implementation science is really clear: this is a complex, multisystem undertaking that needs strong whole-of-government leadership across portfolios, because these kids have needs that are going to intercept with Health, with Justice, with Child Protection, with Housing, with Disability.

So we need a whole-of-government approach, and we need to understand that for the change to be embedded, it is

system reform, and for Ashley to change from the way it thinks and works at the moment to the new opportunities to present themselves, it's at least a five-year implementation program of work before it becomes the new business as usual, where it's not going to be dependent on who the leader is or who the staff group are. Implementation science is really clear about that.

COMMISSIONER BENJAMIN: How do we stop - you've had, between 2012 and 2022, some attempts to bring about change, haven't we? There's been a pretty significant churn but not a lot of butter's being made.

MS MITCHELL: Yep.

COMMISSIONER BENJAMIN: And you've got almost an institutional sclerosis. How do we avoid our recommendations falling into that pit and be another churn? Have you any - I mean, you talk about leadership, you talk about whole-of-government. How do we defeat that, if it can be defeated?

MR MCGINNESS: I think one of the things that we need to - I agree that it's a five-year-plus reform journey, but we also can't make it some big bang where we analyse for three years and develop policies and processes: we need to find a way to act and bring a bit of action bias to some of these reforms, to not defer hard decisions, to commit to that action, to iterating and improving on what works.

I think in this very specific context as well two new facilities represents a fantastic opportunity for reform. That's the sort of step change that can make Tasmania a leader in this space, so use that opportunity that is there in terms of two new facilities to really sort of turbo charge that process, because I think it was - you know, it was always going to be pretty impossible or very, very difficult to make those improvements in the context of the existing facility

MS MITCHELL: I think when I was saying "implementation", I was talking more about, once we know what we want to happen, the implementation window is a five- to seven-year window. It's not planning to do it, but actual doing of it, the implementation of it is a long-term proposition. So you're challenged around election cycles and all sorts of things around the policy and the sustained investment

around that.

I think that one of the things that really often gets in the way of - I think that one of the things that really needs to happen is we've got to engage the community in the conversation about who these kids are and what they need and how they got there, because at the moment they are the problem, and the only frame the community have to understand what should be done is the frame we've got, because they only define the kids as young offenders.

I think we've got to change the conversation in the community, because there is no doubt that politicians come under a lot of pressure from the community if Youth Justice and youth crime is seen to be escalating and the government's not doing enough about it, so we've got to - education of the community has to be part of one of the recommendations, because if we can't engage the community, it's going to be very difficult to have a government that's prepared to invest and sustain the change that's going to be required.

PRESIDENT NEAVE: Would it be at all possible to try and strive for a bipartisan approach on this issue?

MS MITCHELL: I would love to think we could.

MR MCGINNESS: It starts with that. It really does.

PRESIDENT NEAVE: We did it with road safety. Remember the debates about road safety 20 years ago, and that's a complex issue - maybe not as complex as this one. Maybe you can.

MR MCGINNESS: Unless we have a bipartisan approach to this and can show that leadership that is required to shape community sentiment and to sort of stick to and have the bravery to make tough decisions and to sustain investment in this space, you know, we'll only be here talking about this until the next election cycle and a "get tough on crime" campaign, you know, comes through.

MS MITCHELL: And we know that, you know, in the out-of-home care space with residential facilities, no-one wants them in their street or over their back fence. These kids aren't quiet in the neighbourhood, because a lot of activity goes on around them. So I can imagine the kind of

conversations that would happen in trying to get community youth justice housing sites.

There's a lot of work done with the community to get the local community to accept these kids into their communities. So that's often, I think, the missing piece.

MS BENNETT: Commissioners, I'm conscious of the time. I'm grateful for the commissioners for allowing us to go over time today. I have nothing further for these witnesses.

COMMISSIONER BROMFIELD: I don't have any further questions. I'd like to thank you for your time. I did just have a reflection. In listening to your timeline ,it struck me that in the time that all of these reviews have happened, we've seen a population of children who will have entered and graduated from Ashley Youth Detention Centre and missed the opportunity for change. Thank you.

PRESIDENT NEAVE: Thank you very much for your work and for your evidence today, and we'll adjourn, thank you.

AT 5.00PM THE COMMISSION WAS ADJOURNED TO FRIDAY, 19 AUGUST 2022 AT 10.00AM