
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 24 August 2022 at 10.13am

(Day 29)

1 MS ELLYARD: Good morning, Commissioners. Our first
2 witness today is Charlotte. She is giving evidence
3 remotely and I ask that the live stream be turned off at
4 her request for her evidence.

5
6 PRESIDENT NEAVE: Yes.

7
8 MS ELLYARD: Good morning, Charlotte, can you see and hear
9 me?

10
11 CHARLOTTE: Yes.

12
13 MS ELLYARD: I'll just ask you to wait there while the
14 Commission's clerk takes you through the affirmation
15 process that we've discussed.

16
17 <CHARLOTTE, affirmed: [10.14am]

18
19 <EXAMINATION BY MS ELLYARD:

20
21 MS ELLYARD: Q. Charlotte, you're here today to speak
22 about some experiences that you had when you were aged
23 between 12 and 15 years old; is that right?

24 A. Yes.

25
26 Q. You have previously prepared a submission for the
27 Commission in which you describe some of those experiences?

28 A. Yes.

29
30 Q. And you did that because you were worried at the time
31 you wrote the submission about what was happening to
32 children in Ashley; is that right?

33
34 PRESIDENT NEAVE: I think there's a bit of feedback, do we
35 need to finish --

36
37 MS ELLYARD: I think the feedback's coming at the
38 witness's end. What she can hear, we can hear her hearing.

39
40 Q. Charlotte, I'm going to ask you some questions based
41 on what's in your submission, but firstly, can I ask you,
42 when you were 12 around the first time you went to Ashley,
43 what was going on for you in your life?

44 A. My mum and dad were in jail at the time. I got left
45 with their friends. I just felt left, alone I suppose, and
46 I just started hanging around with other people and got -
47 stealing cars and I got chucked into Ashley.

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Q. You said in your submission that that first time you went to Ashley was the worst time of your life, and you talk about a worker who we're calling Edwin, that's not his real name, but can you tell us, that first time, about what Edwin did and the way he treated you?

A. Well, there were a few times really, so what, like, the first time?

Q. You've said that he was very sleazy; what kind of things would he do to you in terms of, like, how he would talk to you?

A. He'd just talk to me, like, really dirty; like, tell me that I'm pretty all the time. He touched my legs and in between my legs, like, he'd just come around to the unit and stuff and just ask to play cards with me, because I used to play a lot of cards. He'd come and sit at the table and play cards with me and he'd start feeling my legs under the table and stuff like that.

At night-time he'd look in my viewing panel, like, when they had to do checks and stuff while I'm in the shower and he'd watch me in the shower.

Q. And you say in your submission that he'd say to you things like, "You're very pretty and I'd love it if you were a bit older"?

A. Yes.

Q. How did it make you feel when he said things like that?

A. It made me have butterflies in my belly, like, it made me feel - I don't know how it made me feel, it just made me feel yuck.

Q. You said in your statement, at the time, this is when you're 12 when this was first happening, you didn't tell anyone because you were scared of what your dad might do if he found out; tell us about that?

A. Yeah, well, my dad was a bit of a crazy bod back then, and if anyone even tried to hurt us he would hurt them and go to jail for it. He was in jail for a pretty bad charge for - someone done something to my mum. So, I was just scared, if I ever did say anything, that he'd go and hurt them and he'd be back in jail for even longer and I'd miss out from seeing him for even longer.

1 Q. One of the other things you described in your
2 statement, thinking about that first time when you were in
3 Ashley when you were 12, Charlotte, is about another man
4 who we're not naming and the way he behaved towards you and
5 one of your friends who has since died. Can you tell us
6 about what that man did to you and your friend?

7 A. He just, he'd be like really sleazily, coming up
8 talking to us, touching our breasts and stuff like that.
9 And one day he'd come out to the common area and writ "bite
10 me" across my friend's chest. One of the workers seen this
11 happen, reported it, and then nothing ever come out of it.
12

13 Q. And I think you wanted to talk to the team leader and
14 it took a few days before you got the chance to speak to
15 the team leader; is that right?

16 A. Yes, yep.
17

18 Q. And then when you did get to speak to the team leader,
19 what did he tell you?

20 A. That he'd been put off for a couple of days, but that
21 wasn't the case.
22

23 Q. So, he hadn't been fired or anything because of what
24 he did?

25 A. No. Nah. The other worker that witnessed it, she
26 told us that nothing had been done.
27

28 Q. I mean, you were only 12 then. After you got out from
29 that first time, what did you do? Did you feel like your
30 behaviour changed because of the experiences that you'd
31 had?

32 A. Yeah, it did, it changed a lot. I ended up not going
33 home, I ended up staying with people that were in Ashley
34 that were getting out and doing that sort of stuff, like.
35 I stayed with this particular boy that was in Ashley and
36 then all of a sudden this worker got with his mum. So, I
37 was living with them as well.
38

39 Q. So, Edwin, the worker that we talked about before, you
40 started - you saw him on the outside, outside of Ashley?

41 A. Yeah.
42

43 Q. And what was his behaviour like you to?

44 A. Really, like, if I'd say anything, he was gonna hurt
45 me, sort of thing, like, like I couldn't - I couldn't even
46 look him in the eyes really, because he was with [REDACTED], one
47 of my friends, and yeah. I'm not really good at talking, I

- 1 can't really say it better.
2
3 Q. No, you're doing a great job.
4
5 PRESIDENT NEAVE: You're doing really well.
6
7 MS ELLYARD: You also said in your statement - would you
8 like to take a break, Charlotte?
9 A. No, that's all right.
10
11 Q. You said after that first time in Ashley you started
12 taking speed and drinking a lot?
13 A. Yep.
14
15 Q. And you got locked up again, and so, that was the
16 second time that you went to Ashley, and Edwin was still
17 there?
18 A. Yep.
19
20 Q. And his behaviour continued, the same kinds of
21 behaviours towards you?
22 A. Yeah, touching down my tops and just being - he took
23 me to the gym one day and four boys were in the gym. He
24 more or less walked out of the gym and let them four boys
25 do what they wanted to me in the gym.
26
27 Q. And, do you feel able to say about what one of the
28 boys did to you during that time?
29 A. Um, he pulled down my pants and done what he wanted to
30 me.
31
32 Q. And, where was Edwin when that happened?
33 A. He walked out the back door up towards Franklin Unit.
34
35 Q. And, was there anyone that you could tell about being
36 sexually assaulted by the boy?
37 A. No, because the boy that done it had been in there for
38 a long time, he was - he was very liked by the workers,
39 like, I can't even really explain it; even if they did
40 something, they wouldn't get in trouble for it.
41
42 Q. So you felt like that boy was kind of - this is my
43 word, not yours - kind of untouchable, there wasn't
44 anything that would be done to him?
45 A. Yep.
46
47 Q. And that must have been an awful thing for you; what

1 did you do after that to try and keep yourself safe while
2 you were in Ashley?

3 A. I used to try and stay in the unit.

4

5 Q. Were you self-harming?

6 A. Yes, I did, I self-harmed one day I was in the unit.
7 They locked me in my room, I think it was, and I just
8 started - I went and got the razor blade and I started
9 cutting my arms, and Ms - this other lady worker had come
10 in, and she stopped me; she took the stuff off me, but she
11 slammed my head into - there was a wood bed base sort of
12 thing, and she told me to, "Grow up and stop doing it",
13 that's making more paperwork for them. Yeah, so after that
14 I just felt like I couldn't even say anything otherwise I'd
15 get it off the workers as well.

16

17 Q. One of the other things that you talk about in your
18 statement, Charlotte, is going off property. The
19 Commission's heard that the chance to go off property for
20 activities is something that some people at Ashley got the
21 chance to do, I think sometimes when they were getting
22 towards the end of their sentences.

23 A. Yep.

24

25 Q. There's a particular time that you described in your
26 statement where you were the only girl with one worker and
27 I think a group of six boys, and you went up to the Apex
28 Hut. Can you tell us about what happened to you on that
29 day?

30 A. Yep. We went up to the Apex Hut, there was one
31 worker. They were going to look for wood to do the fire
32 sort of thing in the little hut. Me and this other boy, he
33 sort of, like, there was nothing I could really do, he was
34 just all over me, and um, yeah, he had sex with me and,
35 yeah, I just had to leave it like that because, if I said
36 anything, he would have got other girls in there to bash me
37 that were in there, and if I said anything to the workers,
38 obviously nothing was working anyway, so I just had to keep
39 it to myself. And, my mental health and anxiety and
40 everything from ever since then has been so bad, like, it's
41 been - yeah.

42

43 Q. When you were in Ashley did you have any cultural
44 support, because I know you're Aboriginal, was there anyone
45 who helped you to feel culturally safe or to help you in
46 that way?

47 A. No-one. No-one.

- 1
2 Q. Do you think that would have made a difference, if
3 there had been any supports for you that recognised that
4 you're Aboriginal and part of the Aboriginal community?
5 A. Yeah. There was none at that stage for anyone that
6 was Aboriginal. I've been to jails in the past, like after
7 that, and the Aboriginal support, like, the support workers
8 that help, they do so much for people. Like, they need
9 more of it and they definitely needed someone like that in
10 there, like, that you could go to to tell staff like that.
11 Like, I don't know, yeah.
12
- 13 Q. You described in your submission that when you got out
14 of Ashley the second time you didn't get any help after
15 what had happened to you and there wasn't any support, you
16 were given a box of toiletries and just sent on your way.
17 A. Yep.
18
- 19 Q. Did you have anywhere to go and live when you came out
20 of Ashley the second time?
21 A. No.
22
- 23 Q. And so, it sounds like not long later you found
24 yourself back in Ashley again for a third time; is that
25 right?
26 A. Yeah.
27
- 28 Q. You've described a situation where you were locked
29 down in your cell for four days and it was partly about the
30 staff thinking that you had a lighter; can I ask you to
31 tell us about that experience?
32 A. Well, we, us girls, we all just had a bit of a - we
33 were only young, so we all started being silly and play
34 fighting and stuff, so the workers couldn't handle it and
35 put us all in our rooms. So, we all got a bit angry, and I
36 had a lighter and my other friend had a lighter, and we set
37 our rooms on fire. As we set the rooms on fire we sat in
38 the shower with the shower on, but the smoke sort of sets
39 the sprinklers off and the sprinklers have got, like, an
40 oil smell and stuff that comes out of them. They left us
41 in our rooms for four days.
42
- 43 Q. So, the fire went out, but they left you in the room?
44 A. Yep.
45
- 46 Q. And, were you cutting yourself during this time as
47 well?

1 A. Yep.

2

3 Q. And so, do you think the staff knew what condition you
4 were in? Did they come in and look at you at least?

5 A. They come in and gave us a blanket and a pillow, they
6 took everything else out because they had to strip our
7 rooms out with whatever we caught on fire. So, we were on
8 a hard bed base with a blanket and pillow. I had no
9 clothes, they didn't give us any change of clothes. I
10 think we got tea. I don't even think breakfast got brought
11 to us because they didn't want to open the doors, and the
12 only time we did get a feed was when another worker that
13 was really high up and an intimidating person, came in and
14 opened our door with, like, five workers.

15

16 Q. When you wrote in your submission, Charlotte, you said
17 that, I think the thing that partly set off you lighting -
18 setting a fire was that you'd been told that you were going
19 to be searched and you were anxious about being searched;
20 is that right?

21 A. Yeah, because when they put us in our room because we
22 all said we've got lighters and going to set our rooms
23 alight, they were going to search us. But every time we
24 got searched, we had to strip off to nothing, in front of
25 two people. So, as if - I got that nervous, I just set the
26 room on fire anyway.

27

28 Q. And after you finally were let out of your room after
29 being in there for a few days in the way you've described,
30 what happened? Did they still make you get searched?

31 A. Yeah, we - no, I ended up handing the lighter over in
32 the end, so we didn't end up getting searched.

33

34 Q. So, you described in your statement when they came to
35 get you a few days later, they took you to reception?

36 A. Yeah.

37

38 Q. And made you take off all your clothes and then they
39 gave you new ones?

40 A. Yeah, they have to before they take you to the other
41 unit, yes.

42

43 Q. And then, I think in your submission then you went on
44 to describe the incident that you've already mentioned,
45 about cutting yourself and one of the female workers coming
46 in and assaulting you?

47 A. Yeah, and that - yeah, and assaulting me on the bed,

1 yeah.

2

3 Q. During the three different times that you were in
4 Ashley, Charlotte, did you get any support for your
5 anxiety?

6 A. No.

7

8 Q. Did you see any counsellor or anything?

9 A. No.

10

11 Q. Did you ever have the nurse talk to you about helping
12 you with your anxiety and your self-harm?

13 A. I did with my self-harm, but I think that was more
14 missing my parents and the attention, because I wasn't
15 getting any attention from anyone, like, so - they didn't
16 really give me much help at all, no, and still --

17

18 Q. And after you got out of Ashley the third time you
19 said in your submission that you had a Probation Officer
20 and you did tell her some things?

21 A. Yeah.

22

23 Q. Was she able to help you at all?

24 A. Nothing was ever done, no.

25

26 Q. You ended up leaving Tasmania; is that right?

27 A. Yeah.

28

29 Q. Thinking now, and I know this happened some time ago
30 now and you've had other things happen to you in your life,
31 but how do you feel your experiences in Ashley have
32 affected you and perhaps changed your behaviour?

33 A. Um, in a lot of ways really, like, my - I can't be
34 around any bloke like I used to, like, I don't feel
35 comfortable around anyone, I don't even have a partner now.
36 Like, everyone I've had I've had to, like, I don't like
37 anyone touching me, at all, like. And my - just, I'm not a
38 very good talker, I'm really not good.

39

40 Q. What do you think would have helped you, Charlotte?
41 Obviously there was a lot going on in your life that led
42 you to be in Ashley when you were 12; what kind of help do
43 you think should have been given to you when you were
44 there?

45 A. A bit of support, like, social - like, just someone to
46 talk to. Like, you couldn't talk to anyone in there.
47 Like, in jail you've got support workers like the

1 Aboriginal support worker; you can go and talk to people
2 like that, you can - but, I don't know, I really - I really
3 don't know.

4
5 Q. So, it sounds from what you've said, Charlotte, that
6 you've experienced more support during times when you've
7 been in adult jail than you ever felt you experienced when
8 you were a 12-year-old or a 15-year-old in Ashley?

9 A. Oh, yeah, yep. Yep.

10
11 Q. One of the things that you said --

12 A. I didn't even know how to read and write because I
13 never got the schooling there, I never got anything, like,
14 it was just like we were pushed into a room and, yeah,
15 nothing really. Like, I still can't read, write or - I
16 have no words. Like, yeah, I'm just blank, all the time.

17
18 Q. And you said in your statement that you're worried
19 that there might be other girls that this has happened to
20 since or that it might still be happening to?

21 A. Yeah.

22
23
24 Q. Thank you, Charlotte, very much for telling us your
25 story. Is there anything else that you wanted to say? I'm
26 not suggesting that you need to say anything more, but?

27 A. No, I'm just sorry I can't talk as much. I've got it
28 all in my head, but it's like I can't get anything out. I
29 don't know, it's really weird.

30
31 Q. They're big things that I've been asking you about and
32 I'm very grateful to you for sharing what you have.

33
34 MS ELLYARD: Thank you, Commissioners, those are the
35 questions I wanted to ask Charlotte.

36
37 PRESIDENT NEAVE: Charlotte, thank you so much for how
38 you've talked to us. I know you found it really, really
39 difficult and you did get your words out, we did hear what
40 you had to say, and you really are a very brave person, so
41 thank you very, very much indeed and I hope you will get
42 some help and I hope things will get better for you in the
43 future.

44 A. Thank you.

45
46 PRESIDENT NEAVE: But we are very, very grateful to you
47 for speaking to us, thank you, because that's the only way

1 that we can ensure that things like what happened to you
2 don't happen to other people. So, thank you very much.

3 A. Thank you.

4
5 COMMISSIONER BENJAMIN: Yes, I was going to say,
6 Charlotte, we share your tears and we heard your voice.

7 A. Thank you.

8
9 COMMISSIONER BROMFIELD: I don't have any questions, but I
10 agree with both of the Commissioners. We thank you so much
11 for finding the words that you did and sharing your story.

12 A. Thank you.

13
14 MS ELLYARD: Thank you very much, Charlotte. You should
15 feel free to turn the camera off now. And, Commissioners,
16 I'll call on my learned friend, Ms Norton, to call the next
17 witness and note that the live stream can come back up.

18
19 MS NORTON: Commissioners, our next witness is the
20 Registrar for Working with Vulnerable People, Mr Peter
21 Graham, who I think is going to arrive imminently.

22
23 I'll ask that the witness be sworn in, please.

24
25 <PETER GRAHAM, sworn:

[10.35am]

26
27 <EXAMINATION BY MS NORTON:

28
29 PRESIDENT NEAVE: Mr Graham, you can take your mask off if
30 you would like.

31 A. Thank you.

32
33 MS NORTON: Q. Mr Graham, can I ask you to state for the
34 benefit of the transcript your name, professional address
35 and occupation, please?

36 A. My name is Peter Graham. My professional address is
37 30 Gordons Hill Road, Rosny, and my occupation is Executive
38 Director of Consumer, Building and Occupational Services.
39 In that role I perform a number of statutory functions on
40 behalf of the state; one of those is as the Registrar of
41 Working with Vulnerable People.

42
43 Q. Thank you, and that's the capacity in which we're
44 pleased to call evidence from you this morning. You've
45 sworn a statement or provided a statement in response to a
46 request from the Commission; that's a statement dated
47 15 August: yes?

1 A. Yes.

2

3 Q. It's got two attachments?

4 A. Yes.

5

6 Q. Have you recently reviewed that statement?

7 A. Yes.

8

9 Q. And is it to the best of your knowledge and belief
10 true and correct?

11 A. Yes.

12

13 Q. Thank you. Now, in your statutory role as the
14 Registrar - I'll just refer to you as "the Registrar" but
15 I'm of course referring to the Registrar for Working with
16 Vulnerable People - you are responsible for the oversight
17 of the work of that office under the Registration to Work
18 with Vulnerable People Act; is that correct?

19 A. That's correct.

20

21 Q. Can I invite you to explain to the Commissioners the
22 role of your office and in particular whether that role is
23 an investigative role or a different type of role?

24 A. Thank you. So, the Registration to Work with
25 Vulnerable People Act establishes a screening and
26 monitoring system for people who engage with vulnerable
27 people, including children.

28

29 In performing that function, we undertake risk
30 assessments, so assessments of people who wish to engage
31 with vulnerable people, and also additional risk
32 assessments, so risk assessments of people who are already
33 registered and we do that on the basis of information
34 that's reported to me as Registrar by Tasmania Police and
35 State Service agencies.

36

37 Q. Is it fair to say that, in order to properly conduct
38 your statutory duties, and in order for your office to do
39 the work it's charged with under the scheme, that you're
40 incredibly reliant on the information that is provided to
41 you by other agencies?

42 A. That's correct. So, reportable behaviour, which is
43 the obligation that exists for State Service agencies and
44 Tasmania Police to provide to me, is any behaviour they
45 become aware of which poses a risk of harm to vulnerable
46 people, whether by neglect, abuse or other conduct, and
47 that really is the backbone of the scheme. So, in essence,

1 it forms the basis of the information available to the
2 Registrar to consider when conducting a risk assessment or
3 additional risk assessment.
4

5 Q. I think there are a range of different tests under
6 your legislation. One of the concepts that's introduced in
7 the legislation is the concept of acceptable and
8 unacceptable risk?

9 A. Yes.

10
11 Q. Can you explain to the Commissioners what those tests
12 are and how they're satisfied?

13 A. Yeah. So, the risk assessment test is a test of
14 satisfaction, so it's a balance of probabilities test.
15 There's also a test with regard to conducting an additional
16 risk assessment, so that's a risk assessment on someone who
17 holds registration, and that's a reasonable belief that
18 there is new relevant information. So, I suppose, a low
19 bar to commence an additional registration, and then a
20 balance of probabilities test with regard to acceptable or
21 unacceptable, and that would be through a cancellation
22 process.
23

24 Q. And which of those thresholds applies when you're
25 looking at a suspension pending assessment?

26 A. So, there is a power to suspend the registration of a
27 person. There actually isn't statutory guidance with
28 regard to the application of the suspension test; it's
29 available, and I think the Act says that the Registrar has
30 grounds to suspend someone if they are undertaking an
31 additional risk assessment, so in essence it's a question
32 of judgment but the Act now provides no further guidance as
33 to how that should be --
34

35 PRESIDENT NEAVE: Q. You just have to have grounds of
36 some kind?

37 A. Yeah, You have grounds. Well, sorry, by commencing an
38 additional risk assessment you have grounds, so you may,
39 but beyond that there's not a statutory guidance, if that
40 makes sense?
41

42 MS NORTON: Q. It does.

43 A. So, I suppose a suspension is considered on a
44 case-by-case basis.
45

46 Q. Yes, having already satisfied the relevant threshold
47 for conducting a risk assessment?

1 A. Yes.

2

3 Q. You've provided in your statement some information
4 about your interactions with the Department of Communities
5 in relation to information sharing. Can I ask you this,
6 and it's really referring back to something we've already
7 talked about: would you agree that your system is really
8 only as good as the information that is provided to you;
9 that is, you can't acquit your duties adequately unless
10 you're provided with the relevant information?

11 A. That's correct. So, it's not an investigative body,
12 we provide assessments of information.

13

14 Q. Now, the Act was introduced in 2013, but requirements
15 in relation to different cohorts of employees came in over
16 time and, as I understand it, the scheme has applied to
17 Youth Justice workers since October 2015; is that correct?

18 A. That's correct.

19

20 Q. You say in your statement, and this is at page 4, and
21 just for your information when I say page 4, you can see a
22 long number on the top right-hand corner of the page, I'm
23 really talking about the last number - or you may not have.
24 No, I'm sorry, you don't have; that's okay. You might have
25 to do it the old-fashioned way and just count four
26 pages in.

27 A. Okay.

28

29 Q. On page 4 you refer to there being 300 reports to your
30 office since the commencement of the scheme for Youth
31 Justice in 2015. That is in relation to current or past
32 employees at Ashley; is that correct?

33 A. That's correct. I would say that that relates to
34 conduct over an extended period of time dating back to, I
35 think, the mid-1950s.

36

37 Q. Yes, so some of them are historical in the true sense
38 of the word?

39 A. Yes.

40

41 Q. They are very old allegations?

42 A. That's correct.

43

44 Q. But they've been provided to your office more recently
45 because the scheme's come into place; is that correct?

46 A. Yeah, that's right.

47

1 Q. You also say that, of those 300, I think one was
2 provided to you in 2016 and the remainder, that is, 299,
3 have been reported to you since late 2020?

4 A. That's correct. I would say though the 300 figure is
5 more than 300, so I don't think 299 would be correct; but
6 that's correct, so beyond a matter that was dealt with in
7 2016, the reporting of that information commenced in late
8 2020.

9
10 Q. Did you have an understanding of why there was
11 suddenly a large increase, almost 100-fold increase, in
12 reports from the Department of Communities?

13 A. Look, I - so, I don't know, but I could speculate if
14 that's - that they were dealing with claims from the
15 National Redress Scheme as an agency, so those claims had
16 been referred to them, and it triggered conversations
17 between staff at Communities and my office who explained
18 the nature of reportable behaviour obligations and
19 effectively asked for that to be reported and it was.

20
21 Q. Can I infer from your answer that, before those
22 conversations were had, and we'll come to them in a bit
23 more detail shortly, that reportable behaviour reporting
24 obligations weren't, prior to that time, well understood
25 within the Department of Communities?

26 A. I think it's fair to say that they were not well
27 understood or - and they were also a bit contested within
28 the State Service at the time because of the way in which
29 they were framed within the Act at that time, and the
30 obligations subsequently changed from 1 February 2021 to
31 make it clearer.

32
33 Q. Yes. Now, you're referring there, I think, to a
34 legislative change to s.53A of your Act; is that correct?

35 A. That's correct.

36
37 Q. And, if I can paraphrase for the benefit of the
38 Commissioners, the significance of this change was that the
39 obligation for a reporting body to notify the Registrar was
40 triggered if the reporting body finds that a person has
41 engaged in reportable behaviour, so "finds" was the
42 threshold. Then the amendment was, the reporting body's
43 obligation was triggered if it became aware by any means or
44 suspects on reasonable grounds that a registered person has
45 engaged or may have engaged in reportable behaviour. Is
46 that the change you're referring to?

47 A. That's correct.

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Q. Are you able to explain to the Commissioners your understanding of the background to that legislative change and why it was considered necessary?

A. I can. I would say that it occurred prior to my time in the role. So, the Registrar - and look, I understand the previous Registrar and the office had held a very liberal view of the find, so an expansive obligation on agencies to provide information that had been contested by some agencies as to findings following a conduct investigation, and so, a legislative amendment was passed to clarify the broader sense of that obligation that exists with State Service agencies and Tasmania Police.

COMMISSIONER BROMFIELD: Q. Hypothetically then, prior to this you could have had a staff member where someone had made an allegation of a serious sexual assault against them and they were stood down, or perhaps not doing the role, but they were undergoing an investigation within the department: that person would not have had a report to the Working with Children Scheme until after that investigation was completed by the department?

A. Quite possibly. So, I suppose what I would say is that, the application of the provision was quite variable by agencies prior to the time, and really, the amendment was to remove all doubt with regard to the expectation on State Service agencies and Tasmania Police, if that makes sense.

COMMISSIONER BROMFIELD: It did make sense, thank you.

MS NORTON: Q. And so, just to pick up on that, as I understand it the distinction that was being drawn between your office, appreciating you weren't in your role at the time, was that a credible report of an allegation of reportable behaviour could trigger the response, whereas agencies took the view that there needed to be substantiated findings or something of that nature?

A. Yes.

Q. Again, appreciating you weren't in the role at the time, but based on your knowledge, was there any interaction between the Office of the Registrar and state agencies about that difference of opinion, do you know?

A. Yes, definitely, there was, and I suppose the office as far as I understand has always had a consistent view about a broader interpretation of that Act, but ultimately

1 a legislative solution was proposed to resolve that.

2

3 Q. Do you know, in the face of a more liberal
4 interpretation from your office about the Act that you're
5 responsible for administering, did you have any insight or
6 are you aware of the reason why the agencies were taking a
7 more conservative view?

8 A. I would - I wouldn't like to speculate heavily there,
9 but what I would say is that, agencies have become a lot
10 better at reporting, but that probably wasn't the case even
11 five years ago.

12

13 Q. Putting to one side the reason why agencies took this
14 more conservative view, would you agree that the outcome of
15 that more conservative view is that credible information in
16 relation to reportable behaviour was not provided to the
17 office in circumstances where it perhaps should have been?

18 A. Yes, unless it was provided by another reporting body.
19 So, it may be that there was allegations of a serious
20 sexual assault that was reported to police, and then that
21 might come to my office from them as a reporting body; or
22 as a mandatory notification under the Children, Young
23 People and Their Families Act, and that might come to my
24 office, so that would then be used as a trigger to do an
25 additional risk assessment even in the event that it hadn't
26 come from the agency itself.

27

28 Q. So there are multiple avenues by which you might
29 receive information?

30 A. Yes. And what I would say is that, if sexual abuse
31 occurs into a State Government setting or a state funded
32 setting, I would expect to get three reports: one from the
33 agency itself, one from Tasmania Police and one from CYS
34 and the Department of Communities, and that's an important
35 safeguard for the sharing of information.

36

37 Q. Can I ask you a question about that. The Commission
38 has made requests of your office as you're aware and also
39 Tasmania Police and the Department of Communities for
40 information about, among other things, the dates on which
41 notifications have been made between those three agencies.
42 Am I right to think that, if the system is operating as it
43 should, you ought to be able to triangulate those three
44 sources of information; that is, a cross-check across
45 information coming out of those three agencies about
46 notifications ought match up?

47 A. Yes, they should. I think there's an important

1 distinction about a notification and then the provision of
2 information that I would make though.

3
4 Q. Yes.

5 A. So, the way our system works, and particularly with
6 Tasmania Police and CYS - so the Children Youth Services
7 is, they report information to us of everything that they
8 have nightly, so every night we get information and then
9 it's matched against current registrants or applicants. We
10 don't get the information at that point, we get a reference
11 number for a request. So, typically there would be a
12 notification which would be followed by the provision of
13 information, typically in three to five days, or sorry, one
14 to five days, but it could be up to - so the dates mightn't
15 perfectly match, I suppose is the point, but it would be
16 contemporaneous.

17
18 Q. So there might be a buffer of a couple of days?

19 A. Yep.

20
21 Q. But more or less they ought match up?

22 A. Yes.

23
24 Q. And, if they don't match up, is that a red flag for
25 you that the system - that there might be a problem in the
26 system?

27 A. Look, potentially. There are a range of reasons why
28 information may take longer to gather than immediately; it
29 may be that they want to pull other records. I imagine
30 that in those cases they would be discussed at officer
31 level to understand what's going on.

32
33 Q. I suppose my question is, if an agency says that it
34 provided information to you on a certain date, and we've
35 asked you when you received that information, if the
36 system's working well, you should have received it within a
37 couple of days give or take?

38 A. That's correct.

39
40 COMMISSIONER BROMFIELD: Q. Sorry, picking up that
41 safety net. That if you don't see the three, then you may
42 need to prompt for that information?

43 A. Yes, and I would say there would be situations where
44 we don't receive the three because we've acted before
45 someone's reported something to us. So, for serious
46 matters, for example, it may be that we get something from
47 police or a heads-up from police and we seek records that

1 otherwise would have been provided to us had we not sought
2 them, so yes, but I suppose the agency which is responsible
3 for the setting in which the conduct occurred would be
4 information we sought, the Children Youth Services, so the
5 mandatory reporting would be sought and police would be
6 sought.

7
8 MS NORTON: Q. I just want to ask you one more question
9 in relation to s.53A and then move back to Communities more
10 specifically. If agencies, as was the previous practice
11 prior to the amendment, applied a higher threshold to the
12 reporting obligations, that is, requiring actual findings
13 of reportable behaviour rather than credible information;
14 you've said that that would have resulted in less
15 information coming into your office.

16 A. Yes.

17
18 Q. Is that something that would undermine, in your view,
19 the intention of the legislation?

20 A. Yes. So, this system relies on the provision of
21 timely information regarding conduct which meets the
22 reportable behaviour threshold; that's the thing - that's
23 the, kind of event that triggers any potential action. So,
24 the more reporting that we get, the better, and I would
25 always encourage agencies, if in doubt, to provide it.

26
27 Q. Was it the intention of the legislation, on your
28 understanding, that the bar for provision of information is
29 lower than the bar for a substantiated finding of
30 misconduct, for example?

31 A. Yes.

32
33 Q. So, the bar for the provision of information is,
34 "Becomes aware by any means of behaviour which meets the
35 definition", so it's a very liberal --

36
37 PRESIDENT NEAVE: Q. And that's because, presumably, the
38 legislative policy is to ensure that children are protected
39 as soon as possible?

40 A. Exactly.

41
42 Q. Rather than waiting for a whole process to be gone
43 through to make a substantiated finding or --

44 A. That's correct, and so that steps can be taken to
45 remove people from settings where they may cause harm even
46 if there is subsequent investigative or other steps which
47 need to be taken.

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COMMISSIONER BROMFIELD: Q. And the settings, plural there, because I note from our information request that people often have a Working with Vulnerable People Check for multiple reasons?

A. Yes.

Q. So you might be stood down from your employer?

A. Yes, so the transferability of the card is - they can be used - it's effectively a licence to engage with children in any setting; it's very important that that information is shared so that, you know, the Registrar can remove people from settings where they may cause harm, which is outside the direct interests of the agency in which the conduct occurred.

MS NORTON: Q. Can I ask you a question on the interaction with the ED5 process, which is the disciplinary process, and the exchange you've just had with Commissioner Bromfield highlights, and with the President, that your scheme is concerned with addressing risk to children.

A. Yes.

Q. Whereas the ED5 process is a disciplinary process that's concerned with the relationship between employer and employee.

A. Yes.

Q. I expect that - there's evidence available to the Commission which I expect to be explored in greater detail in the coming days that suggests that there may have been occasions in 2020 where there was a delay, and quite a substantial delay - and I'm talking in the manner of months - in commencing an ED5 investigation and the reasons for that will be explored on another occasion. But I think it might be said in defence of that approach that in the interim, before a formal stand down occurred through an ED5, measures were put in place to - and I'm speaking in relation to Ashley employees - that measures were put in place to ensure that, even though those employees continued to work at Ashley, they weren't responsible for supervising children, for example. In your view, is that an appropriate response to risk for more than a limited period of time?

A. Look, if I could qualify the remarks that the ED5 is a process that the Head of Agency needs to consider on the facts in front of them.

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Q. Yes?

A. And what those facts were would be highly relevant to any situation, but in general terms, no. I come at this from a regulator whose Act says the safety, wellbeing and protection of children is the paramount concern, so my view would be, when you become aware of information, you have to act on it and you have to take - and acquit your other obligations relating to Child Safety, be it mandatory reporting, be it reporting to my office, be it reporting to police in the event that it relates to criminal conduct as well.

Q. I appreciate the point you make about these being case-by-case scenarios and I don't want to invite you to give an answer that you're not comfortable with, but can I ask you this question: if you had a situation where an allegation that warranted an ED5 process had been made, and an ED5 was ultimately commenced but it wasn't commenced for a period of a number of months, and let's say over six months, perhaps even close to a year, and in the interim the safety measure that was put in place was to put that employee on alternative duties but still working at Ashley; is that an approach which, just on the facts I've given you or on this hypothetical you would have concerns with?

A. Yes, particularly if it was allegations of a serious nature, yeah.

Q. Thank you.

A. And if I can add to that?

Q. Please.

A. That's because that the systems that we have to keep children safe rely on many actors performing their role, and that's within an agency, it's within police, it's within my office; we all have a role to play. They are distinct roles, quite deliberately, and it's important, and information sharing is really the core to that.

COMMISSIONER BENJAMIN: Q. And, Mr Graham, your task is a predictive task, isn't it?

A. Yes.

Q. I read a comment coming out of a recent case in the Family Court where they described the assessment of risk as a predictive exercise, and the risk is postulated from the

1 known historical facts and present circumstances not
2 requiring proof of any possible harm as a probability. Is
3 that a fair assessment of what you do?

4 A. That's right. It's not for us to determine whether
5 conduct occurred and to make findings in that regard, it's
6 to determine on the balance of probabilities whether a risk
7 is acceptable or unacceptable.

8

9 Q. And looking over the horizon based on those facts?

10 A. Yes.

11

12 Q. Whereas other tasks tend to be a retrospective look at
13 behaviours which may or may not impact in the criminal
14 sense or in an employment sense?

15 A. Yes. So, of course, understanding the conduct is the
16 vital first step, but we're not required to make a finding
17 about whether conduct occurred, and there are many cases
18 where we have been able to act where there has been no
19 findings of fact with regard to conduct by virtue of the
20 information in front of us.

21

22 PRESIDENT NEAVE: Q. Just following on from the issue
23 that Ms Norton put to you, this is a situation where a
24 person might be put on alternative duties as a response to
25 your decision that this person should not continue to be in
26 contact with children in the interim period. Are the
27 differences between different settings in which alternative
28 duties might be an appropriate process and where they
29 wouldn't be, or your comment, is that a general comment, a
30 general comment that you think that alternative duties may
31 not provide adequate protection?

32 A. So, my comment was --

33

34 Q. I'm sorry, I didn't say that very clearly, but you
35 understood my question?

36 A. I did. My comment was a general one. My system is
37 binary: you can either work with children or you can't.
38 So, if you are going to engage with children, you have to
39 have registration.

40

41 Q. Yes.

42 A. So, I suppose, the scenario you put, if someone is
43 either cancelled or suspended, they need to be employed in
44 a role where they do not engage with children and meet the
45 test of contact, which is, you know, reasonably expected to
46 engage with children in performing the function. So, we
47 don't have a kind of, "it's okay under these circumstances"

1 kind of category.

2

3 Q. I suppose my issue is, you can imagine a circumstance
4 where you might put a person completely out of any
5 possibility of contact with children; that would be one
6 situation, or you might have them in the office --

7 A. No, and that would be an entirely appropriate
8 response, and actually, that would also be a fair response,
9 particularly when allegations are made that really do need
10 some level of investigation. So, I wouldn't want my
11 previous remarks to be presented as, you know, you need to
12 be - employment needs to be terminated or anything like
13 that; you need to not engage with children if you do not
14 have registration.

15

16 Q. But if they're on the same site, for example, working
17 in the office rather than as a youth worker, then the
18 circumstances depend, as you said, I think, on the
19 reactions of other people in the context of that place?

20 A. So, if someone was on site and they were expected to
21 have more than incidental contact with vulnerable people,
22 and they don't have registration but which they require,
23 they shouldn't be there, yep.

24

25 PRESIDENT NEAVE: Okay, thank you.

26 A. So, it may be that they can be in another setting
27 performing functions, but the more - you know, a reasonable
28 expectation of more than incidental contact is really the
29 threshold that the Act sets.

30

31 COMMISSIONER BROMFIELD: Q. Do you have a view, a
32 personal view, as to whether alternate duties that may
33 involve no contact with children, whether it would be
34 appropriate for you to be writing child-related policy that
35 would affect then the practice with children?

36 A. Look, I think it's highly dependent on what the
37 allegations of conduct are against the individual, but
38 assuming that they relate to conduct that would be of the
39 gravest kind, and many of the allegations we've seen in the
40 context of Ashley are that, no.

41

42 Q. Thank you.

43 A. But also, just to kind of qualify that: we start
44 additional risk assessment any time we get any information
45 including where it's not attributed to someone but they're
46 named in the context of that information, so it would not
47 always be appropriate to exclude people.

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COMMISSIONER BROMFIELD: Understood, thank you.

MS NORTON: Q. Can I take you back to the 300-plus notifications that you've received from the Department of Communities, and I think we're still on page 4 of your statement which I think you have open in front of you. I believe it's the case that, of those 300 reports, you identified 33 Ashley employees who have or have in the past held a Registration to Work with Vulnerable People?

A. If I could just explain the 300? The 300 came from a spreadsheet that was shared I think on or around December 2020.

Q. Yes.

A. I think from that spreadsheet we were only able to establish eight people of interest but subsequent reports, whether by Communities or other bodies, relate to that total of 33, so I suppose in the stable we're trying to give you a picture of what we've dealt with at Ashley at a point in time, which was - yes.

Q. Thank you for that clarification. So, is it fair to say that, of the notifications that have come to you whether via normal systems or the spreadsheet, you've identified 33 --

A. That's correct.

Q. -- Ashley employees, current or former, who have at some stage or currently held a Registration to Work with Vulnerable People?

A. Yes.

Q. And I think you say that, of those 33, 28 had a registration at the time you received the notification; that is, 5 of the 33 had an historical registration, 28 had a current registration?

A. That's correct.

Q. And of those 28, as I understand it, 23 remain registered?

A. That's correct.

Q. Can you explain to the Commissioners in general terms how it is that such a high proportion of the notifications still have - of people who were the subject of notifications still have a registration?

1 A. Yes. So, the majority of these allegations have come
2 from claims to the National Redress Scheme. That scheme is
3 established for an entirely different purpose to risk
4 assessment, so it often includes very limited information
5 about the actual conduct, so it would not be uncommon for
6 there to be one sentence relating to conduct. They also
7 often don't attribute specific conduct to individuals, but
8 they may mention individuals in their statement as a whole.
9 So, those 23 include people where we have, for example, no
10 specific allegations against them, but they may be
11 mentioned in a claim where allegations of physical or
12 sexual abuse is alleged, if that makes sense.

13

14 We have started an additional risk assessment
15 effectively for anyone who was named in a national register
16 claim, because that then commences a process of active
17 monitoring, so where you seek records from agencies and
18 other things with regard to those people. So, that's
19 really the - I suppose, the Redress Scheme has been an
20 important source of the trigger in essence, but it is very
21 rare that there is substantial information regarding the
22 nature of any conduct, and that's entirely appropriate;
23 it's not for that purpose that that information is
24 collected, but it's our entry point into being able to
25 actively monitor or actively engage and look into people.

26

27 COMMISSIONER BROMFIELD: Q. I assume that's why it's so
28 important that you have discretion then about when you
29 would then impose a suspension?

30 A. Yes, and I would be very - yes, and it's definitely
31 the case that you want to have a very sort of liberal test
32 to invite that additional risk assessment, but judgment
33 applied to when you might issue a suspension.

34

35 COMMISSIONER BROMFIELD: Thank you.

36

37 MS NORTON: Q. You've referred to a lack of particulars
38 coming from the National Redress Scheme, and the reasons
39 for that are perfectly explicable. The Commission has
40 heard evidence that suggests that on occasion people who
41 make applications through that scheme are being asked for
42 an extraordinary level of detail and in an
43 untrauma-informed way, if I can put it that way, to
44 describe the offending. Do you see that level of detail
45 ever coming through in notifications you receive?

46 A. So, no, in general. So, initially when we would get
47 reports of conduct from the Redress Scheme we would just

1 get extracts, so quotes, it could be one or two sentences;
2 it may not name someone, but it may say "this redress
3 application also names these people" for example. In many
4 cases we don't get the redress application in full, but my
5 experience of reading those claims is that they're not
6 particularly detailed. I don't have any firsthand
7 knowledge to how that scheme operates in practice.

8
9 Q. Sure.

10 A. And to some extent it's - you know, my job is to take
11 the next step, what can and should be done based on the
12 information that's contained within it, so I wouldn't
13 pretend to be an expert.

14
15 MS NORTON: No, I was just interested in your impression.

16
17 PRESIDENT NEAVE: Q. Mr Graham, we're a state Commission
18 obviously, but would it be helpful for the National Scheme
19 to regularly pass on to you all the details that they do
20 have; we can't make a recommendation that would be binding
21 on the National Scheme which applies to all states, but
22 would it be helpful if you were able to get, assuming that
23 there is more information held, that information?

24 A. Yes. So, I suppose what we do get from the National
25 Redress Scheme comes from agencies who have got it from the
26 Department of Justice who administers it in Tasmania. So,
27 we get it where that conduct occurred in Tasmania or in a
28 Tasmanian setting.

29
30 Q. Right, yes.

31 A. So, more broadly, potentially we would log anything as
32 reportable behaviour, so that if that person was registered
33 it would provide a trigger, or if that person was
34 registered in the future it would invite a trigger to
35 invite further information.

36
37 PRESIDENT NEAVE: Right.

38
39 MS NORTON: Q. I'd like to ask you a few further
40 questions about the attitude of the Department of
41 Communities to engagement with your office and the
42 provision of information to your office, and I'll just
43 pause to ask you: you have compulsory powers to request
44 information from agencies?

45 A. That's correct.

46
47 Q. On page 7 of your statement you make some observations

1 about your interactions with the Department of Communities,
2 and I'll just read just for the benefit of the transcript.
3 You say at page 7:

4
5 *It is clear that the department have found*
6 *the scale of historical allegations at AYDC*
7 *and the obligations placed on them to be*
8 *overwhelming.*

9
10 And then you go on to say:

11
12 *Throughout the period, late 2020 to the*
13 *present, it has been [your view] that the*
14 *department has not recognised the scale of*
15 *the challenge and put appropriate systems,*
16 *processes and resources in place to ensure*
17 *it was in a position to meet its*
18 *obligations under the Act.*

19
20 That's your experience, Mr Graham?

21 A. Yeah, that's correct.

22
23 Q. Can I invite you to elaborate for the benefit of the
24 Commissioners on what interactions inform that impression?

25 A. Yes. So, I suppose I saw the scale of information
26 that was reported to my office and the fact that a lot of
27 it was relatively recent, so related to current employees,
28 as extraordinary. And, I suppose, in contrast I felt the
29 response from the department was very much a business as
30 usual kind of response; it didn't scale up the resources to
31 ensure that it was able to, you know, review historical
32 records and provide them in a timely way. That definitely
33 got better over time, but it was incredibly frustrating,
34 particularly in I suppose the period from those early
35 notifications in late 2020 until about mid-2021.

36
37 And I suppose I'm making these comments in the context
38 of being the Regulator that actually says the safety,
39 protection and wellbeing of children is the paramount
40 concern, and having allegations of the gravest kind but not
41 substantial information about those and not being able to
42 get further information, you know, from the records or from
43 investigations that had been initiated to try and form a
44 view about whether those people should have their cards
45 suspended or cancelled so that they could be removed from
46 other settings where they may use them.

1 PRESIDENT NEAVE: Q. So, these are your comments about
2 Ashley, but can I ask whether that difficulty in
3 responding, or the slowness in response, is that something
4 that was evident in the case of other departments who might
5 have similar information?

6 A. I suppose, the two big departments that deal with
7 children are Communities and Education.

8
9 Q. Education, yes.

10 A. What I would say is, Education have - so, over time
11 they've had more established processes for investigations
12 and reporting, you know, in a more timely way. Also, I
13 would just make a comment, if I can, that the establishment
14 of the Safeguarding Unit within Education has been a
15 significant positive step for that agency, because what it
16 has done, it's removed from a corporate area which has the
17 interests of the organisation at heart, the responsibility
18 for children, so that is a hugely positive step, and the
19 cooperation that we've got from Education because of that
20 has been fantastic and I would say it's a model for other
21 agencies that have service settings that significantly
22 engage with children.

23
24 PRESIDENT NEAVE: Thank you.

25
26 MS NORTON: Q. Can I take you back to the Department of
27 Communities. In your statement you say it became clear
28 in February 2021 that there was an apparent reluctance
29 within parts of the Department of Communities to share
30 records. Are you able to explain to the Commissioners why
31 it became clear in February 2021 that there was that
32 reluctance, and also, which parts of Communities you traced
33 the reluctance to?

34 A. Yes. So, there are some restrictions on how national
35 redress information can and should be used. There was
36 reluctance - I think there was a difference of opinion,
37 effectively, between the legal part of the department and
38 the, what I would call the HR part of the department. The
39 HR part of the department was what I would say was more pro
40 disclosure: the legal part less so. That was ultimately
41 resolved in or around mid-March, I think, but at that point
42 we had basically decided that we would, you know,
43 notwithstanding waiting for information to be reported in
44 the normal way, we'd just initiate requests based on anyone
45 who was included in that spreadsheet, so that was the eight
46 people, and to try and substantiate the particulars of
47 other people named so we could get dates of birth, for

1 example, so that we could log the reportable behaviour in
2 our systems.

3
4 Q. And so, even though your role isn't investigative, you
5 took on a quasi-investigative role in that particular
6 instance?

7 A. Yes, and look, as I referred to earlier, these were
8 allegations of particularly grave conduct, albeit with no
9 real particulars, so it was very hard: you're sort of
10 sitting with something that you need to make a decision on,
11 potentially a suspension decision on, but you don't really
12 have information about it, so trying to understand more
13 about the people who were alleged to have taken it was a
14 vital kind of step.

15
16 Q. Because these were employees who had a current
17 registration?

18 A. That's correct.

19
20 Q. And were working at Ashley at the time?

21 A. Some of them were stood down, but they still had a
22 card, so they could volunteer and do other things with
23 Ashley. I'm concerned about the whole, not just --

24
25 Q. The institution?

26 A. Yeah.

27
28 Q. You said you started issuing notices. Can you recall,
29 give the Commissioners a sense of the volume of notices
30 that have been issued to the department in relation to
31 Ashley employees?

32 A. Yeah, so the Act gives me the power to seek the
33 provision of information, s.52A. There's been more than 80
34 s.52A requests for follow-ups to requests relating to
35 conduct at Ashley.

36
37 Q. And is that in the last 18 months or so?

38 A. Yes.

39
40 Q. Of those 80-odd, are you able to give a sense of the
41 proportion in respect of which you received a response or
42 an adequate response?

43 A. So, I think probably we would have received responses
44 to most or all of them now, but there have been some where
45 there's been months between, you know, and they've been
46 followed up multiple times. So, it was incredibly
47 frustrating and slow getting records out of the agencies,

1 and then often those records provided not much more than
2 the information we already held.

3
4 And what I would say is that, we didn't get records
5 relating to - for any information that had been revealed
6 through ED5 investigations, for example, that were
7 underway.

8
9 Q. And ED5 investigations are a really important source
10 of information for you?

11 A. Vital, yeah.

12
13 Q. And is that because the employer has a greater ability
14 to investigate allegations than your office does?

15 A. Yes, because they can compel staff to participate, and
16 they can interview people and other things, and collect
17 information, which we don't - you know, we receive
18 information and make assessments on it, we don't
19 investigate.

20
21 Q. I'm conscious of the time, but a few final questions.
22 You refer in your statement to giving consideration to
23 exercising enforcement action in relation to the
24 department.

25 A. Yeah.

26
27 Q. But that you ultimately decided against that and
28 instead set up a regime of regular meetings with relevant
29 executives; is that correct?

30 A. That's correct.

31
32 Q. What was the purpose of those meetings and are you
33 able to identify the executive or executives who attend?

34 A. Yeah. So, I suppose, by mid-2021 we had a number of
35 additional risk assessments open, we received very limited
36 information from the initial complaint. I was incredibly
37 frustrated at the time, because also a lot of the Ashley
38 staff were coming up for renewal of their registration, so
39 I would be forced to make a decision that they were an
40 acceptable or unacceptable risk. I felt that I did not
41 have information that would say that they were an
42 unacceptable risk without further info.

43
44 And it became clear to me as well that a number of
45 people subject to ED5 investigations were yet to have any
46 allegations put to them by the investigator assigned to it,
47 so it felt like the process was moving very slowly, so I

1 did contemplate compliance action.

2
3 I ultimately decided that, actually, the onus was on
4 me to engage further and to make sure they understood their
5 obligations, but also to kind of prod that along, so I
6 initiated regular meetings with the relevant Executive
7 Director, Kathy Baker, and they were effective in as a kind
8 of clearinghouse almost for the information that had been
9 requested and getting kind of status updates and other
10 things, but they were basically transactional in nature:
11 where's this up to? Can I get any update on that?
12

13 And I would say, from the second half of 2021
14 information did flow more freely. That was also as a
15 result of, you know, more resources that the organisation
16 had put in, some outcomes from the digitisation of their
17 records, the location of records and other things, but yes,
18 that was the case.
19

20 Q. My final question is this: you distinguish in your
21 statement between the efforts of employees at the
22 department at the officer level where you could see that
23 people were genuinely doing their best to assist. I'd like
24 to invite you to comment or to offer any comments you might
25 have about reluctance or resistance or a lack of urgency
26 within the Executive of the department, and I'd invite you,
27 if you are able to, if there are any particular people that
28 you saw as being obstructionist, to identify them?

29 A. So, yeah, firstly, I would like to acknowledge the
30 work of staff at the Department of Communities at the
31 officer level who responded to requests; they did a very
32 good job, they engaged constructively with my staff, and
33 yeah, I wouldn't make any further comment than that.
34

35 I suppose, I see this - it's my view that the
36 leadership of the department didn't see this for the crisis
37 that it was. There was multiple grave allegations about
38 current staff that kind of got a "business as usual"
39 response as far as just process. So, you know, we don't
40 have outcomes from investigations that started in November
41 2020, nor do we have any real appreciable information
42 that's come from those investigations that would enable us
43 to make decisions to remove people from settings where they
44 may cause harm.
45

46 Q. Thank you. I do have two further questions. The
47 regular meetings you referred to, you said that Ms Baker

1 was present at those; are there any other regular attendees
2 at those meetings?

3 A. So, it was with Ms Baker while she was there and so
4 subsequently since she's left the department I meet with
5 Anita Yan, yeah.

6
7 Q. Thank you. You talk in your statement about, and it's
8 been evident in some of your answers today that you have
9 frustrations with the ED5 process?

10 A. Yes.

11
12 Q. And the delays associated with it and the impact that
13 has on information that comes to you. Will the
14 introduction of a Reportable Conduct Scheme help to
15 alleviate those frustrations in your view?

16 A. Definitely. It would do a few things I hope; you
17 know, it's still a prospective scheme, but so I suppose
18 firstly, it would create clear obligations with regard to
19 investigations. It would create reporting requirements and
20 accountability, so that is great. I hope it will also
21 require investigations irrespective of whether the staff
22 member is current or former; so, you know, establishing
23 what conduct has gone on is vital. And also, the ability
24 of the regulator to intervene if the organisation lacks the
25 will or capacity or otherwise to conduct those
26 investigations.

27
28 I also think, just commenting on the ED5 as well, it's
29 not a well-placed instrument to investigate these matters,
30 I totally accept that.

31
32 Q. When you say "these matters" are you referring to
33 child safety matters or disciplinary matters or both?

34 A. Well, I assume probably both, but child safety
35 matters. I would like that there was an overarching
36 obligation similar to my own around the paramount
37 importance of the safety of children to be part of that
38 system, so that, you know, findings can be made with regard
39 to that so that we can keep children safe.

40
41 MS NORTON: Thank you, Mr Graham. Commissioners, I have
42 no further questions.

43
44 COMMISSIONER BROMFIELD: No further questions. Thank you,
45 Mr Graham.

46
47 COMMISSIONER BENJAMIN: I have three.

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Q. The first is, I think you suggested there should be some legislative change giving that overarching obligation to which you referred.

A. Yes.

Q. Are there any other legislative or regulatory changes which would make your task of protecting children easier or better?

A. Yeah, there are a few. I think there should be a general exemption in the PIP Act, the Privacy Act, that enables people to share information when it's in the interests of the safety of children, similar to the exemption that exists for law enforcement to share information. That would be a huge step forward and would also combat the reluctance that some people have in sharing information, because the PIP Act is often used as a kind of --

PRESIDENT NEAVE: Q. Barrier.

A. -- barrier, so that would be the first.

The second thing, I think the suspension power that I have needs statutory guidance about when it should be used; it's completely open to me to use it when I have commenced an ARA, which means - and definitely, I've used that to remove people from settings where they may cause harm, but there should be statutory guidance about when it should be used.

And the last thing I would say is that there should be better access to Justice when decisions are made, adverse decisions are made in the scheme. At the moment reviews are undertaken by the Magistrates' Court: they're very rare, which means - and I understand that cost is the most significant barrier there. So, the establishment of TasCAT offers a real opportunity to have decisions more regularly reviewed, and that's because the scheme needs to be legitimate in the eyes of the community.

Q. So, these are reviews of decisions that are made, adverse decisions --

A. By me.

Q. -- that are made by you?

A. Yes, because there have been very few of them and we've made a lot of - we've either excluded people or

1 removed them, and to have - I think we've only had one
2 matter that has gone to a full de novo remaking in
3 eight years. So, that's not a healthy kind of sense of
4 access to justice or the review mechanisms that you would
5 expect of an Act which has quite extraordinary
6 implications.

7
8 COMMISSIONER BENJAMIN: Q. Yes, that's the first
9 question. The second question is: do you see the need for
10 your office to have some investigative role in terms of
11 some applications or some consideration of suspending or
12 removing these permits?

13 A. This is actually something I've thought about a lot,
14 and there's definitely been times where I wish I had a
15 different role in this system, but I think the obligation
16 needs to sit with the agency in which the conduct occurs
17 because, if they can pass it off to someone else, it won't
18 be front of mind to that organisation, would be my view.

19
20 I also hope that the Reportable Conduct Scheme would
21 fill the gap in the sense of, they would be able to step in
22 and investigate where an organisation lacks the will or
23 capacity to do so themselves. Does that make sense?

24
25 Q. Yes, it does, thank you. Is there anything you want
26 to add to that?

27 A. No, but look, I just - the Reportable Conduct Scheme
28 will be so vital to the kind of regulatory architecture we
29 have to keep children safe.

30
31 Q. And finally, does your office have at present adequate
32 resources to ensure that you can meet your statutory
33 obligations?

34 A. Yes, so this function of my office is funded by the
35 fees that registered people pay for their registration; so,
36 I think it's about \$120 to have a card now. That brings in
37 revenue of about \$4 million a year, of which we have 27
38 staff. That currently is adequate. Look, I would -
39 finding staff is harder with the appropriate skills, has
40 been perhaps harder than finding money to pay them, but I
41 imagine that we are moving into a world where there will be
42 more reporting and more conduct which needs to be reviewed
43 and, of course, that would need to be appropriately funded,
44 but money has never been a problem with regard to
45 acquitting my obligations.

46
47 COMMISSIONER BENJAMIN: Thank you for your evidence and

1 your frankness.

2

3 PRESIDENT NEAVE: Yes, thank you very, very much for your
4 evidence, that was really helpful.

5

6 MS NORTON: And can we take the morning adjournment.

7

8 PRESIDENT NEAVE: Yes, thank you.

9

10 **SHORT ADJOURNMENT**

11

12 MS NORTON: Commissioners, our next witness is Acting
13 Deputy Commissioner, Jonathan Higgins, and I'll ask that
14 the witness be sworn in, please.

15

16 <JONATHAN CRAIG HIGGINS, sworn: [11.52am]

17

18 <EXAMINATION BY MS NORTON:

19

20 MS NORTON: Q. Can I ask you to state for the
21 transcript your name, occupation and professional address,
22 please?

23 A. Yes. Jonathan Craig Higgins, Acting Deputy
24 Commissioner, Tasmania Police, and Police Headquarters
25 being the address.

26

27 Q. Thank you. As I understand it your permanent role is
28 as Assistant Commissioner for Operations, but as you've
29 just announced you're currently the Acting Deputy
30 Commissioner?

31 A. That's right.

32

33 Q. You've prepared for the purposes of this hearing two
34 statements in response to requests from the Commission: the
35 first is a statement dated 15 August 2022?

36 A. Yes.

37

38 Q. And the second is in response to some further
39 questions from the Commission, and that's dated 23 August
40 2022?

41 A. Yes, that's correct.

42

43 Q. I understand that one of the attachments to that
44 statement, that is, JCH-1, has been updated a few times
45 including this morning; is that correct?

46 A. Yes, that's correct.

47

1 Q. In its most recent form is JCH-1 and your statements
2 more generally true and correct to the best of your
3 knowledge and belief?

4 A. To the best of my knowledge and belief.

5
6 Q. I'd like to ask you some questions about information
7 sharing, if I could, and in particular information sharing
8 with the Registrar for Working with Vulnerable People.
9 When did notification obligations come into place for
10 Tasmania Police?

11 A. So, in relation to that Act, 13 July 2016.

12
13 Q. Thank you. As I understand it, automated
14 notifications as between Tasmania Police and the
15 Registrar's office were introduced at around the same time;
16 is that correct?

17 A. Yes, that's correct.

18
19 Q. If I can perhaps take you to JCH-1, the spreadsheet
20 exhibited to your statement. Just for the benefit of the
21 Commissioners, the three columns on the far right of that
22 document relate to various ways in which automated
23 notifications might flow from Tasmania Police to other
24 state agencies; is that correct?

25 A. That's correct.

26
27 Q. If I can just go through them in sequence, beginning
28 with the one that is third from the right-hand side. This,
29 as I understand it, it's headed, "Listed as presents a risk
30 to vulnerable people", can you see where I am in the table?

31 A. Yes, I can.

32
33 Q. As I understand it, this is what's referred to as an
34 intelligence report?

35 A. Yes.

36
37 Q. And it has over time sat on different police systems;
38 I think at one point it was IDM --

39 A. Integrated data management, so if we call it
40 intelligence reports that will cover both.

41
42 Q. And currently it's ATLAS?

43 A. Yes.

44
45 Q. The repositories of the information, but under either
46 repository, it's an intelligence report?

47 A. Yes.

- 1
2 Q. And this is a report that became the subject of
3 automated notifications to the Registrar for Working with
4 Vulnerable People in 2016; is that correct?
5 A. Yes.
6
- 7 Q. And, would I be right to think that the vast majority
8 of information, or notifications between Tasmania Police
9 and the Registrar's office go via information reports?
10 A. No, not necessarily.
11
- 12 Q. Right.
13 A. It would be a combination of the Child Safety
14 occurrences as well, being in a separate ATLAS Report, and
15 also the Offence Reporting System and the Online Charging,
16 so it'll be a combination of those four that will actually
17 provide that information to the Registrar.
18
- 19 Q. But would there be more intelligence reports than
20 there would be, for example OLCs, the Online Charging
21 sheets?
22 A. Yes.
23
- 24 Q. And that's because an intelligence report is just
25 that, it's a report of information which may or may not
26 lead to an investigation, but under the automated system
27 it's provided to the Registrar?
28 A. Yes.
29
- 30 Q. It's described in your statement as an automated
31 notification, but would you agree with me that it has a
32 manual element to it?
33 A. Yes, it does.
34
- 35 Q. In that, it's a tick-a-box requirement. So, the
36 officer who's entering the information in the intelligence
37 report needs to tick a box in order to trigger that
38 automatic notification?
39 A. That's right, so when we say "tick-a-box", checking a
40 box on the computer, on the sheet, as they're filling the
41 information out.
42
- 43 Q. And understandably, any manual system of that nature
44 is subject to human error, isn't it?
45 A. Yes, of course.
46
- 47 Q. So there will be occasions where, for some reason,

1 completely innocent someone will neglect to tick a box on
2 the information report and the outcome of that would be
3 that the automatic notification wouldn't go to the
4 Registrar?

5 A. It is possible that may happen.

6
7 Q. There also, it seems to me, to be a subjective element
8 to that automatic notification, in that, in order to tick
9 the box or check the box the officer entering the
10 information needs to ask themselves whether the person
11 who's the subject of an allegation or an intelligence
12 report presents a risk to vulnerable people?

13 A. Yes, that's correct.

14
15 Q. And so, would you agree that there's an element of
16 subjectivity in that assessment potentially?

17 A. Yes, there can be. We do have guidelines on what
18 should be done, but yes, there's a human element.

19
20 Q. And I'll come back to the guidelines and some of the
21 work that you've done, but just to illustrate perhaps the
22 point, if I can take you to JCH-1, and in particular
23 line 2. And, we don't need to identify any of the people
24 that this relates to, but you'd agree that it's a
25 notification that's come through the Royal Commission, the
26 National Royal Commission?

27 A. Yes.

28
29 Q. In May 2017.

30 A. Yes.

31
32 Q. And it concerns an allegation of ongoing sexual, among
33 other things, ongoing sexual abuse?

34 A. That's correct.

35
36 Q. Based on the information in this table, and in
37 particular that third column from the right, it appears
38 that there was no information report in relation to that
39 notification?

40 A. On that notification, yes. Sorry, yes, there's no
41 report.

42
43 Q. Yes, thank you. And, if I can perhaps contrast some
44 other entries, if I can take you to lines 56 and 69 of the
45 table, these are entries that relate to two separate
46 employees. And, I'm sorry, I should for the benefit of the
47 transcript ask you to identify what this table includes?

1 A. So, the table itself includes employees at Ashley
2 Detention Centre who may or may not be still employed, and
3 allegations against them; so, reports by individuals
4 against employees.

5
6 Q. Yes, thank you. The other entries I wanted to just
7 direct you to are at 56 and 69; they relate to the same
8 allegations but concern two separate employees of Ashley
9 Youth Detention Centre and they were received around the
10 same time as the item I took you to in line 2, that is,
11 mid-2017 and they're allegations of indecent assault. You
12 can see, when you go over to that information report
13 column, that those information reports were the subject of
14 a notification via an intelligence report?

15 A. Yes, they were.

16
17 Q. Is that accurate? Just based on the information
18 available to you in that table, can you see any reason why
19 the last two entries that I've taken you to at lines 56 and
20 69 would be the subject of an information report, whereas
21 the entry at line 2 wasn't?

22 A. Okay, so in 2017 through the Royal Commission - or
23 from 2014 through the Royal Commission there were a number
24 of referrals that would come through, and they were
25 recorded on our - so, it comes through as an email, and
26 they were recorded on our - I'm going to call it TRIM, it's
27 called CM9, but our record management system, not just for
28 this but for everything we do in the department. So, when
29 they would come in on that, on email, they'd be put onto
30 what I'll call the TRIM, and then be allocated for
31 investigation to the appropriate area, whether it's
32 Bellerive CIB, Launceston CIB or elsewhere in the state.

33
34 Q. Just looking at the information in those three lines
35 that I've taken you to, can I ask you this: is there any
36 reason that you can see that that entry at line 2 - sorry,
37 let me withdraw that. Should the entry at line 2 have been
38 the subject of an information report based on the
39 information in line 2?

40 A. Certainly now. Post December 2020, absolutely, yes,
41 it should be. The practice at the time, best practice
42 would be to put it on an intelligence report, but it may
43 have not happened in this case.

44
45 Q. And is that --

46 A. Or didn't happen, sorry.

47

1 Q. Sorry?

2 A. Didn't happen in this case.

3

4 Q. And is that an example of the difficulty with this
5 intelligence report notification, in that, even though it's
6 described as automated, it is subject to human error?

7 A. It is.

8

9 Q. Can I invite you to explain to the Commissioners any
10 systems you have in place now to minimise - well, I suppose
11 to ensure that the tick-the-box is ticked when it needs to
12 be, including by way of officer education, about who might
13 present a risk to vulnerable people?

14 A. Yes, certainly. So, from December 2020, which was a
15 pivotal time for I think the state but certainly for our
16 agency and I'll speak on our agency, from that point in
17 that first six or seven months we changed our protocols,
18 our guidelines, our training packages for our staff to give
19 clear guidance, particularly in relation to initial
20 attendance and investigation of allegations of child abuse
21 and requirements that needed to be followed from that
22 point; whether it's putting the intelligence submission in
23 and making sure the boxes are checked, appropriate boxes
24 are checked so that the Registrar could be notified, or
25 whether it's - in some cases they may actually be not
26 adults but children, so a Child Safety occurrence would be
27 instead put in for the same reason, and they would do
28 automatic notifications across.

29

30 Moving from that though, we have the Offence Reporting
31 System where there are notifications from that. So, if a
32 suspect is listed and a particular offence or crime is
33 listed on that, it triggers an automatic notification.
34 Likewise, if that goes through to charging and the person
35 is moved from "suspect" to "offender", another notification
36 goes through to the Registrar as well.

37

38 PRESIDENT NEAVE: Q. Can I just ask you: you mentioned
39 the training packages. Who got that training?

40 A. So, 94 per cent of police, sworn police staff, have
41 completed the training.

42

43 Q. And, how was that delivered?

44 A. It was delivered online.

45

46 Q. Right?

47 A. So, an online training package needed to be completed,

1 but there is a guidance package behind that which is
2 accessible in our materials that are provided to our staff,
3 but 94 per cent of our staff have actually completed the
4 online training package as well.

5
6 PRESIDENT NEAVE: Thank you.

7
8 MS NORTON: Q. Acting Deputy Commissioner, can I just
9 ask you, following on from your evidence just now, going
10 back to the table, you referred to the ORC and the OLC
11 notifications, and am I right to understand that they're
12 the notifications in the second column from the right of
13 the table?

14 A. Yes, I apologise, I'd moved to the next column, yes.

15
16 Q. And they go to the Department of Justice or the
17 Registrar for Working with Vulnerable People?

18 A. Yes, they do.

19
20 Q. And then, just to complete the picture, the column in
21 the far right of the table are the Child Safety occurrence
22 reports, and they go to Child Safety Services?

23 A. That's right.

24
25 Q. And I believe that you referred before to particular
26 offences that trigger an ORS notification, and am I right
27 to understand that in respect of Child Safety at least,
28 they're referred to as Schedule 1 offences?

29 A. That's right.

30
31 Q. Thank you.

32
33 COMMISSIONER BENJAMIN: Q. If I could just interrupt for
34 a moment. You said 94 per cent of sworn officers were
35 given the course. Was there any analysis of the efficacy
36 of the learnings in terms of those 94 per cent?

37 A. What we've actually seen is probably more precise
38 reporting, so an increase in reporting, and the Registrar
39 would have seen that as well. So, more correct reporting
40 at each level through there, including not just the
41 electronic systems, but the actual attendance and
42 investigation of child sexual abuse.

43
44 Q. So, there's been a measurable change which you've been
45 able to observe?

46 A. Been able to observe, yes.

47

1 MS NORTON: Q. You've given evidence previously, as has
2 Commissioner Hine, in relation to a particular body of work
3 that Tasmania Police did following the arrest of James
4 Griffin, and that's the work of the Child Sexual Abuse
5 Joint Review Team, but I'll refer to them as "the Joint
6 Review Team".

7
8 As I understand it, part of the role of the Joint
9 Review Team was to conduct an audit of historical
10 allegations that had been provided or notified to Tasmania
11 Police or the Department of Communities and there was a
12 review of those notifications to see whether appropriate
13 information sharing between agencies had occurred.

14 A. That's correct.

15
16 Q. Is that an accurate description of that aspect of the
17 work of the Joint Review Team?

18 A. It is. I can detail the work they did do in a
19 snapshot, if that does help?

20
21 Q. Absolutely, thank you.

22 A. Sorry, I'll just put my glasses on. So, in short, the
23 checks were conducted across the data within ATLAS, the
24 Communities CARDI and CPIS and the Working with Vulnerable
25 People section as well, and the list was as of 28 June
26 2021.

27
28 In regards to ATLAS, it went from 2002 to 30 June
29 2021. CARDI: December 2018 to 30 June 2021. The CPIS data
30 was for all persons recorded as a person believed
31 responsible for sexual harm from 2018 to 30 June 2021. The
32 CPIS data was from 1 January 2019 to 30 June 2021 and
33 sourced from keyword searches within specified text fields
34 and subsequently scoped for review but not obtained in the
35 third dataset there I said about the CPIS data for all
36 persons recorded as a person believed responsible for
37 sexual harm. And, the fifth element was in relation to
38 Working with Vulnerable People and there was a complete
39 list that was looked at as of 20 June 2021, and they went
40 through stages of two point matches, three point matches
41 with those agencies, with those areas being picked out, and
42 that was - the Joint Review Team consisted of across
43 agency. So, it wasn't just police, it was Communities,
44 Education and others in Peter's area.

45
46 Q. Am I right to understand that the purpose of what
47 sounds like a very extensive body of work that you've just

1 described was to identify whether there were occasions
2 where notifications had been made to an agency and not
3 properly passed on or, I'm sorry, information received by
4 an agency and then not the subject of notifications to the
5 other two agencies or one of them?

6 A. Yes.

7

8 Q. Is that an accurate summation?

9 A. That's accurate.

10

11 Q. And what was the outcome of, in a snapshot again, the
12 outcome of that audit work?

13 A. As a result of the audit work there were certainly
14 more notifications through to Working with Vulnerable
15 People, or to the Registrar, but no child at risk.

16

17 Q. And so, more notifications to the Registrar; is that
18 because the review identified occasions historically in
19 which a report had been made to police that should have
20 been the subject of notification to the Registrar but
21 hadn't been?

22 A. In some occasions, yes.

23

24 Q. I think Commissioner Hine in a previous week described
25 the work of the JRT as "meticulous and thorough and that
26 system errors had been identified and rectified". Is that
27 your view also?

28 A. Yes.

29

30 Q. And as a result - I know you've referred in your
31 statement to work that you did in 2021 with the Registrar
32 in relation to an information sharing protocol?

33 A. Yes.

34

35 Q. And so, as a result of both that audit work, learnings
36 that have come from it, and information sharing protocols
37 in place, what's your view now of the robustness of the
38 information sharing as between Tasmania Police and the
39 Registrar?

40 A. I think it's far more robust now and information
41 sharing is as it should be but there will be occasions,
42 with human error, that may not facilitate that as it
43 should. But on the whole, yes, there's a general
44 observation that it's improved considerably.

45

46 Q. And so, is it fair to say that even though, as you've
47 acknowledged, there will be occasions due to human error or

1 some other reason a notification that should occur doesn't,
2 but generally you have confidence in the system?

3 A. I do.

4
5 PRESIDENT NEAVE: Q. Can I ask a question about systemic
6 safety nets in cases where there is human error. Are you
7 likely to pick those up and what are the processes - I
8 mean, obviously you're comparing information, or you were
9 at that time. How do you do it now? How do you put in
10 place your safety net?

11 A. Yep, so I think Commissioner Hine alluded to, we were
12 doing a review of our ATLAS. So, our ATLAS system we've
13 had since October 2019, and with a view of ensuring that
14 the correct reporting has been happening. What we are
15 implementing as a result of that is a greater supervisory
16 level as well. We have had the ability to do the
17 submissions, an individual, an officer would put a
18 submission in and the notifications will happen providing
19 everything is checked as it should, but to ensure we have
20 full confidence at a supervisory level onto it to ensure
21 there are checks and balances greater than what we
22 currently have and I think that's particularly important.

23
24 Q. Any random audits?

25 A. Yes, we have had audits, and there are some - not with
26 current children at risk, but there have been concerns that
27 we have found and we're rectifying that with introducing a
28 supervisory level where it can't go past - once it's
29 submitted it can't go any anywhere else until it's actually
30 checked by a supervisor, so, yes, there have been audits
31 and there have been deficiencies found.

32
33 MS NORTON: Q. Are there any system prompts that
34 require, for example, someone to tick the box or indicate
35 in some way on the system that they've given consideration
36 to the risk question before an intelligence report can be
37 finalised, for example?

38 A. Yes, there are, but it still requires the individual
39 to actually check the box themselves, but there are
40 prompts.

41
42 Q. They can make it harder to forget those, those sorts
43 of prompts?

44 A. Yes.

45
46 Q. Or to overlook, yes. I'll ask you a question that you
47 will have heard me ask Registrar Graham earlier. The

1 Commission has requested information about notifications in
2 relation to Ashley employees that pass between Tasmania
3 Police, the Registrar and the Department of Communities,
4 and my question is, if the system's working as it should
5 and with the improvements that you've put in place
6 following the Joint Review Team audit, should the material
7 that we receive from each of those agencies more or less
8 match up or triangulate in terms of when notifications were
9 made from one agency to another?

10 A. I believe it should be now; I don't think it's always
11 been the case, though.

12
13 Q. But it should be now.

14 A. (Witness nods.)

15
16 Q. And Registrar Graham made the point that there might
17 sometimes be an inconsistency of a couple of days between
18 where information leaves one system or one agency and is
19 received or processed by another. If a comparison of
20 information that the Commission's received from across
21 agencies doesn't match up, even allowing for that sort of a
22 buffer, is that a red flag that there are still some
23 problems in information sharing?

24 A. Yes.

25
26 Q. Thank you. I'd like to now return to --

27
28 COMMISSIONER BROMFIELD: Q. Before you do, Ms Norton.
29 The whole data matching exercise that you did, and I'm
30 trying to remember all the acronyms and what they refer to,
31 are there any systems that you're worried about that
32 weren't included in that data matching? For example, this
33 Commission has heard about quality of care allegations or
34 complaints, and obviously about complaints that were raised
35 in Ashley that weren't necessarily referred through to the
36 Advice & Referral Line. Is it conceivable that the State
37 still holds information that has not been part of that data
38 matching?

39 A. It's possible. I couldn't speak for other agencies,
40 but I imagine it is probably possible on paper-based-type
41 systems.

42
43 COMMISSIONER BROMFIELD: Thank you.

44
45 MS NORTON: Q. I'd like to go back to JCH-1, please.
46 I'm not going to take you in detail through the entire
47 table, just to reassure you, but I would like to use as an

1 example the entries in relation to an employee who we're
2 referring to as Lester, and those entries start at line 40
3 of the table.

4 A. Yes.

5
6 Q. The evidence before the Commission suggests that the
7 Department of Communities was first made aware of
8 allegations of child sexual abuse involving Lester in
9 January 2020 and that came to be because an employee at
10 Ashley who we're referring to as "Ira" - and I'm not sure
11 if you've got a pseudonym sheet in front of you but, if
12 not, can I just ask so you can see who I mean when I refer
13 to Ira.

14 A. Thank you. Yes.

15
16 Q. So, Ira made allegations to another employee at the
17 centre, Alysha, who gave evidence earlier this week, in
18 relation to sexual abuse by Lester. Now, notwithstanding
19 that the department was first aware of those allegations in
20 January 2020 - and I can take you to item 44 in the table.
21 If you go to item 44 there, that's the particular report
22 that I'm referring to.

23 A. Yes, I've got that.

24
25 Q. You'll see in the column where the notification to the
26 police is that, even though the department was aware of
27 those allegations in January 2020, the police didn't
28 receive notification until November 2020, so a delay of
29 10 months or so. And I should, out of fairness, make the
30 point that, although Lester was working at the centre
31 throughout that time, he was on alternate duties, although
32 there is evidence to suggest that he was still having some
33 contact with the children at the centre.

34
35 The reasons for the delay between the notification to
36 Communities and 10 months later the notification to police
37 include that the department was taking a statement from
38 Ira, the employee who made the allegations against a
39 colleague. I'd like to invite you to comment on whether
40 it's appropriate for the department, as the employing
41 agency, to delay making a notification to police in
42 order to take a statement from an employee. Is that the
43 proper role of the department?

44 A. In relation to a criminal matter, no, the preference
45 would certainly be to refer it to the police.

46
47 Q. Would you agree that the allegation there at line 44

1 might raise a potential criminal matter?

2 A. Based on the information, possible, yes.

3

4 Q. And so what would best practice involve in January
5 2020 when that allegation was made to the department about
6 Lester, what would best practice approach require?

7 A. So, a notification to police at the time at the very
8 least; seek advice or notify, seek advice. It may not be
9 that anything stalls on either way, but at least as a - I
10 guess, a heads-up and to be able to record it and move
11 forward there with the department.

12

13 I honestly think this is done far better now with
14 everything that the government agencies have done to
15 improve in reporting and working together, particularly in
16 relation to criminal matters and ED5s; I think that hasn't
17 always been the case. ED5s can be very complicated, very
18 lengthy in time, mind you criminal matters can too, but I
19 think it's fair to say that over the last couple of years
20 in particular that has certainly changed, for the better
21 for all.

22

23 Q. Just going back to the taking of a statement, and it's
24 encouraging to note those improvements you've referred to,
25 but going back to the taking of a statement. Ira, on the
26 evidence before the Commission, is somebody who is alleged
27 to have witnessed the conduct that was the subject of the
28 allegation, so he was an eyewitness to a potential criminal
29 offence. Who's the proper investigating body or the body
30 that ought be charged with taking a statement from Ira? Is
31 it the Department of Communities or is it more properly the
32 role of Tasmania Police?

33 A. If it's going to be a criminal matter it's Tasmania
34 Police; if it's going to be an internal matter it would be
35 Communities or the investigator they appoint. Look, on the
36 information that's there, it could be either way, but a
37 notification to police earlier is better to be able to seek
38 that advice.

39

40 Q. So, at the very least you would expect to be notified
41 about the allegations even if for some reason you were
42 comfortable with the department taking a statement; you
43 should at least be notified?

44 A. Yes. We wouldn't be comfortable for the - when we're
45 talking about the department, we're talking about the
46 Communities or Ashley I'm assuming?

47

1 Q. Yes.

2 A. No, it wouldn't be - they wouldn't take a statement
3 for a criminal matter, that would be purely for an ED5.
4

5 Q. And, if you receive the notification and it's
6 suggested, as I think your evidence before was, that there
7 was potential criminal offending, then that would suggest
8 that the statement should be taken by Tasmania Police?

9 A. Yes, but that would be - that would be decided with a
10 police investigator speaking to somebody at Ashley.
11

12 Q. In consultation?

13 A. Yes.
14

15 COMMISSIONER BROMFIELD: Q. So, can I just clarify what
16 I heard there. In determining who should undertake the
17 interview, is it your preference then that, before a
18 decision is made or before the interview is undertaken,
19 that there is that consultation with police?

20 A. Yes. Obviously, I know a little more than behind the
21 line that's in this, so I have the benefit of that. Yes, I
22 think in that instance it would be appropriate to be able
23 to either provide that guidance on which way it should go
24 and, if it was going to be criminal, then it would be
25 police taking the statement, but not to be used in an ED5,
26 that's for an investigation.
27

28 PRESIDENT NEAVE: Q. One of the problems might be that
29 you don't yet know whether it's likely to be a criminal
30 matter?

31 A. That's absolutely right.
32

33 Q. And, presumably it would be preferable for the police
34 to make the judgment, as to whether it was likely to be a
35 criminal matter, than for the department to make that
36 judgment, or at least to have a consultation about it?

37 A. At least to have that consultation.
38

39 PRESIDENT NEAVE: Thank you.
40

41 MS NORTON: Q. Are there ways in which the Department of
42 Communities taking a statement from an employee in relation
43 to a potential criminal offence might somehow compromise
44 police investigations?

45 A. It can, because it won't - we couldn't I don't think
46 really use that in a criminal proceeding later. I think it
47 needs to be balanced: firstly, at the forefront here is the

1 safety of a child, so we're talking about a detention
2 centre where there are children and what they do at that
3 point. In relation to - sorry, if I read the pseudonym -
4 Ira as a witness, it doesn't necessarily mean that in the
5 very first instance that the other employee in question
6 needs to be alerted to that. So, an initial conversation
7 would be preferable to be able to move forward.

8
9 Q. Thank you. Can I take you back to the table and a
10 different entry. Although there was a delay in notifying,
11 or might be said there was a delay in notifying police of
12 the allegation at line 44, allegations in relation to
13 Lester were known to police. At line 40 you can see an
14 allegation that was made directly to police; have you got
15 that?

16 A. So, we have 40 and 44?

17
18 Q. No, I'm moving on to 40, you can leave 44 behind.

19 A. Right, yes.

20
21 Q. At 40 there was a report in November 2012 made by
22 somebody who was not a detainee at Ashley but who
23 nonetheless made an allegation of sexual abuse in relation
24 to Lester. Can you see that?

25 A. I can see that.

26
27 Q. And then, if you follow it through, it refers to the
28 complainant making a statement, I think it was a statutory
29 declaration; was unsure if they wanted to proceed to court
30 proceedings. I think you've seen a document recently which
31 is the disclosure report in relation to this report. Would
32 you like me to provide it, I'll just hand it over to you?

33 A. It is in my folder, yes, but that would be good.

34
35 Q. I don't know if it's in your folder. I just want to
36 highlight some of the features of that.

37 A. Thank you.

38
39 Q. This is an intelligence submission and it's classified
40 as, "Reliability can't be judged but probably true". And
41 the person who's made the complaint, although he's
42 complaining about sexual offending in respect of himself,
43 he also refers to being concerned because Lester works at
44 Ashley Youth Detention Centre, and that's a concern that
45 was raised with police in 2012.

46 A. Yes, certainly that's what it says, yes.

47

1 Q. It also refers to there being - or it may not be that
2 document, but are you aware that there was a second person
3 who was also willing to speak to police about the
4 offending?

5 A. Yes, a person nominated by the complainant.
6

7 Q. Yes. Just pausing there, it's quite noteworthy that,
8 although this person was coming forward about offending in
9 relation to themselves, they were clearly concerned about
10 the risk that Lester posed to children and young people at
11 the centre; would you agree?

12 A. I would agree, reading it, yes.
13

14 Q. If we go back to line 40 and follow the report
15 through, in the column where the intelligence reports are
16 listed, it says that an intelligence report was made at
17 that stage, this is in November 2012, but this was prior to
18 automatic notifications. And I'll note also that it's
19 prior to the Registrar for Working with Vulnerable People
20 Scheme coming in effect.

21 A. It is.
22

23 Q. What would have been done with that intelligence
24 report in terms of bringing to attention, perhaps to
25 management at Ashley, the potential risk that Lester might
26 pose to detainees?

27 A. So, without having the rest of it there, but a
28 practice would be to make contact with - it would have been
29 DHHS then or Child Safety, to notify them of a concern, and
30 that would be done by an investigator directly.
31

32 Q. And is that, what I might describe as an informal type
33 process, picking up the phone, having a conversation?

34 A. Yes, it's probably informal as far as picking up the
35 phone and having a conversation, but I'd argue it's formal,
36 in that, passing on the concerns, if that did happen, and I
37 don't know if that did happen, but certainly pass on the
38 concerns that are raised by this complainant.
39

40 Q. And so, you've described what you consider to have
41 been best practice back in 2012 before the Registrar Scheme
42 was in place and before there were automatic notifications,
43 but you are unable to say, based on the information you've
44 got, whether that in fact happened?

45 A. No, I don't know if that happened.
46

47 Q. And, if it did happen, would there necessarily be a

1 record of it?

2 A. Not necessarily. There could be entries on the - so,
3 in 2012 it was the, I call it the IDM, the integrated data
4 management one, so it's the older system; there could have
5 been entries and a running sheet on that, but it doesn't
6 appear there has been anything on what I can see in front
7 of me.

8

9 Q. Accepting that you can't confirm one way or another,
10 if that notification - if a conversation of that kind
11 didn't occur, would you agree that that was a missed
12 opportunity to raise with Ashley concerns about the risk
13 that Lester might pose to children at the centre?

14 A. Yes, if that didn't happen.

15

16 Q. If that didn't happen, thank you.

17

18 PRESIDENT NEAVE: Q. Can I just ask a question there.
19 The linking of information. Let's suppose you have three
20 separate notifications separated by some years but perhaps
21 by different alleged victim-survivors, how is that brought
22 together? What's the process for linking the information
23 that I provide in 2012 and the information that somebody
24 else provides in 2015 and the information that's provided
25 by somebody else in 2019?

26 A. So, the information on this system, so the old one,
27 the IDM and ATLAS, will be by the names.

28

29 Q. Yes.

30 A. Now, this relies on the names being spelt properly --

31

32 Q. Of course.

33 A. -- as well, which can be an issue. Obviously, I'm not
34 going to say the names that are there, but I am aware of
35 this particular one, I think it's Lester, is spelt - it's
36 obviously not Lester, the spelling, but yes --

37

38 Q. But there is a system for linking it?

39 A. Yes, there is a system for linking, but it does rely
40 very much on the correct information being put in.

41

42 Q. I understand that.

43 A. The difference that we have now with our new system is
44 that you can't just put a report in with a - look, I'll use
45 something very simple which is not child sexual abuse -
46 John Smith selling drugs. You would actually have to find
47 that John Smith on the system, put the correct one in with

1 the date of birth and so forth to actually validate that
2 information. That wasn't the case in the past, you could
3 literally put what I said on and then, if you do the search
4 for John Smith you may get many of them and not be able to
5 link.

6
7 It's an improvement that certainly has been made as
8 far as linking; it's not always perfect though.

9
10 PRESIDENT NEAVE: Thank you.

11
12 COMMISSIONER BENJAMIN: Q. And if there is not a John
13 Smith, where do you go from there? Do you go to drivers'
14 records or that sort of thing to try and track them down?
15 A. The expectation is that the officer putting a report
16 in goes to - most details they possibly and reasonably can,
17 and it may be checking things like that. It may be that
18 they can't actually identify the person, it might be from a
19 source that's not able to provide that information to that
20 detail and I think we have to accept that we may not always
21 be able to identify exactly who that is.

22
23 MS NORTON: Q. One final set of questions in relation to
24 the table, Acting Deputy Commissioner. If I can take you
25 to items 45, 46 and 47. Again, these are reports in
26 relation to Lester. Now, they're three separate reports,
27 but as I understand it or I'll ask you to confirm, these
28 are reports that weren't included in the table that was
29 initially provided with your statement. Is that your
30 recollection?

31 A. That's my recollection.

32
33 Q. And then, when that was drawn to your attention, you
34 went back and located the relevant notifications and
35 they've been included?

36 A. Yes.

37
38 Q. Each of these are, as I understand it, information
39 reports or reports that came to you in a manner that was a
40 bit outside usual practice. Can I ask you to explain that
41 to the Commissioners?

42 A. Probably not fair to say "unusual practice", it did
43 happen, it was directly by email from the reporting agency.

44
45 Q. Somebody at Communities?

46 A. Yep, and it was - the email was treated a little bit I
47 said with the Royal Commission, put on our TRIM Record

1 Management System and then allocated to the relevant CIB to
2 actually investigate, which did occur, but the occurrences
3 didn't go onto the system; it was treated as an
4 investigation without that step.

5
6 Q. And when you say they didn't go onto the system, do
7 you mean they didn't go onto the ATLAS system?

8 A. The ATLAS for the notifications.

9
10 Q. And so, the consequence of that, for that oversight,
11 is that there was no intelligence report to the Registrar
12 in respect of those three notifications around the time
13 that the notifications were made to police?

14 A. That's correct, but one thing with these - in this
15 instance with this particular one, they were redress
16 matters, they de-identified, so there's a difficulty with
17 the redress - the national redress - in being able to do
18 that as well, which is a complicating factor in trying to
19 report information.

20
21 Q. You note, though, in that column, and I assume this
22 was in response to further enquiries from the Commission,
23 that notifications or intelligence reports were submitted
24 to the Registrar very recently, that is, 18 August 2022?

25 A. Yes, they were.

26
27 Q. So, accepting the limitation you've just referred to,
28 is there any reason to think that what happened on
29 18 August couldn't and shouldn't have happened back
30 in November 2020?

31 A. It could have happened then.

32
33 Q. So, that's something that ought to have happened?

34 A. Yes.

35
36 Q. In your supplementary statement you addressed a
37 question about whether you had any concerns about action
38 taken by the police in response to the notifications that
39 are outlined or listed in JCH-1 in the table. I think you
40 accept that notifications to external agencies were
41 deficient at times. I've taken you to some examples of
42 what I expect are some of those deficiencies. Are there
43 any other deficiencies in addition to the ones we've been
44 exploring that you had in mind when you made that
45 statement?

46 A. Specifically in relation to this table?

47

1 Q. Yes, or more generally - and I'm sorry, I should
2 direct you to, it's paragraph 16 of your supplementary
3 statement.

4 A. I might just have a look, sorry.

5

6 Q. Take your time.

7 A. Right.

8

9 Q. I should just say, I know you already made some
10 statements in there about problems with data. If I can ask
11 you, really my question is whether there is anything that
12 isn't outlined in that paragraph or explored through the
13 matters we've been going to that you think is a source of
14 deficiency in terms of notifications that the police make?

15 A. Not outside that off the top of my head, no.

16

17 Q. Can I ask, over the page you go on to say that, as a
18 result of the deficiencies you've outlined Tasmania Police
19 has commenced a review of matters relating to Ashley to
20 ensure the correct entity is linked to each matter. Am I
21 right to understand "entity" in that context means
22 "individual"?

23 A. Yes, it is, it's just our - it's police terminology.

24

25 Q. This review that you've commenced, am I right to
26 understand that is separate to the review that's previously
27 been done by the Joint Review Team?

28 A. Yes, that's correct.

29

30 Q. And, what is it that's prompted this new review and
31 what's the purpose of the new review that you refer to in
32 paragraph 16?

33 A. So, in going through and preparing the tables, so with
34 my staff, obviously my staff was preparing them with me, I
35 guess we could say, it's obvious that there are a number of
36 people that have a lot of entries and making sure that
37 we're picking up everything we possibly can: whether it's
38 the increased spelling of a person, whether there's a check
39 box that hasn't been done, so not trying to push it to
40 another area to do, we're doing that ourselves out of my
41 office. So just to ensure that we're capturing everything
42 we possibly can to be able to provide the best possible
43 information to other agencies.

44

45 Q. I think Commissioner Hine's referred to this as well
46 and I think you do in your statement as well: Tasmania
47 Police is a learning organisation, so you're taking this

1 opportunity to see if you can further improve your systems;
2 is that a fair summation?

3 A. Absolutely. As an example of that, as we found things
4 when reading through even this table over the last few days
5 and you alluded to that, we'd updated it a number of times
6 and including this morning, that's been through that
7 matching and trying to link those entities and so forth.
8 So, as we've done that, whilst we're incredibly sorry we
9 have to do it each time, we will do that to make sure that
10 you have the best information you possibly can. We want to
11 make sure that, if we do find something that hasn't been
12 the best possible product we can provide to you - and
13 "product" would be an ordinary word to use in a situation
14 like this, but making sure that we are able to provide the
15 quality information that's up-to-date and has everything we
16 possibly can; if that continues, we'll continue to update
17 as well.

18
19 Q. That was going to be my question: if as a result of
20 these future endeavours you identify further inaccuracies
21 or deficiencies in that table, can the Commission expect
22 that another updated table might be provided?

23 A. Yes, absolutely.

24
25 Q. Thank you. I'd just finally like to ask you a few
26 questions about Memorandum of Understanding between the
27 police and the Department of Communities. Exhibited or
28 included with the request for statement that went to you
29 was a document, an MOU which I think you say in your
30 statement, at about paragraph 21, was put in place between
31 Tasmania Police and Ashley; that is, not just the
32 department of, or what was then DHHS, but Ashley
33 specifically in relation to the roles and responsibilities
34 of each agency where, for example, complaints were made by
35 detainees in relation to Ashley staff. Are you familiar
36 with that document?

37 A. Yes, I am.

38
39 Q. Have you got that in front of you?

40 A. Yes, I will.

41
42 Q. Annexure E to the request for the statement, if you
43 have that?

44
45 PRESIDENT NEAVE: Is this the original?

46
47 ACTING DEPUTY COMMISSIONER HIGGINS: No, I don't, I'm

1 sorry.

2

3 MS NORTON: Q. The 2006. That's fine, I'll just read
4 from it?

5 A. I'm happy for you to read from it. I've read it many
6 times.

7

8 Q. Yes, I'll read from it. I'm going to go in particular
9 to, there's a statement or a bullet point on the first
10 page that says:

11

12 *It is agreed by the parties ...*

13

14 It's the Department of Police and Public Safety and
15 DHHS, Ashley Youth Detention site:

16

17 *... that Ashley is the lead agency in any
18 situation involving detainees, staff and
19 management within the confines of the
20 Ashley site.*

21

22 It's not clear to me, and I'd invite you to clarify,
23 if you are able to, whether the upshot of that agreement
24 was that Ashley was the lead agency where there were
25 allegations of criminal offending made by a detainee in
26 relation to a staff member. Is that your understanding of
27 the operation of the 2006 MOU?

28 A. No, that's not my understanding of the practical
29 application of that.

30

31 Q. What was the practical application?

32 A. And I was in Launceston, in Launceston CIB at the time
33 for, well, for 14 years during that time. So, the
34 practical application was that, if a criminal matter
35 occurred, that Tasmania Police were contacted. There was
36 a - there was and still is, a very good relationship with
37 the, as it is now, Central-North, but Deloraine Station
38 right there where the site is to be able to facilitate
39 that. So, the practical application, if we purely look at
40 it as the child safe/child abuse allegations, that no, that
41 the lead agency in a practical application isn't by, at
42 that stage, Ashley to do that and to run the investigation.

43

44 Q. Over the page there's a section that's headed,
45 "Complaints by Detainees" and it says that:

46

47 *In the event of an offence or a crime being*

1 *committed ...*

2

3 But I think it's properly to be understood, an
4 allegation of a crime or an offence:

5

6 *... against a detainee Ashley will refer*
7 *the complaint to DHHS for assessment and to*
8 *the police for investigation.*

9

10 Do you understand assessment by DHHS and investigation
11 by the police to be things that would happen in parallel,
12 or would the assessment by DHHS take place before there was
13 a notification to police?

14 A. It could be both. So, an assessment - and I did, was
15 in charge of People & Culture for a while, so I understand
16 the term "assessment" in relation to ED5s - there is an
17 assessment done. So, the terminology of that means that an
18 assessment might be done for that Code of Conduct side.
19 But likewise, and it alludes to the criminal matters for
20 investigation being passed to Tasmania Police, that that
21 should happen as well.

22

23 So, it's the wording, I think, that's probably
24 difficult, and we're looking at it from today's lens, where
25 it becomes very hard. But that is interestingly an MOU
26 that has been used and I found out at Deloraine Station
27 they've got it there, it's at Launceston Station, so it is
28 still used, but the practical application is, if a criminal
29 matter happens, it's Tasmania Police.

30

31 Q. Evidence has been called in previous weeks, in the
32 Health week in particular, which show a practice by the
33 Department of Health and Human Services at around the time
34 this MOU was in place, or perhaps a bit earlier, of
35 internally investigating allegations against employees
36 before getting police involved in an investigation. Is
37 that something that you understand to be condoned by the
38 2006 MOU?

39 A. It's not my understanding, and my reading of it is
40 that that wouldn't be the intent; whether that practice has
41 occurred, I think we've had evidence already that that has
42 happened. The expectation for police would be that a
43 criminal matter is referred to the police because it could
44 compromise an investigation. The difference being, and
45 this is the, I suppose, the space that policing has moved
46 into, into the disruptive space as opposed to
47 conviction-led more so, is that, now the expectation would

1 be we'd work hand-in-hand towards making children safe; so
2 that may mean a criminal investigation is compromised, but
3 it's at the - not the expense - but it's to keep either the
4 child in question or children in general safe, and that's
5 certainly a modern way of thinking from our traditional
6 policing ways and it's a big step that had to be taken
7 there.

8
9 PRESIDENT NEAVE: Q. So, should the MOU be amended to
10 reflect that understanding more clearly?

11 A. Perhaps we had a MOU with communities which isn't
12 specific to Ashley Detention Centre.

13
14 Q. Yes, okay, I forgot that, yes.

15 A. And, in reading the two, I would say that superseded
16 it, but it doesn't go into the detail that the original MOU
17 does. Because the MOU talks about specific protocols in
18 relation to other things, and I think yesterday - well, not
19 yesterday, I was watching - there was a particular instance
20 that was teased out with on the roof or in the roof, and
21 that would be - police were there, so a response was police
22 and that clearly there were response protocols. But if you
23 look at it in isolation from the 2006 one, they were really
24 responding under that MOU more so than the one with
25 Communities because it was an operational response as
26 opposed to a sharing of information.

27
28 Q. So, should the more recent MOU be amended too?

29 A. I think we can review it, yes. Do we go into specific
30 detail that's in the 2006 one? No, not necessarily,
31 because that's taking it right down to more an operational
32 level, but certainly as a strategic document to provide
33 guidance for our staff, both lots, yes, we could look at
34 that further.

35
36 COMMISSIONER BROMFIELD: Q. If the 2006 MOU is still at
37 Deloraine and Launceston Station and being used, then do we
38 perhaps need to update the 2006 one or repeal it?

39 A. I don't know if it's actually - I think there are
40 aspects that are still worked to; whether it's still in
41 existence in it's - no, probably not. We checked, there
42 was a copy, because obviously I was provided it in the
43 notice to produce, and I had seen it many years ago, but I
44 was pleasantly surprised there was still a copy.

45
46 MS NORTON: Q. I think you say in your statement that
47 there are aspects of the 2006 Memorandum of Understanding

1 that are still in place or observed. Are you able to
2 elaborate on which practices under that MOU continue and,
3 if not, you may want to take it on notice?

4 A. Well, the example I used with responding to the youths
5 in the roof. So, that is actually in the MOU, but it's not
6 in the 2021 MOU with Communities, so that response protocol
7 still did happen as per that MOU. So, I think the latest
8 one is not a hybrid, it is really, that's shoring up our
9 information sharing based on practices probably more so
10 with Child Safety interactions to making sure that's
11 happened; not responding to incidents at a detention
12 centre.

13
14 Q. One last question. You referred before to changes in
15 the attitude to policing within Tasmania Police, and
16 Commissioner Hine has previously given similar evidence
17 that you've moved from a model which is pre-occupied with
18 gaining convictions to one that's more disruptive and
19 recognises risk to child safety relevantly for our
20 purposes.

21
22 There is evidence before the Commission which I expect
23 to be explored again in the coming days that suggests that
24 there were occasions in 2020 where the Department of
25 Communities delayed standing employees down, that is,
26 delayed commencing an ED5 process and standing employees
27 down due to a concern that doing so might interfere with
28 police investigations and, I expect that in some cases the
29 evidence will show that there was quite a substantial
30 delay, perhaps in the order of six or nine months.

31
32 You said in response to a question in your statement
33 that you're not aware of any requests from Tasmania Police
34 to the Department of Communities in 2020 to that effect.
35 Is that a practice that you have concerns with, if it did
36 in fact occur?

37 A. If it occurred the way that you've described it, yes,
38 that initial contact would be helpful to be able to provide
39 some greater clarity, I guess, so that the other agency
40 could actually either move forward or stop at a point in
41 time.

42
43 Q. If you accept that there was not only no notification
44 or, it's hard to know whether there was a notification, but
45 what I think is clear is that there was no stand down of
46 that employee for a period of nine months, and the
47 documents suggest that a reason for that may be a concern

1 within the department not to compromise police
2 investigations. Is that something that you would be
3 concerned about?

4 A. It is concerning, but I can also see the other side,
5 and understand why that may be thought; that if - to not
6 compromise, so not stand down, so therefore not speak to -
7 because at the moment we're talking about a witness as
8 opposed to the - Lester in question?

9
10 Q. Yes, that's correct, we're talking about Ira?

11 A. So, Ira as opposed to Lester. So, I understand why
12 they may think that way. Do I agree that's the best
13 practice? No, but I don't - but I think it's - I can
14 understand why they wouldn't notify that person but not for
15 the length of time. I'm talking short time to get advice,
16 not long time.

17
18 Q. And would you regard nine months as a long time?

19 A. It is a long time.

20
21 Q. Would it make a difference - you're really alluding to
22 the fact that - and I appreciate it's difficult to comment
23 in the abstract but specifics matter: would it make a
24 difference to your answer whether there was a current
25 police investigation or not? That is, would it be more
26 defensible to hold off on standing an employee down if
27 there was a current police investigation on foot?

28 A. There would want to be a compelling reason for that to
29 happen.

30
31 Q. And if there was no police investigation on foot?

32 A. On the circumstances we're talking about?

33
34 Q. Yes?

35 A. I think the practice of standing employees down really
36 happened from October 2020 onwards across agencies, and I
37 can't speak to each agency, but I can see why it was coming
38 through my office at the time with stand downs or
39 suspensions, I think we're probably talking suspensions:
40 it's very different. We would normally be notified of
41 that, that was when the sheet came out about stand downs
42 across government agencies and so forth, so that's a point
43 in time. It might not be the practice of that agency to
44 stand down, it may have been - and I did hear alternate
45 duties used as a - I think before, so I really can't speak
46 about that agency.

47

1 Q. I appreciate that. A second final question. The
2 Commission has received information that, perhaps a
3 tendency to regard allegations that come from Ashley Youth
4 Detention Centre detainees as false, perhaps a
5 predisposition to questioning the veracity of those
6 allegations. Do you have any personal views about whether
7 that is a practice based on your experience?

8 A. Sorry, is that police practice?
9

10 Q. No, based on your personal experience, do you have any
11 concerns that members of the police force may be less open
12 to believing allegations that are made by detainees as
13 distinct from other members of the community?

14 A. It's possible. Would it be common practice? No. I
15 think, watching a witness this morning, I think you'd only
16 have to watch a victim in that case to realise how raw it
17 is and how compelling their experience is to be able to put
18 your personal view on the veracity of something. So, it's
19 difficult to say. The only thing I'd say to qualify that
20 is that, the sad reality of the detainees at Ashley over
21 lengthy periods is that they have had very long histories
22 with police, so there perhaps is on occasion scepticism.
23

24 Q. Somebody can have a long history with police though
25 and still come forward with a bona fide allegation?

26 A. Absolutely, yes.
27

28 Q. How does a police officer on the beat juggle those two
29 things; that somebody may have had a difficult history with
30 police and yet may be telling the truth on this occasion?

31 A. I think that you have to think that, if a person's
32 willing to come forward and speak about their experience,
33 that it has to be explored further before dismissing what
34 they're actually saying. So, to be able to come forward.
35 So, there are many of these matters in the spreadsheet
36 which are redress, so nobody actually has spoken to police,
37 but the people that have actually in particular had that
38 courage to actually speak to a police officer, I think, is
39 probably - and that's the firsthand, because the police
40 aren't seeing the redress matters - well, we see it, but
41 not speaking to the victims; I think it's a very different
42 experience they'll do. And even looking at, when we go
43 back to the information submission from, was it 2012?
44

45 Q. 2012, yes.

46 A. It's quite compelling what the person's outlining, and
47 that wasn't in a detention centre but it's - yeah.

1
2 COMMISSIONER BROMFIELD: Q. From the lived experience
3 witnesses we've heard this week in particular, but also to
4 an extent in the out-of-home care week as well, we actually
5 heard in particular detainees saying that the fact that
6 they were just criminals and no-one would believe them was
7 actually used as a tool to stop them from disclosing, or
8 used against them, this perception?
9 A. It's terrible, isn't it? I was watching this morning,
10 it was extremely sad.

11
12 Q. Is there anything that can be done in terms of
13 education with your officers around being alert to the fact
14 that there's some kids who, because of their history with
15 police and with institutions, perpetrators may actually be
16 able to use that against them; just being alert to that?
17 A. Absolutely, I think there is, yes, and I think it is
18 something we need to work on as an unconscious bias as
19 well.

20
21 COMMISSIONER BROMFIELD: Thank you.

22
23 MS NORTON: I have no further questions, Commissioners.

24
25 PRESIDENT NEAVE: Thank you very, very much indeed for
26 your evidence, that's been helpful to us.
27 A. Thank you, Commissioners.

28
29 MS NORTON: We will adjourn for lunch.

30
31 **LUNCHEON ADJOURNMENT**

32
33 PRESIDENT NEAVE: Thank you, Ms Rhodes.

34
35 MS RHODES: If it please, Commissioners, our next witness
36 is Mr Lucas Digney from the Health and Community Services
37 Union. If Mr Digney could be sworn in.

38
39 **<LUCAS JOHN DIGNEY, affirmed: [2.08pm]**

40
41 **<EXAMINATION BY MS RHODES:**

42
43 MS RHODES: Q. Thank you, Mr Digney, you can take a
44 seat. For the purposes of the transcript, could you please
45 tell us your full name and your occupation and your
46 business address, please?
47 A. Lucas John Digney, I'm the Assistant State Secretary

1 of the Health and Community Services Union, 2/187 Charles
2 Street in Launceston.

3
4 Q. The Health and Community Services Union is better
5 known as HACSU; is that correct?

6 A. That's right.

7
8 Q. So we might use that term instead of saying
9 everything. You prepared a statement for the Commission on
10 request for that statement; is that correct?

11 A. Yes.

12
13 Q. Have you had an opportunity to read through that
14 statement recently?

15 A. Yes, I have.

16
17 Q. Are the contents of that statement true and correct?

18 A. Apart from the revision that I provided to the
19 Commission this morning, yes, that's true and correct.

20
21 Q. With that revision, you're referring to a table that
22 was part of your original statement which you've now
23 updated; is that correct?

24 A. Yes, that's right, there's been an addition of a
25 number of names to that table.

26
27 Q. Thank you. You said that your current role is as
28 Assistant State Secretary of HACSU; how long have you been
29 in that position for?

30 A. Since September last year.

31
32 Q. But you have had a role within HACSU for some time; is
33 that correct?

34 A. Yeah, prior to that I've held roles as both an
35 organiser and as an industrial officer at HACSU and I've
36 been in those roles variously since 2010.

37
38 Q. Since 2010, you've had direct involvement with members
39 who work at Ashley Youth Detention Centre?

40 A. That's right.

41
42 Q. But HACSU does represent other services and
43 industries; is that correct?

44 A. Yeah, across a range of industries: Aged Care,
45 Disability, private health diagnostic services, and in the
46 Public Health System as well.

- 1 Q. Your union is the dominant union represented at
2 Ashley; is that correct?
- 3 A. Amongst the operational staff, yes, that's correct.
4
- 5 Q. According to your statement at the time that was
6 provided, there was about 52 members working at Ashley, and
7 eight of those were workplace delegates; is that correct?
- 8 A. That's correct.
9
- 10 Q. What does HACSU offer in terms of services to members
11 who work at Ashley?
- 12 A. So, essentially we offer industrial representation
13 advice, we offer a range of other benefits supplementary to
14 our members, like cheap groceries, holiday homes,
15 professional and indemnity insurance, those types of
16 things, but substantially our services are industrial
17 representation of our members.
18
- 19 Q. And, industrial representation could include advocacy;
20 is that correct?
- 21 A. Yes.
22
- 23 Q. And industrial relations would cover the ED5 process?
- 24 A. It covers disciplinary processes for our members, yes.
25
- 26 Q. And so, what role does HACSU have in disciplinary
27 matters as it relates to your members who work at Ashley?
- 28 A. Our role is to represent our members, to provide them
29 support in terms of the process, and ensure they are
30 afforded natural justice and that the process is followed
31 as outlined by whatever framework it falls under.
32
- 33 Q. So if one of your members comes to you and says, "I've
34 received this notice, it's made allegations of child sexual
35 abuse while I was working at Ashley", what role would HACSU
36 have to help that member?
- 37 A. We would assist the member with the process. So,
38 generally, that would involve allegations being made
39 against our member and a determination that those matters
40 were going to be investigated; we would provide support to
41 our member during the investigation process and possibly,
42 depending on the outcome, any further processes that may be
43 undertaken depending on that outcome.
44
- 45 Q. Does that support extend to helping members write
46 submissions in response to the allegations?
- 47 A. It extends to assisting them in the process of

1 responding to the allegations themselves; it doesn't extend
2 to writing the response on behalf of the members.

3
4 Q. When you're providing that assistance, does HACSU as
5 an organisation make any determination as to whether the
6 allegations are true or not?

7 A. Not initially, we wouldn't make that assessment.
8 Ultimately an assessment would be made on the strength of
9 any evidence against our member, rather than the nature of
10 the allegations, if you like. But at some point,
11 particularly at the decision-making juncture of that
12 process, an assessment as to the strengths or weaknesses of
13 the parties' cases would be made, yes.

14
15 Q. So, it wouldn't be the role of HACSU to assist in
16 writing a submission and putting any strong position as to
17 the truth or not of allegations?

18 A. Not without direct instruction from our member. So,
19 the member is the one who tells us whether they deny those
20 allegations absolutely or otherwise and we simply follow
21 those instructions.

22
23 Q. You have also provided assistance to some of your
24 members in providing statements to the Commission; is that
25 correct?

26 A. Yes, we have.

27
28 Q. And you've supported the workers who came and gave
29 evidence?

30 A. Yes, that's correct.

31
32 Q. Is that generally a role for HACSU to assist in those
33 sorts of things?

34 A. No, it's not. Generally, our members are not called
35 to Commissions of Inquiry or Parliamentary Inquiries or
36 things of this nature, but certainly, given the timeframe
37 that our members had to produce statements for the
38 Commission and the difficulties they were having getting
39 tangible support elsewhere, we felt compelled to assist
40 them as we could.

41
42 PRESIDENT NEAVE: Q. Can I just ask a question. Does
43 HACSU have any in-house lawyers who assist members or --

44 A. Yeah, we have legal officers who are employed by the
45 union present, that's right, but we only have one of them
46 at the moment. We also have external legal partners who
47 we'll refer members to. Ordinarily, in circumstances like

1 a notice to produce from a Commission, we would refer them
2 to our external legal partners, but the timeframe didn't
3 allow us to do this on this occasion, President, so we
4 simply assisted our members to get a statement together as
5 best they could.

6
7 PRESIDENT NEAVE: Thank you.

8
9 MS RHODES: Q. Just returning to the ED5 process, do you
10 believe that that process is trauma-informed in terms of
11 the child victim and how the child, now adult, of child
12 abuse goes through that process?

13 A. No - well, to the extent that I'm qualified to answer
14 those things, no, I don't believe it is trauma-informed.
15 From my perspective they're run as a straight
16 investigation: the allegations are put to the respondent
17 and, as far as I understand it, the complainants are made
18 to provide further particulars about the allegations that
19 they have made.

20
21 Q. We heard evidence in the first week from Professor
22 Eccleston that unions do have a part to play in terms of
23 these processes to make them more child-focused or more
24 trauma-informed. How could you see HACSU's role in doing
25 that?

26 A. We'd be willing to work with the government in terms
27 of any reform to any of the disciplinary processes so that
28 they are more trauma-informed. We don't certainly have any
29 great influence on that, but we'd certainly be willing to
30 discuss the necessary revisions to the current Employment
31 Directions to ensure that happened.

32
33 Q. In your statement you were asked a question - sorry,
34 I'll rephrase that. We've heard a lot of evidence, and
35 it's been in the public domain, that Ashley is going to
36 close. In your statement you say that there's not any real
37 plan in relation to that closure. Could you explain to the
38 Commission what you mean by that?

39 A. Yes. So, obviously it's well-known that the previous
40 Premier announced the closure of Ashley Youth Detention
41 Centre some year ago now. Shortly thereafter we met with
42 senior department officials to discuss what that process
43 might need to look like, the various factors and various
44 work that would need to be undertaken to meet that
45 announcement, but since that initial meeting we have not
46 met with the department to discuss the transition of
47 custodial Youth Justice away from Ashley, and given that as

1 of today's date there's less than two years on that current
2 timeline, we are significantly concerned that the work that
3 needs to be undertaken will not have the sufficient time to
4 be undertaken on that current timeline.

5
6 Q. What do you see as things that need to be considered
7 in that planning?

8 A. Well, there's a range of things that need to be
9 considered. The first thing is the framework that these
10 new facilities will operate under. Whether there will be a
11 distinction between young people who are serving a sentence
12 and young people who have been remanded awaiting trial.
13 Whether there will be various different programs or
14 facilities for young people to be housed in as they need to
15 be, and we're really concerned that we'll reach a point
16 where the government is forced to close the centre but the
17 reality will be just two smaller centres with largely the
18 same underlying issues.

19
20 Q. What do you want to see changed at Ashley? At the end
21 of all this planning and we've got new centres, what do you
22 think are the needs of children - or the best way to ensure
23 children are safe in these new centres?

24 A. Well, the Commission will hear from far more qualified
25 people than I to speak on these matters, but ultimately
26 therapeutic residential intervention is clearly, on the
27 evidence, the only way to have any meaningful chance of
28 intervening in these young people's lives, and report after
29 report that the government has implemented themselves, and
30 I refer specifically to the Noetic report and the Harker
31 report, state that Ashley is not an environment where that
32 type of care or those type of programs can be delivered.
33 So, the sooner that young people are in an environment
34 where well-resourced therapeutic programs can be run, then
35 the better off we'll all be.

36
37 Q. You make note in your statement of the staff shortages
38 at the minute.

39 A. Yes.

40
41 Q. And the implementation of restrictive practices.

42 A. Yes.

43
44 Q. What comments can you make on those restrictive
45 practices and the suitability of those for the safety of
46 children?

47 A. Well, ultimately the restrictive practices are imposed

1 because the operational managers really have no other
2 choice to maintain safety for the young people and the
3 workers that are there. But ultimately, from our
4 perspective, from HACSU's perspective, those young people
5 are being isolated; they are being kept in their rooms for
6 extended periods of time, and if one of our members wanted
7 to place a young person in their room and they did it
8 without authority, well, they would be disciplined for that
9 because that young person is being isolated. And, I'm sure
10 that most people would agree that that's an intolerable
11 situation, that we are detaining young people and we're
12 placing them in a regime of restrictive practice simply
13 because we can't resource the facility where we're housing
14 them.

15
16 Q. Resourcing is going to be a big issue in terms --

17
18 COMMISSIONER BROMFIELD: Sorry, Ms Rhodes.

19
20 Q. You said that the operational staff don't have a
21 choice about that situation, but you do in your statement
22 make some suggestions for people that you felt do have some
23 choices there.

24 A. That's right, Commissioner, and ultimately, as I'm
25 advised, there are still young people who are at Ashley but
26 have not been sentenced. I would have thought, given the
27 chronic staffing circumstances, that more could have been
28 done to investigate whether there was more appropriate
29 facilities to remand those young people and therefore take
30 some stress off that chronic situation that exists there at
31 this moment.

32
33 Q. And I think you also suggested maybe looking at, was
34 it, potential for early release or?

35 A. That's right. Anything that the government has the
36 power to do, they should be investigating in a fairly
37 timely fashion, Commissioner.

38
39 Q. As an alternative to what, from your perspective,
40 HACSU's perspective, is extended isolation?

41 A. That's right.

42
43 MS RHODES: Q. And that's something that the government
44 should be looking at before making the bigger structural
45 decisions about what Ashley would look like in two years'
46 time?

47 A. Yes.

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Q. When you say that young people are still being detained, what have you heard from members in terms of how young these people are?

A. So, I am advised that a person as young as 11 is currently detained at Ashley Youth Detention Centre.

Q. These restrictive practices, from what your members have told you, how recently were they in place?

A. As recently as Monday.

Q. In terms of the therapeutic approach that HACSU is asking the government to look at in terms of children detained at Ashley, are all your members in support of that change to that therapeutic approach?

A. I would not say all of them.

Q. But that is the position that HACSU has in terms of what you as an organisation believes is in the best interests of child safety?

A. That is the evidence of the experts in that field, that's what they say is the best outcome for the young people, and we advocate for the best outcome for the young people.

Q. Those experts have said that a therapeutic approach will require more staffing rather than less staffing. What is HACSU's position in terms of the optimal staffing currently and then what you would say would be under a therapeutic model?

A. So, ultimately there's two perspectives. So, there's a perspective of staffing from a safety perspective and we'd say that, if you have any less than two operational staff per unit that young people are housed in, then that would be unsafe. But from a therapeutic standpoint you're probably looking at more one-on-one with young people, and when I say one-on-one, that doesn't equate to one youth worker per young person, that equates to probably a doubling of what the current ratio is at the moment.

So, over the recent period where there has been improvement to the practice framework and then a new practice framework at the end of 2020, I believe, we've seen a real demand on the resourcing, and that's even when they're at the current agreed staffing levels. So, even if Ashley is to remain open for some time into the future we will continue to advocate for increased staffing levels as

1 soon as tomorrow.

2

3 PRESIDENT NEAVE: Q. I have a question there. Does
4 HACSU have a position on the appropriate qualifications for
5 the operational staff? At the moment, as I understand it,
6 a Certificate IV is the qualification that's required, and
7 it may be difficult for the union to take a view on that,
8 but I just wondered whether they had any view on the
9 appropriate qualifications that would be needed for people
10 to have a genuinely therapeutic approach.

11

12 COMMISSIONER BROMFIELD: And probably the banding going
13 alongside.

14

15 PRESIDENT NEAVE: Q. Yes, the bands as well.

16 A. Thank you, President. The Certificate IV is probably
17 adequate for an operational youth worker as they're
18 currently described in their statement of duties, but if
19 you were to move to a more direct and therapeutic approach,
20 then further qualifications would likely be necessary, but
21 I do note that it's difficult for me to answer those
22 questions broadly.

23

24 Q. Yes, I understand that.

25 A. But in saying that, President, there were a number of
26 operational staff who were enrolled in a diploma of youth
27 work or custodial youth work in 2012/13; that was a program
28 that seen them supported by the department. That program
29 was ended due to resourcing issues and those operational
30 staff didn't complete that qualification.

31

32 Q. Who offered that diploma?

33 A. I'm unsure. It was facilitated by the department at
34 the time, President.

35

36 PRESIDENT NEAVE: Right.

37

38 MS RHODES: Q. You said, not even at a therapeutic level
39 but at an operational level, it should be two youth workers
40 per unit. It's my understanding that that's not the case.
41 What is the current staffing level?

42 A. That would vary from day-to-day. Ultimately, what the
43 agreed staffing level is, eight youth workers and one
44 operational coordinator on day shift. I am not sure that
45 that's been met for quite some time.

46

47 Q. Would you agree that, with the lack of staffing,

1 causes a lack of supervision of the detainees?

2 A. Yes.

3

4 Q. And that, with a lack of supervision, puts at risk
5 detainees of sexual abuse from other detainees or staff
6 perhaps?

7 A. Yes.

8

9 Q. I'll just quickly go back to the ED5 process, I just
10 have one further question in relation to that. What is
11 your understanding of the test that's required for either a
12 suspension or the commencement of an ED5 process?

13 A. The head of an agency must form a reasonable belief
14 that the Code of Conduct may have been breached. So, it
15 can't merely be a suspicion and it can't merely be an
16 allegation; the Head of Agency under the Employment
17 Directions must form a belief on a reasonable basis that
18 the breach may have occurred. That has been a matter of
19 some argument.

20

21 Q. And, argument between who?

22 A. Between us and the various agencies who level
23 allegations against our members.

24

25 Q. Could you explain what the dispute is about?

26 A. Well, at times there may be a dispute as to whether
27 the Head of Agency has the relevant information in front of
28 them that would enable them to form a requisite belief:
29 that's not to say that allegations haven't been made, but
30 that's to say that perhaps an allegation that there's been
31 a breach of the Code of Conduct has been made prematurely
32 before other enquiries are made.

33

34 Q. Is there any room in that process and that assessment
35 of the test to consider the risks to children by the
36 employee who's been levelled allegations of child sexual
37 abuse?

38 A. All of the relevant matters are taken into account
39 should there be an assessment on the Head of Agency's
40 formation of that requisite belief; so the risk to clients,
41 in this case children, would be taken into account in that
42 assessment.

43

44 Q. Is that test different for the ED4, the suspension,
45 whether to suspend or not?

46 A. There's no such test for ED4. Once an ED5 is
47 instigated or an ED6, a capacity assessment, the Head of

1 Agency is free to suspend an employee with or without pay
2 after those allegations have been made.

3
4 PRESIDENT NEAVE: Q. Can I ask a further question. We
5 have heard, I think from one of our previous witnesses
6 today, that there were virtually no stand downs until 2020,
7 and it's really only since then that this has been
8 occurring in the context of Ashley at any rate. Is your
9 experience consistent with that observation?

10 A. There's been no suspensions, President, for
11 allegations of abuse except for those that I've laid out in
12 my statement at section 20, but certainly not in the
13 volumes that we've seen since the Redress Scheme initially
14 and then the Commission.

15
16 Q. So, the National Commission might have played a role
17 and its recommendations may have played a role in
18 increasing the numbers of stand downs; before that, it
19 didn't happen; have I got that right?

20 A. That's a good summary, President, yes.

21
22 MS RHODES: Q. There's also been a public announcement
23 that the Child and Youth Services, which includes Ashley
24 Youth Detention Centre, is going to be placed within a
25 bigger, what I would call a super-department with
26 Education. What is HACSU's position in relation to whether
27 that is a good or not good idea?

28 A. Our members are gravely concerned about the
29 announcement to create what in essence is a superagency.
30 The Department of Communities is roughly only four years or
31 thereabouts old. Its formation came about because large
32 parts of the Department of Communities used to be the Human
33 Services element of another superagency, the Department of
34 Health and Human Services. The service areas that are in
35 the Department of Communities were pulled out of various
36 other departments because they were found to be secondary
37 to those agencies. We're concerned that the proposal to
38 essentially put those Human Service elements back into
39 another agency is just repeating what has been undone
40 relatively previously in terms of government decision
41 making.

42
43 Similarly, we are concerned that another jurisdiction,
44 South Australia, where they did the same thing, put their
45 Child Youth and Family Services into the Department of
46 Education, was undone some years later after the Royal
47 Commission recommended that those services be in a

1 stand-alone agency.

2
3 We're also concerned that the services that the
4 Department of Communities undertakes are services that are
5 directed and designed for the most vulnerable people in our
6 community, and HACSU is certainly of the position that
7 those people in our community deserve their own government
8 agency to direct services towards them. So, our members
9 are gravely concerned about what that means.

10
11 Similarly, the reforms in Youth Justice and in Child
12 Safety seem to have stalled because of that announcement.

13
14 MS RHODES: Thank you. Mr Digney, I'm just conscious of
15 the time, so I may leave my questions there. If there's
16 anything from the Commissioners?

17
18 PRESIDENT NEAVE: Q. I just had one quick question. We
19 have read that there have been in the past a practice of
20 hiring Chubb employees or one of the others - I can't
21 remember now.

22
23 COMMISSIONER BROMFIELD: Wilson or Chubb as labour hire on
24 site.

25
26 PRESIDENT NEAVE: Q. As labour hire on site. Do you
27 know whether that's happened recently and what's the union
28 position on that?

29 A. It certainly hasn't happened recently, President.
30 When we were involved in some discussions recently about
31 the staffing crisis there was some discussion about using
32 security contractors as a back-up, if you like, should
33 there be a critical incident, but certainly, we have a
34 very, very strong position about the use of contract
35 security in an environment like Ashley Youth Detention
36 Centre. It would only be in the most extreme circumstances
37 and in a support capacity that we would contemplate any use
38 of them.

39
40 Q. Do you know when that practice ceased?

41 A. I couldn't say that with any confidence, President.

42
43 PRESIDENT NEAVE: Thank you.

44
45 COMMISSIONER BROMFIELD: I don't have any further
46 questions, thank you.

1 MS RHODES: Q. I do have a couple of questions arising
2 from the President's question. You do have concerns about
3 that, and there have been previous reports in relation to
4 the use of security services and I believe that the union's
5 position was that they're not properly trained, and being
6 not properly trained is putting other staff at risk and the
7 children at Ashley at risk. Would I be correct as that
8 being the union's position still?
9 A. That's correct.

10
11 MS RHODES: Thank you.

12
13 PRESIDENT NEAVE: Thank you very much indeed for your
14 evidence, Mr Digney, it was very helpful.

15
16 MS RHODES: Our next witness, if I could just ask the
17 Commissioners to stay on the bench --

18
19 PRESIDENT NEAVE: Yes, we will.

20
21 MS RHODES: -- is Fiona Atkins who will have to come round
22 and I'll leave it to my learned senior.

23
24 MS ELLYARD: Thank you. The next witness is Mrs Fiona
25 Atkins and there's an appearance to be announced on her
26 behalf which I'll invite my learned friend to do while she
27 comes into the witness box.

28
29 MR CASSIDY: If it pleases, Cassidy for Ms Atkins here
30 today.

31
32 PRESIDENT NEAVE: Thank you, Mr Cassidy.

33
34 <FIONA LOUISE ATKINS, sworn: [2.39pm]

35
36 <EXAMINATION BY MS ELLYARD:

37
38 MS ELLYARD: Q. Take a seat, Mrs Atkins, and I'll just
39 make sure that you've been given a fresh glass and some
40 water. Can you tell us, please, your full name?

41 A. Fiona Louise Atkins.

42
43 Q. And, what's your present occupation?

44 A. Assistant Manager at Ashley Youth Detention Centre.

45
46 Q. You've been asked by the Commission, and you have, to
47 make a statement outlining answers to questions that the

1 Commission has posed to you?
2 A. Yes.
3
4 Q. Have you got that statement with you?
5 A. No.
6
7 Q. We'll just put a copy in front of you in case you want
8 to refer to it. For the purposes of preparing that
9 statement you looked at a number of documents that were
10 shown to you by the Commission; is that right?
11 A. Yes.
12
13 Q. You've also attached a number of documents that you've
14 looked at to your statement?
15 A. Correct.
16
17 Q. Are the contents of your statement true and correct?
18 A. I believe so, yes.
19
20 Q. Thank you. And at any time if you want to look at the
21 statement, please feel free. You answered that you're
22 presently the Assistant Manager at Ashley. It's clear from
23 your statement that you've worked at Ashley for more than
24 20 years?
25 A. Correct.
26
27 Q. And you started as a casual youth worker?
28 A. Correct.
29
30 Q. And you've held a number of roles over the past
31 22 years up to and including the role you currently hold,
32 which is the second-in-charge at the centre?
33 A. Yes.
34
35 Q. Indeed, would I be right in understanding that you're
36 actually acting as the Manager at the moment?
37 A. Correct.
38
39 Q. Because the full-time Manager, Mr Watson, is on leave?
40 A. Correct.
41
42 Q. We've heard some evidence from a number of witnesses,
43 including the witness who just gave evidence, about the
44 current state of affairs at Ashley and I wanted to ask you
45 some questions about that.
46
47 Firstly, can you tell us, how many children are there

- 1 detained at Ashley right now?
2 A. We actually only have one young person on a detention
3 order and we have 10 on remand, so there's 11 in total.
4
5 Q. So, there are 11 children in Ashley at the moment,
6 only one of whom is serving a sentence?
7 A. Correct.
8
9 Q. Are you able to tell us the age range of those
10 children?
11 A. 11 to 17.
12
13 Q. Is the 11-year-old one of the ones on remand?
14 A. Yes.
15
16 Q. Is the 17-year-old the one serving a sentence, or is
17 the one serving a sentence aged 17?
18 A. No.
19
20 Q. Are you able to say the age of the young person who's
21 serving a sentence?
22 A. I believe he's about [REDACTED].
23
24 Q. And, thinking about staffing levels; we've heard
25 evidence from a number of people, including Mr Watson
26 yesterday, about difficulties that the centre has been
27 experiencing in the recent past in relation to staffing.
28 What's the present position? Are you able to staff the
29 centre in the way you would wish for 11 children being
30 detained there?
31 A. No, we're not able to at the moment. Currently we've
32 got high cases of workers' comp, stand downs, so it is
33 extremely difficult to staff the centre the way that we'd
34 want to.
35
36 Q. And, of course, staffing the centre means both
37 frontline youth workers and people in the hierarchy, team
38 leaders and above; is that right?
39 A. Yes.
40
41 Q. Are there difficulties at all levels or is the
42 difficulty mainly focused at the frontline youth worker
43 staff?
44 A. It's mainly in the operational area.
45
46 Q. When you say "operational area", what are you
47 referring to as within the operational area?

1 A. So, in the operational area you've got your youth
2 workers and then you've got your Operations Coordinators
3 which are, basically they run the shift; yeah, we're very
4 short in that area at the moment.

5
6 Q. And that's because, in part, a number of people who
7 hold those positions are suspended from duty at the moment;
8 is that right?

9 A. Some are suspended and some are on workers' comp.

10
11 Q. So, for a cohort of 11 young people in the centre, how
12 many youth workers would be required if you could staff as
13 many as you needed, as you wished to have?

14 A. Taking into consideration today's number and the
15 behaviours of the young people, we will probably need about
16 10 or 11.

17
18 Q. And, how many have you got to put on - are you able to
19 say?

20 A. Today?

21
22 Q. Yeah?

23 A. Four.

24
25 Q. So, you've got less than half the staff that you would
26 wish to have?

27
28 PRESIDENT NEAVE: Q. Excuse me, 10 or 11 in a particular
29 shift?

30 A. Yes.

31
32 Q. Yes, thank you.

33
34 MS ELLYARD: Q. So, just to be clear, you'd like to have
35 10 or 11 youth workers on duty to meet the needs of the 11
36 young people who are presently at Ashley?

37 A. Yes.

38
39 Q. But right now you've only got four?

40 A. Correct.

41
42 Q. And so, does that mean, as we've heard from some
43 witnesses, that there needs to be changes to the young
44 people's daily activities and some limitations placed on
45 what they can do?

46 A. Through the day, yes.

47

1 Q. Can you describe for us what that looks like? What
2 part of the day is affected and what's the change?

3 A. So, it may mean that they're allowed out of their
4 rooms a little bit later so that we can operate normally
5 from, say, 10 till 7, to take them through their normal
6 day, which would be trying to get them to education,
7 through their school day, do their programs, and facilitate
8 all the medical appointments, yeah, things like that, and
9 their normal recreational activities as well.

10
11 Q. So, the current principal of the school, Mr Baker,
12 gave some evidence last week, and he described a situation
13 in the recent past where children's ability to access
14 education was quite limited because they might have only
15 one hour available out of their cell and it was really a
16 matter for them whether they chose to prioritise education
17 in that hour or not. Was Mr Baker right --

18 A. Yes.

19

20 Q. -- that from time to time that's been the level of
21 restrictions?

22 A. Yes.

23

24 Q. How frequently has it been necessary for you to
25 restrict young people to that extent?

26 A. I believe today is probably the first day that we've
27 had to further restrict access for the young people to
28 education and more regular programs throughout the day.
29 We've tried really hard throughout the preceding weeks to
30 get as much - as many staff as we can on from 10 till 7 to
31 be able to facilitate the daily routine.

32

33 Q. We heard some evidence from Mr Watson that there has
34 been some recruitment in the recent past, I think five
35 staff started perhaps a week or so ago and there are five
36 more staff coming; is that right?

37 A. That's correct, yes.

38

39 Q. And do you expect that's going to be enough to be able
40 to have a large enough pool to meet the staffing needs of
41 the centre?

42 A. Not immediately, no; not until those five youth
43 workers gain some experience, and usually we have some more
44 experienced workers for them to be able to, you know, be
45 mentored, but presently that's not a situation we're in.

46

47 Q. So, there's a lot of junior people, junior perhaps in

1 their experience; is that right?
2 A. Yes.
3
4 Q. Today there's 10 children there who are on remand.
5 A. Correct.
6
7 Q. That balance of 10 children on remand and only one
8 young person serving a sentence, is that an unusual balance
9 or is that a common --
10 A. No, that's a regular occurrence.
11
12 Q. So the overwhelming majority of children have been
13 remanded before their criminal matters are dealt with?
14 A. Correct.
15
16 Q. And, might the numbers change soon? Do you expect
17 that a number of those children might be bailed or dealt
18 with in the near future, or is it likely that they're going
19 to remain on remand for a while?
20 A. I don't know what the individual court matters or
21 where they are in the process of being settled, but I do
22 know that some young people don't have bail addresses, so
23 that's an issue, but that's not a reason to remand them
24 because they don't have a bail address.
25
26 Q. But in fact you're aware that it's a barrier that's in
27 place for them?
28 A. Yes.
29
30 Q. Thank you, I understand.
31
32 COMMISSIONER BROMFIELD: Q. Sorry, can I clarify? So,
33 they're not remanded because they don't have a bail
34 address; is that your understanding?
35 A. No, they don't have a bail address, sorry.
36
37 PRESIDENT NEAVE: Q. And that's why they are remanded?
38 A. Yes.
39
40 COMMISSIONER BROMFIELD: Q. They are remanded?
41 A. Yes.
42
43 MS ELLYARD: Q. But you're making the point, that that
44 shouldn't be a sufficient reason for them to be remanded?
45 A. Yes.
46
47 Q. Mrs Atkins, I wanted to ask you some questions about

1 your observations of the culture at Ashley and how you've
2 seen that change over time, if indeed it's your view that
3 that has changed. You commenced work at Ashley in its very
4 early days, perhaps about a year after it commenced
5 operation on the site of the old Ashley Boys' Home, and
6 you've remained working there moving up through the ranks
7 since that time. Have you observed a change in the way in
8 which young people at the centre are treated over that
9 time?

10 A. I think it's been fairly consistent, and I mean
11 obviously this is just my personal view and experience.

12
13 Q. Of course.

14 A. I think it's been fairly consistent throughout
15 the years.

16
17 Q. So, how would you describe the way in which young
18 people at Ashley are treated by staff?

19 A. They're certainly treated very well in most cases that
20 I'm aware of. When you have young people come in who, you
21 know, have been on various drugs or whatever, they come in,
22 they're appreciative of the food, the bed, you know, clean
23 room, they've got their own space, so they're very
24 appreciative of that. They're getting three cooked meals a
25 day, so they're very appreciative of that as well.

26
27 Q. So it's quite clear I think from evidence we've
28 received that the young people who find their way to Ashley
29 are often people who are leading very difficult and
30 disadvantaged lives in the community; has that been your
31 experience?

32 A. Absolutely.

33
34 Q. And so, I think what you're saying is, there's an
35 extent to which getting into Ashley means that their basic
36 physical needs are met?

37 A. Correct.

38
39 Q. Can I ask you though about the way in which youth
40 workers are trained and then expected to work with young
41 people. Have you observed over the 22 years you've been at
42 Ashley a change in the framework or attitudes that you've
43 been asked to bring to bear on your work with young people?

44 A. Over the last 22 years there's been lots of changes,
45 lots of frameworks being introduced. So, yes, there has
46 been a lot of changes, but I think the general interactions
47 and relationships that the youth workers form with the

1 young people has generally been basically the same; it's
2 that relational work that they have with them.

3
4 Q. The Commission's aware that over the past 22 years
5 there have been a number of reports written into Ashley or
6 reviews undertaken for various reasons, and there's a
7 number of common themes that have emerged from those
8 reports, one of which relates to whether or not the staff
9 engaged to work at Ashley have the right skillset and the
10 right support to do the work that they're being asked to
11 do.

12
13 Can I ask you, from your observation about whether or
14 not staff at Ashley, back in 2000 and compared to now, if
15 you feel there's a difference, whether or not staff do have
16 the skills that they need for this very difficult work?

17 A. One train of thought is that, if you employ the right
18 raw talent in a person, you can give them the education
19 after, which is probably the case in my case. So, I think
20 we've seen a lot of highly educated people trying to
21 perform the youth worker role and they've been unable to
22 build a relationship enough to work with those young
23 people, and generally - and this is just my observation -
24 they don't last in the role very long.

25
26 Q. And so, I think you're drawing on your own experience
27 because, as you make plain from your statement, when you
28 started originally as a casual youth worker you didn't have
29 particularly high educational qualifications?

30 A. No.

31
32 Q. You'd finished Year 10. While you've been engaged at
33 Ashley you've gone on to complete a number of further
34 courses at Certificate and Graduate Certificate level, I
35 think?

36 A. Correct.

37
38 Q. So are you making the point that there's an aptitude
39 or an attitude that is important to the role of a youth
40 worker?

41 A. Yes, I think so.

42
43 Q. And that that's perhaps just as important as formal
44 training?

45 A. No, I believe the aptitude and - is absolutely
46 important, but I'm not undermining the training aspect of
47 it at all.

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Q. No.

COMMISSIONER BROMFIELD: Q. Would you say maybe that they're equally important then?

A. Yes.

COMMISSIONER BROMFIELD: Thank you.

MS ELLYARD: Q. You mentioned that it's been your observation, Mrs Atkins, that some people who have come into work as youth workers, perhaps with a lot of academic qualifications, haven't been able to, I think to use your words, form those relationships with the young people?

A. M'hmm.

Q. You may or may not be aware, but the Commission has received evidence or perceptions from some people that there have been people who have come in with qualifications who have found it difficult to adapt themselves to the culture at Ashley. I'm interested in your reflections on that. Do you think that's right?

A. That may be their experience; I can't really comment on that.

Q. And more significantly, I think, the evidence of some witnesses would be that the culture at Ashley is a culture which doesn't value professional training and expertise and which doesn't give enough weight to expert opinion. Has that been your experience?

A. Are you referring to the youth worker cohort or the case management area?

Q. I think what we've heard is both: both that some people coming into the Professional Services Team have struggled to stay and have felt themselves undervalued, but also that there have been examples of people taking up a youth worker's role, perhaps the same people you're referring to, but a different explanation perhaps for why it didn't work out for them; the explanation being, there was a culture that didn't value them and that they couldn't align with their training?

A. Okay. Um, I'm sorry, obviously that's their experience and, yeah, I'm unable to comment on it.

Q. Can I ask you about your own experience. At paragraph 38 in your statement, and feel free to go to it

1 so that you know what we're talking about, you answered a
2 question about your general experience of the workplace
3 culture, so I'm thinking now about what kind of place it is
4 to work as opposed to the relationships with the young
5 people. And your answer was that your own personal
6 experience was that it was quite good up until a few years
7 ago?

8 A. Yes.

9
10 Q. Can you tell us, what was the change that you
11 observed?

12 A. At that time I had undertaken a period of leave and I
13 had been an Acting Operations Coordinator before I went on
14 leave, and when I returned I appeared to be out of favour
15 of the Manager and the Assistant Manager at the time.

16
17 Q. You've used the word "bullying" in your statement?

18 A. Yes.

19
20 Q. You felt that you were subjected to bullying?

21 A. Yes, I was.

22
23 Q. And that's Mr Ryan and a person who we're calling
24 Lester; they're the two people, I think, that you were
25 referring to?

26 A. Correct.

27
28 Q. Who were at that time the Manager and the Acting
29 Assistant Manager?

30 A. Correct.

31
32 Q. When you talk about being bullied, can you give us an
33 example of the kind of behaviours that you experienced?

34 A. I was called to a meeting in Mr Ryan's office with the
35 intention that - I'd been participating in an on-call
36 Manager role - roster, sorry, since about 2005 or 2006, and
37 their intention was to take me off that on-call roster so
38 that Mr Ryan could go on-call, and they were going through
39 all the reasons why I shouldn't be on-call. So, I just
40 advised them at the time that it was actually my position
41 description that I participate in an on-call roster and,
42 yeah, they started scurrying around trying to find where it
43 said that in my position description and that's - they were
44 quite - not happy that it was in there.

45
46 Q. The Commission's heard evidence from a number of other
47 people that they experienced or observed around about this

1 time, in 2019, there to be a very kind of top-down command
2 and control culture of management led by Mr Ryan.
3 A. That's true.
4
5 Q. That's your experience?
6 A. Yes.
7
8 Q. And involving Lester as well?
9 A. Correct.
10
11 Q. As I understand it, one of the experiences that you
12 had involved different stories, I think, that Lester gave
13 you and gave a witness who we're calling Alysha at the time
14 she started at the centre.
15 A. Yes.
16
17 Q. It seems to have been designed to kind of play you off
18 against each other.
19 A. That's correct.
20
21 Q. Can you tell us about that?
22 A. Yes, I was given a version of events that led me to
23 believe, or potentially could have caused conflict with
24 Alysha, that she wasn't going to undertake induction
25 training, didn't wanna have any bar of it, and it wasn't
26 until Alysha and I actually had a conversation that we
27 found out that that wasn't true.
28
29 Q. So, I think you'd been told that she didn't think
30 there was any value in being inducted, and she'd been told
31 that you didn't want to induct her?
32 A. Correct.
33
34 Q. And both of those things were untrue?
35 A. Correct.
36
37 Q. And it was Lester who did that?
38 A. Yes.
39
40 Q. You answer some questions in your statement about the
41 Centre Support Team, which I understand from Mr Watson's
42 evidence has taken on a different form now --
43 A. Yes.
44
45 Q. -- and perhaps has a different name. But at
46 paragraphs 29 and 30 of your statement you answer some
47 questions about that, and you refer in paragraph 31, to the

1 relationship between operations officials and Professional
2 Services people as being "personality-driven". Can you
3 tell us what you mean by that?
4 A. In the old Professional Services area there were a lot
5 of strong personalities, and also in the Operations area,
6 so there will be some quite robust discussions at times.
7
8 Q. And I mean, robust discussion is not always a bad
9 thing.
10 A. No.
11
12 Q. We've heard evidence from a number of other witnesses
13 of a perception that there was really a disconnect between
14 the work of the Multi-Disciplinary Team, which largely
15 comprised Professional Services people, and the CST which
16 was largely operational.
17 A. Yes.
18
19 Q. Do you recognise that description?
20 A. Yeah, yep.
21
22 Q. Would that still be true now, to describe the
23 relationship between those different streams at the centre?
24 A. Now?
25
26 Q. Yeah?
27 A. No, no.
28
29 Q. What's changed, do you think?
30 A. Well, two years ago, you know, Mr Watson was appointed
31 Manager, I became the Acting Assistant Manager. I think
32 there's been a huge cultural change in that time. We've
33 been working hard to support staff. We've been
34 implementing the new Behaviour Development Program. We've
35 got risk assessments that are taking place on young people,
36 so I think there's been a lot of work done over that time.
37
38 Q. One of the things you said there was you felt there
39 had been a huge cultural shift. I asked you earlier about
40 Ashley's culture towards young people and you felt that it
41 had largely stayed the same, so what's the cultural shift
42 that you're describing?
43 A. That of support --
44
45 Q. Support for the young people or support for staff?
46 A. Both. Currently - well, not at the moment, but up
47 until about three weeks ago we had young people going off

1 property engaging in rehabilitation programs; so that could
2 be going fishing or seeing waterfalls, things like that.

3

4 Q. That's not possible at the moment, but --

5 A. No, we don't have the staff.

6

7 COMMISSIONER BROMFIELD: Sorry, Ms Ellyard.

8

9 MS ELLYARD: Yes.

10

11 COMMISSIONER BROMFIELD: Q. I think from a memory, and
12 you've probably seen about five different managers in your
13 time? Does that sound about right?

14 A. I think it might be a couple more, but yeah.

15

16 Q. Even more than that?

17 A. Yeah, I think it might be.

18

19 Q. I mean, when you're an operational staff member you're
20 often at the whims of the directions set by your
21 management.

22 A. Correct.

23

24 Q. Did you see in that time period some differences in
25 ideology? You know, maybe being pulled this way or that
26 way around the kind of behaviour management for kids?

27 A. Yeah, I think so. Looking back to probably the early
28 2000s there were some managers that were maybe more aligned
29 to a more justice type of model, and then, yeah, I think
30 probably from maybe 2005/06, there was a lot of policies
31 and procedures were starting to be formed and put in place.
32 So, yeah, there was a lot of change over the years.

33

34 Q. And, did you feel like those changes under different
35 management styles led to changes in the way that staff were
36 being expected to interact with the kids?

37 A. I think, through the development of the policies and
38 procedures, yes.

39

40 Q. And, was it a continual development in one direction
41 or did it maybe kind of ebb and flow a bit with different
42 managers? Was it kind of all in one direction, the change?

43 A. I think there was a genuine interest in continuous
44 improvement, and I think that was based on best practice at
45 the time, so I just - yeah, it was - I think it was just,
46 yeah, ebb and flow, but trying to continually improve.

47

- 1 COMMISSIONER BROMFIELD: Okay, thank you.
2
- 3 MS ELLYARD: Q. Are you aware of the evidence that
4 Ms Spencer and Ms Ray gave last week to the Commission?
5 A. Bits and pieces.
6
- 7 Q. So you didn't get the chance to see it all?
8 A. No.
9
- 10 Q. They certainly described a very difficult working
11 environment, both difficult in terms of the effects on them
12 of long shifts with very limited opportunities for breaks,
13 but also difficult because of the cohort of children that
14 they're dealing with. To the extent that you're aware of
15 their evidence, did any of it surprise you?
16 A. It's certainly very challenging work, but yeah,
17 Mrs Ray's been on leave for nine to 12 months now.
18
- 19 Q. So her experience isn't incredibly recent?
20 A. Yeah.
21
- 22 Q. Ms Spencer's experience is more recent, perhaps?
23 A. Yeah, she'd done a few shifts on return to work, so -
24 but she's been on long-term workers' comp as well.
25
- 26 Q. One of the things you say in your statement at
27 paragraph 63, you've answered some questions about
28 reporting to police and you've expressed a view that in the
29 past perhaps there were lots of matters that ought to have
30 been reported to police; that is, incidents occurring in
31 the centre involving detainees or involving detainees and
32 staff, and that in the past there was a practice of not
33 reporting things but you've seen a change in that practice.
34 Can you tell us about that?
35 A. Previously, managers had had meetings with the
36 Deloraine Police Station, that's generally where we would
37 report things to, and the message was that, unless there
38 was a willing victim or the victim was willing to make a
39 statement, it wouldn't be progressed.
40
- 41 Q. But that's not the case now?
42 A. No. More recently, I've sort of formed a working
43 relationship a little bit with Deloraine Police and have
44 referred matters to them.
45
- 46 Q. So, that might include the behaviour of detainees
47 towards other detainees?

- 1 A. Correct.
- 2
- 3 Q. Or the behaviour of detainees towards staff?
- 4 A. Correct.
- 5
- 6 Q. And, I'm not sure from your statement whether this has
- 7 ever occurred in your particular experience, but what about
- 8 allegations about the conduct of a staff member towards a
- 9 detainee; would that also get referred to the police?
- 10 A. In certain circumstances, yes.
- 11
- 12 Q. Have you ever had that experience, of having to make a
- 13 referral to the police about the alleged conduct of a staff
- 14 member?
- 15 A. Not that I can recall.
- 16
- 17 Q. We've heard a lot of evidence from former detainees of
- 18 Ashley, and perhaps more generally as well, about what
- 19 might be termed a culture of not explaining; of young
- 20 people being reluctant for a variety of reasons, some that
- 21 they bring into the centre with them and some that they
- 22 learn in the centre, to complain. Are you aware of there
- 23 being a suggestion that young people in Ashley don't feel
- 24 able to complain when they feel that they've been
- 25 mistreated?
- 26 A. My observations of young people complaining is that
- 27 they will complain and that, if something's not right,
- 28 you'll know, they'll let you know.
- 29
- 30 Q. What kind of things have you had experience of young
- 31 people complaining about?
- 32 A. It could be anything from food to, "I don't want to be
- 33 in this unit", or - yeah, sorry that's all I can ...
- 34
- 35 Q. What about complaints of, "I've been bashed up by
- 36 someone"? Have you received complaints like that?
- 37 A. I would have over the years, but I can't recall any
- 38 particular incidents at the moment.
- 39
- 40 Q. So, what about complaints about sexual abuse by fellow
- 41 detainees?
- 42 A. Yes.
- 43
- 44 Q. You've had children complain to you about that?
- 45 A. I can remember one instance mid-2000s --
- 46
- 47 Q. I think you described it in your statement.

1 A. Yes.

2

3 Q. That's your only experience of hearing from a young
4 person, an allegation that they'd been sexually assaulted
5 by another detainee?

6 A. Yep.

7

8 Q. Are you aware of many other such allegations being
9 made, perhaps to your colleagues or coming to your
10 attention through your work over the time that you've been
11 at the centre?

12 A. Not that I can recall.

13

14 Q. I know you won't have had the chance to observe it
15 because it was evidence given without the live-streaming
16 on. The Commission has heard evidence from a number of
17 young people over this last week, all of whom will have
18 been at Ashley at a time when you were working there, and
19 their evidence, if the Commission accepts it, would tend to
20 suggest that there have been quite a number of children who
21 have been sexually assaulted either by guards or by - by
22 staff, I'm sorry, or by detainees and who haven't felt able
23 to complain and I wanted to know your reflections on
24 learning that, perhaps contrary to your personal
25 experience, there are a number of children who have
26 described very difficult abuse experiences.

27 A. Okay. Yeah, sorry, I can't comment on that, I ...

28

29 Q. One of the things you say in your statement is that
30 one of the issues that is making it a difficult place to
31 work at the moment is the perception that staff have that
32 they might be the subject of false allegations; do you
33 remember saying that?

34 A. Yeah.

35

36 Q. Do you mean that people are worried that they'll be
37 falsely accused of physical or sexual abuse?

38 A. Some young people have actually voiced that they will
39 say, you know, "You touched me" or whatever, so that they
40 can get a payout. I have heard that.

41

42 Q. And it's your assumption that, if a young person said
43 that, it wouldn't be truthful?

44 A. Not when they're smiling and laughing in front of me,
45 no.

46

47 Q. Do you have a personal view - I should step back.

1 You're aware, obviously from your work, that there are a
2 number of people, people who no doubt you worked with over
3 many years, who are presently suspended because of
4 historical allegations about them?

5 A. Yes.

6

7 Q. And that must be a difficult thing for you?

8 A. Yes.

9

10 Q. And, have you been given any information about the
11 nature or seriousness of the allegations that have been
12 made about those people?

13 A. No.

14

15 Q. When we talk about false allegations being made,
16 Mr Watson gave evidence yesterday that he had the sense
17 that there would be a view amongst many current staff
18 members that historical allegations that had been made
19 against their colleagues are false allegations. Would you
20 agree that that's a general view that's held at Ashley?

21 A. Yes.

22

23 Q. Is it a view that you hold?

24 A. That's a hard question.

25

26 Q. It is a hard question, and a difficult one because you
27 know them all.

28 A. Yeah.

29

30 Q. And it's very difficult for you and no doubt for
31 others, but --

32 A. I would like to think that, you know, it's not true
33 but, you know, if there's evidence to suggest, then ...
34 yeah.

35

36 Q. So you have to be open to the possibility that at
37 least some of the allegations are true?

38 A. Yeah.

39

40 Q. Now, one of the things that the Commission has heard
41 is that at different points in time staff, including some
42 staff who have since been stood down, have been moved
43 around the centre so that they're in roles that don't give
44 them contact with children. So, there's been reference
45 both to the person we're calling Lester and to another
46 person who we're calling Ira being placed at various times
47 in policy roles in which they weren't going to have contact

1 with children. Are you aware of that?
2 A. I'm not aware of why Lester was in a policy role. I
3 assumed, being new to the centre at the time, that that was
4 a role that he had gone for and went through the process
5 and won.
6
7 Q. So, do you mean that was the role he had when you
8 started in 2000?
9 A. No, no. When I started he was operational.
10
11 Q. So you mean, when you came back from your period of
12 leave he had --
13 A. No. No, I'm talking early 2000s.
14
15 Q. Okay, thank you.
16 A. Sorry.
17
18 Q. Is it the case that there are policy roles at Ashley
19 that are separate from work involving direct work with
20 children?
21 A. Yes.
22
23 Q. And so, if someone's in a policy role, they wouldn't
24 be operational?
25 A. No.
26
27 Q. And they wouldn't be, or shouldn't be, having direct
28 contact with detainees?
29 A. They might be walking across the courtyard and, you
30 know, pass a young person and speak with them, but not in a
31 general supervisory role, no.
32
33 Q. And they shouldn't - they wouldn't ever be required to
34 participate in a search or a strip-search or anything like
35 that?
36 A. Not normally, no.
37
38 Q. The last question that I wanted to ask you,
39 Mrs Atkins: it's clear from your statement that you were
40 involved in implementing the results of a review that was
41 done by SERT. The Commission has heard a lot of evidence
42 about a SERT Review that was done following the experiences
43 of a young person who we're calling Henry, and his
44 experiences in a unit in the Franklin Unit. You know the
45 incident that I'm talking about?
46 A. Yes.
47

1 Q. The Commission has heard evidence, including from
2 Ms Honan, that there were a large number of recommendations
3 that came out of that review and that you were part of the
4 team implementing them?

5 A. Yes.

6

7 Q. And, as I understand it from looking at the reviews,
8 those were some quite significant changes that were being
9 put in place?

10 A. Yes, they certainly were.

11

12 Q. Were those changes things that you've observed to
13 cause a change in the way in which staff interact with
14 young people?

15 A. Yes, yeah.

16

17 Q. Are you able to offer any comments on - you're not a
18 youth worker now, although I understand that sometimes
19 because of short staffing you do still have to go and do
20 that hands-on work.

21 A. I have.

22

23 Q. How different is it to go and be a youth worker today
24 compared to when you started in 2000 or 2001?

25 A. Yeah, it is quite different. The buildings are
26 different, we've got, you know, better technology, we've
27 got better cameras, so I think there's lots of differences.
28 Better programming, a better school on site. So, we -
29 yeah, I think there's more opportunities for young people
30 now than there was.

31

32 Q. So I think you're describing a better experience for
33 young people now?

34 A. Yes.

35

36 Q. Leaving aside the issues of restrictive practices at
37 the moment compared to back when you started.

38 A. Yes.

39

40 Q. What about the job that youth workers are being called
41 on to do though? Is that job easier or harder or different
42 from the way it was when you first set out on it?

43 A. I think it's probably a little bit more difficult at
44 the moment, particularly around, you know, trying to
45 implement therapeutic practices. So, there's more support
46 probably with the young people at the moment, but mind you,
47 there's less young people on site.

1
2 Back when I started there was probably 30 or 40 young
3 people on site so it was a bit harder to provide support to
4 all of the young people. So, I think at the moment youth
5 workers do provide a lot of support to young people and
6 guide them through their daily routines.

7
8 MS ELLYARD: Thank you, Mrs Atkins. Thank you,
9 Commissioners, those are the questions I had, subject to
10 any questions that you had.

11
12 COMMISSIONER BROMFIELD: I don't have any questions, thank
13 you, Mrs Atkins.

14
15 PRESIDENT NEAVE: I don't have any questions either.
16 Thank you very much, Mrs Atkins.

17
18 MS ELLYARD: Can I invite you to take the afternoon break
19 before we return with the final evidence of the day.

20
21 **SHORT ADJOURNMENT**

22
23 PRESIDENT NEAVE: Ms Ellyard, before we start, there's
24 another restricted publication order to be made.

25
26 Last week the Commission made an order which restricts
27 the publication of certain information in relation to these
28 hearings which are focused on the Ashley Youth Detention
29 Centre; that included the requirement not to identify
30 certain people being referred to by pseudonyms in order to
31 protect the identity of other people. It's necessary for
32 the Commission to make a further restricted publication
33 order. We make this order because we are satisfied that
34 the public interest in the reporting of the identities of
35 certain people who may be discussed during this hearing is
36 outweighed by relevant legal and privacy considerations.

37
38 I will now briefly explain how the order will work.
39 It will apply for the duration of the subsequent hearings
40 this week, or for all the hearings this week. The
41 order contemplates the use of pseudonyms in relation to a
42 number of people. Any information in relation to the
43 identity of those people must be kept confidential. This
44 means that anyone who watches or reads the information
45 given this week must not share any information which may
46 identify the people who will be referred to by the
47 following names: Alice, Howard, Keith, Martin or Owen.

1
2 This information is not limited to their real names
3 and may include other information which may identify them
4 such as where they live or work. I make the order which
5 will now be published and be placed on the outside door of
6 this hearing room.

7
8 I encourage any journalist wishing to report on this
9 hearing to discuss the scope of the order with the
10 Commission's media liaison officer.

11
12 Yes, Ms Ellyard.

13
14 MS ELLYARD: As the Commission pleases. Our final panel
15 of evidence today is Mr Connock and Ms McLean who have both
16 given evidence previously, but I'll ask that they be sworn
17 in before we commence their evidence this afternoon.

18
19 <LEANNE DELANY MCLEAN, affirmed: [3.46pm]

20
21 <RICHARD CONNOCK, affirmed:

22
23 <EXAMINATION BY MS ELLYARD:

24
25 MS ELLYARD: Thank you. May I start with you, Ms McLean,
26 please. Could you tell us your full name.

27
28 MS MCLEAN: Leanne Delany McLean.

29
30 MS ELLYARD: You're the current holder of the office of
31 Commissioner for Children and Young People in Tasmania?

32
33 MS MCLEAN: Correct.

34
35 MS ELLYARD: You've given evidence to the Commission on
36 two previous occasions, firstly in the opening week, and
37 then secondly in our hearings in out-of-home care.

38
39 MS MCLEAN: Correct.

40
41 MS ELLYARD: In both of those hearings you made reference
42 to a detailed statement which you prepared for the
43 Commission.

44
45 MS MCLEAN: Correct.

46
47 MS ELLYARD: There's parts of that statement that relate

1 particularly to your roles in relation Ashley Youth
2 Detention Centre.
3
4 MS MCLEAN: Yes, that's right.
5
6 MS ELLYARD: Mr Connock, turning to you, you wear a number
7 of hats.
8
9 MR CONNOCK: I do.
10
11 MS ELLYARD: Relevantly for the purposes of this afternoon
12 you wear three: one of them is as the Ombudsman for
13 Tasmania?
14
15 MR CONNOCK: That's right.
16
17 MS ELLYARD: The second is in relation to being the
18 Custodial Inspector?
19
20 MR CONNOCK: Yes.
21
22 MS ELLYARD: Thirdly, you've recently I think also been
23 given the duties and powers under the Optional Protocol; is
24 that right?
25
26 MR CONNOCK: Yes.
27
28 MS ELLYARD: And you also have given evidence on two
29 previous occasions, once in the opening week and once
30 during the Health hearings, where you were wearing a
31 different hat again?
32
33 MR CONNOCK: That's right.
34
35 MS ELLYARD: In relation to each of you as your work and
36 responsibilities touch on Ashley, would you both each agree
37 with me that in your various roles you have both a degree
38 of responsibility in relation to systemic issues at Ashley
39 and some degree or opportunity to be involved in individual
40 cases. Ms McLean, would that be fair to say?
41
42 MS MCLEAN: Yes.
43
44 MS ELLYARD: And, Mr Connock, thinking about the two
45 different hats, the Custodial Inspector and the Ombudsman,
46 the former gives you an oversight or systems role in
47 relation to Ashley.

1
2 MR CONNOCK: Yes, inspecting the facility against
3 standards, yes.
4
5 MS ELLYARD: And then wearing your hat as Ombudsman you
6 can receive and investigate in appropriate circumstances
7 complaints made by detainees about their treatment at
8 Ashley?
9
10 MR CONNOCK: I can, yes.
11
12 MS ELLYARD: Sticking firstly with you, Mr Connock, if I
13 may: you've mentioned that in your role as the Custodial
14 Inspector you conduct inspections not just of Ashley but of
15 Ashley as one of a number of places of detention in
16 Tasmania?
17
18 MR CONNOCK: Yes, we inspect the adult prisons as well as
19 an Ashley and reception prisons.
20
21 MS ELLYARD: You prepared a report representing the
22 outcomes of your inspections?
23
24 MR CONNOCK: That's right.
25
26 MS ELLYARD: And the Commission is aware and has received
27 copies of a number of reports which you have written
28 arising from your inspection of Ashley?
29
30 MR CONNOCK: Yes.
31
32 MS ELLYARD: As I understand it, as part of your role as
33 Custodial Inspector, you have access to certain information
34 that's held about the operations of Ashley; is that right?
35
36 MR CONNOCK: We are given information, yes.
37
38 MS ELLYARD: What kinds of information do you receive?
39
40 MR CONNOCK: We receive all sorts of internal
41 documentation now, we didn't use to, but we get numbers
42 about residents, where they're housed, various incidents,
43 things like that. We get fairly full reporting done.
44
45 MS ELLYARD: When you say you didn't used to but you do
46 now, when did the change occur?
47

1 MR CONNOCK: Change occurred when Ms Honan and Mr Watson
2 became involved.

3
4 MS ELLYARD: And, what's the frequency with which you
5 received that information?

6
7 MR CONNOCK: We used to meet regularly with Ms Honan in
8 particular, and the former Deputy Secretary to discuss
9 issues as and when they arose, and we would be provided, as
10 I say, with things like incident reports and other
11 documentation.

12
13 MS ELLYARD: So I don't know if you were here when
14 Mrs Atkins gave her evidence a short time ago, but she's
15 the current Acting Manager at Ashley, as perhaps you know,
16 and she said that presently there's 11 children there, 10
17 of whom are on remand and one is serving a sentence. Is
18 that information to which you would have access in your
19 role as Custodial Inspector.

20
21 MR CONNOCK: Yes.

22
23 MS ELLYARD: And would you get it because you asked for it
24 or do you receive --

25
26 MR CONNOCK: We receive it regularly, yeah.

27
28 MS ELLYARD: What information do you receive, Ms McLean,
29 about the ongoing workings of Ashley?

30
31 MS MCLEAN: So it's very similar to the information that
32 Richard receives in his various roles. I receive what's
33 known as the daily roll, which includes the information as
34 to who is at the facility on any given day. It also
35 includes other information about those young person, for
36 example if they're under a Care and Protection Order, their
37 age, their date of remand, their court information. And,
38 in addition, in the same way that Richard does, I now
39 receive regular monthly reporting on incidents, on searches
40 and on uses of force.

41
42 MS ELLYARD: And the date from which you've begun to
43 receive those reports, is that the same as Mr Connock has
44 identified?

45
46 MS MCLEAN: The regular monthly reporting of that extent,
47 yes.

1
2 MS ELLYARD: Obviously there's been an innovation or a
3 change in practice that has coincided with the appointment
4 of Ms Honan, as I understand it. Was it Ms Honan's idea or
5 was it something that each of you had perhaps been
6 advocating for previously? Starting with you, Ms McLean?

7
8 MS MCLEAN: So, isolation was something that I'd had an
9 interest in earlier, and I think once the systems had
10 reached a point where they were able to actually gather
11 that information in a form that was shareable, for want of
12 a better term, which was, once Ms Honan was there, they
13 were happy to share it; it was - I think, you know, we
14 would have liked that information, but it was instigated as
15 a result of the changes that were made at the time, so I
16 think you could say that Ms Honan had something to do with
17 that.

18
19 MS ELLYARD: Mr Connock, what's your reflection on how it
20 came to be that you started getting this information.

21
22 MR CONNOCK: We started meeting with Ms Honan and talking
23 about the sorts of information that would be useful to us
24 and what we needed and over time that started to be
25 provided, as Leanne said, to a fairly large extent. Prior
26 to that there had been difficulties getting information.

27
28 COMMISSIONER BROMFIELD: Sorry, I'm a bit confused,
29 Commissioner McLean. Just that comment about, to the
30 extent that they were able to get the information in a
31 form. I'm not sure, was it about the ability to retrieve
32 the information or an interpretation or a predisposition
33 about sharing that information?

34
35 MS MCLEAN: No, I think it was - it was possibly both, but
36 my understanding is, there wasn't sort of a spreadsheet
37 available that was easy - that easily summarised the
38 information for the month that was then able to be shared
39 with people in our roles.

40
41 COMMISSIONER BROMFIELD: So then, Ms Honan's approach to
42 leadership was to cause that spreadsheet to be created; is
43 that your understanding?

44
45 MS MCLEAN: Something like that, yes.

46
47 PRESIDENT NEAVE: Was it to do with the fact that their

1 records were being computerised, whereas they hadn't been
2 in the past?

3

4 MS MCLEAN: My understanding is that that had something to
5 do with it. The record management was a particular issue
6 at the facility.

7

8 PRESIDENT NEAVE: I was trying to remember that, I don't
9 recall, you probably don't either, when that began to
10 occur?

11

12 MS MCLEAN: No, and I think it depends which records
13 you're talking about.

14

15 PRESIDENT NEAVE: I see.

16

17 MS MCLEAN: So there's been various stages of record
18 digitisation or shifting to electronic systems.

19

20 MS ELLYARD: So certainly I think the Commission has
21 received evidence that whereas as late as early 2020
22 incident reports were entirely paper based; since that time
23 there's been the change so that all such reports and
24 records are maintained electronically, that would
25 presumably make the task of extracting for your offices
26 easier?

27

28 MS MCLEAN: Yeah, much easier, and I'd add, it relies on
29 the quality of the information going in at that end.

30

31 MS ELLYARD: May I turn back to you, Mr Connock. You've
32 indicated that the reports that you write and the
33 inspections that you conduct measure facilities like Ashley
34 against certain standards.

35

36 MR CONNOCK: Yeah, there are sets of published standards
37 and they're published by our website and we go in and
38 review the facilities against those.

39

40 MS ELLYARD: And do you review them against everything
41 every time or do you have a staged approach?

42

43 MR CONNOCK: No, I'm afraid I'm not well enough resourced
44 to do a full omnibus inspection most of the time. We did
45 do one of the Mary Hutchinson Adult Women's Prison fairly
46 recently, but we still had to exclude some of the more
47 specialised areas. So, no, we do themed inspections of the

1 various weeks of standards.

2

3 MS ELLYARD: And so, over the course of several years then
4 as I understand it, thinking particularly about Ashley, you
5 would have had cause to look at such things as Mental
6 Health Services, healthcare more generally, whether there's
7 complaints mechanisms, the extent of training for staff,
8 things of that kind.

9

10 MR CONNOCK: Yes.

11

12 MS ELLYARD: Is there any particular set of standards that
13 you would identify as relevant to the issues that this
14 Commission is particularly concerned with, which is the way
15 in which allegations of child sexual abuse can be made and
16 assessed?

17

18 MR CONNOCK: I think safety and security and health would
19 be important ones.

20

21 MS ELLYARD: And thinking particularly about those
22 standards, is that something that you have had cause to
23 investigate and report on in relation to Ashley?

24

25 MR CONNOCK: We have reported on all of the standards.
26 We've required to do every facility within a three-year
27 period, so over time we have reported on each of the
28 standards, yes.

29

30 MS ELLYARD: I'm going to quote from a report which is
31 your 2021/21 annual inspection report, Mr Connock, where
32 you said amongst other many things, and you'll tell me if
33 you think I'm quoting you out of context:

34

35 *For the most part I hold few concerns about*
36 *the operations at Ashley Youth Detention*
37 *Centre and if I do have any queries these*
38 *are resolved promptly through liaisons*
39 *between my office and the Director Youth*
40 *and Family Services or the Centre Manager.*

41

42 MR CONNOCK: Yes.

43

44 MS ELLYARD: So, when you talk about the operations at
45 Ashley Youth Detention Centre, you're describing the
46 operations in their entirety?

47

1 MR CONNOCK: In their entirety, yes.

2

3 MS ELLYARD: For the purposes of conducting any
4 inspection, to what extent do you speak to young people.

5

6 MR CONNOCK: We speak to young people whenever we go out
7 there. I don't get out there as often as the rest of my
8 staff because I have all of these other responsibilities,
9 and one thing about this process has demonstrated how
10 thinly spread we've been over recent times. So, it's
11 normally my staff - but here they talk to - and they've
12 eaten with the young people and they move around the units
13 fairly free, and yes, certainly conduct conversations.

14

15 MS ELLYARD: Turning to you, Ms McLean, I think we've
16 identified - and you describe in your statement your
17 systemic advocacy role and then individual advocacy role.
18 You've described receiving certain information. To what
19 extent do you receive information that lets you get a
20 snapshot of the entire operation of Ashley? Do you feel
21 that you have visibility of all aspects of its operations?

22

23 MS MCLEAN: So, aside from, you know, I do rely heavily on
24 the Custodial Inspector's work for some of that, but the
25 other information I receive, and I mentioned this in my
26 statement, a presence there is very important in
27 understanding how the organisation operates and the way
28 decisions are made, and I receive a lot of information
29 about how the centre is operating in a relational way in my
30 discussions with management or operations coordinator, or
31 indeed the Director.

32

33 In particular over the course of the last few months
34 while restrictive practices have been in operation, I've
35 been in very, very regular contact with the people making
36 the decisions about restrictive practices on what they are,
37 what's happening on the ground on any given day and what
38 the impacts are for young people. I have then, you know,
39 unashamedly, used that information to advocate for changes
40 to that practice at more senior levels.

41

42 MS ELLYARD: Can I come back to you, Mr Connock, and ask
43 you about the roles that you have as Ombudsman. That's a
44 role which enables you to receive complaints across a
45 variety of areas but relevantly from children who are
46 detained at Ashley?

47

1 MR CONNOCK: That's right. As Ombudsman I can take
2 complaints about the administrative actions of public
3 authorities and that includes Prison Service and Youth
4 Detention Centre.
5
6 MS ELLYARD: I think I'm going to ask you to re-orient
7 yourself with relation to the microphone.
8
9 MR CONNOCK: Is that better?
10
11 MS ELLYARD: As long as you're still visible on the
12 screen, and I just look to make sure that's the case. I
13 think perhaps if you could come a little closer. Thank you
14 very much, Mr Connock. So, you can receive and investigate
15 complaints about, you were saying, various administrative
16 decisions that are made?
17
18 MR CONNOCK: Yes, systems issues and things like that.
19
20 MS ELLYARD: That might relevantly include a young person
21 complaining about aspects of their treatment in Ashley?
22
23 MR CONNOCK: Yes.
24
25 MS ELLYARD: From the records that the Commission has
26 received it's clear that from time to time your office has
27 received complaints from young people?
28
29 MR CONNOCK: We have, yes.
30
31 MS ELLYARD: And a number of them have related to matters
32 relating to the use of force?
33
34 MR CONNOCK: Yes.
35
36 MS ELLYARD: And there's at least one which I think is
37 before your time but the Commission is aware of involving a
38 young person complaining about what might be regarded as
39 sexualised behaviour towards her by a guard?
40
41 MR CONNOCK: Yes.
42
43 MS ELLYARD: As I understand the evidence, not every
44 complaint that gets made to you by a detainee at Ashley
45 gets investigated by someone from your office; there's been
46 from time to time practices of some kinds of matters being
47 referred off; is that right?

1
2 MR CONNOCK: There used to be, there isn't now. The basic
3 structure under the Ombudsman Act is that I can either make
4 preliminary - well, I can make preliminary enquiries in
5 order to determine whether a complaint should be formally
6 investigated, and we now conduct preliminary enquiries on
7 any complaint we receive.

8
9 There was a process many years ago where by
10 arrangement simple complaints, and they had to be simple,
11 and I'm aware of one that was referred back that wasn't a
12 simple complaint and it should not have happened, they
13 would go back to be dealt with by Ashley, but that practice
14 has stopped, we don't do that anymore. So that situation
15 that arose, and I heard some of the evidence yesterday,
16 wouldn't arise now.

17
18 MS ELLYARD: And I'll come to ask you about that one in a
19 little more detail later, thank you.

20
21 Are you able to comment on in general terms - the
22 number of complaints that come through to your office from
23 detainees at Ashley?

24
25 MR CONNOCK: I think I did some statistics, we're
26 finalising annual reports at the moment, I think on our
27 current database we've had about 107 over the last,
28 whenever that came in. But it's a small number. My
29 microphone technique is sadly lacking. Since 2018 it's
30 only been about 12, 12 or 14.

31
32 MS ELLYARD: Are there any steps that your office takes to
33 make yourselves known to the young people at Ashley; to
34 what extent are you confident that a young people who might
35 have something they want to explain about would know that
36 they could complain to your office?

37
38 MR CONNOCK: Well, we acknowledge all complaints and we
39 write to the young people, we have posters and various
40 other things up around the place advertising that young
41 people can complain to us. We have had - we do the adult
42 prisons as well and one of the most useful sources of
43 complaints there is their telephone system where they have
44 a line to us. Until very recently that hasn't been
45 available at Ashley because calls are monitored and a youth
46 worker has to be in a sight line with the young person.
47 But I understand that recently a phone has gone up on the

1 wall and it's got some pre-recorded numbers in it, doesn't
2 include Custodial or an Ombudsman at this stage but we'll
3 be making representations in that respect. Talking about
4 the adult prison, that is a constant source of contact with
5 prisoners and detainees, they can talk to us whenever
6 they - well, when they're out of cell.

7
8 MS ELLYARD: Ms McLean, you refer in your statement to
9 some work that has been done particularly since you came
10 into the role to increase awareness inside Ashley of the
11 roles that you can perform?

12
13 MS MCLEAN: That's right. When I came into the role we
14 had a suite of - well, promotional material, for want of a
15 better word, created, which includes a caricature - this
16 sounds a bit narcissistic - but it's my head, the
17 caricature, and those pictures are around the centre, and I
18 also made a video explaining my role to young people. My
19 understanding is, those materials are provided to young
20 people through the admissions process that's been described
21 to you, and usually I can point - when I introduce myself
22 to a young person, I can point to the promotional materials
23 around the centre, and then they can make the connection
24 between the person on the poster and the person who's
25 there, and that seems to be quite a powerful way of
26 working.

27
28 MS ELLYARD: I know this is something that was taken up in
29 evidence when both of you appeared as part of a panel in
30 the first week, but obviously there's differences in the
31 roles that you can perform and differences in the kinds of
32 matters that come to each of you. Ms McLean, it sounds
33 like you perhaps have a more visible presence in the centre
34 but in fact it's not part of your formal functions to
35 investigate individual concerns that young people have.

36
37 MS MCLEAN: That's right, no, I don't investigate
38 individual matters and I'm not a complaint handler, but I
39 think in the eyes of young people who are detained there
40 I'm probably a very visible form of independent oversight.

41
42 And at this point it's probably good to mention that
43 since mid-February this year, in addition to my three
44 weekly visits to the centre, we now have a full-time
45 advocate for young people in detention who lives in the
46 North West of the state, who's present on site very
47 regularly and has a mobile phone whose number is available

1 to all detainees from admission.
2

3 So, since the instigation of that additional resource
4 we have seen a dramatic increase in the call on our
5 advocacy and also an increase in the call upon us to
6 facilitate a complaint. So, if you're a child at Ashley
7 and you have a complaint to make and you tell the Advocate
8 or the Commissioner about that complaint, we will say to
9 you, "Would you like to make a complaint?" And if they say
10 "yes", we have access to a form that is a form that you can
11 either complain to the Secretary or you complain to the
12 Ombudsman and we can help a young person go through that
13 form; it's often easiest to do it that way.
14

15 MS ELLYARD: And so, the Advocate doesn't have any
16 statutory powers then under the Act, but they're
17 effectively an assistant to young people in exercising the
18 rights that they do have either under the Ombudsman Act or
19 under the Youth Justice Act?
20

21 MS MCLEAN: That's right, and I acknowledge that can be a
22 bit confusing for young people and we often find ourselves
23 in that explanatory position and saying, "Look, we're not
24 going to handle this complaint but we will make sure that
25 the Ombudsman gets the complaint". And just recently
26 between the Ombudsman's Office and our office we have
27 negotiated an information sharing arrangement that, with
28 the use of a consent form, enables information about the
29 outcome of the complaint to also come through my office so
30 that we can help to communicate the outcome of the
31 complaint to the young person.
32

33 MS ELLYARD: Can I come then to the question of the roles
34 that each of you have played or advocacy or other actions
35 that you might have taken in relation to the use of
36 restrictive practices recently at Ashley. The Commission's
37 heard a lot of evidence that, leaving aside the question of
38 whether or not isolation and unit-bound practices were
39 previously used inappropriately, in the recent past because
40 of staff shortages and related matters there's been a need
41 for the young people to be locked in their cells more often
42 than would otherwise be the case, and for long periods of
43 time.
44

45 Starting with you, Mr Connock, of the various roles
46 that you hold, is there a role that gives you any powers or
47 responsibilities in relation to the impact of those

1 Lockdowns on children?

2

3 MR CONNOCK: I can report on it. I don't have coercive
4 powers in any of my jurisdictions, so I can't make people
5 do anything apart from, oddly enough, energy where I can
6 make a binding decision; but I can only, as I say, exercise
7 coercive powers. But we have been in regular contact
8 throughout this recent thing, and I can say that that is -
9 not all are actually - lockdowns of that nature are, I
10 don't think - I can't recall another one. And yes, we were
11 kept informed throughout that as well, but we can't direct
12 people to do anything. We can report on it, and that can
13 become quite a powerful tool.

14

15 MS ELLYARD: And so, when you say you can report on it, it
16 means that presumably in the next report that you will
17 write on Ashley it will record that there was the use of
18 practices that would not have been consistent with the
19 applicable standards for young people in terms of things
20 like time out of cell, access to education?

21

22 MR CONNOCK: That is covered by the standards, so that
23 will be reported on, yes.

24

25 MS ELLYARD: Turning to you, Ms McLean, and I think you've
26 foreshadowed perhaps part of your answer to this already:
27 what powers do you have in relation to the way in which
28 children have been subjected to restrictive practices?

29

30 MS MCLEAN: So, the role of the Commissioner is primarily
31 a monitoring and advocacy role, so this is where at the
32 systems level using information that we learn through
33 individual advocacy, we have conducted quite a bit of
34 systemic advocacy in relation to the lockdowns. It
35 actually started - the impacts of low levels of staffing
36 were being felt by young people well before the restrictive
37 practices came into place, and so, through our advocacy
38 role we were - I'm just looking at a summary that I'm happy
39 to provide to the Commission, but the most common themes in
40 terms of individual advocacy request, so restrictive
41 practices and lockdowns, there were 45 requests for
42 advocacy in relation to those in between February this year
43 and mid-August this year.

44

45 So, on 20 June, which is when they began, I was
46 notified that restrictive practices were being put in place
47 and I wrote to the Secretary and made that information

1 available to the Minister on that day. And our job in
2 relation to this is to liaise with young people, to
3 understand what this is like from their perspective and to
4 make sure that the people taking decisions understand that.
5

6 And then, I think arguably perhaps even at times
7 beyond what some may say is my legislated function, I have
8 actively suggested to the Secretary and indeed the
9 Minister's office alternatives that could be pursued for
10 young people who are on remand that may reduce the
11 likelihood that they would be in detention, because there
12 seemed to me to be two ways to fix the issue: more staff
13 in, and I've been advocating for things like a
14 whole-of-government expression of interest for people with
15 appropriate skills and experience to swing in. There
16 wasn't an appetite for that. And getting young people out
17 is the other way to relieve the pressure, and it seemed to
18 me, with alternative accommodation arrangements, perhaps
19 expressing bail support plans, and even early release for
20 some people, there were options for that. I didn't receive
21 a positive response to any of those suggestions throughout
22 that time.
23

24 MS ELLYARD: And, perhaps, Ms McLean, I think I'd be right
25 in understanding that those are all things that you can
26 suggest but, a bit like Mr Connock, you don't have anything
27 other than the power of noting and perhaps persuasion?
28

29 MS MCLEAN: Yeah. I've also got the ability to ask for
30 more detailed information, so I am now in receipt of a log
31 of when young people were in and out of their room - that
32 only came recently; that was as a result of me seeking that
33 information that it was compiled. I'm yet to analyse that.
34 I have pointed out in all of my - or in much of my
35 communication, not all of it, very clearly that it is my
36 view that we are not meeting our obligations under the
37 United Nations Convention, and unfortunately it hasn't
38 resulted in a shift.
39

40 And indeed, I think the staffing situation at Ashley
41 has continued to decline and we are probably, in my view,
42 now at an all time low in terms of staff that are available
43 to work on the floor. My understanding today is that we
44 have moved back to restrictive practices, that young people
45 may be cycling in and out of their rooms on an hourly
46 basis.
47

1 When you visit the facility to speak to young people
2 and advocate for them through a small window hole in the
3 door, it is really awful. And I know the staff there don't
4 like it either.

5
6 COMMISSIONER BENJAMIN: Ms McLean, when you talked about
7 the Interventional Convention, were you talking about the
8 Interventional Convention on the Rights of the Child or the
9 Optional Convention in Relation to Torture?

10
11 MS MCLEAN: Well, arguably it's both. I don't have a role
12 specifically in relation to the latter. The principles of
13 the legislation I operate under include that I take
14 specific account of the United Nations Convention on the
15 Rights of the Child. It's a part of my job to make sure
16 the state upholds its obligations under that Convention and
17 I have pointed that out.

18
19 COMMISSIONER BENJAMIN: And, Mr Connock, you have the
20 obligations in relation to the OPCAT; is that what it's
21 called?

22
23 MR CONNOCK: Yes.

24
25 COMMISSIONER BENJAMIN: And, given what we've been told so
26 far, and I think last Friday we were told that children
27 were held in their rooms, or cells, for up to 23 hours a
28 day on a regular basis, do you see that as a concern having
29 regard to the provisions of the Optional Convention Against
30 Torture?

31
32 MR CONNOCK: It is a concern. I understand why it was
33 happening and we were informed and we liaised with Leanne's
34 office, so it was a staffing matter, it was very difficult
35 for all concerned, but no that wouldn't be compliant with
36 the UN's expectation.

37
38 COMMISSIONER BENJAMIN: When you say it was a staffing
39 matter, we were told today that the last one was as
40 recently as last Monday and perhaps today. M'mm.

41
42 PRESIDENT NEAVE: Can I just ask you a practical question
43 to understand how this has affected your performance of
44 your role. When you visited children in the past on an
45 individual basis, that child could come out and, what, sit
46 in a room and speak to you in a room without other people
47 being present; is that how it worked?

1
2 MS MCLEAN: They can if they want to. That's often not
3 how they want to engage. So, another way I might engage
4 with a young person is sitting next to them in a shared
5 space, in a private part of a shared pace, or even having a
6 walk around the courtyard with a youth worker nearby. It
7 does depend on the young person's needs. Their current
8 status, in terms of their behaviour and how things are
9 going, yeah, but it's very flexible.

10
11 PRESIDENT NEAVE: You then referred to the fact that
12 you're talking to them through their door.

13
14 MS MCLEAN: That's right.

15
16 PRESIDENT NEAVE: With the door locked? Yes, they're in
17 their cell, they're not allowed out.

18
19 PRESIDENT NEAVE: And so, the restrictive practice is
20 interpreted in such a way that, even when you're there to
21 visit them they can't come out and speak to you even if
22 they wanted to.

23
24 MS MCLEAN: Yeah, I don't think it would meet the safety
25 requirements of the centre for a worker, because they're so
26 thin on the ground, to come off the floor to supervise a
27 young person out of their room to engage with the
28 Commissioner or the Advocate.

29
30 COMMISSIONER BROMFIELD: You said that in your role you
31 are, part of your role is advocating about how children are
32 experiencing these lockdowns. How are they experiencing
33 the lockdowns?

34
35 MS MCLEAN: It's awful. You know, they're experiencing
36 declines in their wellbeing. Think about this from the
37 perspective of a teenager or a young child --

38
39 PRESIDENT NEAVE: An 11-year-old.

40
41 COMMISSIONER BROMFIELD: An 11-year-old.

42
43 MS MCLEAN: That's right. So, no child - well, very few
44 prefer to be isolated, very, very few, and where they do,
45 you need to be asking questions around how safe they feel.

46
47 I do want to make the point that staff and management

1 at Ashley during this time have done just about everything
2 I think humanly possible they could do to try and relieve
3 the boredom and create a reasonable environment for young
4 people during the time that they're in their cell: you
5 know, everything from Technic Lego, to continual
6 availability of movies and DVDs and education packs being
7 delivered, but the reality is, if you're getting an hour at
8 a time out of your room, so you might be in for two hours,
9 in for three hours and out for one; in that one hour you
10 are needing to get access to fresh air and exercise, call
11 family, friends, your lawyer, all of those things, and
12 maybe engage with education. My experience from young
13 people has been, the first thing you want to do is get on
14 the phone, call your family, call the people that are on
15 your call list, and everything else goes to the wayside.
16 So, you're not accessing education largely, and it has also
17 had an impact on young people's ability to engage with
18 their lawyer.

19
20 MS ELLYARD: Can I ask you, Mr Connock, whether you're
21 aware that evidence was given by Ms McLean's predecessor,
22 Mr Morrissey, last week and he expressed the view that
23 those kind of conditions, perhaps he used a stronger word
24 than you, it's not just a concern, but that would meet the
25 definition of torture, wouldn't it, to be isolated in such
26 an extreme way?

27
28 MR CONNOCK: Well, what I can say is that, yes, the
29 United Kingdom ratified OPCAT many years ago and they have
30 produce documentation which they refer to as
31 "Expectations", which is their expectation of what a
32 facility should do to become compliant with their
33 responsibilities under OPCAT and they recommend 10 hours a
34 day out of cell for every child and young person every day.

35
36 COMMISSIONER BENJAMIN: We ratified OPCAT in May 2012,
37 didn't we?

38
39 MR CONNOCK: We signed it and ratified it, I think, in
40 2020.

41
42 COMMISSIONER BENJAMIN: I thought it was ratified earlier
43 than that but I might be mistaken.

44
45 MR CONNOCK: No, it sat around for a long time with no
46 action having been taken on it and then a former
47 Commonwealth Attorney-General made the announcement and -

1 yes, it must have been 2017 because we had to be compliant
2 as of this year.

3
4 COMMISSIONER BROMFIELD: Commissioner McLean, I don't know
5 if you heard, or you probably know from the daily roll, but
6 listening to Mrs Atkins, the last witness, she talked about
7 how 10 of the 11 children in Ashley are on remand, and she
8 also spoke about how children are being placed on remand
9 because they have no address. Thinking about the
10 functioning of both the Youth Detention system and the
11 Out-of-Home Care system, do you have any reflections on
12 that as Commissioner for Children?

13
14 MS MCLEAN: Look, I could probably go on for far, far too
15 long. One of the things that's been really pleasing about
16 these hearings, in particular, is that you've taken a very
17 broad approach to consideration of the Youth Justice
18 System, and not just what is happening at Ashley, because
19 the two are intrinsically - they're intertwined.

20
21 So, a child, for example, in my experience could be
22 under a Care and Protection Order, yet they may cycle in
23 and out of Ashley and when they are released, be released
24 into a clearly unsustainable placement arrangement because
25 there are not available placement arrangements, and that is
26 becoming increasingly difficult because the non-government
27 sector that we rely on to provide therapeutic care
28 placements is also under increasing pressure, including
29 insurance which is becoming increasingly difficult and I
30 think causing a constraint in their ability to manage risk.

31
32 And all of this means that for young people who are
33 homeless, without the help of a guardian, and who find
34 themselves in trouble, it is less likely that we will be
35 able to find a stable accommodation arrangement for them.
36 And the two things that young people at Ashley tell me that
37 they need is somewhere to live and someone to help them and
38 I reckon that's pretty reasonable.

39
40 COMMISSIONER BROMFIELD: Very low expectations actually.

41
42 MS ELLYARD: Can I turn to ask you for your reflections in
43 the light of a lot of the evidence we've heard over the
44 last week. It would be fair to summarise that we've heard
45 evidence from a number of the detainees of a culture that
46 discourages complaining within Ashley; a culture that young
47 people bring in themselves sometimes perhaps because of

1 negative experiences outside of Ashley that make them feel
2 like they can't trust those in authority; a culture that
3 once they're inside they don't want to be seen as a "dog"
4 or as a complainer, and in some cases the perception that
5 they're punished inside Ashley for complaining.
6

7 Would you agree with me then that in each of your
8 different ways you as perhaps someone who goes and invites
9 people to tell you their problems, Ms McLean, you as the
10 Ombudsman, Mr Connock, who receives complaints, both of you
11 need children to open up their mouths and complain to you
12 in order for you to exercise your powers and help them.
13 Mr Connock, do you agree with that?

14
15 MR CONNOCK: Absolutely, yes.

16
17 MS ELLYARD: Ms McLean, do you agree with that?

18
19 MS MCLEAN: Yes.

20
21 MS ELLYARD: So, one of the key difficulties facing the
22 current system which doesn't reflect on you in your
23 individual roles but on the system is, we're entirely
24 dependent on this cohort of very traumatised and troubled
25 system, asserting themselves in order for adults like you
26 to be able to intervene to help them. Ms McLean?
27

28 MS MCLEAN: To a large extent, yes, in the absence of the
29 other key features of a Child Safety organisation around a
30 culture of reporting including amongst staff --
31

32 MS ELLYARD: Indeed, yes.

33
34 MS MCLEAN: -- I'd think that observation is right.
35

36 MR CONNOCK: It doesn't sound unreasonable. We do
37 occasionally get youth workers and others referring matters
38 to us as well, but there is a real need to reinforce the
39 right to make a complaint in young people. My first
40 appearance down here, I was with Mr Easton who is the CEO
41 of the Integrity Commission, and clearly this situation,
42 not just at Ashley, has been pertaining for a long time and
43 we're just not getting those complaints.
44

45 One of the things that I opined doing the health
46 complaints was, perhaps there's not enough knowledge of
47 things like the Public Interest Disclosure Act which

1 provide protections for complainants, including young
2 people, against reprisal if they complain. So that, if
3 there is a concern that people are being inhibited from
4 complaining because they're frightened of what might happen
5 to them, broader publication of that avenue of complaint
6 could be of assistance I think.

7
8 MS ELLYARD: Because certainly considering the - and I
9 think, Ms McLean, you've been here to hear a lot of it:
10 Mr Connock, I don't know the extent to which you've been
11 able to hear the experiences of the lived experiences
12 witnesses.

13
14 MR CONNOCK: Only what I can, I'm sorry.

15
16 MS ELLYARD: Yes. No, that's fine, and I know, Ms McLean,
17 you've heard at least some of them. But with one potential
18 exception that I'm going to ask you about, Mr Connock,
19 those young people described awful, horrific experiences,
20 some at the hands of staff, some at the hands of other
21 children, and almost inevitably they said, "I didn't
22 complain because I wouldn't be believed or I didn't want to
23 feel like a dog", and as a result, I suspect, a lot of that
24 evidence would have been new to both of you, even though
25 it's occurred during the time you've been in your positions
26 and available to help those people if they complained.

27
28 Do you accept that, Ms McLean?

29
30 MS MCLEAN: Yes.

31
32 MS ELLYARD: Mr Connock?

33
34 MR CONNOCK: Yes.

35
36 MS ELLYARD: And so, there's obviously a gap in the system
37 that such horrific things appear to be happening to some
38 children in Ashley with the holders of the offices who
39 could potentially do something about it being unaware of
40 it. Yes?

41
42 MS MCLEAN: Yes.

43
44 MS ELLYARD: And, Mr Connock, you've raised issues of
45 awareness and so forth, but perhaps there needs to be more
46 something larger than that done to empower young people
47 who, on the evidence we've heard, are experiencing profound

1 criminal acts against them to complain.

2

3 MR CONNOCK: I agree. On the evidence I've heard I agree
4 with you. We really need to raise our profile and
5 reinforce the ability and appropriateness of complaining.
6 One of our slogans is, "It's okay to complain", you know,
7 this is not something you should be worried about or
8 frightened about, it can achieve positive results and,
9 unless you complain, we don't hear about it, we can't do
10 anything and we end up in a situation like this.

11

12 MS MCLEAN: And I think, if you consider that through the
13 lens of the Child Safe Organisational principles, that
14 notion of "it's okay to complain, it's useful to complain,
15 we want you to complain", that should exist at every level
16 of an organisation and that is what can drive the cultural
17 change. It shouldn't be - I know what you said about,
18 we're relying on the agency, I think it was agency you said
19 of young people: it shouldn't be their responsibility
20 alone.

21

22 MS ELLYARD: No, it shouldn't be, and I think we had this
23 discussion in the context of out-of-home care. The system
24 shouldn't actually depend on a child finding the bravery to
25 tell someone what's happening to them.

26

27 MS MCLEAN: No, that's right.

28

29 PRESIDENT NEAVE: You're actually asking the most
30 powerless people in society to do things to correct flawed
31 institutions, aren't you?

32

33 MS MCLEAN: That's right, and putting themselves seemingly
34 at risk in doing so. It's not dissimilar to some of the
35 stories, the harrowing stories from the Disability Royal
36 Commission that, do you really want to complain about the
37 people who are providing you with food and shelter and
38 basic care? You know, I would really think about that if I
39 was in that position.

40

41 MR CONNOCK: And I think it's an organisational skill -
42 thing as well, that the staff need to be aware of these
43 avenues as well, if there are problems. It's to
44 everybody's benefit that they're brought to light early
45 rather than late.

46

47 MS ELLYARD: I think we heard about this in evidence, I

1 think perhaps in week 1, that there needs to be a culture
2 inside the organisation which encourages and supports, in
3 this instance a youth worker, to name conduct that concerns
4 them?

5
6 MR CONNOCK: Yes.

7
8 MS MCLEAN: Yes. And, you know, it's one of the core
9 fundamental principles of a Child Safe Organisation. You
10 know, one of the questions you've asked me is, is it
11 important that organisations are providing care or
12 oversight to children and Child Safe Organisations? Yes,
13 it is, including my organisation.

14
15 And, in addition, there needs to be an organisation in
16 Tasmania that is charged with building capacity around
17 Child Safe Organisations. We clearly had that position at
18 one point, because in 2016 when the government published
19 their strategy to reduce youth suicide, it's a public
20 document, Action 1.1 is to support the Commissioner for
21 Children to spread the word around Child Safe
22 Organisations: it was there, it's there, but that never
23 happened, and I don't know what happened, it was before my
24 time, but it pains me to think that we have lost six years
25 of capacity building around Child Safe Organisations, and
26 now we're here in a Commission of Inquiry talking about how
27 inappropriate it is to rely on a child to speak up around
28 the system that is failing them.

29
30 MS ELLYARD: One of the issues that's being explored in
31 the evidence, particularly this week although it's come up
32 in previous weeks as well, relates to the use of ED5
33 processes, disciplinary processes to investigate
34 allegations which, if proven, would tend to suggest that a
35 person poses a risk to children.

36
37 Mr Connock, can I ask you in your capacity as the
38 Ombudsman, have you got any power to recommend or direct
39 that conduct that's come to your attention ought to be made
40 the subject of a disciplinary inquiry?

41
42 MR CONNOCK: I could potentially recommend it. I couldn't
43 require anybody to do it. But if I thought - an ED5
44 relates to a breach of the State Service Code of Conduct.

45
46 COMMISSIONER BENJAMIN: Yes,
47

1 MR CONNOCK: So, if I thought that was indicated by some
2 of the conduct in a complaint, I could make that
3 recommendation, yes.

4
5 PRESIDENT NEAVE: Could I just ask: have you ever done so,
6 do you know?

7
8 MR CONNOCK: No, not that I'm aware of. I haven't, but I
9 have had discussion discussions around ED5s and the
10 appropriateness of them and various thing.

11
12 MS ELLYARD: Can I also ask you: one can imagine
13 circumstances where allegations might come to the attention
14 of the police which, although they don't ultimately in the
15 view of the police disclose potential criminal conduct,
16 nevertheless might raise concerns about administrative
17 actions of officials at Ashley. Have you ever received, in
18 your capacity as the Ombudsman, referrals from the police?
19

20 MR CONNOCK: I don't recall any from the police. I have
21 had some from the department about potentially criminal
22 conduct - this is going back some years, so it has
23 happened.

24
25 MS ELLYARD: Thank you. Can I turn then, still sticking
26 with you, Mr Connock, and perhaps going to the issue that
27 you anticipated we might touch on.

28
29 Earlier this week we heard evidence from a witness who
30 we're calling Erin, who was in Ashley in the last decade
31 and who described a number of very difficult experiences,
32 awful experiences, one of which, and perhaps on one view
33 the less serious one, she complained about at the time to
34 the Ombudsman's Office. It's before your time.

35
36 The particular allegation was, as you may be aware,
37 that a male youth worker, in response to her concern that
38 she had appendicitis, drew on her abdomen what he told her
39 was a "happy appendix", and that she correctly identified
40 that he shouldn't have done that, complained to the
41 Ombudsman's Office and had her complaint referred back to
42 Ashley because of a protocol in place at that time.

43
44 What are your reflections on that?

45
46 MR CONNOCK: Well, I was at the office at the time, but I
47 wasn't Ombudsman.

1
2 MS ELLYARD: I see.
3
4 MR CONNOCK: But no, I thought - when going through this
5 to try and gather information to respond to the
6 Commission's queries, I found a couple of things that were
7 questionable. That one was definitely questionable.
8 I would not have referred that back to Ashley. They were
9 potentially serious allegations; they should have been the
10 subject of at least preliminary enquiries by us as an
11 independent assessor.
12
13 MS ELLYARD: And a complaint of that kind now would be
14 assessed by your office?
15
16 MR CONNOCK: Would be. It would, yes.
17
18 MS ELLYARD: And so, I take it back in the day there might
19 have been a concern that complaints about the food and
20 things of that kind --
21
22 MR CONNOCK: Not enough jam and that sort of stuff; that
23 was the sort of level that was intended to go back to
24 Ashley to be reviewed by them and report back to us as to
25 outcome. So they were low level things.
26
27 MS ELLYARD: But of course, looking at the way Erin
28 subsequently experienced more and more severe forms of
29 sexual abuse while she was in Ashley, she did never
30 complain to the Ombudsman office again. And it's hard not
31 to reflect, isn't it --
32
33 MR CONNOCK: It is.
34
35 MS ELLYARD: -- that a different outcome to the first
36 complaint might have brought other matters to your office's
37 attention?
38
39 MR CONNOCK: Absolutely, yes. I have no explanation for
40 that; I think it must have been a mistake. But, as I say,
41 I certainly wouldn't have done that.
42
43 MS ELLYARD: You mentioned that as you reviewed records
44 for the purposes of today, there were a couple of matters,
45 one of which was that one?
46
47 MR CONNOCK: Not involving that sort of level of conduct,

1 no. But there were a couple that I perhaps wouldn't have -
2 or my senior officers perhaps wouldn't have referred back.
3 But not many.

4
5 MS ELLYARD: And can you tell us about what kind of
6 subject matter those matters related to?

7
8 MR CONNOCK: I'd have to take those on notice.

9
10 MS ELLYARD: Certainly. Can I turn to --

11
12 COMMISSIONER BROMFIELD: Before we do finish that
13 conversation, Erin also made the point - and I think it
14 aligns with some of the things we've heard about the way
15 that children might test the waters in terms of
16 disclosure - that everything should be treated seriously
17 when a young person complains in Ashley, even the little
18 things, because there might be more going on that they're
19 not ready to talk about yet.

20
21 MR CONNOCK: Yes, that's a fair comment.

22
23 MS ELLYARD: Can I turn to ask you some questions,
24 Ms McLean, arising out of some evidence that we've heard?
25 Firstly, as I understand it and from the materials that
26 we've seen. And I think from your statement as well, from
27 time to time you have matters brought to your attention by
28 staff at Ashley?

29
30 MS MCLEAN: Yes, that's right.

31
32 MS ELLYARD: And subject to the view that you form about
33 that, that might form a request for information that you
34 make to the department or to Ashley management to find out
35 about practices occurring in a particular way.

36
37 MS MCLEAN: Yes, or it could result in me making myself
38 available for a young person to seek individual advocacy.

39
40 MS ELLYARD: Yes. And so, I think we're aware from the
41 materials that you became aware of concerns about the way
42 in which young people displaying harmful sexual behaviours
43 were being responded to within the centre, and you sought
44 and received information about that?

45
46 MS MCLEAN: Yes. I'm just trying to recall. In terms of
47 seeking information, I don't know if that's exactly right.

1 I might need a bit more information on which instance
2 you're referring to, because there are a few.

3
4 MS ELLYARD: We're certainly aware of an incident, a
5 significant incident or pattern of behaviours displayed by
6 two young people who we're calling Finn and Albert?

7
8 MS MCLEAN: Yes, yes.

9
10 MS ELLYARD: And I think you came to understand that there
11 were concerns held by some professional staff at the centre
12 about whether those young people were being treated
13 appropriately for their own needs and other people around
14 them being protected?

15
16 MS MCLEAN: Oh, yes. And thank you for the
17 clarification. So, I became aware through a call from an
18 Allied Health professional working at the centre that there
19 was an issue. The issue had actually been flagged very
20 briefly in an interaction in August, and I then became
21 aware that a file review was underway to ascertain if there
22 had been a pattern of behaviour. And by, I think this was
23 late November or early December, the pattern of behaviour
24 was clear, and the person who contacted me and some other,
25 I believe, Professional Services staff were deeply
26 concerned that the pattern of behaviour was not being given
27 appropriate consideration.

28
29 MS ELLYARD: What was the lever that you had to pull - and
30 perhaps it wasn't a lever at all that was just exercising
31 the power of relationship - to try and understand what was
32 being done?

33
34 MS MCLEAN: So, in that case I wrote immediately to the
35 department; I would have phoned first, I always do. I
36 wrote to the Secretary, and my recollection is that I spoke
37 to the Director saying, "Look, I've just been made aware of
38 these allegations. This is not okay. This requires a
39 significant level of investigation". I also made the
40 comment - and I have a file note of this - that it seemed
41 to me that the threshold for the consideration of these
42 types of behaviours wasn't right and had perhaps been
43 influenced by the custodial environment.

44
45 MS ELLYARD: And the Director that you're talking about,
46 that's Ms Honan?

47

1 MS MCLEAN: That's right. And Ms Honan said to me at that
2 point she was aware but didn't have all the information;
3 she was going to get the information. And then I was
4 advised that that would result in a Serious Event Review
5 Team going in, and I very much supported that position.
6

7 MS ELLYARD: I think we've heard in the evidence that that
8 team ultimately did report, and I think you had to press
9 multiple times to find out what the report had said and
10 then to understand how the recommendations were being
11 followed up.
12

13 MS MCLEAN: Yes, I did. Initially, I was told that I
14 would receive the report fairly quickly. I was told that
15 then, in I think either late December or early January,
16 that the reporting was delayed. I was told the delay was
17 due to the absence of staff, including the person doing the
18 report. Clearly, we've heard evidence that there was an
19 awful lot more going on that delayed things. And I then
20 expected to receive the report in March. I didn't receive
21 the report in March. March is also when COVID hit. And I
22 received the report in May, and then it took some time to
23 follow up to understand what the implementation plan for
24 what were very serious recommendations was.
25

26 MS ELLYARD: And at a high level, and without doing
27 justice at all to the detail of the recommendations, but at
28 a high level what emerged from that SERT review was that
29 there had been exposure of young people - at least one
30 young person and on the evidence we've heard at least two
31 young people - to seriously harmful sexual behaviours
32 displayed towards them by other detainees at the centre?
33

34 MS MCLEAN: Yes, that's right.
35

36 MS ELLYARD: And there had been a failure by management to
37 apprehend - to understand the seriousness of those
38 behaviours and to respond appropriately to protect the
39 children and meet the therapy needs of those engaging in
40 the behaviours?
41

42 MS MCLEAN: Yes, that's right. And I think at the time I
43 was unaware of the level of split and disagreement between
44 what was known as the Professional Services Team and the
45 Operational Team at that time. I wasn't - I could tell
46 that there was a robust relationship, but I certainly
47 didn't have the level of information that I have now, as a

1 result of these hearings, to understand what was going on.

2

3 MS ELLYARD: Mr Connock, a child being exposed to the risk
4 of harmful sexual behaviours from other detainees is
5 obviously a matter that affects their health and safety
6 inside a detention centre?

7

8 MR CONNOCK: It is, yes.

9

10 MS ELLYARD: Did you come to be aware that that concern
11 had been investigated through a SERT Review?

12

13 MR CONNOCK: Sorry?

14

15 MS ELLYARD: Did you find out about this thing that we've
16 just been talking about, the SERT Review into the harmful
17 sexual behaviours displayed by some young people at the
18 centre?

19

20 MR CONNOCK: Again, I'm not 100 per cent sure of that.
21 This is one of, as I was saying before, one of the things
22 that I've noticed about this is how thinly spread we all
23 are, and with OPCAT I've now got seven jurisdictions, and
24 it's becoming increasingly difficult to keep track of
25 everything. So I'm happy to take things on notice, but --

26

27 MS ELLYARD: Perhaps if I'll put it to you this way: would
28 you agree that it's the kind of thing that it would be
29 important for you in your role as custodial inspector to be
30 aware of?

31

32 MR CONNOCK: Yes. Yes.

33

34 MS ELLYARD: And important in your new jurisdiction under
35 OPCAT as well?

36

37 MR CONNOCK: Yes.

38

39 MS ELLYARD: And subject to appropriate resourcing, and I
40 understand your point about that, it would be a matter that
41 would well be of interest to you in the fulfilment of your
42 functions?

43

44 MR CONNOCK: Very much so, yes. Yes.

45

46 MS ELLYARD: Ms McLean, can I turn now to a couple of more
47 specific things that relate just to you and to the evidence

1 that we've heard. One of the pieces of evidence that we've
2 heard from a witness, who is called Alysha for the purposes
3 of these hearings, is of a time when she contacted your
4 office. And the context, to help you know where we're
5 coming from, is there had been a recent decision with which
6 Alysha disagreed to unexpectedly transferring a person who
7 just received a long sentence to adult prison. And Alysha
8 gave evidence that she contacted you concerned that there
9 was another young person who might similarly be transferred
10 quickly, and she was concerned that there wouldn't be an
11 appropriate planned and therapeutic transition for him, and
12 she contacted you about that. Do you recall that
13 occurring?

14
15 MS MCLEAN: There's no record of the contact in the
16 office, so there's no record that Alysha called and I
17 haven't made a note of the discussion. But that doesn't
18 mean it didn't happen.

19
20 MS ELLYARD: So as you sit here, you don't recall it?

21
22 MS MCLEAN: I don't recall the exact discussion, but I do
23 recall being told by someone about the terrible conditions
24 of that transfer; I absolutely recall that. And, you know,
25 to be frank, Alysha has said that she had the call with me,
26 she remembers speaking to me on the phone and I believe
27 her.

28
29 MS ELLYARD: She went on in her evidence to say that she
30 explained to you during that call something of her concerns
31 for her own safety at that time, having regard to what was
32 going on at the centre, and to making a request of you that
33 her identity be kept confidential in any action that you
34 took. Are you aware that she gave that evidence?

35
36 MS MCLEAN: Yes, I'm aware that she gave the evidence. I
37 don't have a specific recollection of the exact nature of
38 the call and I didn't make a note, Ms Ellyard, which is
39 unusual for me and I'm disappointed about that.

40
41 MS ELLYARD: But I take it you're not suggesting that the
42 absence of a note means that the conversation didn't
43 happen?

44
45 MS MCLEAN: No, absolutely not. And as I've said, Alysha
46 has said that she made the call to the office, that we
47 spoke, and I believe her. We probably spoke.

1
2 MS ELLYARD: And she probably did say to you, "Please keep
3 my name out of it because I'm concerned for my safety"?
4
5 MS MCLEAN: She may have, she may have. I can't confirm
6 that.
7
8 MS ELLYARD: She went on to describe in her evidence,
9 clearly you did something with it or made some contact with
10 Mr Watson. Do you accept that on Alysha's evidence it
11 appears that you did make some inquiry of Mr Watson or
12 someone at Ashley about that young person's --
13
14 MS MCLEAN: Yes, my recollection is I did two things as a
15 result of finding out about the transfer. One was seek out
16 the young person that Alysha was advocating for to enable
17 them to seek individual advocacy for themselves, so we
18 pursued that avenue. And on the other avenue, I do recall
19 having a conversation with Mr Watson which was along the
20 lines of, "What on earth happened there?" I mean, that was
21 terrible.
22
23 Q. It appears from Alysha's evidence that Mr Watson
24 became aware that she was the person who had raised
25 concerns with you; do you accept that?
26
27 MS MCLEAN: Yes. And all I can say is, if I have, in
28 conducting advocacy in the best interests of those young
29 people inadvertently disclosed information that has
30 revealed her identity, I am terribly sorry about that. And
31 I had the chance yesterday to give that apology personally
32 to Alysha because that is not something that I would ever
33 want to do, and I can understand that it may have
34 influenced her view of what speaking up means, and that,
35 you know, I'm mortified that that happened and I'm
36 terribly, terribly sorry about it.
37
38 MS ELLYARD: Can I turn then, Ms McLean, to the question
39 of Max, a young person who gave some evidence yesterday.
40 I think you were present for his evidence?
41
42 MS MCLEAN: Yes.
43
44 MS ELLYARD: And you know who he is?
45
46 MS MCLEAN: I do.
47

1 MS ELLYARD: You've advocated for Max and met with Max
2 yourself or through the advocate who works for you on a
3 number of occasions over the years?
4

5 MS MCLEAN: Yes, many.
6

7 MS ELLYARD: He's an example, as I understand it, of a
8 young person who from time to time has sought the
9 assistance of your office with concerns that he had about
10 his time at Ashley?
11

12 MS MCLEAN: Yes.
13

14 MS ELLYARD: And you're aware, from his evidence, that he
15 described towards the end of his evidence yesterday the
16 circumstances prior to and following his meeting with a
17 Commissioner as part of this Commission of Inquiry process?
18

19 MS MCLEAN: Yes.
20

21 MS ELLYARD: And you've provided, and I think you should
22 have in front of you and the Commissioners should have in
23 front of them as well, some documents from your records
24 which are relevant to the evidence that he gave and the
25 evidence that Mr Watson has also given on this topic?
26

27 MS MCLEAN: Yes, that's right. And there's further
28 information I can probably add that I think would be
29 useful.
30

31 MS ELLYARD: Yes. So we'll go through it and, noting that
32 the Commissioners have and will no doubt carefully read the
33 emails in their entirety. But at a high level of
34 generality, Max's evidence to the Commission was that,
35 having - with your assistance, I think, is the implication,
36 or we know you helped him make the appointment with the -
37 having made the decision that he wished to speak to the
38 Commission to talk about what Ashley was like, he had a
39 conversation with Mr Watson which he told the Commission he
40 understood to be a conversation in which he accepted a
41 bribe to only say nice things, and that afterwards he felt
42 that Mr Watson didn't follow through with what he thought
43 had been agreed to. That's a high level summary of Max's
44 account.
45

46 MS MCLEAN: That's my understanding of his evidence, yes.
47

1 MS ELLYARD: And Mr Watson, when he gave his evidence, was
2 very clear that he had not engaged in any conduct of that
3 kind.
4
5 MS MCLEAN: Yes.
6
7 MS ELLYARD: And that any conversations that he had had
8 with Max about benefits and so forth were entirely
9 unrelated to Max engaging with the Commission.
10
11 MS MCLEAN: Yes.
12
13 MS ELLYARD: And instead had to do with Mr Watson seeking
14 to support Max in his planning and goals for life.
15
16 MS MCLEAN: Yes.
17
18 MS ELLYARD: So that's the evidence we've heard thus far.
19 And this is - I think you did become aware, as I understand
20 it, that Max has had, at some time at least, a belief that
21 Mr Watson has bribed him or tried to bribe him?
22
23 MS MCLEAN: Yes, that's right.
24
25 MS ELLYARD: And you have provided us, or we have access,
26 I think, from you, a copy of an email that you sent to
27 Ms Honan in which you raised, for the first time I think,
28 on 15 November 2021, matters that Max had reported to you?
29
30 MS MCLEAN: Yes, that's right.
31
32 MS ELLYARD: As I understand it just at a high level of
33 generality as well, Max had contacted you wanting to speak
34 with the Prime Minister about Ashley, saying he wants
35 people making decisions about the place to know what it's
36 really like, and you said, "Well, I can't help you with the
37 Prime Minister, but I'll get you an appointment with the
38 Commission of Inquiry".
39
40 MS MCLEAN: That's right. He actually requested two
41 people: He requested Scott Morrison and Peter Gutwein.
42
43 MS ELLYARD: And at the same time, he had a conversation
44 with you about an issue to do with access to video games in
45 his unit.
46
47 MS MCLEAN: Yes.

1
2 MS ELLYARD: Which was a matter that there were some
3 ongoing discussions about.
4
5 MS MCLEAN: Although that had begun before.
6
7 MS ELLYARD: Yes. And he having made that request of you,
8 you booked him in to come and speak to the Commissioner
9 about two weeks ahead?
10
11 MS MCLEAN: Yes.
12
13 MS ELLYARD: A couple of days before, I think the day
14 before he was due to have his meeting with the
15 Commissioners, Max rang you and told you that Mr Watson had
16 come to see him and had said:
17
18 *I can get you the games if you don't get*
19 *involved in any political stuff, speaking*
20 *with the Commission of Inquiry,*
21 *Commissioner for Children and Young People*
22 *because, if you do, then it gets taken out*
23 *of our hands.*
24
25 MS MCLEAN: That's right, that's what Max said to me at
26 that time on the 9th.
27
28 MS ELLYARD: Did that concern you?
29
30 MS MCLEAN: Yes.
31
32 MS ELLYARD: I mean, that's Max disclosing ahead of time
33 that Mr Watson is trying to "influence" - let's put it that
34 mildly for now - the evidence that he's giving.
35
36 MS MCLEAN: Yes, that's right.
37
38 MS ELLYARD: I don't see from the timeline dot points here
39 that you did anything about that particular allegation at
40 that time; is that right?
41
42 MS MCLEAN: So, Max and I had a discussion on the 9th.
43 So, my records show that on the 9th - and I am going to
44 refer to my notes for this, to make sure it's right.
45
46 MS ELLYARD: That's fine.
47

1 MS MCLEAN: So I followed up with him on the 9th regarding
2 what he would like me to help him with regarding that
3 disclosure. So, we discussed options: that I could raise
4 the appropriateness of that behaviour with management, so
5 raise it with management, or the "big boss" is often the
6 words that I would use speaking to a young person; or he
7 could make a complaint; or he could raise it with the
8 Commission of Inquiry. And I also mentioned the Integrity
9 Commission, but it was all getting a bit much.

10
11 Max asked me to raise it with management. He said
12 that Stu had told him that he would give him an answer
13 about the video games by the Monday, which was the day
14 before, and he hadn't done it; and my notes from that day
15 include that he expressly asked me to follow it up with
16 management.

17
18 MS ELLYARD: And it appears - I'm looking at the dot
19 points of the email; I don't have access to your notes, of
20 course - it appears that you contacted Stewart to ask how
21 things were going in relation to the games. There isn't
22 anything in the email that you sent Ms Honan that suggests
23 that at that time you took any action about the bribe
24 aspect.

25
26 MS MCLEAN: No, other than advising him to raise it with
27 the Commission of Inquiry.

28
29 MS ELLYARD: It wasn't matter that you felt you should
30 raise with the Commission of Inquiry?

31
32 MS MCLEAN: Well, I did. I provided in the tranche of
33 information that I included to the Commission of Inquiry.

34
35 MS ELLYARD: Are you saying that in the information you
36 gave the Commission of Inquiry you told the Commission
37 about Max's allegation about what Mr Watson had said?

38
39 MS MCLEAN: No, but my --

40
41 MS ELLYARD: That's what I'm asking you about, that
42 particular aspect. On one view - and I want to be clear
43 again that this version of events is disputed by Mr Watson
44 and we have details in another email of his version of
45 events. But on the face of what Max has described to you,
46 he was due to come and see a Commissioner, and he accepted
47 a bribe to say false things. Wasn't that matter which you

1 needed to do something about?
2
3 MS MCLEAN: I'm being really careful what I say here,
4 Ms Ellyard, because I would absolutely hate to say the
5 wrong thing, but my understanding of the situation is that
6 the Commission were made aware.
7
8 PRESIDENT NEAVE: At what point?
9
10 MS ELLYARD: At what time?
11
12 MS MCLEAN: At about the same time. I'm being very
13 careful about what I say, and I'm happy to have this
14 discussion in a different way.
15
16 MS ELLYARD: So, are you aware of - is the disclosure, as
17 best you're aware, contained in a document or was it a
18 disclosure that was conveyed through some other means?
19
20 MS MCLEAN: It was conveyed through some other means and
21 I believe it may be contained in a document, but that
22 document is not in my possession.
23
24 COMMISSIONER BROMFIELD: Ms Ellyard, we may know what -
25 could this relate at all to --
26
27 COMMISSIONER BENJAMIN: I think I know what you're talking
28 about.
29
30 COMMISSIONER BROMFIELD: -- our Act?
31
32 COMMISSIONER BENJAMIN: And I think if you and I raise
33 that, we may commit - if it's accurate, and I have no
34 particular memory of it, it may give rise to a breach of --
35
36 MS MCLEAN: And that's why I'm being so careful,
37 Commissioner Benjamin.
38
39 COMMISSIONER BENJAMIN: Yes.
40
41 MS MCLEAN: Yes. Thank you for raising that.
42
43 MS ELLYARD: Okay, so I'll move on from that point. But
44 certainly it appears that, perhaps slightly differently
45 from the way Max remembered it, he told you in advance of
46 coming to see the Commissioner about what he said was an
47 agreement that he had with Mr Watson?

1
2 MS MCLEAN: There's another key piece of information
3 that's slightly different to both the way Max has
4 represented the chain of events and Stewart has represented
5 the chain of events, and I'm not saying either of them are
6 incorrect, but what I'm going to tell you is my
7 understanding of how the chain of events occurred.

8
9 MS ELLYARD: Of course.

10
11 MS MCLEAN: And that is that it wasn't - it had been - it
12 was widely known when the issue of Max wanting to speak to,
13 originally, the Prime Minister but eventually the
14 Commission, it was me that suggested the Commission. He
15 was asking to speak to the Prime Minister and the Premier
16 so that he could tell them the good things about Ashley,
17 and that was clear from the first time he raised it.

18
19 So, my recollection of that time is that it was
20 actually relatively known amongst the centre that Max was
21 going to do this; he was going to speak to the Commission
22 and he was going - or he was going to speak to somebody, I
23 told him the Commission would be the best place, but he was
24 going to speak to somebody about the good things about
25 Ashley.

26
27 My notes in my book from that time tell me that --

28
29 PRESIDENT NEAVE: What's the date of those notes?

30
31 MS MCLEAN: Just a moment. If you just give me a moment
32 to find them. So, on 29/10, Max phoned me to say thank you
33 for some other advocacy matters. And then he and another
34 resident - this is on 29/10 - [REDACTED]
35 who were [REDACTED], they were annoyed about the
36 video games. And they asked me at this point, on 29/10, if
37 I could arrange for him to speak to Scott Morrison or Peter
38 Gutwein about what is happening at AYDC. He told me at
39 this point that he had been in and out over the last five
40 years and wanted to talk about the good things.

41
42 On that day, I believe I spoke with the CEO of the
43 Commission of Inquiry at that point, but there's no date
44 recorded, and we agreed that I would sort out the consent
45 arrangements that might be required because of people being
46 in Youth Justice and under care and protection orders. I
47 phoned the Secretary seeking consent as the Guardian to

1 progress the contact with the Commission of Inquiry, and
2 the Secretary was happy that these young people consent for
3 themselves.
4

5 So that's the point at which this began, and my
6 understanding is that it began with young people on the
7 29th wanting to tell a positive story about their time at
8 Ashley.
9

10 MS ELLYARD: You heard Max's evidence yesterday.

11
12 MS MCLEAN: I did, yeah.
13

14 MS ELLYARD: His evidence about what he wanted to come
15 forward and say to the Commission was very different from
16 the note that you've recorded, wasn't it?
17

18 MS MCLEAN: Yes, that's right.
19

20 MS ELLYARD: And, in fact, his evidence yesterday was that
21 he thought that it was great that there was a Commission
22 because he really had a lot of bad things that he wanted to
23 say about Ashley.
24

25 MS MCLEAN: Yes, and I don't for one second want to send a
26 message that I don't believe him; it's not my job to be the
27 decision maker here as to what has occurred: all I'm going
28 to do or all I'm doing is sharing with you the events that
29 the evidence in my office that I collated last night tells
30 me occurred.
31

32 MS ELLYARD: There's no doubt, is there - well, I'll
33 invite you to agree or disagree with this - there's no way,
34 based on the evidence Max gave yesterday, that he has a
35 firm recollection as described by him - of course, assuming
36 he wasn't deliberately lying yesterday - but he has a firm
37 recollection of accepting what he understood to be a bribe
38 and then complaining to you afterwards when he felt the
39 bribe hadn't been followed through. That was the evidence
40 he gave?
41

42 MS MCLEAN: Yes, he absolutely believes that he was
43 bribed, and I can't tell you whether he was bribed or
44 whether he wasn't bribed. And he believes that a deal was
45 made, and he told me, "We made a deal, we shook hands".
46

47 MS ELLYARD: But why would he be making such a deal if

1 he'd already been intending to say good things?

2

3 MS MCLEAN: I don't know.

4

5 MS ELLYARD: Can you offer any reflections on that?

6

7 MS MCLEAN: No. I mean, it might be worthwhile me
8 stepping out the actions from that time. You know, I have
9 extensive notes.

10

11 MS ELLYARD: And perhaps - we've got the summary as
12 contained in the email, and it may be that we can ask you
13 if you're willing to share your notes with us afterwards,
14 but just to perhaps touch on the highlights, because I'm
15 conscious of the time, it appears based on the summary that
16 we have in the email to Ms Honan that, again still before
17 Max came and had his session with the Commissioner, you had
18 spoken to him again, had a discussion with him about
19 getting to green and getting access to the games that he
20 was wanting access to.

21

22 MS MCLEAN: Yes, that's right.

23

24 MS ELLYARD: He confirmed that he was going to speak with
25 the Commission of Inquiry --

26

27 MS MCLEAN: He did.

28

29 MS ELLYARD: -- as indeed he did.

30

31 MS MCLEAN: Because my ongoing contact with him was to
32 make - was to ensure that he felt comfortable to speak to
33 the Commission, because the way the inducement had been
34 represented to me - and not just me and I'll go into detail
35 about that - was that the inducement was to not to speak to
36 the Commission.

37

38 MS ELLYARD: And again, isn't that completely bizarre if,
39 as you recall, Max wanted to say good things?

40

41 MS MCLEAN: Yes, but I believe the inducement was - in
42 Max's mind the inducement was that he shouldn't speak to
43 them at all. And, he consented to me following up the
44 issue with the psychologist at the centre, because he had
45 disclosed to her, and so I did again on the 9th; I spoke to
46 the psychologist who confirmed she had had a discussion
47 with him yesterday in which he had disclosed the

1 inducement. The psychologist said he told her, "Don't
2 speak to Leanne or the Commission of Inquiry and I will get
3 you the games".
4

5 The psychologist told me she asked him in several ways
6 to reflect and describe the situation and he repeated his
7 understanding of the discussion which was that, if he
8 stopped talking to me and the Commission of Inquiry, he
9 would get the games. The psychologist said that she had
10 told the Manager of Ashley Team Support, who had raised it
11 with Stewart and he had denied it, and the psychologist
12 also said that she had concerns and had encouraged Max to
13 speak to me.
14

15 MS ELLYARD: And so, on that version, where Max again was
16 clearly disclosing what he understood to be pressure being
17 placed or inducements being offered to not to speak to the
18 Commission, what did you do in response to that?
19

20 MS MCLEAN: I advised him to raise that matter with the
21 Commission and we agreed that I would also raise it with
22 management.
23

24 MS ELLYARD: Which you did?
25

26 MS MCLEAN: Yes.
27

28 MS ELLYARD: And then, as I understand it, Max then had
29 the meeting with the Commissioners?
30

31 MS MCLEAN: Yes.
32

33 MS ELLYARD: And then Max contacted you a couple of days
34 later?
35

36 MS MCLEAN: That's right. So again --
37

38 MS ELLYARD: The version that Max recalled and that he
39 gave in his evidence yesterday was that he contacted you to
40 tell you that what he understood as the arrangement had
41 fallen through?
42

43 MS MCLEAN: Yes. So, on 12 November - I think it's
44 12 November - Max contacted me to report that after the
45 Commission of Inquiry meeting, Stuart Watson came to him
46 and asked if he had mentioned the "blackmail" - and they
47 were very specific used words - to the Commission of

1 Inquiry. Max reported that Stuart made statements that,
2 "You know you're old enough to go to Risdon, don't you?"
3 Max appeared unsettled during the phone call and reported
4 he was involved in several incidents that day. He
5 expressed a wish to go to Risdon straight away and that he
6 wanted to give up on his exit plan.

7
8 MS ELLYARD: Did you have any further discussion with
9 Mr Watson after that or did you send the email that I've
10 got access to?

11
12 MS MCLEAN: I did; I sent that email, yes.

13
14 MS ELLYARD: So, Max's recollection as contained in his
15 evidence yesterday was that when he told you, as he
16 recalled in a conversation, after his session with the
17 Commissioners, about the deal that had been done, you said
18 to him, "Well, you shouldn't have done that". Do you
19 recall that being said?

20
21 MS MCLEAN: No, I didn't say that; that is not what
22 happened.

23
24 MS ELLYARD: He also recalled, as I understand from his
25 statement and his evidence, telling you that he wanted to
26 speak to the Commission again, and you saying, "Well,
27 you'll have to wait until you're out of prison in order to
28 do that." Did that conversation happen?

29
30 MS MCLEAN: No, not that I'm aware of. And our advocacy
31 journey in relation, broadly, to this matter didn't end.
32 So, at this time Max's journey at Ashley was becoming
33 increasingly difficult. There were incidents almost on a
34 daily basis, he was very - he was not okay and he was
35 really dysregulated, and he was calling me regularly in
36 particular seeking psychological support, and I was
37 advocating for him to receive psychological support because
38 the psychologist at the centre had left. And nursing staff
39 were providing support, but in my view that wasn't enough.
40 And I believe my advocacy eventually resulted in a
41 telehealth service being delivered, but the incidents and
42 dysregulation did continue; I don't think he was able to
43 access the support that he needed. And eventually I was
44 advised, after the decision had been made, mind you, that a
45 transfer arrangement had occurred for him to go to an adult
46 custodial facility in Hobart.

1 MS ELLYARD: Can I ask you this question, Ms McLean, and I
2 understand that, and you've made it plain, that you want to
3 be careful about how you answer questions about precisely
4 how these matters may or may not have come to the attention
5 of the Commission.
6

7 But thinking about this core question of Max's
8 apparent belief, as disclosed to you and to others, that
9 there were attempts being made to influence his evidence:
10 other than the matters that have led you to believe that
11 the Commission might have already known about it, was there
12 anything else that you did to bring to the Commission's
13 attention or to ventilate this question of whether or not
14 an inducement or a bribe had been offered to Max?
15

16 MS MCLEAN: No.
17

18 MS ELLYARD: No?
19

20 MS MCLEAN: No. My view at this time was that the
21 appropriate institutions, authorities, were aware.
22

23 MS ELLYARD: And, as we've said, there's no doubt that Max
24 remains of an understanding that there was a bribe offered
25 to him which he thought he'd accepted.
26

27 MS MCLEAN: Absolutely.
28

29 MR GATES: I'm sorry, the way that question was asked is
30 just very --
31

32 PRESIDENT NEAVE: I'm sorry, I can't hear what you're
33 saying.
34

35 MS ELLYARD: There was an objection and I'm going to
36 rephrase the question.
37

38 PRESIDENT NEAVE: Yes.
39

40 MS ELLYARD: There's no doubt that, if Max was giving
41 truthful evidence yesterday, which is a matter for the
42 Commission to determine, that on that evidence, if
43 truthful, he continues to believe that he was offered and
44 accepted a bribe?
45

46 MS MCLEAN: Yes.
47

1 MS ELLYARD: And it would appear that around the time of
2 the events which we've been discussing and in the period of
3 time which followed, Max's behaviour was very dysregulated?
4

5 MS MCLEAN: Yes.
6

7 MS ELLYARD: Continued to be dysregulated?
8

9 MS MCLEAN: Yes.
10

11 MS ELLYARD: Culminated in getting what I think he
12 describes in his statement as what he was told was a
13 Christmas present of transfer to an adult prison?
14

15 MS MCLEAN: That's right, and I don't believe that that
16 transfer was reasonable. I made an immediate call to the
17 Secretary about it. I don't believe that the appropriate -
18 well, at the time I didn't believe the appropriate policy
19 and procedure in relation to transfers was followed, but
20 having now read the MOU that exists between the adult
21 custodial facility and Ashley or the Department of
22 Communities, I think they did - you know, you could follow
23 it, because you could drive a truck through it; it has no
24 reference to the rights or wellbeing of young people.
25

26 I don't believe a transfer assessment panel was
27 convened, which is what should normally happen for the
28 transfer of a young person. And our advocacy for Max did
29 not end because he transitioned to an adult custodial
30 facility; there were six visits, have been six visits to
31 him during his time in an adult custodial facility, either
32 undertaken by me or by the Advocate for Young People in
33 Detention, and we have also advocated for him to return to
34 Ashley stating all of the reasons why his time in the adult
35 system was very detrimental to his wellbeing, because he
36 went straight into a lockdown, 23 out of 24 hours. And I
37 have correspondence between the Secretary of the department
38 and I in relation to that; the request to be sent to Ashley
39 was rejected, and he remains at an adult custodial
40 facility, and of course now he has - he's no longer within
41 my jurisdiction.
42

43 MS ELLYARD: Can I ask you each this final question.
44 We're on notice of course because of the announcements of
45 the government that Ashley's due to close. It's due to
46 close in just over two years. Do either of you receive
47 updates or briefings about the plans that are in place for

1 the replacement of Ashley? Starting with you, Ms McLean?

2

3 MS MCLEAN: Yes, I do. Um --

4

5 MS ELLYARD: What's your understanding of the extent to
6 which those plans are advanced?

7

8 MS MCLEAN: I received in my office this week a draft for
9 consultation of the Youth Justice blueprint that the
10 government intend to release once they have consulted with
11 key stakeholders. I haven't analysed that yet or provided
12 comment, but my understanding is that they are looking to
13 come up with the detention model to give us some clarity on
14 what that detention model might look like as soon as
15 possible.

16

17 We really need to get on with it, Ms Ellyard, because
18 the lives of the children and young people who are largely
19 on remand at Ashley, their wellbeing is deteriorating as a
20 result of low levels of staffing not enabling - not even
21 enabling people to consider, really, a therapeutic
22 response.

23

24 MS ELLYARD: Mr Connock, have you had any insight --

25

26 MR CONNOCK: I think I received the same correspondence
27 this week.

28

29 MS ELLYARD: So your understanding is that there's been a
30 draft Youth Justice blueprint, which I understand it is
31 broader than just the question of what the new replacement
32 facilities will be?

33

34 MS MCLEAN: Yeah, that's right. In addition, to inform
35 that, the Noetic Group together with the Reform Group in
36 government have been tasked with consultations with those
37 key stakeholders to inform the development of what the new
38 detention model would look like, and I've been involved in
39 whole day workshops to help design that. So, I know what
40 the input is, I know what the government is receiving; the
41 advice they're receiving is, we need to do something that
42 is very, very different to what we do now.

43

44 MS ELLYARD: But leaving aside the wholesale reform of
45 Youth Justice that a blueprint like that might describe, it
46 would be possible, wouldn't it, to do something about the
47 11 children currently in Ashley much sooner than the time

1 at which that blueprint comes to fruition?
2

3 MS MCLEAN: It would; it would require a very intensive
4 effort and a strong will from government to enable
5 placements that are sufficient enough to meet the
6 requirements, safety and other requirements, to be able to
7 be gazetted under the Youth Justice Act as a detention
8 centre. So, there are very few places that are gazetted as
9 a detention centre.

10
11 MS ELLYARD: But it could be done and, in your view,
12 should be done?

13
14 MS MCLEAN: Absolutely. We --

15
16 MS ELLYARD: What about you, Mr Connock? I'm sorry to cut
17 you off, Mr Connock, I'm just conscious of the time.

18
19 MR CONNOCK: No, I agree with Leanne.

20
21 MS MCLEAN: And, together with that, there are a range of
22 things we can do to relieve the pressure. As you've heard,
23 children and young people are regularly remanded simply
24 because they have nowhere to go. That shouldn't even be
25 legal. It should not be okay, you shouldn't be able to do
26 that, but you can, and while that is the case we still have
27 a youth detention facility that, whether we like it or not,
28 is quasi providing care and protection for children who may
29 not have an active guardian to care for them.

30
31 MS ELLYARD: Thank you, Commissioners, and thank you to
32 our transcriber for a long session. Thank you to the
33 witnesses. I have no further questions, but I'm conscious
34 the Commissioners may.

35
36 PRESIDENT NEAVE: I think Mr Gates wants to make a
37 submission to us. Yes, Mr Gates?

38
39 MR GATES: Commissioners, if I could just first, if I may
40 just address you. I feel that there are questions that
41 need to be asked and clarified in relation to the evidence
42 that the Commissioner for Children gave about matters that
43 touch on my client's interests.

44
45 Counsel Assisting put Max's version of events to the
46 Commissioner for Children which was contained in an email
47 that was disclosed to me today - sorry, that I received a

1 copy of - no, it was disclosed to me today. Another email
2 was disclosed which actually contained my client's response
3 to the concerns that were raised by the Commissioner for
4 Children. I think, in fairness to my client and in the
5 interests of the Commission receiving a balanced
6 perspective of the evidence in relation to this issue, that
7 it would be appropriate that I be able to ask a question of
8 the Commissioner for Children.

9
10 MS ELLYARD: May I just indicate, and the Commissioners
11 will decide whether or not --

12
13 PRESIDENT NEAVE: Yes.

14
15 MS ELLYARD: -- the email that my learned friend's
16 referring to is before you. It's an email that largely
17 describes, as he's said, Mr Watson's version of events, and
18 you have it.

19
20 PRESIDENT NEAVE: Yes.

21
22 MS ELLYARD: It appears to be a matter that in respect of
23 which this witness couldn't necessarily comment because it
24 doesn't involve her, but I'm in the Commission's hands as
25 to whether or not it considers that it would be assisted by
26 or fairness requires this witness to be asked about that
27 email.

28
29 PRESIDENT NEAVE: Yes, Mr Gates, it's appropriate, the
30 Commission considers it's appropriate for you to put some
31 questions to Ms McLean.

32
33 MR GATES: Thank you, Ms President.

34
35 <EXAMINATION BY MR GATES: [5.08pm]

36
37 MR GATES: Ms McLean, Counsel Assisting earlier asked you
38 about an email that you'd sent to the Ashley Youth
39 Detention Centre, I think it was addressed to Mr Watson,
40 outlining the concerns that the young person Max had raised
41 with you. Do you recall receiving a response in relation
42 to that from Ms Honan?

43
44 MS MCLEAN: So, just to be clear, I never sent an email
45 about this matter to Mr Watson. I never communicated about
46 this matter to Mr Watson.

1 MR GATES: Sorry, quite so. I have to apologise, I've
2 only just received this. I understand maybe it was an
3 email to Ms Honan in fact?

4
5 MS MCLEAN: That's right, on 15 November.

6
7 MR GATES: And, did you receive a response to that from
8 Ms Honan?

9
10 MS MCLEAN: Yes.

11
12 MR GATES: And was there, in the email chain that you
13 received, a version of events provided by Mr Watson in
14 response to the concerns you'd raised?

15
16 MS MCLEAN: Yes.

17
18 MR GATES: And, did Ms Honan's response to you also
19 provide you with further information in relation to a
20 meeting that had happened with Max between her and
21 Mr Watson?

22
23 MS MCLEAN: Yes.

24
25 MR GATES: And does that email say:

26
27 *Stewart, Max and myself spoke about these*
28 *concerns on Wednesday 24 November. It was*
29 *agreed by Max that he may have confused*
30 *what has been told to him and taken it out*
31 *of context.*

32
33 MS MCLEAN: Yes.

34
35 MR GATES: Thank you. There's nothing further, thank you.

36
37 PRESIDENT NEAVE: Thank you. And, I should assure you
38 that the Commission has those emails.

39
40 MR GATES: Thank you.

41
42 PRESIDENT NEAVE: Thank you.

43
44 COMMISSIONER BENJAMIN: Before we take the adjournment,
45 just one question. I think, Mr Connock - sorry, I think,
46 Mr Connock, is that better?

47

1 MS MCLEAN: Very good.
2
3 COMMISSIONER BENJAMIN: It will wake up the whole room.
4
5 MS ELLYARD: It's certainly different, Mr Commissioner.
6
7 COMMISSIONER BENJAMIN: I think, Mr Connock, you said
8 there was one phone in the centre which was available to
9 the young people?
10
11 MR CONNOCK: There is one phone that they can use with
12 pre-recorded numbers on it now, yes. Before there were
13 phones in the units but they had to speak to a youth worker
14 to use them.
15
16 COMMISSIONER BENJAMIN: And I think you said that your
17 number as Ombudsman and/or Custodial Inspector wasn't on
18 the phone at present?
19
20 MR CONNOCK: No. I think Leanne's is on there.
21
22 MS MCLEAN: Mine is definitely on there, Commissioner, and
23 I am receiving a lot of calls; none of them yet have been
24 advocacy related, but they are certainly very interesting.
25
26 COMMISSIONER BENJAMIN: I think we were told earlier in
27 the week that there may have been such a phone in each of
28 the units. Is that the case?
29
30 MS MCLEAN: Yes, that is my understanding, that there has
31 now been a phone installed in the common area of each unit
32 that has - it's basically a speed dial to relevant people,
33 mine is one of them; I think mine might be the only one
34 that's currently activated, and maybe the NDIS are on there
35 as well, and the novelty of a new phone has not worn off,
36 Commissioner.
37
38 COMMISSIONER BENJAMIN: Thank you, that was the only
39 questions.
40
41 MS ELLYARD: Thank you, Commissioners. If there's nothing
42 further, I thank the witnesses for their evidence and
43 that's the end of today.
44
45 COMMISSIONER BROMFIELD: We thank you for the long
46 session, we really appreciate your evidence.
47

1 PRESIDENT NEAVE: Thank you, both of you.
2
3 **AT 5.12PM THE COMMISSION WAS ADJOURNED TO**
4 **THURSDAY, 25 AUGUST 2022 AT 10.00AM**
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