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TRANSCRIPT OF PROCEEDINGS

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

At Hearing Rooms 6A and 7A
Tasmanian Civil and Administrative Tribunal,
38 Barrack Street, Hobart

BEFORE:

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

On 6 May 2022 at 9.48am

(Day 5)

1   PRESIDENT NEAVE: Thanks, Ms Darcey.
2
3   MS DARCEY: Thank you. Yes, our first session this
4   morning, Commissioners, is with Ms Sonya Enkelmann, if she
5   can be called, please, and she'll take an affirmation.
6
7   **<SONYA DEVEREUX ENKELMANN, AFFIRMED:**   **[9.48am]**
8
9   **<EXAMINATION BY MS DARCEY:**
10
11   MS DARCEY: Q.   Ms Enkelmann, can you please tell the
12   Commissioners again your full name and your professional
13   address?
14   A.   My name is Sonya Devereux Enkelmann and I work as a
15   therapeutic specialist at the Sexual Assault Support
16   Service.
17
18   Q.   Thank you. Ms Enkelmann, is it the case that you
19   provided a statement dated 26 April 2022 for the benefit of
20   the Commission?
21   A.   Yes.
22
23   Q.   Do you have a copy of that statement in front of you?
24   A.   Yes.
25
26   Q.   I understand that there are a couple of amendments to
27   be made to the statement, if we could deal with that as a
28   preliminary matter. At paragraph 27 of the statement there
29   is a reference in the final line of that paragraph to
30   paragraphs 85 to 97. If we could take out those numerals,
31   please, and replace them with "81 to 92". It's just a
32   cross-referencing issue.
33   A.   Yes, I was recovering from COVID at the time, I wasn't
34   thinking very straight.
35
36   Q.   I think a lot of people could relate to that. Thank
37   you. And then, paragraph 75. In the final sentence of
38   that paragraph which reads:
39
40   *If young children under the age of 10*
41   *are ...*
42
43   And the word after "are" is "were". Could we just
44   delete the word "were", please.
45
46   The final amendment to paragraph 85. The second
47   sentence of that paragraph:

          Since 2018 the CCYP role has also included
          system monitoring of Out-of-Home Care
          with ...

     Could we then insert the word "one" "monitoring report
on wellbeing outcomes of being healthy and more recently",
and after that word could we insert the words "a monitoring
plan, being loved and safe".

PRESIDENT NEAVE: I'm sorry, could you repeat that last
one, the "and more recently"?

MS DARCEY: "And more recently, a monitoring plan, being
loved and safe".

PRESIDENT NEAVE: Thank you.

MS DARCEY: Having made those amendments, are you now
satisfied that the contents of that document is true and
correct?
A.   Yes, I am.

Q.   In your statement at paragraphs 4 to 6 you outline
your qualifications and professional background, could you
please detail that for the benefit of the Commissioners?
A.   Certainly. At the moment I work as a therapeutic
specialist at the Sexual Assault Support Service. I would
like to emphasise that I am making my statement in a
private capacity, however, not as a therapeutic specialist,
I'm not speaking for SASS. So, in my current role I
support people with lived experience of sexual assault,
that includes adults primarily but also adolescents, and I
also work in an intake role which includes crisis support
for people, so that may include supporting them with a
forensic medical examination or making a police statement.
So, I've been working there for a period of just under, I
think, 12 months but prior to that I was there on a social
work placement as well.

     Prior to that I've worked in different roles across
government and the non-government sector; I was an
operations manager at Save the Children. While I was doing
my social work placement I was a project manager for Out of
Home Care Reform with the Department of Communities
Tasmania for a period of three years from 2017 to 2020.
And, prior to that I've had roles, in management roles,

1   including at Relationships Australia also with the
2   Department of Prime Minister and Cabinet as a deputy
3   regional director in Tasmania and also as a team leader,
4   so, in the Department of Employment and Workplace Relations
5   in Tasmania.
6
7   Q.   Thank you. Just to make it perfectly clear, although
8   you are currently employed with SASS, the focus of your
9   evidence today relates to your experience between 2017 and
10   2020 when you were a project manager for Out of Home Care
11   Reform in the Department of Communities?
12   A.   That's correct, yep.
13
14   Q.   In your statement, Ms Enkelmann, you discuss the role
15   that you held and explain why it allowed you to develop a
16   deep understanding of the Out-of-Home Care system. Could
17   you please explain that visibility?
18   A.   Okay. Look, it was a role that I absolutely loved, it
19   was not often you get an opportunity to work in that way.
20   I was very fortunate to have a very broad capacity to work
21   with the sector. So, I worked alongside or with Child
22   Safety and Children and Youth Services but I was not part
23   of that organisational structure.
24
25   So, I was outside of that structure and it meant that
26   I was allowed to meet with children and young people with
27   carers, with frontline workers within the department but
28   also with non-government agencies, with our service
29   providers, with our policy people in other organisations
30   within the sector, and I really felt that that actually
31   gave sort of a sense of safety for a lot of people that I
32   spoke with.
33
34   I encountered a lot of hesitancy when I started about
35   the safety of what people were saying, and so, it became
36   very apparent very early about the need to, you know,
37   obviously maintain confidentiality in terms of identifying
38   people. So, it was really always about receiving their
39   views but not in a way that could identify, and that
40   applied to workers as much as to carers or children and
41   young people, it was across the board.
42
43   So, I think I was given a lot of latitude and a lot of
44   freedom in that respect and it was something that I was
45   very grateful for. I think the other key part of that was
46   that we also had a very strong focus on consultation in
47   working with the sector; we didn't assume we knew the

1   answers, and so, we took a very open approach to working
2   with people and a really strong emphasis on co-design which
3   I think was quite threatening at times. It was quite a,
4   you know, different approach in some ways.
5
6   Q.   Would you just explain to the Commission, please, the
7   concept of co-design and what that means?
8   A.   Well, there's probably different understandings and
9   different understandings of consultation and so on as well;
10   but from our purpose there, it was really about working
11   with those service users, so children and young people,
12   carers, but also with workers, those who actually have the
13   practice wisdom to really understand the nature of the
14   issues that we were facing and to really work through the
15   solutions and with some of those options we had to identify
16   the complaints, we made it very clear about the limits of
17   our authority, the limits that I had, in that, I was there
18   as someone to gather the views and to bring together the
19   themes and the work; it was always up to government to make
20   the decisions. But it was really coming from a position of
21   wanting to work in a very open way.
22
23   PRESIDENT NEAVE: Q.   Can I just ask you, was your
24   position filled, is there an equivalent person to you now
25   in the department, do you know?
26   A.   I don't believe so, but you would have to ask the
27   department.
28
29   PRESIDENT NEAVE: Yes, of course, thank you.
30
31   MS DARCEY: Q.   Thank you. Just to understand, and I
32   appreciate that you have not been in the role of a
33   caseworker within the department, so I'm just asking you to
34   give your view based on your personal experience and what
35   you've seen: can you outline the sorts of reasons why a
36   child would become engaged with the Out-of-Home Care
37   system?
38   A.   Certainly. So, if a child has been brought into the
39   Out-of-Home Care system, then there has been, you know,
40   sufficient concern; it's always done under the provisions
41   of the Act which is the Children, Young Persons and Their
42   Families Act and, you know, a child - action is taken when
43   there has been concern that a child has already experienced
44   significant harm through abuse or neglect or is at
45   significant risk of harm.
46
47   So, for a child coming into Out-of-Home Care, you

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1   know, the reality is that they may have experienced
2   different forms of abuse; and the unfortunate thing, too,
3   is that, if they haven't experienced that much trauma
4   beforehand they probably experience it as a result of being
5   removed from their families anyway; it's not an easy
6   process for anyone and it's a very fraught role for the
7   department. It's a really tough environment to work in,
8   this is not an easy thing to be doing.
9
10   Q.   In your view, is it likely that the department would
11   know the full extent of the harm or trauma that a child has
12   experienced before they come into the sector?
13   A.   It would be my view that it is unlikely to understand
14   the full extent. Obviously, there has to be some - you
15   know, there is knowledge about what a child has
16   experienced, but particularly in relation to child sexual
17   abuse, you know, there are many factors that may mitigate
18   against knowing the full extent of harm that a child has
19   experienced; that may come down to a child's young age,
20   their level of disability, their capacity to communicate;
21   it may be, you know, just the upheaval and the sense of
22   overwhelm that happens when a child has been brought into
23   care. Also, you know, there may be concern for their
24   family and their sibling members if they say things, there
25   may be fear of a perpetrator, and also, the reality is for
26   many children in terms of different types of abuse, not
27   just necessarily child sexual abuse, there is that sense of
28   really taking on - there's a lot of shame, self-blame,
29   sense of guilt and that sort of thing, there's a sense of
30   responsibility and that's a fairly consistent thing that we
31   sort of see - that I see working with survivors of sexual
32   assault, yep.
33
34   Q.   In terms of the intake process, are there any initial
35   assessments or screening tools or other attempts to obtain
36   a full trauma history from a child?
37   A.   Look, I can't answer that, I think you need to direct
38   that to the department, yeah.
39
40   Q.   Thank you. In your view, does a lack of knowledge
41   about a child's trauma history potentially put them at a
42   disadvantage at the point where that child is matched to a
43   carer, or can I assume from paragraphs 29 and 30 of your
44   statement that the process of matching children with carers
45   with any level of precision is just a luxury that can't be
46   afforded?
47   A.   Look, I think the intention is always there to try and

1   have a good fit, if you like, between a carer and a child.
2   It is difficult because you're working in tight timeframes,
3   you may have limited information about a child and their
4   circumstances, so you may know broadly, you know, some of
5   their circumstances, but unfortunately - and this has been
6   the case for some time - a lot of times the Out-of-Home
7   Care workers are under a lot of pressure to find a home for
8   a child, and that was my experience at the time working in
9   the department and I saw firsthand the pressure on an
10   Out-of-Home Care team leader trying to find a home for a
11   child. So, look, always try to find, that's always the
12   best intention to try and do; whether it's always possible
13   is another matter.
14
15   Q.   I'm also interested in the opportunity that a child
16   may have once they're in the Out-of-Home Care system to
17   disclose and then to heal from child sexual abuse. At
18   paragraph 20 of your statement you raise the point that a
19   child may not have disclosed that they've experienced
20   events of child sexual abuse or other kinds of serious
21   trauma because they've never had a safe, trusted adult in
22   their lives. It's not the first time this week that we've
23   heard about the importance of a child developing even just
24   one single relationship with an adult in which there is
25   trust and a sense of safety.
26
27   What's your view about the chances of a child in
28   Out-of-Home Care being able to experience that kind of
29   relationship of trust and safety with their carer?
30   A.   Okay, so the first thing I would say is that we know
31   that it often takes many years for a child, or for anyone
32   to disclose an experience of child sexual abuse; okay, so
33   that's known in research. So, it's already a difficult -
34   you know, that's historic, that's knowledge.
35
36   I think that for many of our children in Out-of-Home
37   Care they are fortunate to be cared for by very committed,
38   kind, patient people who open their hearts and their homes
39   and that many children are able to feel safe - or many
40   children feel safe and have a good connection. That is not
41   necessarily the case, however, for all children.
42
43   I can't tell you how many children feel safe with
44   their carer because it's not information that we gather -
45   well, not when I was in the department anyway, we didn't
46   gather information on how many children actually felt safe
47   in any sort of routine or consistent way.

So, and this is not to suggest that children did not feel safe with a birth parent, but while they're in Out-of-Home Care and they may not be able to see a birth parent, then, you know, they still need to have a trusted relationship with a safe adult in their life, a consistent safe adult, and that can be difficult if they have unmet needs and if that carer isn't supported to form a healthy attachment relationship with that child.

Q.   Thank you. In paragraphs 31 to 38 of your statement you outline the role of case managers in the Out-of-Home Care context. Could you comment on that role and give some detail about what their capacity is like to develop those kind of relationships with children?
A.   Sure. So, case managers have a really integral role and they are employed by Child Safety to provide case management casework sort of services. They, with Child Safety, are responsible for the child's overall case direction; for example, if a child is intended to return home to the birth family or, you know, to remain in Out-of-Home Care the case manager has the primary responsibility for the care plan for the child and for ensuring that their needs are met along with the remaining members of the care team.

Case managers are really the people that we heard consistently that children want to have a safe relationship with; that was a consistent theme that came up again and again throughout our consultations with children and young people; they wanted to have a safe relationship with somebody outside the home environment, and case managers were the person who was most often nominated. Now, that's not to say that all children would want that, but there was a significant portion of children and young people who did. And, when that was possible, it made a real impact, a meaningful impact, on those children and young people and we heard many positive examples of that.

However, there were too many children and young people and carers who said that they just never saw the case manager. So, I remember speaking with one kinship carer who spoke about the child for whom they cared for 15 years and they'd had something like 13 case managers in that time. I would speak with other carers or children who said they hadn't seen their case manager for 12 months or six months or three years - like, they just didn't hear

1   from people, and it was really difficult in that sort of
2   context to form any sort of relationship, trusted or
3   otherwise, for a child.
4
5   So, when you've got really high caseloads, when you've
6   got really high turnover, it's really hard to get any
7   continuity for a child. So, case managers were under
8   enormous strain in terms of managing their own caseload of
9   children, high numbers of children on their caseloads, high
10   administrative burden, you've got high turnover in an
11   organisation, you know, so it makes it pretty fraught.
12
13   COMMISSIONER BENJAMIN: Q.   Do I take it that your
14   concern is not so much too many children but not enough
15   caseworkers available for those children?
16   A.   Certainly, I would say that we would benefit from
17   having a lot more case managers who are actually able to do
18   their job, who are actually able to manage their workload,
19   you know, people who are dedicated and want to be able to
20   support children and actually get out and see them, yes.
21
22   Q.   One of the problems which may have been identified is
23   the turnover of caseworkers and case managers. Do you have
24   any insights into that?
25   A.   Only that there is a lot of, from what I observed,
26   there is a lot of vicarious trauma, there's a lot of
27   burnout, there's a lot of stress; I mean, we're talking
28   about a difficult type of job in the first place, but my
29   sense in terms of talking to people was, it was often - it
30   wasn't the children and young people that were the issue
31   or, you know, that whole process of working in that
32   environment, it's actually the organisation and the system
33   around it that's the frustrating thing: you know, not being
34   able to provide the services, not being able to see kids
35   and do the job that you want to be able to do that is often
36   the source of stress.
37
38   But I'm sure that the department would have done, you
39   know, wellbeing reviews on their workers, because the
40   turnover was well and truly known, so I think that would
41   probably be best directed to the department in terms of why
42   people were leaving, but they just couldn't keep up with
43   recruitment from what we could see, they were constantly
44   talking about recruiting but we always just seemed to be
45   short.
46
47   COMMISSIONER BENJAMIN: Thank you.

1
2   MS DARCEY: Q.   Moving back to carers. In paragraph 28
3   of your statement you detail that there are a number of
4   different types of placements available to children; these
5   include kinship care, foster care, sibling group care,
6   residential care and special care packages. The last two,
7   are you able to explain, please, what residential care is
8   and what special care packages are?
9   A.   Okay. So, I think, in terms of the remainder: look,
10   kinship care and foster care is Family-Based Care and it's
11   care delivered by a volunteer in a home-based sort of
12   environment. Whereas residential care and special care -
13   well, special care is basically a type of residential care,
14   if you like, and it's delivered by non-government agencies
15   contracted by the department in which you have residential
16   care workers delivering the support to a child or young
17   person; the department still has responsibility for case
18   management of those children so far as I understand it.
19
20   So, residential care would typically be, you know, you
21   might have a home where you have a small number of young
22   people typically, children or young people. My
23   understanding is that, and this is the case in most States,
24   that there is a policy where you do not have children under
25   the age of 10 unless there are exceptional circumstances in
26   residential care, but you need to ask the department about
27   that.
28
29   But then you have special care packages, which was
30   something that was introduced - you'd need to check - I
31   think it was in around 2016-ish, somewhere like that, where
32   for children for which there was an extraordinary level of
33   need, was sort of the terminology that went with it, and
34   these children either on their own or with their sibling
35   were placed into a care arrangement where they had care
36   around the clock, so they were basically on their own or
37   with a sibling.
38
39   Q.   Did you see any difficulties with the care around the
40   clock model in those settings in terms of being able to
41   form meaningful relationships with individual people?
42   A.   Well, I think it's a little bit heartbreaking that
43   this is where we are, that we've got children living in an
44   environment that isn't a home. In saying that, there are
45   circumstances where, you know, perhaps due to the level of
46   disability or the level of complex needs where that may be
47   necessary for a time, but you would always hope that it is

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 1    something that can be stepped down.  But certainly, you can
 2    have amazing resi care workers and for some young people
 3    that is a really good option, but you need to have
 4    continuity in those workers and you also need to make sure
 5    that they're well qualified for the work that they're doing
 6    and that they're safe people, especially in special care
 7    packages where you've got children potentially quite
 8    isolated.  But that is, I would be hesitant to comment
 9    further on that because that wasn't something that I looked
10    at specifically.
11
12    Q.   Just going back to the intake process just briefly.
13    Presumably, if a child's history of child sexual abuse is
14    not known, then I assume that therapeutic services wouldn't
15    make it onto the radar and that child wouldn't be engaged
16    in those sort of services; but even if there is a known
17    history, what are the chances of a child in the Out-of-Home
18    Care sector engaging with those sorts of services?
19    A.    Well, if it's known, then if a child is known to have
20    a history of child sexual abuse then they would likely be
21    referred to a support service.  The issue is that often we
22    will not know the full extent of harm that a child has
23    experienced prior to coming into care or when they're in
24    care; I think that's actually the issue, and that children
25    often have - you know, they have unmet needs and any form
26    of abuse renders a child sort of vulnerable, if you like,
27    and that, unfortunately children are not routinely and
28    consistently provided with the therapeutic support that
29    they need to form healthy attachment relationships.
30
31         So, any form of abuse is basically relational - you
32    know, is a breach of that relationship, the trust in that
33    relationship.  So, if you consider that trauma is a form of
34    relational abuse, then healing is also through
35    relationship, and children need to be able to form healthy,
36    safe relationships for healing.  Unfortunately, because of
37    the amount of therapeutic supports available, that tended
38    to be prioritised according to those children who were
39    assessed to be at most need, but unfortunately that did not
40    seem to take into account the full spectrum of children's
41    responses to trauma and it carries with it an implicit
42    assumption that, if a child is compliant or quiet, then
43    they don't need support, which I think is a flawed approach
44    to thinking.
45
46         My concern is that the department did not consistently
47    or routinely meet the unmet needs of the child in terms of
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1   forming healthy, safe relationships with carers.
2
3   Q.   Thank you. Are carers themselves required to
4   undertake any particular training in either taking a
5   disclosure from a child or any general trauma-informed
6   education?
7   A.   Certainly carers do receive training as part of their
8   service on-boarding, if you like, to do with trauma and
9   that is part of the assessment process and they do receive
10   pre-service training in that area.
11
12   When I worked with the department there wasn't any
13   requirement to undertake sexual disclosure training so far
14   as I knew. That doesn't mean that some of the service
15   providers didn't provide it, they may have, because the
16   service providers sometimes - you know, they delivered
17   different types of training in addition to what was
18   required.
19
20   The issue is that you can have training, but really,
21   the thing that's going to make the difference is that
22   support from a worker in the home. So, it's all very well
23   to go and attend two weeks of training or, you know, a
24   period of training; it's the application of that training,
25   it's knowing that someone's got you when you're pulling
26   your hair out because this little one just won't settle or
27   keeps running away or keeps hiding or keeps gorging
28   themselves on food, you know, that sort of thing. So,
29   training is one thing, support is a whole other bucket.
30
31   Q.   What sort of support does the department extend to
32   carers and do you think it's sufficient?
33   A.   Certainly at the time that I worked there my sense
34   from talking with carers is that generally speaking, if a
35   carer was attached to a service provider then the level of
36   support was pretty well regarded. Some service providers
37   were very highly thought of.
38
39   If you were attached to a kinship - if you were a
40   kinship carer, however, or a foster carer attached to the
41   department the level of support that you were likely to be
42   receiving was - I can only describe it as woefully
43   inadequate. That is no reflection on the Out-of-Home Care
44   workers who I found to be incredibly dedicated and
45   committed people, and I have the utmost respect for them,
46   but their caseloads were completely ridiculous,
47   particularly in the south. It wasn't so bad in the north;

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 1    the northwest was pretty bad as well, but the south was
 2    really quite terrible, yeah, when I worked there over that
 3    period of time, and it meant that they were restricted to
 4    crisis work, which basically involved collecting children
 5    when a carer has cracked and finding another home for that
 6    child or young person, which is so debilitating for
 7    everyone: for that child, for that carer, for that worker;
 8    yeah, it was heartbreaking.
 9
10    COMMISSIONER BROMFIELD:   Q.   Excuse me, Ms Enkelmann, it
11    sounds like really tough work, as you've said, but also I
12    guess a self-fulfilling prophecy in that, if you are not
13    able to support the carers around those trauma behaviours,
14    and if you don't get there in time to do that, that it's in
15    fact contributing to the carer "cracking", as you say, so
16    contributing to the crises, would you accept that?
17    A.   Absolutely, that's right.  So, if we don't meet unmet
18    needs of the children, whether that's a health need,
19    whether that's a learning disability, whether it's their
20    ability to form healthy attachment relationships, if we
21    don't support the carer to manage to understand how to meet
22    those needs, how to manage those trauma behaviours, which
23    are challenging.  You know, if you're talking about a
24    little one smearing faeces everywhere and being really
25    wild, you know, in terms of the behaviours because there's
26    so little trust or just how those behaviours are
27    manifesting, that's a really tough gig for a carer who
28    hasn't encountered that before, so they might need real
29    support in the home to manage that.
30
31        So, yes, it does lead - it can lead to further
32    troubles where I see that we're actually as a system
33    potentially making these children more vulnerable to harm
34    because, if that home breaks down, then those trauma
35    behaviours are likely to escalate because we've just
36    reinforced for that child that they are unlovable, that
37    they are a problem, that no-one's going to want them.  So,
38    the more breakdowns that we have for a child, the less
39    likely they're going to be able to live in a home
40    environment.
41
42        So, to me, there is always going to be homes that
43    unfortunately will breakdown for some reason, but I think
44    at a system level where we're having this consistently I
45    would see it as a sign of system failure; that we are
46    failing those children and we are failing those carers, and
47    for the workers it's equally frustrating because they know
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1   that they could have done better, that they could have
2   provided support and they could have prevented it happening
3   in the first place.
4
5   I put in my statement I met a worker one day who had
6   just come down, they were really frazzled because they had
7   just been up to collect a child from a carer who had looked
8   after that child for six or seven years and they had
9   finally reached the point where they couldn't do it any
10   more, and so now they had to find another home for this
11   young person. The carer was beside themselves, that sense
12   of failure on the part of the carer: they don't surrender a
13   child lightly, you know, this is not something that they
14   take lightly, and the sense of frustration from the worker
15   was palpable. They said to me, "I know this carer, I know
16   they're committed, I know they care about this kid, you
17   know, if I could only have been in there earlier I probably
18   could have stopped this from happening". So, it's that
19   sense of futility and frustration, and it's just - this is
20   what I see as an abusive system, it leads to harm on so
21   many fronts, yeah, it's really, really frustrating.
22
23   Q.   Thank you. If I could just take you back to what your
24   role was within the department and the Out-of-Home Care
25   foundation's project that you were in charge of. As I
26   understand it you were responsible for three key pieces of
27   work, the first being an Outcomes Framework for Out-of-Home
28   Care, and secondly a model for Family-Based Care, and then
29   finally some Out-of-Home Care standards and continuous
30   improvement frameworks.
31
32   Would you mind briefly explaining firstly the
33   intention of the Out-of-Home Care framework --
34   A.   The Outcomes Framework?
35
36   Q.   Yes, thank you.
37   A.   Sure. Yes, I was the project manager, I worked to an
38   executive director, so ultimately I was the person
39   conducting that work on behalf of an executive director in
40   the department. So, the Outcomes Framework was really
41   about identifying what is it that we need to be achieving
42   for young people in Out-of-Home Care. It was one of the
43   recommendations by, at the time Commissioner Mark
44   Morrissey, which I think was put out in 2017 and it was
45   part fulfilling that recommendation. It was consistent
46   with the Child and Youth Wellbeing Framework which was
47   released for Tasmania, so it aligned with the six child

1   wellbeing domains; it identified 11 wellbeing outcomes and
2   that was co-designed with children and young people in
3   Out-of-Home Care, and we were also very fortunate to
4   receive a lot of support from one of the service providers,
5   Kennerley, who had done a lot of work as well with their
6   children and young people. So, it was really about, what
7   do we need to be focused on, what is important to children
8   and young people in terms of what we should be achieving.
9
10   Q.   In terms of the model for Family-Based Care, what was
11   involved in that work?
12   A.   So, there was a lot of consultation that led up to -
13   throughout that work. That was done in two stages: the
14   first was to develop a discussion paper to identify the
15   issues for discussion with the sector; there was a lot of
16   consultation with children and young people again, with
17   carers, with workers, service providers and policy and
18   other supporting people in the system that went into that
19   discussion paper. That was a fairly significant piece of
20   work in its own right, but then the focus was really on
21   consulting with the sector. We had submissions; it was
22   really about looking at, how do we improve Family-Based
23   Care. It was initially just looking at foster care but
24   then the decision was made to include kinship care within
25   that as well, and how do we make it sustainable but also to
26   achieve better outcomes for children; what was it that was
27   really needed.
28
29   The discussion paper was released by government in
30   2018, the consultation forums were held, we received about
31   15 submissions from memory, and a lot of work was
32   undertaken through 2019 in finalising that model, but it
33   hasn't been released.
34
35   Q.   In terms of what happened to the first project, the
36   Outcomes Framework, as far as you know how did that end up
37   and where is it now?
38   A.   So, the Outcomes Framework was published by
39   government. It seems difficult to find; I actually wasn't
40   able to find it when I searched for it, so, I don't know,
41   that would be a question for the department; it is meant to
42   drive policy and practice. We did develop a companion
43   document as well - well, we drafted one which was ready for
44   release, it was actually finalised and it was actually
45   approved by a steering committee but that hasn't been
46   approved by government so far as I know and I don't know
47   where that's up to. That was meant to start the process of

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1   reporting against the outcomes in the Outcomes Framework.
2
3   Q.   In terms of the final piece of work that you were
4   involved in, the Out-of-Home Care standards; what's the
5   status of those?
6   A.   So, yes, a third piece of work was to draft standards
7   for Out-of-Home Care in Tasmania and also to develop the
8   quality and continuous improvement framework. We undertook
9   the work, we drafted standards, I had a small group,
10   working group to do that work within the department. I
11   don't know what happened to those; I think that they were
12   redone actually. I understand that other standards were
13   since released, but I don't know what's happened to those,
14   so you'd need to direct that question to the department.
15
16   The draft quality and continuous improvement
17   framework, I don't know what's happened to that.
18
19   Q.   So, is it fair to say that the department has had,
20   since at least 2019, possession of an Outcomes Framework, a
21   Family-Based Care Model, Out-of-Home Care standards and a
22   quality and continuous improvement framework in either
23   completed or near stages of completion, but as far as you
24   can tell none of them have been implemented or in
25   operation?
26   A.   With the Outcomes Framework, I don't know what is
27   happening with that. I think there's a difference between
28   having something released and actually having something
29   used and operationalised. So I can't comment on the
30   Outcomes Framework. As I said, it was published but I
31   don't know where it is or if it is used.
32
33   The companion document in terms of monitoring and
34   reporting, that has been advanced. So far as I know, it's
35   not being used. In terms of the model for Family-Based
36   Care, there was significant work that was actually done
37   with that; it was finalised, it was ready, however you
38   would need to ask the department what's actually happened
39   to that, and with respect to the other, yes, the standards,
40   as I said, they were redrafted for some reason, you would
41   need to ask the department why, but with the quality and
42   continuous improvement framework, it certainly wasn't
43   finalised but it was perhaps ready for consultation and
44   work with the sector, because I think the important thing
45   is that you need to work with the sector and not just
46   always have something done as a fait accompli, you actually
47   need to work with the people who are actually going to have

1   to live with it, you know, to get the input to it.
2
3   Q.   Do other states and territories have these kind of
4   models and frameworks and structures that they can work to?
5   A.   Yes.
6
7   Q.   And, why are they important?
8   A.   Well, it's pretty hard - in terms of, how do we know,
9   in terms of our system performance, if we don't report on
10   it in any meaningful way, if we don't know the outcomes
11   that we're working to achieve, if we don't have clear
12   reporting on that, then how do we know where to focus our
13   improvement efforts? I think it's really important to have
14   those sorts of principles that guide us so that, to
15   structure our work and our effort so that it isn't perhaps
16   seen as responding to more crisis-driven sort of reactive
17   things.
18
19   Q.   I just have one further question for you. You've
20   given evidence this morning which highlights some of the
21   systemic issues within the department: we've talked about
22   high caseload, lack of resources. Are you able to tell the
23   Commissioners, please - and I'm referencing paragraphs 12
24   and 13 of your statement - as to how those systemic
25   pressures manifest in the operation and the culture of the
26   Out-of-Home Care sector?
27   A.   Yeah. So, I hadn't worked with Out-of-Home Care or
28   Child Safety prior to the role of project manager, but it
29   became very apparent to me very quickly that the department
30   had a reputation of being very closed and very defensive.
31   Its approach was often considered to be crisis-driven and
32   reactive. And, it's very difficult - and you just see that
33   in simple things: like, it is really difficult to find out
34   how anything is done, even what the structure of the
35   organisation is. You know, if you look on the website now
36   there's information on the public website that's 12 years
37   old, but nothing that's actually current on the actual
38   structure of Child Safety, what the current org structure
39   is, or that's readily apparent in any case, or policies so
40   how things are done. In other States they have - the whole
41   procedures manuals are available online.
42
43   It's just very difficult to get insight to the system,
44   and I think that's in part because this is a really small
45   state, you know, so if there is a problem in the community,
46   if a child dies because Child Safety didn't intervene, it
47   has ramifications throughout the community. If a child

1 dies because they've been brought into Out-of-Home Care it
2 has ramifications throughout the whole community. So, it's
3 understandable when you have that as well as chronic
4 under-investment in the infrastructure and the capacity of
5 the department over many years that you lead to a situation
6 where you can have quite a defensive mindset.
7
8   So again, I would emphasise, this isn't the fault of
9 individuals, this is a system issue. And, I remember when
10 I started this project I was told by a senior policy person
11 that, "Nothing would change and I was wasting my time".
12 That was one of the very first conversations I had with
13 someone in the policy team, and I remember looking at them
14 and going, "Well, if we take that approach we may as well
15 give up now". But they were right.
16
17   You know, there's a hesitancy for genuine open
18 consultation when I was there. There's much more interest
19 in trying to maintain control of the message, which I think
20 is a sign of an organisation that's under stress. When
21 you're under stress you retreat, you seek to manage what
22 you can control, what's in your control, so it's
23 understandable that there can be fear and reluctance to
24 hold yourself open.
25
26   But, to be honest, I suspect that we actually perform
27 better than we think we do in some ways, you know, that it
28 isn't always doom and gloom. We have a lot of great
29 outcomes for children and young people in Out-of-Home Care
30 because of those children and young people, their own
31 resilience and their own capacities and the people around
32 them: the carers, individual workers. We have some
33 sterling individuals in the system and we achieve some
34 wonderful outcomes because of that, but I would say it's
35 because of those individuals and their relationships that
36 they've developed rather than as a deliberate result of the
37 system itself.
38
39   So, I've sort of lost track of where I got to.
40
41 Q.   No, that's a great way to (indistinct).
42 A.   So I just find that, yes, unfortunately it is very
43 difficult in a small system which feels like it's under
44 siege in many ways for it to manage change. There is so
45 much pressure on that department, and particularly on, you
46 know, a fairly small division, in the time that was CYS, to
47 really effect change; an enormous burden. And the

1   frustration for the people at the frontline wasn't that
2   there was change, it was that they just wouldn't see real
3   change where it mattered. There's all this talk of change,
4   and change fatigue, but nothing actually changed on the
5   frontline where it actually really counted in terms of
6   resources for kids, or resources for carers, or capacity
7   for workers to actually be able to do their job.
8
9   MS DARCEY: Thank you so much for your evidence this
10 morning, I'm not sure if the Commissioners have any further
11 questions at this stage.
12
13 PRESIDENT NEAVE: Thank you. Thank you, Ms Enkelmann.
14
15 Q.   This is the challenge for the Commission in a sense,
16 for this Commission. Any insights - you've talked about
17 resources, you've talked about resistance to exposure of
18 problems. Any particular mechanisms that you could suggest
19 that would help us with those things, that we could
20 recommend that would help with those things?
21 A.   I think if we actually implemented so many of the
22 recommendations that have been made before.
23
24 Q.   Yes.
25 A.   We have had many, many reviews into Out-of-Home Care,
26 and government will say, "Yes, we accept them in full" and
27 then nothing happens, or very little happens, and it seems
28 to be - that's one of the things that contributes I think
29 to the sense that nothing will actually change.
30
31   I think we need to have accreditation of Out-of-Home
32 Care agencies and that it must be independent of
33 government, and that it be properly resourced with
34 legislative powers like we see in New South Wales and
35 Victoria, along those sorts of lines. I think we've got an
36 opportunity to learn from interstate.
37
38   But my sense is our government - because we've got a
39 hybrid system in Tasmania where the government is a
40 purchaser as well as a provider of services: we provide the
41 case management services, we provide the Out-of-Home Care
42 services to kinship care and to foster care. Government is
43 conflicted and I don't - from what I saw when I was there,
44 I think we would be much better placed to have
45 accreditation sitting separate to government, if we're
46 serious about change, if we're really serious about change.
47 And I actually think it would be of benefit to the

1   department because it might mean they can be properly
2   resourced to do their job.
3
4   PRESIDENT NEAVE: Thank you very much.
5
6   COMMISSIONER BROMFIELD: Q.   Ms Enkelmann, is it a matter
7   solely of resources? It seems to me that resources were
8   allocated to develop the Out-of-Home Care standards, to
9   develop the model, to develop the Outcomes Framework and
10 the accompanying guidance paper, and the Out-of-Home Care
11 sector engaged in consultations, as did carers and young
12 people, so it appears that a lot of people, including the
13 department, put resources into the development of those
14 resources and policies. What then has, in your view, what
15 stops those resources then being implemented?
16 A.   You need to have a commitment to actually implement.
17 At the end of the day it's up to government, the Minister
18 of the day, to implement and to resource that
19 implementation. So, you know, it takes - if we're serious
20 about having sufficient numbers of workers, then we're
21 really looking to increase the number of workers that we
22 have - look, that would just have to be the reality in
23 terms of Out-of-Home Care from what I saw from when I was
24 there, unless things have massively turned around.
25
26   And I think that you would need to have a transition,
27 you know. So, at the moment we have extraordinary amounts
28 of money going into special care packages, which is the
29 really extreme end of care, and I will call that system
30 failure. If you've got children with multiple breakdowns
31 in the home that are going into the special care packages,
32 then that's a sign of failure to me, and that's simplistic
33 and I know it's simplistic, but at the end of the day some
34 of these children are quite young that, what's happened?
35 You know, surely - to me it says that we haven't put
36 sufficient supports around those children early enough, we
37 haven't put the supports around the carers early enough, or
38 enough supports around them.
39
40   We have evidence from interstate that you can have
41 intensive Family-Based Care programs that actually can step
42 kids down out of residential care or prevent them going
43 into residential care: we know that, there is evidence for
44 those sorts of programs, but you have to be able to fund
45 them and resource them, and you have to allow time for that
46 to happen and it has to be a deliberate choice, and part of
47 your offering, not a one-off last resort: it has to be

```
 1    deliberate.
 2
 3         So, it takes time.  So, if all your money is focused
 4    at the really, the bottom end of the cliff, if you like,
 5    it's really hard to shift the resources, to find the
 6    resources to put them where they need to be which is at the
 7    top of the cliff redirecting kids away.  So, we really need
 8    to have a lot more money in the therapeutic supports, we
 9    need to have a lot more money in medical supports for
10    children with disability - you know, or different types of
11    learning disabilities, for example, who require additional
12    support to catch up at school.  You know, kids to
13    participate in the community like any other child; like,
14    they have rights and we're not meeting them, too often
15    we're not meeting them.  Sometimes we do, but consistently
16    there is, for some children we just don't.
17
18         But we need to give time to allow that transition to
19    occur because, unless we actually do that and we fund it
20    properly, it's just not going to work.
21
22    Q.    Ms Enkelmann, you're in a unique position having an
23    understanding of the Out-of-Home Care system and now
24    working in SASS.  I'm wondering if you have a view on how
25    the insufficient placements, the lack of meeting needs,
26    that cumulative relational trauma that you spoke to, the
27    case managers really struggling with work demands and not
28    being able to go and see kids: do you have a view on the
29    relevance of that to the risk for child sexual abuse
30    occurring in Out-of-Home Care?
31    A.    The bottom line is, I don't think we can say with any
32    level of real credibility the extent to which child sexual
33    abuse occurs prior to or during Out-of-Home Care.  I don't
34    think we can say that with any real level of honesty or
35    integrity because we can't know, we don't have the
36    oversight mechanisms in place.  We have child visits, but
37    how often do they actually occur in reality?  We don't have
38    in-home support for carers or annual reviews being done
39    necessarily consistently, at least not when I was there, by
40    the department.
41
42         Who has eyes on some of these kids?  If a child
43    doesn't have a good relationship with the carer, if they
44    don't have a safe carer, how do we know this child is safe?
45    You know, so I don't know how many children are safe, I
46    don't know: vast majority would be likely to be safe, we
47    know that from the Create Survey that came out in 2018 for
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1   the numbers that actually apply, which were very, very
2   small for Tasmania, but it came back quite positive saying
3   that a lot of children felt that they had a good
4   relationship. But for those that don't, particularly if
5   they're in kinship care or with a departmental foster
6   carer, there may be no eyes on that child from the
7   perspective of the department, you know, so that really
8   worries me.
9
10   And, if it is the case that we're not supporting our
11   carers effectively, and the child ends up having a
12   breakdown in the home or multiple breakdowns in the home,
13   then we are as a system magnifying those vulnerabilities to
14   child sexual abuse, to grooming behaviours because, guess
15   what, you know, there are perpetrators out there that can
16   pick a person a mile away who has - who is going to be more
17   amenable to grooming, who has unmet needs, who is isolated,
18   who doesn't have a sense of being loved, who doesn't have a
19   sense of self-worth, you know, those sorts of things, so
20   that is the worry that I have, that we don't meet
21   children's needs early enough and, when we don't do it
22   well, we can actually magnify those unmet needs and those
23   vulnerabilities in the future.
24
25   COMMISSIONER BROMFIELD: Thank you.
26
27   COMMISSIONER BENJAMIN: Q.   First of all, thank you for
28   your care, support and advocacy for the children who find
29   themselves in these terrible circumstances. One of the
30   questions that was asked of you earlier was whether you
31   knew whether a trauma history was taken; I think your
32   answer was, you didn't. But I guess, in seeing the
33   children, looking at their records for the time that you
34   were there, if a trauma record was available you would
35   probably have seen some sign of it in various cases; would
36   that have been the case?
37   A.   I wouldn't have seen it because that wasn't part of my
38   role. My role was really to work through developing
39   system-level elements such as looking at foster care and
40   kinship care. I certainly know from speaking with carers
41   that one of the frustrations that they had is that, even -
42   the department obviously knew information about children
43   and they work and looked to ascertain information on
44   children: that information was not routinely or
45   consistently shared with the carers, however, which meant
46   that sometimes carers didn't know what sort of behaviours
47   that they might be encountering with the child, which made

1   it very difficult for them to prepare or know how to
2   support that child, and that was a consistent area of
3   feedback as a source of frustration from carers.
4
5   But, you know, I think in terms of an informal
6   assessment and so on, that really needs to be directed to
7   the department.
8
9   Q.   I think we were told earlier in the week that any
10 involvement of removing a child and putting the child in
11 care would give rise to trauma or be indicative of trauma
12 in the past or there is a likelihood of trauma in the
13 future and that then it increases a likelihood of risks of
14 various aspects insofar as a child is concerned.
15
16   Is there a sense in the department and with the
17 workers that almost invariably children who come into their
18 care will have suffered trauma of some description or
19 another? And I suppose I ask it, one, with the care
20 workers who would almost invariably understand it, but has
21 that seeped through to the department, do you think?
22 A.   I'm not quite sure that I understand your question.
23
24 Q.   Perhaps I can rephrase it better, I'm just trying to
25 think. A placement, whether that placement be in kinship
26 care, foster care, sibling care, residential care or
27 special needs care, must mean that a child has been exposed
28 to or is suffering trauma at that time. Is that a
29 reasonable --
30 A.   Under the Act, and look, there may be some
31 circumstances where a child is unable to be cared for
32 within the family which may not involve child abuse or
33 neglect, and that may be - for example, I remember speaking
34 with one kinship carer, it was because his daughter had a
35 significant intellectual disability and was unable to care
36 for the child.
37
38 Q.   But that change itself would be a trauma for the
39 child, would it not?
40 A.   Potentially. Certainly what it means is that - well,
41 his child that he cared for had experienced trauma, but not
42 as a result of abuse but it was because the parent in that
43 case hadn't understood how to care for their child.
44 Developmental trauma can take many different forms and I
45 think that the key point is that, you know, it's a serious
46 decision for the department to take a child from their
47 family, and certainly there's a lot more emphasis, as there

1   should be, on early intervention and there have been
2   programs put in by the department to try and improve that
3   in terms of working more intensively with families to avoid
4   those children having to be taken into Out-of-Home Care
5   which is really to be welcomed and acknowledged.
6
7   The reality is that there is likely still to be
8   children unfortunately that will have to come into care
9   unless, you know, we can arrest that development.
10   Unfortunately, there hasn't been a significant drop in the
11   numbers of children in Out-of-Home Care in Tasmania. You
12   know, it's still, I think it's around - like, last year was
13   1,100-odd, when I was there it was 1,207 when I sort of
14   finished up. At the moment on the health dashboard it's
15   around 1,275 or something: you're still looking at
16   significant numbers of children in Out-of-Home Care as the
17   reality. So, for most of those children, a lot of those
18   children have experienced some form of trauma,
19   developmental trauma, disruption in their life, in their
20   attachment relationships in the care that they've received,
21   okay, so it's really important for those children, even
22   when they're living in the kinship care arrangement, that
23   they receive support to form healthy attachment
24   relationships with their caregiver.
25
26   PRESIDENT NEAVE: Thank you so much for the work that
27   you've done in the past and are continuing to do, and thank
28   you so much for your very frank and helpful evidence.
29   We'll just take a short break.
30
31   **SHORT ADJOURNMENT**
32
33   MS DARCEY: Commissioners, our next witness is Professor
34   Judith Cashmore who probably needs no introduction, so I
35   just ask that she be sworn in, she obviously joins us
36   remotely this morning.
37
38   **<JUDITH ANNE CASHMORE, affirmed and examined: [11.01am]**
39
40   **<EXAMINATION BY MS NORTON:**
41
42   MS NORTON: Q.   Good morning, Professor Cashmore, could
43   you just state again your full name, professional address
44   and occupation, please?
45   A.   Right. Judith Anne Cashmore, I'm Professor of
46   Socio-Legal Research and policy at the University of
47   Sydney.

1
2   Q.   Thank you, and you've made a statement for the benefit
3   of this Commission; is that correct?
4   A.   Yes.
5
6   Q.   That statement's dated 3 May 2022, and Commissioners,
7   it appears at folder C, tab 3. Have you read that
8   statement recently, Professor Cashmore?
9   A.   Yes, I have.
10
11   Q.   I understand there's a correction to paragraph 44.
12   There's been an error with cross-referencing, and in the
13   third-last line there's a cross-reference to paragraphs 42,
14   and it should read "41", I believe. Is that correct?
15   A.   Yes, it is.
16
17   Q.   With that amendment, is your statement otherwise true
18   and correct?
19   A.   Yes, it is, as far as I know.
20
21   Q.   To the best of your belief?
22   A.   To the best of my knowledge.
23
24   Q.   You have a long and distinguished professional history
25   and you've exhibited to your statement at JC-1 your CV.
26   I'll just take you through some of those, the highlights
27   for present purposes. You have a PhD in Developmental
28   Psychology and a Masters in Education?
29   A.   Yes.
30
31   Q.   And you're a member of the Judicial Commission of New
32   South Wales and the New South Wales Office of the Director
33   of Public Prosecutions Sexual Assault Review Committee?
34   A.   Yes.
35
36   Q.   In 2010 you became an Officer of the Order of
37   Australia for Distinguished Service to the Protection of
38   Children?
39   A.   Yes.
40
41   Q.   Can I ask you to just outline for the benefit of the
42   Commissioners and those here today what has been the focus
43   of your over 35-year research career?
44   A.   Well, I actually started in the area of child
45   witnesses in various - both in juvenile offending as well
46   as Child Protection, and then child sexual abuse, and so, I
47   did a lot of work in there, but overall the focus has been

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1 on the way in which children and young people are dealt
2 with and their experiences in courts and administrative
3 procedures and legal proceedings in which decisions are
4 made about their lives; that includes Out-of-Home Care,
5 family law, and adoption amongst other things.
6
7 Q. Thank you, Professor Cashmore. I'd like to speak to
8 you about some of the features of institutional settings
9 that make children more vulnerable to abuse and that also
10 create difficulties in terms of responding to abuse where
11 it occurs. You're published on this area and I know you
12 assisted the National Royal Commission. You speak, at
13 paragraphs 10 and following of your statement, about some
14 of the features of institutions that create a higher risk
15 of child sexual abuse.
16
17   Can I ask you to speak to the features of
18 organisations that, in addition to creating a risk of child
19 sexual abuse, also create barriers to responding to
20 allegations of child sexual abuse, and I'll direct you to
21 paragraph 18 and following of your statement.
22 A.   Right. I'm just checking that, just getting that.
23 Yes, I mean, the major issues are where children - where
24 there's not a real respect for children or an understanding
25 of their behaviours, a culture in which the needs of adults
26 and others is put before those of the children, where
27 there's not real respect for understanding how they will
28 respond in terms of power relationships and who they can
29 tell.
30
31   I mean, one of the biggest issues is, who do they have
32 available to tell and do they have some trust, that if they
33 did tell and they understood what the consequences or what
34 the behaviours really meant, that something would happen as
35 a result of that. The contrary to that is where the adults
36 involved either don't know or are not well versed about the
37 Child Protection procedures or that they are more liable to
38 and tend to protect the reputation of others involved or of
39 their reputation and that that is seen as more important
40 than the protection of children.
41
42 Q.   Thank you. As I understand it, Professor Cashmore,
43 the 2017 research that you did in the context of the
44 National Royal Commission highlighted and looked at the
45 reasons why institutional risk is particularly acute in
46 residential settings, and residential settings that are of
47 interest in the context of this Commission include Youth

1   Justice and residential care, environments that are
2   sometimes referred to as "total institutions". Can you
3   identify for the benefit of those here today the particular
4   features of total institutions that create an elevated risk
5   of child sexual abuse?
6   A.   Well, they actually bring together the core types of
7   risk which are the situational risk, the propensity risk;
8   so, who do you have looking after these children; the
9   vulnerability risk of who is actually there and the
10   congregation of children, and then in terms of
11   institutional risk, what are the procedures and what are
12   the protections.
13
14   With a total institution you have something that's
15   more like a non-permeable membrane to the outside society,
16   so that you don't have a means by which children and young
17   people have an easy access to others who they could
18   complain to outside the institution and a concern that, if
19   they complain within it, that they may be subject to some
20   sort of repercussions as a result of that.
21
22   And, the children in those sort of total institutions
23   can also have those particular vulnerabilities; they could
24   be children with disability and incapacity to communicate
25   clearly with others, they could be children who have
26   previously been sexually abused or abused in other ways in
27   juvenile detention centres, and so, you're bringing
28   together a group of children and young people - young
29   people usually over the age of 10, of course, because of
30   the age of criminal responsibility - but those - and I
31   think what the Royal Commission really brought to the fore
32   and was quite surprising to the Commission and to a lot of
33   people, was that in these institutions the risks don't just
34   come from the adults, they come from other residents, same
35   age or older peers, and so, it can come in terms of
36   bullying, harassment and putting pressure on for sexual
37   activity, non-consensual activity, and who do these young
38   people go to in that situation? Who do they have available
39   to them that they could complain about if they were so
40   minded to do so?
41
42   Q.   Can I ask, you identified before some features of
43   these institutions that make it more difficult for them to
44   respond to allegations. Earlier in the week the Commission
45   heard evidence from a criminologist, Dr Michael Guerzoni,
46   and he talked about socialisation dynamics within
47   institutional environments and the possibility that you

1   might have people come into an environment, that is,
2   employees, come into an environment with a child-centred
3   attitude but that that attitude can be eroded by a toxic
4   culture within a total institution. Would you like to
5   offer any comments on that perspective?
6   A.   I would agree with him; I think that, if you come into
7   that sort of institution which already has a fairly set and
8   toxic culture you've got two choices: you get out or you
9   adjust in various ways; trying to act against it can be
10 extremely difficult, and then it can obviously mean that
11 you become alienated from the others.
12
13   So, you either adjust and comply or get out, and I
14 would say they would be the two most common responses, but
15 the pressures - if you have an institution where you've got
16 your own peers, the pressures to actually comply with their
17 behaviours and values and expectations would be somewhat -
18 generally somewhat stronger than those of protecting those
19 of the young people you were there with. And there's also
20 the issue of the transients, so you often have a turnover,
21 so you have a number of young people who will go through
22 it.
23
24   I mean, they will be there long enough that they can
25 be subjected to some pretty awful behaviours, but then they
26 go on, and who do they tell? If they don't tell anyone and
27 they don't have a means of passing that information back
28 and having someone outside that toxic culture make an
29 adjustment to it, then it's very easy for it to continue.
30
31 Q.   I'd like to come back shortly to this idea of the
32 importance of people from outside the institution being
33 available to children and young people inside institutions,
34 but before I do can I ask: you've spoken about different
35 types of violence within institutional settings. Is it
36 useful for the Commissioners to bear in mind the concept of
37 a continuum of abuse? You talk in your statement about
38 institutions which tolerate any type of abuse, whether it
39 be violence, physical violence, emotional abuse,
40 environments where child sexual abuse is more likely to
41 occur?
42 A.   Yeah. Look, I think the history and what the Royal
43 Commission's history going back - and we can see it in all
44 sorts of institutions and so on, that these things don't
45 tend to occur as a pure form of abuse; that if you have
46 things like a tolerance of hitting kids, you know, whacking
47 them around the head or the shoulder and nobody does

1   anything about it, and what was very common is to
2   depersonalise them by taking away their clothes, taking
3   away their names, calling them by numbers, calling them
4   by - you know, but just using pejorative terms, all of
5   those sorts of things mean that the children become much
6   more vulnerable to other forms, and it just breeds that
7   sort of culture.
8
9   Child sexual abuse can in the familial environment
10   occur alone and it can often occur with extra special gifts
11   and so on within the family environment; that can also
12   happen in an institutional environment and that one of the
13   issues for young people in those environments is that,
14   there are two things that they don't want to risk: one is
15   losing privileges and gifts, and some of that might mean
16   things that make them more vulnerable, like being allowed
17   to have alcohol and drugs that again make them more
18   vulnerable to sexual predation; and they also don't want to
19   risk repercussions of the sorts of behaviours and threats
20   and things that can be delivered by somebody in a position
21   of authority and by older residents.
22
23   If you're looking at detention centres, there's also
24   the other risk aspect for, say, health settings, would be
25   where you have children where there's personal care
26   aspects, and so the behaviours that the people are carrying
27   out as carers or people delivering a health service can be
28   done within - you know, abusive behaviours can be done
29   within a culture of delivering care - so-called care. So,
30   it's quite complex but usually, yeah, I think to think that
31   sexual abuse happens by itself would be a mistake; it's
32   usually in the context of that emotional degradation and
33   attitude to disrespect, bullying, harassment and so on.
34
35   Q.   Professor Cashmore, can I take you back to an analogy
36   that you drew before where you said that total institutions
37   have a non-permeable membrane, and you've spoken about the
38   reasons why there are disincentives for children or young
39   people within total institutions to speak up about what
40   happens to them. What are some of the ways that the
41   outside world can permeate that membrane?
42   A.   Well, I think having adults at the top who can come in
43   and have some sort of surveillance, creation of a different
44   culture, so the culture is not just internally determined,
45   it comes from outside. Independent visitors could be
46   useful, but not if the young people or the children there
47   just see them as part of the system and not someone to be

1   trusted, and that they need to be - to trust that, if they
2   say something, that it's not going to come back and cause
3   them more trouble than not saying something.
4
5   In terms of the permeable membrane, I'd also like to
6   have a bit of a caution around residential institutions for
7   young people, children and young people in Out-of-Home
8   Care, because we know that in fact in some of those cases
9   it's not the adults within those residential care
10   institutions who is risky, it's the adults outside who come
11   in and are exploiting particularly young women and guys,
12   young guys, for sexual behaviours, and again, in exchange
13   for alcohol and drugs and other privileges.
14
15   So, you'd want to be a little bit careful about who
16   this permeable membrane admits; it needs to be in terms of
17   a selection and it needs to be in concert with a culture of
18   respect and trust, and it needs to be the young people who
19   trust them. So, if they don't trust, they're not going to
20   say anything and, if they wait until they leave and then
21   say something but it's not until years later, then, yes, it
22   has an effect at that point, but it also means that a lot
23   of young people have been exposed to those sorts of risks
24   and behaviours for a long time.
25
26   Q.   The Commission heard evidence earlier this week on the
27   topic of independent visitors. Evidence was given by the
28   CEOs of the two Sexual Assault Support Services in Tasmania
29   who both spoke of their eagerness to provide therapeutic
30   services within Ashley Youth Detention Centre but, for
31   reasons unexplained, there not having been any take-up from
32   within the institution. Is in-reach by services like
33   Sexual Assault Support Services, might those services be
34   the right type of independent visitors to permeate the
35   membrane?
36   A.   I think they well could, and we would be wanting to
37   look at the reasons why there haven't been much take-up: is
38   it that they don't get in the door? Is it that the people
39   in charge don't want it to happen? Or is it that they've
40   tried it at some stage and yet they didn't get much
41   take-up? It might take a little bit of time to build up
42   trust. I mean, young people need to know how this is going
43   to work for them and, you know, you can't expect them, when
44   they've had the sort of experiences that have got them
45   there in the first place, means that they are likely to
46   have less trust of those in authority. So, you know,
47   expecting them to immediately trust someone who comes in

1 from the outside, it might take a little time and
2 demonstrated behaviours and so on for that to happen.
3
4 Q.   Indeed, and the Commission's heard evidence on that
5 earlier this week. One of the Sexual Assault Support
6 Service CEOs, Kathryn Fordyce, used the term "professional
7 loiterers" which I think is similar to the concept you're
8 talking about. Professionals who spend time within the
9 institution - she used the term "loitering", it's really
10 about gaining trust, but being available if and when
11 somebody wants to speak to an outsider about a concern, but
12 also being around to notice changes in behaviour to see
13 early warning signs that something might not be right. Do
14 those sorts of ideas accord with what you have in mind?
15 A.   Yes, I think that makes a lot of sense. I mean, I
16 think as parents and so on we know that if you want to talk
17 to an adolescent, bailing them up and putting them across a
18 table is probably the least effective way to do it.
19 Driving in a car and being in a safe space and doing it
20 coincidental to something else; so, it's the sort of people
21 who come in and, I don't know, play some sort of games,
22 table tennis or whatever they do that they enjoy, but who
23 can be around the place and get to be trusted and are just,
24 you know, gradually getting engaged in conversation and
25 chat and build it up that way. So, I think "professional
26 loiterers" is probably a pretty good term.
27
28 Q.   Another suggestion that's been made is that it's
29 important just to have someone around who on occasion you
30 might sit and talk to about the basketball or the football
31 or something completely benign so that, if you do want to
32 go up to that person and disclose something it's not
33 obvious to peers or to other workers within an institution
34 that that's what you're doing?
35 A.   Yeah, that makes a lot of sense. If you put an office
36 there with a big sign on it that says, "Counsellor", you
37 can be pretty sure that there won't be a lot of take-up.
38 And we know that the same happens in schools, that students
39 can be quite reluctant to go to a school counsellor because
40 the other kids will be saying, "What did you go and see
41 them for?", or they get marked out that that means that
42 their families and parents have separated or there's
43 something going on. So, having those positions of trust
44 clearly marked out with a label is not a good idea, but
45 having them engaged in general conversation and be around
46 the place is - but not hostage to the culture of the
47 authority, I think, makes a lot of sense.

1
2 Q.   Thank you, Professor Cashmore. You've mentioned
3 residential care a few times, and the Commission has just
4 this morning heard evidence from Ms Sonya Enkelmann who
5 previously worked in Out-of-Home Care in this state, and
6 there was discussion with Ms Enkelmann and other witnesses
7 early in the week about the importance of children within
8 residential care environments still having access to
9 healthy relationships, healthy physical affection, and the
10 protective and healing impact that those things can have.
11 I think you've got some examples that you might be able to
12 share with the Commission about situations where children
13 in care have been denied those sorts of very normal, very
14 healthy forms of affection and also some research about
15 what can be the impact of denying children those sorts of
16 healthy attachments in care.
17 A.   Right. I mean, I can start first up by just talking
18 about the pathways of a care longitudinal study in New
19 South Wales which is a longitudinal study of all the
20 children in care and then went on to final orders in
21 2010/11. It's now in a wave six. My focus of that work -
22 and I haven't detailed much about this in the statement but
23 it's relevant to what you're talking about.
24
25   The focus of my analysis has been about children's
26 relationships, so their relationship with their carers and
27 their relationship with family members. And, they're
28 residing with siblings where that's clearly deemed to be
29 safe to do so and having good contact with family members
30 and having a good relationship with the carers are the best
31 predictors of how well those children are doing, so in
32 terms of their socio-emotional health and wellbeing. So we
33 know there's a lot of research to say that good, healthy
34 relationships are protective for children and that's what
35 they need.
36
37   The other aspect that is in the statement that I
38 referred to, and that was going back to a study of Wards
39 Leaving Care that I did with Marina Paxman, and we followed
40 young people who left care and we talked to them
41 three months before, three months after they left care,
42 12 months after they left care, and then four to five years
43 later. I mean, just as a sideline, one of the issues that
44 we had in that study is that we became people that they
45 would ring people when they were in trouble, some of them.
46 We were researchers, we were not counsellors, we were there
47 to talk to them and listen to them and we contacted them on

a reasonably regular basis, but the fact that they didn't have available to them other people that they would talk to, I think, speaks volumes.

But there was one particular young woman who was doing okay four to five years later, but she told us 12 months after she left care that the first hug that she had from the people that had been caring for her since the age of 5 was on her 18th birthday. She'd been sexually abused and so had her siblings, and they had not felt - they'd actually been warned by the department or by a caseworker to be careful about affection and how that might work, but to leave a child or young person without that sort of physical affection because of, you know, what was deemed a risky background of sexual abuse is really, that's not healthy upbringing for a child.

And the two best predictors of all the young people that we saw were at the time four to five years after they left care were their positive answers to two questions: did you ever live anywhere that you'd call home, and, was there ever anyone that you think loved you, that you'd say loved you? The more people they had around them that they said they could trust and they'd turn to with problems, the better they were doing.

The young people that we were talking to in prison, in refuges and in family violence, you know, difficult circumstances, were the young people who answered "no" to those two questions, so it's really important that children, young people, have a network of protective, positive relationships around them, and they tend to choose those. For some of those young people it was somebody in a church, some of them had joined the Navy and they had got someone there that they really trusted. For some of them it was a former carer that they had left and they'd gone back - that they'd continued to have, you know, like a mentoring-type relationship with, so it's their choice; it needs to be their choice of who they want to have relationships, but that's actually one of the difficulties because some of these children and young people who have had abusive experiences earlier in life, that their antennae may not be all that good sometimes as to who are safe people, and they can be very vulnerable to grooming and to people who look on the surface to be safe but further down the track are not.

1   And we need to be very clear that people who are
2   intending to sexually abuse children don't just groom the
3   children, they groom everyone around them, so, their
4   families let down their guard, they don't see these people
5   as risky. That was very clear in a lot of the situations
6   in the Royal Commission. We saw one person who was seen to
7   be a fantastic babysitter, he'd worked at an agency, and
8   the parents all thought he got on so well with the kids
9   they wanted him to babysit, which just gave him further
10 opportunities to abuse their children, so those protective
11 relationships are incredibly important, but ones where the
12 antennae are also alert.
13
14 Q.   There's got to be somewhere in the middle - it's not a
15 binary choice between no relationships at one end and
16 abusive relationships at the other?
17 A.   Absolutely not, no, right in the middle and maybe
18 perpendicular to it you need the more positive
19 relationships, and I think that's one of the issues we've
20 focused on, too, in the Pathways of Care Study, is it's not
21 a zero sum game, it's not that children are better off if
22 they have just carers who are good or if they have family
23 members who are good; what is best for them is if they have
24 carers who they have a very positive relationship with,
25 family members they have a very positive relationship with,
26 and those carers and the family members get on okay. Where
27 there's high conflict, that becomes very difficult.
28
29 Q.   Professor Cashmore, I'd like to ask you now a bit on
30 your work on delayed reporting. Before I get into your
31 research, the Commission has already heard evidence this
32 week from other experts, including Professor Milroy, about
33 the - I think it's uncontroversial that some children or
34 young people take time to disclose but others can disclose
35 quite quickly and perhaps a bit clumsily and the
36 disclosures aren't recognised by the adults around them.
37 An example that Professor Milroy gave was a child
38 complaining to an adult that they have a sore throat, which
39 seems innocuous to the adult, but actually is the child
40 describing a physical symptom of sexual abuse.
41
42   Would you agree that adults around children have a
43 real role in sharpening their antennae, I suppose, to
44 recognise disclosures when they happen?
45 A.   Absolutely. Actually, one of the positive things
46 that's happening as a result of the Royal Commission is
47 that I'm involved in a committee at the University of

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 1      Sydney and it's across the group of eight universities
 2      where we're looking at, what are all the courses that
 3      people need to be trained in?  And it goes beyond what you
 4      think are the expected ones, like medicine, and dentistry
 5      also comes up, but also music, so music teachers who are
 6      looking - you know, and those who run those sorts of
 7      institutions or agencies, and it goes right across the
 8      board, IT, so that they need to be aware of what sort of -
 9      what are the environments, including the cyber environments
10      increasingly, that expose children to risk.
11
12          I think, when we talk about how children disclose, one
13      of the big areas of risk I think is - and it could well be
14      within residential care and all of those where you've got
15      internet connections and so on - is the cyberspace and that
16      it's one that probably the adults without that sort of
17      being digital natives in a sense are not as alert to.  I
18      think we're getting better, but it's just another example
19      of how children may tell in different ways, and they may
20      try to tell and get brushed off, they might say, "I've got
21      a sore bottom" or whatever, and then somebody will be
22      looking to give them some worming tablets but without
23      understanding maybe.  I mean, it's also that tricky
24      balance, you don't want to put all parents on the alert,
25      you know, if their child says something like that that they
26      better start questioning them about child sexual abuse.
27      So, you don't want to make people feel unsafe, but you also
28      need adults to at least be more alert to the risks and what
29      might be signs, but particularly professionals in the field
30      that I think we've often overlooked ...[Zoom link
31      disconnects]...
32
33      Q.   Professor Cashmore, can I now take you to your 2016 --
34      A.   -- to make sure that those who are going through are
35      alert.  Sorry?
36
37      Q.   No, we've just got a problem with the connection.
38      Shall I proceed?
39
40      PRESIDENT NEAVE:   Yes.
41
42      MS NORTON:   Q.   Can I ask you then about your 2016
43      research.  We've been talking about disclosures thus far to
44      parents, teachers, trusted professionals.  You conducted
45      research in 2016 about delayed reports to police and the
46      engagement of the criminal justice system.  Can you address
47      the Commissioners and those here today about the reasons
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 1    why delayed reports to the police occur and the
 2    difficulties and the implications of delayed reporting in
 3    terms of the criminal justice system?
 4    A.    Well, there are lots of reasons why children won't -
 5    (a) they won't tell anyone.  I mean, if they tell someone
 6    like a teacher or a doctor or so on then it becomes a
 7    mandatory reporting issue so it will be - it should be
 8    reported to police quite quickly.  But as we were just
 9    talking about, their disclosures may seem somewhat
10    uncertain, but it's about the whole process: why do they
11    take so long?  Who are they and what's the process, what
12    are the dynamics of child sexual abuse?
13
14         They tend to be, you know, those who are offending
15    tend to target children who are more vulnerable; they
16    target children who will have less people around them that
17    they can tell.  Where there's a power differential, there's
18    a whole culture of secrecy and specialness around it and,
19    you know, the dynamics of the relationship, if you can call
20    it, but it's not really a relationship, so calling it
21    "maintaining a sexual relationship" in the terminology is a
22    tricky one, I think "persistent abuse" in legal terminology
23    is much better.
24
25         But the confusion?  Do they necessarily even deem this
26    as abuse?  Even in older young adolescents may see it as a
27    special relationship and, you know, that brings into
28    account a whole lot of loyalty and confusion and, why, what
29    are the risks of telling versus what are the risks of not
30    telling?  So, the distress has to get high enough to
31    overcome some of the risks of not telling, in essence, I
32    think.  And, who are they going to tell becomes that issue,
33    so why does it take so long?  Shame.  So, for boys in
34    particular there are real issues around, does this mean I'm
35    gay?  What does it mean in terms of what anyone else would
36    know about me if I disclose this, I told anyone?
37
38         And then, you know, their uncertainty of, well, what
39    happens, if I do tell the police, what happens beyond that?
40    And the uncertainty of all that that might mean, and who
41    gets to hear about it and what do I have to do, and what
42    happens if I have to go to the DPP and give evidence at
43    court: all of those aspects are pretty daunting.
44
45         I think that the only people who truly feel
46    comfortable in courts are legal professionals, judges and
47    lawyers, I don't think anyone else, including expert
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1   witnesses - and I've been one - I don't think we actually
2   do feel all that comfortable, and children in particular.
3   And I'd also include there people who are adults who have
4   been sexually abused, I would include them in the
5   vulnerable group.
6
7   Your second part of the question was, what are the
8   issues about delayed reporting. Well, it's some of the
9   evidentiary issues and some of those it can be more
10 difficult to procure evidence if the reporting is delayed
11 for too long. You need to be able to seek and protect
12 certain evidence. Memories can, you know, fray a little.
13 What we need to recognise very clearly is that memory is
14 reconstructed every time we recount something, so those
15 views that you get from TV programs that it's like a
16 videotape running when they run the thing in the
17 background: that's not how we remember things. And so, who
18 else is around, who else can substantiate or corroborate
19 the evidence, and that is one of the key factors in sexual
20 abuse, that often, and very often, the only substantial
21 evidence is the account of the complainant. And, sometimes
22 you do have others who are involved and other peers where
23 there are multiple complaints.
24
25   But then we have a legal system that tends to split
26 and dice those stories so you don't get a whole narrative,
27 a coherent narrative, about what happens; where you have
28 separated trials, there are issues around attendance and
29 coincidence evidence; all of that makes it very much harder
30 for a complainant to tell a story in terms that is really
31 the whole of the story. You're asked to tell the truth,
32 the whole truth and nothing but the truth, but telling the
33 whole story can be really difficult, particularly if you're
34 not being questioned in a way that actually allows that
35 whole story to emerge, and quite often that is one of the
36 barriers in terms of how do children get to tell the whole
37 story without being asked, you know, totally irrelevant
38 questions really about what colour your underwear was, and
39 where was the sun, what time of day it was: children don't
40 remember.
41
42   You call into question their credibility when you ask
43 them things that really have no relevance in many respects
44 to what actually happened. It's not a denial of anything
45 that happened as to whether or not they can tell you:
46 whether it was raining outside or what time, and
47 particularly the issue where it's continued abuse or

1 continual abuse and that's really problematic in
2 evidentiary terms.
3
4   Because, with the grooming process it's a gradual
5 increase in the severity and in type of offending, and so,
6 asking children or complainants to particularise it to
7 particular incidents and what happened on a particular
8 incident over time and being able to do that is very
9 difficult. If we're asked, what was the - maybe it's a bit
10 easier these days since we don't do it so often, but what's
11 the last time you went to - won't say a restaurant, say go
12 to a supermarket; and if you're asked exactly what time of
13 day it was, where did you go, who was with you, did you see
14 anyone, what did you buy? I mean, we don't have memories
15 for things like that; you get a script and you get a
16 generalised script and that's one of the issues, and one of
17 the reasons that delayed reporting can be problematic, is
18 it puts together a whole - you know, you're trying to
19 unravel a whole series of offences usually; it's often not
20 one. With children who are sexually abused over a number
21 of years it becomes incredibly difficult to provide a
22 coherent narrative of exactly in the way that the legal
23 system wants to hear it.
24
25 Q.   Thank you, Professor Cashmore. You've highlighted in
26 your statement, and we don't need to go to the detail of
27 it, but you've highlighted some reforms within the criminal
28 justice system which seek to ease the burden of criminal
29 proceedings on children and adult complainants in child
30 sexual abuse cases; witness intermediaries, pre-recorded
31 evidence and directions from judicial officers under
32 section 41 of the Evidence Act. You refer to a New South
33 Wales Act but there's an equivalent provision in the
34 Tasmanian Evidence Act.
35
36   I'm interested to get your views on whether those
37 reforms on their own are enough or whether there is still
38 scope, in particular within the legal profession, for
39 cultural change to better enable children to give reliable
40 evidence?
41 A.   Well, yeah, I mean, I think we've come a long way from
42 the days where, really, the only cases that proceeded were
43 with a child at least 12 years old who could take an oath
44 and who was corroborated, and we've now got CCTV
45 pre-recorded evidence which is investigative interviews
46 much closer to the time of disclosure and that gives you
47 some sort of non-verbal cues as well. Closed-circuit TV,

1   that helps; witness intermediaries, pre-recorded hearings
2   with cross-examination: all of those sorts of things help,
3   but what really are the determining factors in terms of how
4   children can give their evidence is how they're questioned,
5   and that's both by the police and at court and the way in
6   which that's done.

7

8   And, if children are not asked questions that they can
9   understand and the people who hear their answers don't
10   understand exactly what they're saying, and if they give an
11   answer that seems confusing it may be because the
12   questioning was confusing, then we've still got quite a
13   long way to go in terms of that aspect, I think, and
14   cross-examination. I think this is one of the issues, that
15   it is an adversarial system. What the defence is aiming to
16   do is discredit the testimony, the evidence of the
17   complainant in order to break down the beyond reasonable
18   doubt aspect of determining the matter for the fact-finder.

19

20   So, the incentives are to try to break down a child's
21   account of what happened, and that may mean going to, you
22   know, confusion by asking. There was an example I gave:
23   usually the defence lawyers who do this best are not the
24   aggressive ones; that doesn't work with a jury in
25   particular and it puts a jury offside. But, if you're very
26   gentle but you can still confuse a child quite easily by,
27   in a case I was witness at where the lawyer asked, you
28   know, defence lawyer had a child about the same age, about
29   8. So, he was quite well versed and kept saying, "Gee,
30   it's hard to remember when things happen such a long time
31   ago, isn't it?" And after he had asked that question 42
32   times in about 40 minutes, and nobody had intervened, that
33   child had pretty much, you could see the shutters had gone
34   down and, and she was not really engaged in the process any
35   longer, "I don't know. I don't know. I can't remember".

36

37   PRESIDENT NEAVE: Q.   Can I ask about the need for the
38   usefulness of judicial training in that area?
39   A.   Yes. I think, well, it's an interesting one. I'm on
40   the Judicial Commission of New South Wales and I think you
41   have an article, the one that Rita Shackel and I wrote for
42   the Judicial Officer's Bulletin and that is about judicial
43   education. Of course, judicial officers like legal
44   professionals, apart from the fact that legal professionals
45   are mandated to do a certain amount of legal professional
46   training every year, but that's not the case for judicial
47   officers.

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1
2   But I think there are two other ways that we can
3   actually encourage education of judges, lawyers and jurors,
4   and one of them is by the use of witness intermediaries,
5   because we found in our evaluation, and in fact several of
6   the judges that we've had conversations with over a period
7   of time and just observing them in pre-recorded hearings,
8   they are the ones now who often intervene before the
9   witness intermediary needs to because they have been made
10   well aware of, "No, that's not a question this child is
11   going to be able to answer".
12
13   So, the need for the witness intermediary to intervene
14   has become less as the judges have become more alert;
15   that's for those who are really used to it. And I think
16   it's also had an effect on the lawyers, particularly the
17   Crown and the defence, that they actually are asking more
18   questions. And, in pre-recorded hearings where the witness
19   intermediary is involved, they actually - and particularly
20   in England, it's actually a much more strict process - but
21   they actually, some of the defence lawyers have been
22   subjecting their questions to the witness intermediary or
23   there are ground rules by the judge that these are the
24   sorts of questions, given the evidence that the witness
25   intermediary has given, that this child will not be able to
26   answer, so don't ask them in that way and, if they try
27   jumping around in chronology then I think the prosecution
28   have become much more alert to those sorts of things.
29
30   So, I think witness intermediaries themselves are a
31   good means of doing it. I think the other is - and I don't
32   know the situation in Tasmania - but we have a couple of
33   sections of expert opinion that can be given in these
34   cases, and my colleague Rita Shackel, Professor Rita
35   Shackel, has actually been an expert witness in a number of
36   cases, but it's been tricky because there's been another
37   forensic clinician who's given evidence and her evidence
38   has been ruled inadmissible by some judges on the basis
39   that she doesn't have the full literature and extent of the
40   research knowledge, whereas Professor Shackel was deemed
41   inadmissible because she didn't have the clinical
42   experience.
43
44   But there is a recent judgment which I can send you
45   the link to, it's R v Aziz, and it's a Court of Criminal
46   Appeal judgment in which the defence didn't object to
47   Dr Shackel's evidence, it was a 57-paged report. Now, her

1   evidence is not an opinion about credibility, her evidence
2   goes to, and her PhD was in this area, is about correcting
3   misconceptions that the judge, the lawyers and the jury may
4   have, and particularly addressing the issue as to common
5   knowledge, what is deemed to be within the common knowledge
6   of jurors. And, as we said in that Judicial Officer's
7   Bulletin, what the courts sometimes assume is within common
8   knowledge is not so common.
9
10   So, it's not about - her evidence is not diagnostic,
11   it's not a clinical assessment of the particular case, it
12   doesn't comment on whether or not the complainant is
13   telling the truth or not; what it does do, and she's
14   usually - she's been asked to comment on particular issues
15   around things like disclosure. Some of the questions that
16   came up today, "Why do you think children take so long to
17   disclose? Why might a child still have sent her father a
18   Christmas card saying 'I love you daddy' after the sexual
19   abuse has been disclosed? And the grooming of the
20   behaviours and what is the impact on this child's
21   behaviours as a result of possible abuse that might explain
22   their behaviours?"
23
24   So, her evidence was deemed - and this judgment
25   actually said her evidence was admissible, and it's the
26   first time we've had that sort of high authority. There
27   are some caveats in that it wasn't objected to by the
28   defence, and the judgment does talk to the need to actually
29   get the Crown to identify what are the particular aspects
30   of the report they want to rely on.
31
32   But I think since juries turnover, you know, they're
33   not around, this is a means, and if there is some way of
34   making it less expensive and making it more available, I
35   think that again is a way of having an educative effect on
36   both judges, legal professionals and jurors, and helping
37   the court to understand, you know, a maybe less biased or
38   misconceived way why a child might behave in a certain way.
39
40   Q.   Professor Cashmore, can I road test with you another
41   idea that's been suggested to the Commission which is also
42   aimed at addressing probably in a less expensive way some
43   of these misconceptions, and that is having certain
44   information provided, I suppose perhaps in a facts sheet or
45   something of that nature to jurors prior to a trial about
46   some of the myths and misconceptions concerning child
47   sexual abuse, the reasons why children don't necessarily

1 disclose immediately. Do you think that something like
2 that might be another way of educating juries in this case
3 and depriving defence counsel of some of those myths that
4 they might otherwise sort of seek to exploit?
5 A.   I don't know, I mean, you're the lawyers and so on who
6 will be making judgments as to how that would go down. I
7 think it makes a lot of sense because I don't think we can
8 assume that people who come in as jurors actually
9 understand this; I mean, it is not common knowledge. I
10 think the Royal Commission did a great deal to expose some
11 of, you know, how prevalent it is and the circumstances in
12 which it occurs, and some of the issues around criminal
13 justice.
14
15   But for jurors coming in, it is a strange environment
16 and these are difficult cases to determine, and the
17 evidence - it's not an equal - the other big issue I think
18 is, it's not an equal playing field. You've got a child
19 against a lawyer questioning in a way that can go, as I
20 said, to all of those issues about trying to discredit.
21 So, I think having jurors who have a better understanding
22 of what the dynamics and the context and the consequences,
23 you know, why children behave in certain ways: they may
24 never have had any experience, and hopefully they haven't,
25 had any experience of knowing a child who's been sexually
26 abused and understanding that.
27
28   So, it makes sense to me to even the playing field a
29 little.
30
31 Q.   I think we can all agree even playing fields are good.
32 I'm mindful of the time, I have two questions that I'd like
33 to pose to you before seeing if there's anything from the
34 Commissioners. You referred earlier to the difficulty and
35 yet, you know, it still seems to happen, where
36 relationship - the term "relationship" is used to describe
37 sexual abuse between a child or young person and an adult.
38 Another term that seems to still be used, and I'd like to
39 ask you to comment on this in a sentencing context, where
40 again you have sentencing submissions from a Crown
41 Prosecutor that concern a young person and somebody, you
42 know, 10 years their senior, so we're not dealing with the
43 situation where it's an 18-year-old and a 16-year-old, for
44 example.
45
46   Do you think it's appropriate in that context for, in
47 sentencing remarks attention to be drawn to the fact that

the sexual abuse or the sexual acts were consensual?
A.   No, I don't think it's appropriate at all and I've
actually had recent experience of where that became a big
issue, and so, in New South Wales it's a matter of whether
it gets charged under Section 61(c) or 66(c)(2), but your
point is about sentencing. And so, consent is not an
issue. If you've got a young person under 16, consent is
generally not an issue except in the 61(c) it can be.

        But the onus is - if you've got somebody who is
10 years older, that to me is an exploitive relationship
and the onus is on the adult. If they are saying, "Well,
she led me on or she was provocative or she wanted to" and
so on, the issue then is that we don't know what -
depending on what the circumstances is. Somebody who's
targeting somebody that much younger than themselves,
there's a real power differential and the onus is on the
adult then to have an adult response to it and to not
exploit behaviour even if it is seen to be something that's
provocative.

        I mean, it's the same with adolescent girls; they
should be able to play out some of their behaviours and,
you know, teasing sorts of behaviours with their fathers -
not sexually I'm not talking about, but you know they
should be able to experiment a little in a safe space
without ever having the risk that that escalates to
something that becomes sexual, and I think with an adult
that much older I don't see that as a relationship, I see
that as an exploitation.

Q.   Thank you, Professor Cashmore. My final question, and
just going back to the reforms within the criminal justice
system like witness intermediaries and others, do you think
that the system currently caters to the needs and
vulnerabilities of adult survivors of child sexual abuse?
Is there more work to be done for that cohort?
A.   Yes, I think there is, I think that a lot of what
we've been talking about in terms of the power imbalance
and the lack of knowledge of the legal system: if you think
about those who have been sexually abused as children and
are now reporting and the case is before the court as an
adult, they're still subject - you know, their experiences
may have meant that they have left school early, that they
don't have the sort of understanding of the way the court
system works, they have the real blame of moral judgments
and shame: why didn't I do something to stop it? I'm now

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 1    an adult, et cetera, and why - looking back on their
 2    behaviours they may not really understand how they could
 3    have not done something earlier at that time, so the blame
 4    and the shame and also the triggers; that when they are
 5    being asked to recount things that went back to their
 6    childhood, it can easily trigger some of these people back
 7    to those sorts of feelings.
 8
 9        I think that they, not necessarily all, but I think
10    there needs to be the opportunity, a window there for those
11    people to be protected in the same way with special
12    measures so that they can give their evidence in a fair
13    way.  If you're under immense stress you don't give your
14    best evidence.
15
16    Q.   And so, would you be in favour of making witness
17    intermediaries available to adult complainants of child
18    sexual abuse where they desire them?
19    A.   I think there might need to be some sort of
20    assessment.  I don't know, I mean one of the issues is
21    around availability of people to do this, so you don't want
22    to open the door so wide that you can't cater for demand.
23    I think it does need to be a bit triaged and targeted, so
24    I'd be a bit more careful about how that happened, yeah.
25
26    MS NORTON:   Thank you, Professor Cashmore.  Commissioners.
27
28    PRESIDENT NEAVE:   Thank you.
29
30    COMMISSIONER BROMFIELD:   No, thank you.
31
32    PRESIDENT NEAVE:   Q.   I just wanted to ask you two
33    questions quickly.  Would you be in favour of raising the
34    age of criminal responsibility, and to what age?  I'm
35    sorry, yes, the age of criminal responsibility, and to what
36    age would you raise it?
37    A.   Yes, I would.  I'd probably - I mean, this is in
38    line with the United Nations Convention on the Rights of
39    the Child, so I think I would go consistent, minimum of 12,
40    but possibly 14.  So, yes, I think before kids finish
41    primary school it seems crazy that we can have 10-year-olds
42    being subject to those sorts of measures that follow their
43    offending behaviours.
44
45    Q.   They're being put into --
46    A.   Alleged offending behaviours.
47
```

1   Q.   And being put into institutions where perhaps they're
2   exposed to a very high risk of sexual abuse.
3   A.   I wouldn't want to see - I think that - well, we know
4   what one of the real age risks are and it tends to be in
5   the early adolescence period in terms of risk of sexual
6   abuse and exploitation by others, including other
7   residents, so yes, I would definitely not want to see them
8   in those institutions exposed to behaviours by older
9   adolescents.
10
11   PRESIDENT NEAVE: Thank you very much, and thank you very
12   much for all of the work that you've done in this area and
13   for helping us reach conclusions on these really difficult
14   issues that arise in this state, so thank you.
15
16   THE WITNESS: Thank you.
17
18   **SHORT ADJOURNMENT**
19
20   MS BENNETT: Commissioners, the next two witnesses to
21   appear together do so remotely. The first is Commissioner
22   Buchanan of Victoria and Mr Steve Kinmond of New South
23   Wales, and I ask that they be sworn in.
24
25   **<LIANA BUCHANAN, affirmed:**   [12.26pm]
26
27   **<STEPHEN JOHN KINMOND, affirmed:**
28
29   **<EXAMINATION BY MS BENNETT:**
30
31   MS BENNETT: Q.   Thank you both for making yourselves
32   available today to give evidence. I'll just start by
33   identifying who you each are and what experience you're
34   bringing to today's Commission. If I could start with you,
35   Commissioner Buchanan, can you please tell the
36   Commissioners and those watching your full name and
37   professional address?
38
39   MS BUCHANAN: Yes, so my name's Liana Buchanan, I work
40   from Level 18, 570 Bourke Street in Melbourne.
41
42   MS BENNETT: Commissioner, you've made a statement to
43   assist the Commission in this inquiry, haven't you?
44
45   MS BUCHANAN: I have.
46
47   MS BENNETT: It is 27 pages and the contents are true and

```
 1      correct; is that right?
 2
 3      MS BUCHANAN:    Correct.
 4
 5      MS BENNETT:    Thank you, Commissioner.  Mr Kinmond, can you
 6      tell the Commissioners your full name and professional
 7      address?
 8
 9      MR KINMOND:    Stephen John Kinmond and my address is
10      Level 9, 110 Sussex Street, Sydney.
11
12      MS BENNETT:    You've also made a statement for the
13      assistance of this Commission; is that right?
14
15      MR KINMOND:    That's correct.
16
17      MS BENNETT:    That statement is 14 pages long and its
18      contents are true and correct; is that right?
19
20      MR KINMOND:    That's correct.
21
22      MS BENNETT:    Thank you both.  Commissioner, turning to you
23      first, can you tell the Commissioners your current role?
24
25      MS BUCHANAN:    Yeah, so I'm the Principal Commissioner for
26      Children and Young People in Victoria.
27
28      MS BENNETT:    How long have you held that role,
29      Commissioner?
30
31      MS BUCHANAN:    Just over six years.
32
33      MS BENNETT:    Before that, can you briefly identify your
34      professional background?
35
36      MS BUCHANAN:    Yes, so I'm a lawyer by training, but I've
37      had a range of roles in law and policy and oversight; the
38      common themes probably being around oversight and system
39      improvement for people who have experienced disadvantage or
40      people who have been affected by sexual and family
41      violence.
42
43      MS BENNETT:    Turning to you, Mr Kinmond, can you likewise;
44      you're presently the Chief Executive Officer of the
45      Association of Children's Welfare Agency; is that right?
46
47      MR KINMOND:    That's correct.
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MS BENNETT: And that's a leading non-government peak body
for New South Wales, child and family sector; is that
right?

MR KINMOND: That's correct.

MS BENNETT: You've held some previous government-related
roles; can you tell the Commissioners what they are?

MR KINMOND: Yes, prior to my appointment as CEO of ACWA,
Association of Children's Welfare Agencies, and that was
three years ago the appointment, I was the New South Wales
Community and Disability Services Commissioner and New
South Wales Deputy Ombudsman Human Services for 15 years,
and before that I was the New South Wales Assistant
Ombudsman Police for eight years, and in terms of those
roles they involved handling complaints about government
and non-government community and disability services
service providers, reviewing the deaths of children, people
with disability and the deaths of children, providing
oversight to agencies in terms of the Reportable Conduct
Scheme and the Reportable Incident Scheme in the disability
area and reviewing and promoting improvements in Community
and Disability Services under the provisions of the Act.

MS BENNETT: Thank you both. I'd like to start with you,
Commissioner Buchanan, and I'd like to ask about, we've
been hearing some evidence this week about the Child Safety
Standards. First of all, can you tell us what they are?

MS BUCHANAN: Yeah. In Victoria the Child Safe Standards
are a set of currently seven standards that are enshrined
in legislation and are mandatory for a whole range of
organisations, so they require organisations effectively to
take steps to prevent harm and abuse of children in
institutional settings; they require organisations to have
a child safe culture, to have relevant policies, to have
codes of conduct, to have appropriate recruitment and
screening and supervision processes, good reporting
processes and strategies to both identify and manage risk
as well as strategies to empower children.

     So, as I say, legislated mandatory Child Safe
Standards that really require organisations not to wait
until abuse has occurred but to take steps to make sure
that, as best they can, that abuse is prevented and that,

1   if it does occur or if an allegation is raised, then
2   there's the right response and right process to deal with
3   that.
4
5   MS BENNETT: Commissioner, you said "not to wait until the
6   abuse occurs", if sadly abuse occurs is it also part of
7   that proactive approach to not to wait for a complaint but
8   to try and proactively identify abuse after it's occurred?
9   Is that part of it?
10
11 MS BUCHANAN: Yeah, absolutely, part of the Child Safe
12 Standards requires that organisations, amongst other
13 things, train everyone involved in the organisation; train
14 everyone from leadership, staff, volunteers, so that
15 everyone has an understanding to some degree about what to
16 look out for, about how to respond if a child raises
17 concerns about the way they've been treated, and then has
18 real clarity about what should happen and what the
19 reporting process and response process should look like if
20 something has occurred.
21
22 MS BENNETT: Is this similar to or different from the
23 Child Safety Principles?
24
25 MS BUCHANAN: So, they're very similar, but we are in
26 Victoria indeed from 1 July this year changing the
27 standards; the government has already announced that the
28 standards in Victoria will change. So, from 1 July the
29 Victorian standards will look far more closely like the
30 National Principles. There are a few differences, the most
31 striking difference will be that Victoria will have a
32 stand-alone Child Safe Standards relating to cultural
33 safety of Aboriginal children, but other than that the
34 Victorian Standards will from July look much more like the
35 National Principles.
36
37 MS BENNETT: Just so I understand correctly. Following
38 the National Royal Commission into Institutional Child
39 Sexual Abuse there were recommendations made, which
40 identified Child Safe Principles or Child Safety
41 Principles; is that right?
42
43 MS BUCHANAN: Yes, that's right.
44
45 MS BENNETT: We had Commissioner Hollonds earlier in the
46 week talking about those at a national level and that's
47 what she was talking about; is that right?

```
1
2    MS BUCHANAN:    Yes, that's correct.
3
4    MS BENNETT:    Then Victoria implemented their version of
5    those in its scheme; is that right?
6
7    MS BUCHANAN:    Yeah.  So, the sequencing is a bit
8    different.  Because in Victoria we had a Parliamentary
9    Inquiry into religious and other non-government
10   institutions and their responses to child sexual abuse,
11   Victoria had earlier on, I think going back to 2013, had
12   had recommendations to introduce mandatory legislated Child
13   Safe Standards and a Reportable Conduct Scheme, so Victoria
14   had actually acted in both of those respects before the
15   final report of the Royal Commission into Institutional
16   Responses to Child Sexual Abuse.  So, we have had these
17   legislated Child Safe Standards in place for some
18   organisations since January 2016, for a broader range of
19   organisations since January 2017, and we as the Commission
20   for Children and Young People have had formal functions in
21   respect of those standards also since January 2017.
22
23        So, in effect what has happened is, Victoria was ahead
24   of the Royal Commission but following the Royal Commission
25   the government reviewed our standards and made the
26   decision, sensibly I think, to work to align our standards
27   with what applies nationally; we certainly recommended that
28   that should be done and indeed that's what's happening.
29
30   MS BENNETT:    Thank you, Commissioner, and I'll return in a
31   moment to some of those changes and I'm particularly
32   interested to return to the additional parts around
33   cultural safety that you've adverted to.
34
35        I'd like to pause now and return to you, Mr Kinmond,
36   and ask about the New South Wales experience.  Now, your
37   experience concerns principally the Reportable Conduct
38   side; is that right?
39
40   MR KINMOND:    Yes, that's correct for the purposes of your
41   inquiry, yes.
42
43   MS BENNETT:    Yes, thank you.  Can you tell us what you
44   understand to be the role of a Reportable Conduct Scheme;
45   is it purely responsive or does it have a role in that
46   proactive attempt to prevent child sexual abuse as well?
47
```

1   MR KINMOND: Yes, look, in terms of the key elements of
2   the scheme it's critically important that the oversight
3   body is independent, it's proactive in terms of identifying
4   and acting on Child Protection risks. It's not an
5   acceptable situation to have an oversight body that
6   understands that risks are in play in relation to matters
7   that are reported to it and remains passive, and so, in
8   that respect it's perhaps different than other oversight
9   arrangements because, if there is an unacceptable risk to
10   children - or a child or children in play the oversight
11   body has to respond.
12
13   Also --
14
15   MS BENNETT: I'd just like to ask about that. Perhaps is
16   that because we can take it as read that the society that
17   we live in has a problem with child sexual abuse and so, if
18   it's not being reported, that itself indicates that
19   something needs to happen?
20
21   MR KINMOND: Absolutely, or if it has been reported and
22   things aren't being handled appropriately, then the
23   community would take a very dim view of an oversight body
24   failing to act. I mean, a good illustration of that was
25   the National Royal Commission Into Institutional Child
26   Abuse where there was a matter involving Knox Grammar and
27   certain information was provided to the Ombudsman's Office
28   at the time, and the Ombudsman's Office was reasonably
29   passive in terms of its response, which is probably a
30   generous statement on my part.
31
32   Now, I'm pleased to say I wasn't running the scheme at
33   the time, but it reflected a more passive traditional
34   oversight model, and that was the subject of legitimate
35   criticism by, I think it may have been the then principal
36   of Knox, and so, can I say I took on responsibility for the
37   scheme in 2010 even though I was involved in conceiving the
38   legislation following the Wood Royal Commission into
39   policing in the late 90s and then someone else performed
40   the scheme.
41
42   I was brought in in 2010 to run the scheme and
43   immediately realised that it was too passive, and so,
44   immediately went about establishing standard operating
45   procedures with the police, getting access to the police
46   system, getting access to the Child Protection system,
47   ensuring that in fact we were proactive in our response.

1
2   If we had not taken that approach, I can guarantee you
3   that our work would have been strongly criticised by the
4   National Royal Commission, but instead because we took a
5   proactive approach, and we were able to provide significant
6   evidence of us doing so, that then led to the Royal
7   Commission endorsing the scheme and recommending its
8   national roll out.
9
10   In addition I had the privilege of going to Victoria
11   in terms of the Betrayal of Trust Report and, you know, I
12   didn't approach Victoria, they approached me on the back of
13   a number of institutions saying, look, we've got an
14   oversight body here that's prepared to roll up its sleeves
15   and assist us in relation to our practices in identifying
16   and responding to these matters. And, after I left the
17   Ombudsman's Office several years ago and went to Western
18   Australia and gave advice to the Western Australian
19   government concerning the establishment of the Reportable
20   Conduct Scheme, pleased to see the recent press
21   announcement that they're moving in terms of legislation in
22   that area.
23
24   And I think the critical issue is, it's okay to wag
25   the finger in this area as to what needs to be done; it's
26   another thing again for the oversight body to see, because
27   we've got risks to children involved, the oversight body
28   has to be a facilitator of good outcomes.
29
30   MS BENNETT: I'm going to return to what the elements of
31   that are in a moment, but Commissioner Buchanan, I'd like
32   to turn to you. Can you tell us about the status of a
33   Reportable Conduct Scheme in Victoria at the moment?
34
35   MS BUCHANAN: Yes, certainly. Victoria has had the
36   Reportable Conduct Scheme in place since July 2017, so
37   certainly since then we at the Commission have administered
38   and held relevant functions for both the Child Safe
39   Standards and Reportable Conduct.
40
41   MS BENNETT: Can I ask you in a general sense, what do you
42   see as being the important elements to provide effective
43   oversight to detect or prevent institutional child sexual
44   abuse?
45
46   MS BUCHANAN: That's a good question. First and foremost,
47   I think in terms of providing that oversight, following in

1   part from what Steve just described, it is thankfully the
2   case that most people, most organisations, want to do the
3   right thing and want to have the right things in place to,
4   as best they can, prevent child abuse and to respond
5   appropriately. My very strong observation from having
6   administered these two schemes for five years or more in
7   the case of Child Safe Standards is that a lot of people
8   and organisations simply do not have the knowledge.
9
10   So, one of the really important aspects of performing
11   an oversight function here is, No.1, you have to be an
12   organisation that has and continues to develop a very good
13   understanding of children, of risks to children, of the
14   patterns of child abuse and harm to children and about what
15   organisations need to have in place to prevent and
16   appropriately respond to child abuse, so that knowledge,
17   that expertise, that specialisation in children and harms
18   to children is very, very important.
19
20   You also have to, and this is effectively, I think,
21   what Steve was alluding to, you have to have an approach
22   that is about primarily, where possible, working to support
23   organisations because in part of that lack of knowledge, in
24   part - I mean, my observation is, organisations are often
25   very, very hungry for support and guidance; whether it's
26   about how they respond to and investigate an allegation
27   that they have notified to us under the Reportable Conduct
28   Scheme or whether they're looking at how they can best
29   implement the Child Safe Standards.
30
31   So, those are two very important elements. I think
32   the independence is critical. We oversight both for Child
33   Safe Standards and Reportable Conduct a broad range of
34   organisations: Out-of-Home Care, Youth Justice, Education,
35   religious organisations, but importantly we also oversight
36   government departments, so that independence from
37   government and from the regulated agencies, I think, is
38   incredibly important.
39
40   The final thing that I'd mention, and I think this
41   sits in part with the importance of having an organisation,
42   an oversight body or regulatory body that specialises in
43   children and harms to children is, I think, having a very
44   clear policy objective from the oversight and the
45   regulatory mechanisms that is about protecting children's
46   interests and rights and safety, and so, absolutely as a
47   regulator one has to apply a whole range of processes

1   objectively and with rigour, but all - and I think this is
2   really important - all ultimately with a view to improving
3   responses to children, improving children's treatment and
4   experiences, and certainly for us at the Commission we're
5   very clear that's our overriding mandate.
6
7   MS BENNETT: Let me see if my notes roughly reflect what
8   you've said. So, it's critical that an organisation in
9   your position has a good understanding of children and the
10   factors that affect risk to children, and that reflects -
11   would you agree, Commissioner, that that's critical indeed
12   for people in senior levels that are child-facing of any
13   organisation?
14
15   MS BUCHANAN: Absolutely. One of the things that we see
16   organisations struggle with, even when they have been
17   working on implementing the Child Safe Standards for some
18   time is precisely that; that requirement under the
19   standards to assess all of the work that that organisation
20   is engaged in with children and to look at all of the
21   activities and the programs and the situations and identify
22   risk, and then put in place the plans to manage those
23   risks.
24
25   So that requires key people in the organisation,
26   including key people in leadership, to understand risks to
27   children. There's two things: unless you understand risks
28   to children, it's hard to get that culture and focus and
29   priority on putting in the effort that is needed to make
30   sure children are safe, but also, unless you have some of
31   that knowledge and, thanks to the Royal Commission, that
32   knowledge and expertise about what creates risks for
33   children is now more readily available, but people in key
34   positions absolutely need that because otherwise they're
35   just not going to be able to do the work they need to
36   within the organisation to identify and respond to and
37   manage risk.
38
39   MS BENNETT: Another of the elements you identified and
40   I'd like to speak to you first and then turn to you,
41   Mr Kinmond, about this because I think it's critical and
42   it's independence. You talked about the criticality of
43   independence, what are the elements of that independence
44   from your point of view? What do you need to be
45   independent?
46
47   MS BUCHANAN: I think, in operational terms, in governance

1   terms, in terms of with whom sits the ultimate
2   decision-making responsibility both for oversight decisions
3   in my case and for regulatory decisions, I think that has
4   to be functionally and legally separate from government, as
5   well as separate from any of the peak bodies that might be
6   involved in the organisations that we oversee or where
7   child abuse might occur.
8
9   So, to my mind it's - I simply can't imagine
10 performing my regulatory functions to improve child safety
11 without that independence. My role, both as an oversight
12 body in terms of Youth Justice and Out-of-Home Care, but
13 also in terms of a regulator of organisations to improve
14 child safety often requires that I am having to consider
15 what powers I have at hand, I'm having to engage and
16 persuade, but ultimately I'm having to make decisions
17 about, if an organisation is not doing what I think needs
18 to be done, what the law and certain standards require,
19 then my independence means that I can make a clear
20 objective decision about what powers and functions might
21 need to be exercised: that's what independence means to me.
22
23 MS BENNETT: Thank you, Commissioner. Does your office
24 have any difficulties in taking your advice from the
25 Victorian Government Solicitor's Office?
26
27 MS BUCHANAN: No. We make sure that, if we do that, then
28 the state is not in some way also being represented by the
29 Victorian Government Solicitor's Office, but we absolutely
30 have occasions where we seek advice from them, not
31 exclusively from the VGSO. But no, we take care to ensure
32 that they will not be conflicted.
33
34   We take care, for example, when we were considering
35 making submissions, as indeed we did to the Royal
36 Commission into Abuse of People With Disability, we made a
37 very clear decision that, whilst the VGSO would be
38 representing the state and government departments, it was
39 not appropriate for us to be similarly represented, so we
40 sought representation elsewhere, but as a matter of
41 principle, no, I have no difficulty with that.
42
43 MS BENNETT: Do you need any permission to obtain legal
44 advice from an agency other than the VGSO.
45
46 MS BUCHANAN: No, I don't.
47

1   MS BENNETT: You can make that decision on your own?
2
3   MS BUCHANAN: Indeed.
4
5   MS BENNETT: Is that important for your independence?
6
7   MS BUCHANAN: Yes, absolutely. To my mind, from whom I
8   can seek legal advice is one of many aspects of my
9   authorising environment. I, as the Commissioner, need to
10   be able to make decisions about the source of advice, make
11   decisions about how I and we at the Commission approach our
12   legislative functions. I need to make decisions as I can
13   about who I employ, they need to be my employees, not
14   employees of a department, all of those are very important
15   aspects to my independence and my ability to perform my
16   role.
17
18   MS BENNETT: Thank you, Commissioner. Mr Kinmond, can I
19   invite you to comment about, first, the significance of
20   independence and what your experience in your various roles
21   tells you about the importance or how you obtain
22   independence in a regulatory role or an oversight role?
23
24   MR KINMOND: Yes, look, let me first of all endorse all of
25   the comments made by Commissioner Buchanan; I'd be
26   struggling to find anything that the Commissioner said that
27   I'd take issue with.
28
29   In terms of independence: so, I just reiterate a
30   number of the points that Commissioner Buchanan made. Just
31   in terms of slight variations on the theme, in terms of the
32   Ombudsman's Office we took the view a number of years ago
33   that it was important for us to obtain our own legal
34   advice, not Crown sols, and so, in that regard we --
35
36   MS BENNETT: Crown sols being?
37
38   MR KINMOND: Crown solicitors, sorry, I apologise, forgive
39   me, so we had an arrangement whereby we'd either directly
40   brief the Solicitor-General or use our own separate legal
41   counsel and that proved to be, I think, a good decision.
42
43   MS BENNETT: Just to pause. Were you compelled when you
44   had to do one or the other?
45
46   MR KINMOND: No. No, no, we could make our own decision
47   in that regard. The other important check and balance I

1 think in the system that I'd probably add is, it was very
2 useful having a Parliamentary oversight body to whom we
3 reported, and so, that was important.
4
5   It's interesting the comments I'd made, or perhaps
6 they're not, on the issue of independence where on the one
7 hand I say you have to roll up your sleeves and get
8 involved in matters, and then one could then say, "But how
9 does that mean you're independent, Mr Kinmond?"
10
11   I remember putting that issue to Professor John
12 McMillan, a former Commonwealth Ombudsman and Commonwealth
13 Information Commissioner who for a period of time was the
14 New South Wales Ombudsman, and I was pleased with his
15 response where he said, "Look, Steve, we have no choice but
16 to be involved in these matters but there's no doubt about
17 your independence".
18
19   Forgive me for giving an old brief anecdote, but I do
20 recall the Assistant Commissioner of Police when I used to
21 oversight the police, and I worked very closely with this
22 Assistant Commissioner and I won't go too far in terms of
23 identifying the individual, but I had cause to investigate
24 his handling of a matter. And he contacted me and he said,
25 "Look, I thought we had a good relationship" and my
26 response was, "We do have a good relationship, that's why
27 I'm investigating you".
28
29   And so, there is that aspect of being in no doubt that
30 whilst on the one hand you seek to facilitate and work in a
31 constructive relationship with bodies with a common aim of
32 protecting children, your calling, your responsibility, is
33 to act always in the public interest, and the moment you
34 lose sight of that you probably should go and find
35 employment elsewhere.
36
37 MS BENNETT: Could I ask you, Mr Kinmond, about that. Let
38 me suggest to you that someone might have said, "You need
39 to effectively oversight the police force, and to do that
40 you need to be able to speak to members of the police force
41 in an informal way; you need access to them, they have to
42 trust you. If they're too wary of you they won't talk to
43 you, so you should overlook some small things to make sure
44 your relationship is intact". Could you talk to the
45 Commissioners about your response to that?
46
47 MR KINMOND: If overlooking small things meant that one

1   was compromised from a public interest point of view, then
2   the answer to that is, "Thanks but no thanks". But it is
3   interesting. It depends on what one is overlooking. I
4   mean, one of the points that Justice Wood made, which I
5   fully agreed with, and there was a fortunate alignment of
6   the thing which was, if one means that one should apply
7   some common sense and one should bring to the table some
8   understanding of some of the challenges that people at the
9   coalface have to deal with, then that's just good
10 administrative decision-making. Does that make sense? And
11 so, you don't overlook anything where clearly you're
12 compromising the public interest.
13
14   But if one is talking about showing a common sense
15 understanding of the challenges that people face and then
16 looking to address those issues but in a way that builds up
17 rather than tears down, then I don't take issue with that.
18
19 MS BENNETT: It's an interesting hypothetical and I'd like
20 to put it to you, Commissioner Buchanan. How do you
21 respond to that proposition? Obviously police are not the
22 direct area of your oversight, but let's have the
23 hypothetical translate and perhaps to access schools or
24 Youth Detention facilities, you need to be on good terms
25 with people. Where's the line for you about where those
26 good relationships meet your need to push back?
27
28 MS BUCHANAN: It's a great question, and I'll answer it by
29 starting to say this: I, like Steve, think it is possible
30 to have a good, open but robust relationship with the
31 bodies that you regulate and oversight, but I think that
32 can really only effectively happen if there's a mutual
33 understanding of role; and, to be frank, if the body that
34 I am regulating or oversighting understands and kind of
35 fundamentally respects not only the role of the Commission
36 and my role as Commissioner but the objectives of the
37 various schemes and provisions that we are responsible for.
38
39   Again, I mean, Steve said this, I can't really imagine
40 overlooking things for the sake of relationship. I might -
41 I mean, all of our work really, whether it's oversight work
42 or our regulatory work, is risk-based, so we kind of assess
43 how significant is the risk, what are the issues for either
44 the individual child or children more broadly, and we make
45 our decisions on what action is needed based very much on
46 that.
47

1   So, it's not the case that in our work with Youth
2 Justice, for example, or with schools that we will pick up
3 every single issue that is drawn to our attention - we
4 wouldn't be able to do that - that's not necessarily about
5 relationships however, that's about making the best use of
6 our capacity and our resources and our powers.
7
8   So, for me, I cannot imagine overlooking an issue for
9 the sake of a relationship; I need to be able to kind of
10 engage constructively, collaboratively, work with
11 organisations and leaders of organisations, but that only
12 works if there's a mutual respect for our roles and if, to
13 be frank, the organisation with which I'm working
14 understands that at any point I may need to take some
15 stronger and more formal action; that's kind of the way
16 that I work.
17
18 MS BENNETT: Commissioner, you mentioned just in passing
19 about Youth Justice and I just wanted to advert briefly to
20 a report I believe submitted in January 2021 that referred
21 to a prevalence of negative attitude to children and young
22 people in the Justice System and a potential inconsistency
23 in the way that those children were treated or children in
24 Out-of-Home Care were treated as against other children in
25 the community, principally in a criminal justice sense.
26
27   Can you tell the Commissioners a little bit about
28 that?
29
30 MS BUCHANAN: I'm not sure which of our reports you're
31 referencing, although I'd be happy to talk to the themes,
32 but it might help me if I'm clear on which of the reports
33 that you are alluding to.
34
35 MS BENNETT: I'll find it and I'll return to it, I don't
36 have a note of it in front of me, but is that a cultural
37 issue that you've encountered, a concern in cultural
38 stereotypes around children in Out-of-Home Care or in Youth
39 Justice?
40
41 MS BUCHANAN: Yes, there's no question, and we do
42 extensive work; we can conduct individual and systemic
43 enquiries into both Youth Justice on Out-of-Home Care and
44 have done and we monitor incidents affecting children in
45 both of those settings, so we are quite heavily involved in
46 oversighting and engage heavily directly with children and
47 young people in those settings.

1
2   So, based on all of our work and also indeed in what
3   we see in Reportable Conduct to a lesser degree, I would
4   say absolutely ...[Zoom link disconnects]... stigmatised
5   and often experience significant kind of stereotyping and
6   negative attitudes in a whole lot of different contexts,
7   and similarly those who have involvement in Youth Justice,
8   and of course there's significant overlap between children
9   in care or those involved in Child Protection and those who
10 entered the Youth Justice System. Many children once
11 they've been in Youth Justice experience significant
12 stigma, again, across a whole range of settings including
13 for example when they go back to their own schools, if they
14 do.
15
16 MS BENNETT: Thank you, Commissioner. Mr Kinmond, I'd
17 like to talk to you about the New South Wales Reportable
18 Conduct Scheme. You speak in your statement at around
19 paragraph 44 and following about capacity building among
20 entities that are responding. Can you talk to the
21 Commissioners about how you do that and the importance of
22 that?
23
24 MR KINMOND: Yes. Look, I might refer to a letter that I
25 stumbled across which was issued by both representatives of
26 survivors of abuse and then also major religious leaders,
27 and I'm happy to provide this to the Commission afterwards,
28 17 May 2018, where they referred to - they were asking for
29 an expansion of the Ombudsman's jurisdiction to include
30 activities or services of any kind under the auspices of
31 particular religious denominations or faith to which adults
32 have contact with children.
33
34   The National Royal Commission recommended it, but the
35 New South Wales Government had been slow to act, and so, we
36 had a host of religious leaders and also well-known
37 advocates in terms of survivors of abuse write to
38 government. And, why did they want the extension?
39
40   And, I won't read at length but:
41
42   *The Ombudsman's Office is in a unique*
43   *position to contribute to identifying Child*
44   *Protection risks through its direct access*
45   *to the policing and Child Protection*
46   *databases combined with its own Reportable*
47   *Conduct database. This access provides*

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 1          agencies with an overview of critical
 2          information which is not readily accessible
 3          to agencies.
 4
 5          The Ombudsman's Office also plays a
 6          critical role in ensuring that information
 7          is shared with relevant parties and that
 8          appropriate action is taken.  For example,
 9          the Ombudsman staff regularly work with
10          agencies who have not recognised their
11          responsibility to refer allegations of
12          certain evidence to the police or the
13          department and helps guide them through
14          this process ensuring that the workplace
15          response to these matters does not
16          compromise any police investigation.
17
18          The Ombudsman's Office has been playing and
19          will continue to play a critical role in
20          raising awareness of agencies'
21          responsibilities under the Reportable
22          Conduct Scheme with a hands-on practical
23          assistance to agencies to respond to
24          allegations as they arise, building
25          organisational capacity to implement robust
26          systems to prevent child abuse and to
27          provide training to build relevant
28          knowledge and skills.
29
30          Now, you will be pleased to know that I'll probably
31     leave it at that, but it's not a bad summary and, not
32     written by us, but written by those who had been under our
33     oversight calling for an expansion of our reach because
34     they recognise that that would assist them in terms of
35     protecting children.  And I trust that in some way answers
36     your question, but if it doesn't, please disabuse me of
37     that belief.
38
39     MS BENNETT:   There was an element in there where you
40     talked about the access to information that the Ombudsman
41     had, I'd like to pick up on that for a moment.  Speaking
42     from the perspective of your time in the role, I think what
43     that letter was saying was that you in your position had
44     multiple streams of information feeding into your office;
45     is that right?
46
47     MR KINMOND:   That's right, we had direct access into the
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1   police system, we had direct access into the Child
2   Protection system, we also had the Carer Database, and of
3   course we had decades of information - decades, it might be
4   the late 90s - of Reportable Conduct information. Then we
5   also had from my community services role a whole lot of
6   system-based information about, for example, Out-of-Home
7   Care providers and so on. So, it was important to join the
8   dots and so that, where you built a good intel base that
9   said that action was needed, you took the action.
10
11   MS BENNETT: Talk to me about joining the dots. So, how
12   would your office in a practical sense be able to join dots
13   in a way that might assist it to identify risks of
14   institutional child sexual abuse? What were you looking
15   for, or were you looking for that? Let's start there, were
16   you looking for that?
17
18   MR KINMOND: Yes, we were looking for it, and for example,
19   with the - a good example of that was a very detailed
20   100-paged submission that we submitted to the
21   Maitland-Newcastle Special Committee of Inquiry, the
22   Cunneen Inquiry, which showed a pattern in the
23   Maitland-Newcastle area of a failure within that diocese to
24   recognise very obvious indications of risk.
25
26   In other organisations there was some very large
27   providers where we had a very detailed history of repeated
28   failings in terms of a failure to appropriately identify or
29   respond to matters; we built profiles and in those
30   circumstances agencies were put on notice in terms of their
31   ongoing accreditation, and those matters, a number of those
32   matters were considered by the Royal Commission.
33
34   And so, that was very common at the systems level, and
35   then also it was really important - let me give you a
36   typical illustration at the individual level. We saw
37   matters, they might have gone back, you know, 20, 30 years
38   or they might have gone back 10 years where you'd have
39   information on the Child Protection system about an
40   individual, and that information at the time had not been
41   properly actioned, and the trigger for us looking at it
42   might be, would have been a Reportable Conduct matter and
43   we'd seen that there was a similar pattern between the
44   earlier matter and the fresh matter, and so, we would join
45   the dots and we'd bring to the attention of community
46   services on the Child Protection arm, and police, and we'd
47   have the discussions with them initially rather than with

1   the involved agency and talk about what action might need
2   to be taken.
3
4   Now, there were quite a number of cases where, for
5   example, the pretty poor practice from 10, 15 years earlier
6   was able to be - well, that wasn't able to be completely
7   remedied, but what we were able to do then was to get the
8   police to go back to talk to the Child Protection
9   authorities to join the information together and in a
10   number of cases we went back to individuals who had raised
11   matters, hadn't been given a good appropriate service, and
12   we were able to join the fresh information with the
13   historical matter and then, with the assurance then of the
14   victim that in fact their concerns were going to be taken
15   seriously, and also the fact that they were reassured that
16   someone else, right, was saying the same thing as them;
17   that led to a number of prosecutions. And so, that's just
18   one example of using information proactively.
19
20   MS BENNETT: You talked about identifying similarities.
21   Now, the law is notorious for applying a reasonably strict
22   approach to the identification of similarities: tendency
23   evidence, similar fact evidence fills law reports. Did
24   your office apply that legal approach or did you have some
25   other approach to that identification of similarity?
26
27   MR KINMOND: Yes. Well, similarity in relation to -
28   similar fact evidence in relation to findings if there's
29   been criminal conduct or whether there's been sufficient
30   bases to reach a finding of unacceptable risk, so that's
31   the end of the matter. But from an investigator's point of
32   view, any good investigator will look for and apply a much
33   lower threshold of course, evidentiary threshold to ensure
34   that, where you've got similar patterns emerging in
35   relation to either an agency or at the individual level,
36   that it gets properly pursued.
37
38   And let me say, and let me stress: on the one hand
39   that might involve the identification of somebody who is a
40   perpetrator who would not otherwise be identified. On the
41   other hand rigorous analysis of this type might actually
42   involve you identifying that somebody has been falsely
43   accused.
44
45   And so the pursuit in this area, and it's very
46   important for me to stress this is about, as far as one
47   can, being as rigorous as possible with the evidence, where

1   there's other evidence that can be obtained, obtaining it,
2   and ensuring that there is robust, rigorous decision-making
3   based on the evidence. Okay, because there can be real
4   risks, as we know, where one forms an early view and then
5   you look at the rest of the evidence that's obtained
6   through the prism of that early view as opposed to taking a
7   proper objective rigorous analysis of the information.
8
9   MS BENNETT: Commissioner Buchanan, can I ask you about
10   your office's access to information. Can you tell the
11   Commissioners about what sort of systems you can access to
12   carry out your role?
13
14   MS BUCHANAN: So, to begin with to kind of follow from
15   Steve in terms of Reportable Conduct: so, we don't, unlike
16   Steve's experience, we don't have direct access into police
17   data holdings and Child Protection holdings, but we have
18   very good arrangements and we've established those really
19   as a priority in our administration of both Child Safe
20   Standards and Reportable Conduct, so we've got good
21   arrangements whereby we both share information with
22   Victoria Police and Child Protection and can obtain
23   information from them, and we do that very, very regularly
24   and frequently, and it's an incredibly important aspect of
25   our role, partly because, as Steve has described, it
26   informs us, it enables different pieces of information to
27   be brought together that otherwise sat separately and could
28   not be looked at together.
29
30   Often what we will do then, we will obtain the
31   information from Victoria Police, from Child Protection if
32   that's relevant, from other regulators potentially, and
33   we'll make decisions after confirming what other colleague
34   agencies are comfortable, we'll make decisions about how
35   much of that we share with the body that is investigating
36   Reportable Conduct. So, often our function and our ability
37   to get information from different places means that the
38   investigation into a reportable allegation can have access
39   to far more information, is far more thorough and rigorous
40   than would have otherwise been possible, so that's very
41   relevant for Reportable Conduct.
42
43   We also, for our other functions, Child Safe
44   Standards, we rely heavily in Child Safe Standards on
45   intelligence gained from Reportable Conduct administration,
46   that's an important part from all of the kind of data
47   holdings that we can access about the other organisations

1   and sectors that we regulate. And, importantly, because we
2   have a particular oversight function separate to Child Safe
3   Standards Reportable Conduct for children in Child
4   Protection in Out-of-Home Care and Youth Justice, we also
5   have, as I mentioned before, first incident reports
6   relating to those children as well as a whole lot of other
7   information about what is happening in those systems, so we
8   draw heavily on those data holdings as well: all of that
9   helps us to perform our Child Safe Standards function which
10   relies very heavily on us making decisions about which of
11   the 60,000 or so organisations we will focus on, where we
12   need to engage in compliance activity, where we need to
13   kind of target a sector or engage with a sector and do some
14   focused education and capacity building; that intel, and
15   then kind of capacity to draw on a whole range of
16   intelligence and information is really important because,
17   without that, really there's no way that you can make good
18   decisions about where to focus your efforts in terms of
19   child safety.
20
21   MS BENNETT: Thank you, Commissioner. I think I observed
22   your evidence earlier on is that your office and some of
23   the schemes that it administers has been operating since
24   about 2017; was that right?
25
26   MS BUCHANAN: Yes, that's right.
27
28   MS BENNETT: So, that's a reasonable amount of experience
29   that you've accumulated in that time. Can I take it that
30   your office has improved its operations over the time it's
31   been working, is that fair, as you've gotten used to it and
32   worked out the terrain?
33
34   MS BUCHANAN: Yeah, absolutely. So, we absolutely had to
35   stand up the two schemes, Child Safe Standards and
36   Reportable Conduct and our capacity to administer them from
37   scratch, so there's no question we are still developing and
38   evolving as indeed are the capacities and responses and
39   systems of the organisations that we regulate.
40
41   MS BENNETT: I don't seek to put you on-the-spot by asking
42   you this, but I take it that you and those in your position
43   nationally are open to sharing your learnings with those in
44   other jurisdictions, so to shorten the journey, if you
45   like, to establish and operate schemes of that kind. Is
46   that fair?
47

1   MS BUCHANAN: That's very fair, and I think certainly
2   Victoria was the first jurisdiction to establish both
3   Reportable Conduct and mandatory legislated Child Safe
4   Standards; New South Wales now has the same but much more
5   recently in terms of that particular approach to Child Safe
6   Standards. So, certainly from my point of view, and when
7   we were setting up Reportable Conduct I benefitted
8   enormously from Steve and his colleagues and their insight
9   after years of running Reportable Conduct there; I'm very
10   passionate about what Child Safe Standards in the form that
11   we have in Victoria and Reportable Conduct can do, I'm very
12   passionate based on what I see about the very serious need
13   for schemes like these, so I'm absolutely open and
14   committed to sharing anything that I can that's going to be
15   helpful for other jurisdictions.
16
17   MS BENNETT: And you're passionate and committed, I take
18   it, because you think it works?
19
20   MS BUCHANAN: That's exactly right. I think it's needed,
21   I think it works, I think it's going to be a long journey.
22   I've seen really significant improvements in some
23   organisations, both in the systems they have to prevent
24   abuse and the approach they have to preventing abuse, and
25   also we've seen really significant, vast improvement in
26   some organisations and the way they respond to allegations,
27   but it's fair to say to put it mildly, we still see extreme
28   variability. There are still many organisations that have
29   done very little work to improve child safety; there are
30   still organisations who really have a limited capacity to
31   run a good investigation and to manage risks to children
32   while they're doing it. So, yes, I think it works; yes, I
33   think both Reportable Conduct and Child Safe Standards are
34   incredibly important and I think, and I recognise including
35   for us in Victoria, we need to be in here for the long
36   haul.
37
38   MS BENNETT: And Mr Kinmond, you've been involved in
39   Reportable Conduct since its inception really in New South
40   Wales; what can you say about its evolution and your view
41   about its effectiveness over that time?
42
43   MR KINMOND: Look, I'd rely on the findings of the
44   National Royal Commission, that it is effective and just to
45   put it in context, I mean at any one particular point in
46   time we would be dealing with - we were dealing with
47   anywhere between 120 to 150 open matters where an

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1    individual was charged with one or more offences at any one
2    point in time, about 70 to 80 of those would be in the
3    school sector, 90 per cent of which would involve sexual
4    offences, Out-of-Home Care sector was a significant
5    contributor.
6
7         Just to go back to a point that Commissioner Buchanan
8    made in terms of, it does enhance the evidence base, and
9    so, there is a connection between the Reportable Conduct
10   Scheme, or there ought to be a connection, and the Child
11   Safe systems that are in place.
12
13        And so, for example, the evidence in relation to
14   reporting rates across sectors, reporting rates across
15   agencies; I was able to tell the National Royal Commission
16   that the reporting rate in the school sector was about one
17   in every 120 teachers were reported each year in the school
18   sector.  In the non-government school sector it was about
19   one in every, at the time I looked at it, 116 teachers.
20   Now, you couldn't have come up with more aligned statistics
21   if you tried and so that was not a bad proxy indicator to
22   say, okay ...[Zoom link disconnects]...
23
24   MS BENNETT:   Frozen.
25
26   MR KINMOND:   ...sustained rates across sectors.
27
28   PRESIDENT NEAVE:   Could you repeat those figures?
29
30   MS BENNETT:   You froze for a moment there.  We got to 1 in
31   160 and you said there could hardly be any better data and
32   then I think that we lost you.
33
34   MR KINMOND:   Sorry, I do apologise for going missing.  So,
35   it was close to - the reporting rate was about one in every
36   about 116 teachers were reported in the non-government
37   sector and if you look at the government school sector was
38   about one in every 119 or thereabouts; in other words, it
39   was extremely close.  Now, you can't manufacture those
40   figures.  That suggests a high level of compliance in terms
41   of reporting rates.
42
43        But obviously, you can look at sustained finding
44   rates, for example, across sectors and then across agencies
45   within the sectors; all of these things are indicators of,
46   you know, things that might be going well or not so well.
47
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1   Then you can break it down in terms of the gender of
2   those who - against whom the allegations are made, the
3   gender of those who are the alleged subject of allegations.
4   We used to capture adequacy of agencies' responses
5   routinely, including the adequacy of the police response.
6   The circumstances of the incident, the age of the alleged
7   victim, and so, you know, I think there is an overwhelming
8   case, particularly if we have Reportable Conduct being
9   rolled out across the country, and wouldn't it be wonderful
10   if we can operate off a very, very similar dataset and use
11   that data to help inform ongoing adjustments to the Child
12   Safe regulatory environment?
13
14   Commissioner Buchanan's better placed, though, to
15   comment on this, on the proposition I've just put than
16   myself. So, sorry to put you in a difficult position,
17   Commissioner, but what do you think?
18
19   MS BUCHANAN: Well, I agree, luckily. I think that's
20   right, it's one of a number of benefits to, I think, having
21   one body administering both the Child Safe Standards and
22   the Reportable Conduct Scheme. I think I've already
23   described that sometimes we will be concerned about the way
24   an organisation has responded to reportable allegations
25   either once or a number of times, or the prevalence of
26   particular types of allegations in an organisation, or in a
27   sector, and that might prompt us to take particular
28   compliance action or engage in a particular way with that
29   organisation or that sector from a Child Safe Standards
30   perspective.
31
32   Similarly, sometimes we will receive a reportable
33   notification from an organisation and we will know from our
34   Child Safe Standards work that that organisation does not
35   necessarily have good capacity to respond to these issues,
36   so we'll know to provide very good concerted hands-on
37   advice and guidance to that organisation as they go about
38   it.
39
40   So, those are two of the reasons, but the other reason
41   which flows from Steve's point about an evidence base is
42   precisely that: by bringing together Reportable Conduct and
43   all of the data that Steve just described that you can get
44   from running a Reportable Conduct Scheme is exactly right,
45   and indeed we have made a very clear commitment to share
46   that information, we have pages and pages of every year's
47   annual report where we make that information public and as

1   the Reportable Conduct Scheme runs in Victoria now for
2   almost five years we are really starting to get a picture
3   of different types of patterns of harmful conduct to
4   children in different settings, different trends over time,
5   misconduct notifications increasing in particular sectors,
6   for example, changes in substantiation rates for particular
7   types of conduct: all of those pieces of information would
8   not be available, that overview in fact about harmful
9   conduct to children where it's alleged and substantiated
10   simply would not be available were it not for the
11   Reportable Conduct Scheme and we have that picture now for
12   such a range of organisations and institutions: Out-of-Home
13   Care, Youth Justice, schools, early childhood, religious
14   organisations and more.
15
16   And so, really, apart from anything else, what the
17   Reportable Conduct Scheme does is it starts to give a full
18   picture of some of the harms that children are experiencing
19   in institutional settings, and the fact is, certainly in
20   Victoria, we simply did not have that information otherwise
21   available and I don't think it's available in jurisdictions
22   that don't have the Reportable Conduct Scheme.
23
24   MS BENNETT: Commissioner, save to thank our witnesses for
25   their generous contribution, I have nothing further.
26
27   PRESIDENT NEAVE: Any questions?
28
29   COMMISSIONER BROMFIELD: No. I wanted to say, thank you
30   both for that evidence, it was incredibly helpful.
31
32   COMMISSIONER BENJAMIN: Well, apart from the thank you,
33   no, I have no further questions.
34
35   PRESIDENT NEAVE: Thank you very much indeed, it was a
36   really fascinating session, and you each contributed to the
37   information that we need for the purposes of this inquiry
38   very substantially, so thank you very much indeed.
39
40   **LUNCHEON ADJOURNMENT**
41
42   MS BENNETT: Commissioners, the next witnesses are
43   Ms Webster and Ms Gale. I ask that they be sworn in.
44
45   **<GINNA MARIA WEBSTER, affirmed:**   **[2.04pm]**
46
47   **<JENNIFER PATSY GALE, affirmed:**

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1
2      <EXAMINATION BY MS BENNETT:
3
4      MS BENNETT:   Q.   Ms Webster, Ms Gale, thank you for
5      giving evidence to this Commission today.  Commissioners,
6      again, these witnesses fall into a category that I have
7      identified a number of times this week, and that is, people
8      to assist us in understanding some of the overall
9      structural issues and it may be in the fullness of time
10     that we return to them with questions arising from the
11     specific enquiries of this Commission of Inquiry.
12
13         With that identification of purpose, if I could ask,
14     Ms Webster, you've made a statement to assist this
15     Commission; is that right?
16
17     MS WEBSTER:   I have.
18
19     MS BENNETT:   Can you tell the Commissioners first your
20     full name and professional address?
21
22     MS WEBSTER:   Yes, Ginna Maria Webster, Level 1, 85 Collins
23     Street.  Hobart.
24
25     MS BENNETT:   And are the contents of your statement true
26     and correct?
27
28     MS WEBSTER:   They are.
29
30     MS BENNETT:   Ms Gale, can you tell the Commissioners your
31     full name and professional address?
32
33     MS GALE:   Jennifer Patsy Gale, 15 Murray Street, Hobart.
34
35     MS BENNETT:   You have made a statement to assist this
36     Commission, is that right?
37
38     MS GALE:   I have.
39
40     MS BENNETT:   Have you read that statement lately?
41
42     MS GALE:   I have.
43
44     MS BENNETT:   Are its contents true and correct to the best
45     of your knowledge?
46
47     MS GALE:   They are.
```

1
2   MS BENNETT: Thank you, Ms Gale. Ms Webster, can I start
3   with you, tell the Commissioners please your current role?
4
5   MS WEBSTER: Yes, I'm the Secretary of the Department of
6   Justice.
7
8   MS BENNETT: What are your previous roles in government
9   just briefly, perhaps the most recent.
10
11   MS WEBSTER: Prior to September 2019 when I was appointed
12   as the Secretary of the Department of Justice I was the
13   Secretary of the Department of Communities Tasmania from
14   1 July 2018. Prior to that I was Deputy Secretary Children
15   and Youth with the Department of Health and Human Services
16   as it was then; that was from March 2017. And, I have
17   previously been with the Department of Justice in a variety
18   of roles including Deputy Secretary since April 2002.
19
20   MS BENNETT: Thank you, Ms Webster. Ms Gale, what's your
21   current role?
22
23   MS GALE: I'm the Secretary of the Department of Premier
24   and Cabinet and also head of the State Service. I've held
25   that role since 2018. Previous to that I was Secretary of
26   the Department of Education for two years, and I've had a
27   long career in education starting as a teacher and
28   finishing as a principal and senior leader before taking up
29   that role.
30
31   MS BENNETT: Ms Gale, starting with you then. In your
32   current role, have you had any contact with
33   victim-survivors of child sexual abuse?
34
35   MS GALE: Not of child sexual abuse, no.
36
37   MS BENNETT: Of institutional child sexual abuse?
38
39   MS GALE: No.
40
41   MS BENNETT: Have you been monitoring the hearings this
42   week?
43
44   MS GALE: As much as I've been able to, yes.
45
46   MS BENNETT: Have you been receiving reports about those
47   that you haven't been able to yourself watch?

```
 1
 2        MS GALE:    Yes.
 3
 4        MS BENNETT:    And so you've seen some report of some of the
 5        lived experience witnesses who have given their evidence
 6        this week, is that right?
 7
 8        MS GALE:    Yes.
 9
10        MS BENNETT:    Did you watch the lived experience witness on
11        Tuesday?
12
13        MS GALE:    No, I wasn't able to do that unfortunately.
14
15        MS BENNETT:    You've received some reports about the
16        evidence they gave?
17
18        MS GALE:    Brief summaries.
19
20        MS BENNETT:    Ms Webster, have you in your current role had
21        any contact with victim-survivors of institutional child
22        sexual abuse?
23
24        MS WEBSTER:    Not face-to-face contact, I've probably seen
25        correspondence from time to time of victim-survivors and I
26        may have had contact with victim-survivors but been unaware
27        of course that they are.
28
29        MS BENNETT:    Have you been monitoring the proceedings this
30        week?
31
32        MS WEBSTER:    Yes, I have where I've been able to again.
33
34        MS BENNETT:    So you've been watching where you can.
35
36        MS WEBSTER:    Absolutely.
37
38        MS BENNETT:    And you've been receiving reports where you
39        were unable to watch?
40
41        MS WEBSTER:    Yes, that's correct.
42
43        MS BENNETT:    Did you observe the victim-survivors who have
44        given evidence this week, the one that was live-streamed?
45
46        MS WEBSTER:    Yes, I was able to watch most of Tuesday.
47
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.06/05/2022 (5)   539   WEBSTER/GALE x (Ms Bennett)

1   MS BENNETT: Are you able to offer any reflections on your
2   impressions having done that?
3
4   MS WEBSTER: I was very sad, actually, to hear the stories
5   of victim survivors and the lived experience, and I should
6   also clarify that I did hear most of Monday's as well,
7   where I could.
8
9   MS BENNETT: Thank you, yes.
10
11   MS WEBSTER: If I could clarify. Yeah, extremely
12   saddened, and I felt that both of the witnesses that I saw
13   had tremendous courage in coming forward and obviously
14   great love for their children, particularly with the lived
15   experience witness on Tuesday.
16
17   MS BENNETT: Ms Webster, it would be uncontroversial,
18   wouldn't it, to accept that all institutions in Tasmania,
19   all departments in Tasmania, should be doing their best to
20   eliminate as far as possible institutional child sexual
21   abuse. Is that fair?
22
23   MS WEBSTER: It is fair, absolutely.
24
25   MS BENNETT: And each and every department has an
26   individual responsibility to do their best in that respect;
27   is that fair?
28
29   MS WEBSTER: That's a fair statement, absolutely.
30
31   MS BENNETT: Ms Gale, I look to you now. In your report,
32   are you able to offer any reflections on the lived
33   experience witnesses based on your reports received?
34
35   MS GALE: Sorry, yes. Well, obviously I also feel
36   sickened and very sad and regret the experiences of
37   children and young people under these circumstances and
38   absolutely feel that we need to do our best to make sure
39   that that doesn't happen again.
40
41   MS BENNETT: Is it uncontroversial - I want to establish
42   that we're on the same page - it is uncontroversial that
43   more needs to be done in the State of Tasmania to bring
44   about that change?
45
46   MS GALE: We've been on a pathway for improvement and of
47   course, yes, more needs to be done, and we are not perfect

1   but we can only aim to be as best as we can be and to do
2   the best we can to protect children and young people.
3
4   MS BENNETT: Is it your aim and the aim of your department
5   to do everything in your power to reduce the instances of
6   institutional child sexual abuse?
7
8   MS GALE: Yes, it is, although, sorry, I would go on to
9   say my department itself doesn't play much of a role but as
10   head of the State Service which has a part of my
11   department - so it's not a full departmental
12   responsibility.
13
14   MS BENNETT: I was going to ask you, what is the role of
15   the head of the State Service?
16
17   MS GALE: So, the head of the State Service is, the
18   employers delegate for all of the employer functions and
19   powers under the State Service Act, except for the issuing
20   of employment directions.
21
22   MS BENNETT: So I'm interested in lines of accountability
23   and this is a theme that we're going to return to.
24   Ms Gale, does accountability of the conduct of staff, for
25   the guidelines to which staff must apply, does
26   accountability ultimately lead its way to you?
27
28   MS GALE: It's the responsibility of each head of agency.
29
30   MS BENNETT: And this is what I'm trying to understand,
31   each head of agency, each employee is part of the Tasmanian
32   State Service; is that right?
33
34   MS GALE: That's correct.
35
36   MS BENNETT: And they might report in this capacity to a
37   head of agency, for example the Secretary of the Department
38   of Education; is that right?
39
40   MS GALE: That's correct.
41
42   MS BENNETT: Or to Ms Webster as the Head of Department of
43   Justice.
44
45   MS GALE: Yes, that's right.
46
47   MS BENNETT: In your role as the head of State Service

1   what responsibility do you bear for those employees and the
2   guidelines under which they work?
3
4   MS GALE: Ultimately, as the delegate of the employer, I
5   suppose I do have ultimate responsibility and
6   accountability at the end. In terms of procedures and
7   practices and processes to which those employees have
8   responsibility, then that is the responsibility of the head
9   of agency.
10
11   MS BENNETT: So does that mean that you need to engage
12   with each head of agency, and I'm going to use that term to
13   refer to, if you like, the secretaries of each of the
14   department or equivalent positions. Does that mean that
15   you need to engage with them around issues of governance
16   and employment contract or codes of conduct? Do you engage
17   with them about that or do you let them do their own thing?
18
19   MS GALE: Under the State Service Act it is the head of
20   agency's responsibility for those things, not mine.
21
22   MS BENNETT: I'm just curious, where does your
23   responsibility reside? So you're the delegate of their
24   employer, of each and every member of the Tasmanian State
25   Service, so you're responsible for the conditions under
26   which they work; is that right?
27
28   MS GALE: I'm responsible for the employment framework and
29   overarching guidelines.
30
31   MS BENNETT: Yes. I'm just curious, if there's a
32   distinction between what I've put to you and what you've
33   answered. So, what I've said is, for the conditions under
34   which they're employed. Have I misunderstood something?
35   Is that a reference to what you've just said, that the
36   framework --
37
38   MS GALE: It may be a misunderstanding on my part from
39   what you said. So, the employment guidelines include -
40   well, the highest level of framework, if you like, is the
41   State Service Act and that's the primary and has primacy
42   over everything else, and then sitting with the State
43   Service Act are employment directions which are issued by
44   the Minister administering the State Service Act and those
45   employment directions apply to every employee in the state,
46   including heads of agency, and the responsibility for
47   implementing those employment directions sit with the head

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1    of agency.
2
3    MS BENNETT:   We might return to that with some specific
4    examples a bit later on.  We've talked about the general
5    obligation that the State of Tasmania has to effect as much
6    child safeguarding as it can; is that a fair summary?  I'm
7    not putting words in your mouth; Ms Webster?
8
9    MS WEBSTER:   Yes, that's correct.
10
11   MS BENNETT:   So far as you're aware, Ms Webster, is it a
12   priority of the public service to seek to embed protective
13   measures for children and young people who might be at risk
14   of child sexual abuse?
15
16   MS WEBSTER:   Yes, as much as each agency has different
17   interactions with children.  So, obviously somewhere like
18   the Department of Education, the Department of Communities
19   has more interaction with children versus, say, the
20   Department of Justice where our points of interaction with
21   children in the delivery of our services wouldn't be as
22   many, if that makes sense.
23
24   MS BENNETT:   Would you accept from me though, Ms Webster,
25   that it's not always directly child-facing that will give
26   rise to the obligations to consider these matters?  Would
27   you accept that from me?
28
29   MS WEBSTER:   Yes, I would.
30
31   MS BENNETT:   Did you hear or did you hear reported upon
32   the evidence of Commissioner Hollonds on Monday, the
33   National Children's Commissioner?
34
35   MS WEBSTER:   Yes, I didn't hear Commissioner Hollonds
36   unfortunately.
37
38   MS BENNETT:   Did you receive a report of her evidence?
39
40   MS WEBSTER:   I received a summary, yes.
41
42   MS BENNETT:   Ms Gale, did you observe her evidence?
43
44   MS GALE:   No, unfortunately, I was not able to.
45
46   MS BENNETT:   Did you receive a summary of her evidence?
47
```

1   MS GALE: Yes.
2
3   MS BENNETT: She talked about child safety principles;
4   have you heard of that, Ms Gale?
5
6   MS GALE: I have heard of child safety principles, yes.
7
8   MS BENNETT: Can you tell us broadly what you understand
9   they are?
10
11 MS GALE: I can't give you the detail exactly what they
12 are.
13
14 MS BENNETT: No, it's not a memory test, just broadly what
15 you understand them to be.
16
17 MS GALE: So, child safety principles which obviously get
18 to the matter of child safety in every aspect, I guess, and
19 particularly as they apply to institutions about the things
20 that the principles that we need to have in place for - to
21 keep children safe, but beyond that I don't have intimate
22 knowledge of those particular child safety principles.
23
24 MS BENNETT: We're not seeking to have a memory test.
25 Ms Webster, I'd like to ask you about those; are you
26 familiar with the child safety principles?
27
28 MS WEBSTER: Yes, as particularly around the Royal
29 Commission recommendations, yes.
30
31 MS BENNETT: You understand they arose out of?
32
33 MS WEBSTER: Yes, correct.
34
35 MS BENNETT: We'll come in a moment to implementation of
36 those recommendations, but at this level I just wanted to
37 suggest to you that Commissioner Hollonds gave some
38 evidence about the importance of those principles being
39 embedded and culturally embedded at senior levels.
40
41   Ms Webster, turning to you first, are you confident
42 that the senior levels of your department have internalised
43 the principles reflected in those child safety principles?
44
45 MS WEBSTER: I don't think I'll be able to answer for all
46 of the senior levels within the department. I certainly,
47 there's an area of my department that's responsible for the

1   implementation of the Royal Commission recommendations and
2   they're certainly discussed, that broad implementation
3   process is discussed and what is required under the Royal
4   Commission recommendations is discussed, I'm not sure I can
5   answer specifically that question, Ms Bennett.
6
7   MS BENNETT: I think I've been unfair. Leaving aside the
8   implementation of the Royal Commission, you've heard of the
9   principles as a thing that exists nationally in Australia.
10
11 MS WEBSTER: Yes.
12
13 MS BENNETT: And even without implementation you
14 understand that they are a recommendation to internalise a
15 child safety culture at the highest levels of
16 organisations. Would you accept that?
17
18 MS WEBSTER: Yes.
19
20 MS BENNETT: Has your organisation done that?
21
22 MS WEBSTER: Not to - no. No.
23
24 MS BENNETT: And, Ms Gale, same question for you: leaving
25 aside the formal recommendations, these child safety
26 principles talk about embedding cultural norms and at the
27 highest levels. Can you say with confidence that the
28 highest levels of your department and the Tasmanian State
29 Service have done that?
30
31 MS GALE: I can speak for my department and I would say
32 that, no, that they are not embedded. I think that my
33 department doesn't have responsibility for child safety or
34 children's services, and it would be possibly a matter of
35 professional development that may occur for certain members
36 but we haven't focused on that.
37
38 MS BENNETT: I just want to unpack that a little bit,
39 because this notion that your department doesn't have
40 responsibility for child services; you have responsibility
41 for overarching governance of the state public service.
42 Doesn't that need to have child safety embedded within it?
43
44 MS GALE: Yes, it certainly does need to have child safety
45 embedded within it, and I think that the way in which the
46 employment framework is positioned is about having safe
47 workplaces, which would include for those people who

1 provide services within those workplaces.

2

3 MS BENNETT: I guess the broader proposition I'm trying to
4 put is: sometimes child safety is embedded at a level well
5 away from the direct provision of service to children.
6 Would you accept that, Ms Gale?

7

8 MS GALE: That it is embedded?

9

10 MS BENNETT: Yeah, well away from the face-to-face with
11 children there are things that institutions can do at a
12 high level, at a leadership level, to embed a cultural
13 commitment to child safety; would you accept that?

14

15 MS GALE: Yes, I do accept that, yes.

16

17 MS BENNETT: Ms Webster, would you accept that?

18

19 MS WEBSTER: Yes, I would.

20

21 MS BENNETT: Do I understand from your evidence that
22 that's not been a focus of your department, Ms Gale.

23

24 MS GALE: It hasn't been a particular focus, no, not since
25 I've been there.

26

27 MS BENNETT: Ms Webster, you'd accept that in relation to
28 the Department of Justice?

29

30 MS WEBSTER: Yes, I would.

31

32 MS BENNETT: I'd like to just understand briefly
33 accountability measures in a little bit more detail. Do
34 you, Ms Webster, use KPIs or how do you measure whether
35 someone's doing what you've asked them to do?

36

37 MS WEBSTER: Across the agency it can be varied, of
38 course.

39

40 MS BENNETT: Of course.

41

42 MS WEBSTER: So there may be KPIs in relation to the
43 delivery of particular services. There are obviously
44 within our annual reporting and our budget chapters there
45 are KPIs that as an agency we deliver on. At a very, I
46 suppose, micro level from my direct reports we would - I
47 would certainly have - they would have accountabilities and

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1    responsibilities that I would meet with them regularly to
2    deliver, absolutely.
3
4    MS BENNETT:   And so, if I understand that correctly, KPIs
5    are used by your department but only in relation to
6    specific areas or projects; is that fair?
7
8    MS WEBSTER:   Yes, I think it's a bit more nuanced than
9    that.  I think it's dependent on the area, dependent on the
10   outputs and the outcomes that they're required to deliver,
11   and it depends on the individual performance management
12   approach, I suppose, if that makes sense?
13
14   MS BENNETT:   It does, thanks, Ms Webster.  Ms Gale, can I
15   ask you the same question.  In the department of Premier
16   and Cabinet do you use KPIs to track progress?
17
18   MS GALE:   Yes, in a similar way that's been described.
19
20   MS BENNETT:   I'd like to now talk about, we've been
21   speaking about child safety in a broad sense and about
22   Tasmania's general responsibilities.  I'd like to turn now
23   to talk about one specific way that I understand is
24   attempting to discharge those responsibilities and that's
25   in relation to the Royal Commission implementation.
26
27       I take it, Ms Webster, you know which Royal Commission
28   I'm talking about?
29
30   MS WEBSTER:   I do, yes.
31
32   MS BENNETT:   That's the National Royal Commission into
33   Institutional Child Sexual Abuse.  Ms Gale, you'd accept
34   from me that there are hundreds of recommendations
35   applicable to Tasmania arising out of that Royal
36   Commission.  Is that fair?
37
38   MS GALE:   Yes, that's fair.
39
40   MS BENNETT:   Have those recommendations been accepted by
41   Tasmania?
42
43   MS GALE:   So I need probably to defer to Ginna there
44   because the Department of Justice is leading Tasmania's
45   response to the Royal Commission.  Suffice to say through
46   my dealings at government level I understand only high
47   level summaries about where we're at with our
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1   recommendations.
2
3   MS BENNETT: Can I pause there to ask: I think your
4   evidence is that the prevention and detection of
5   institutional child sexual abuse is a priority for the
6   State of Tasmania; is that fair?
7
8   MS GALE: It is, yes.
9
10   MS BENNETT: And it's a priority for your department?
11
12   MS GALE: Insofar as the recommendation that is relevant
13   to our department, yes.
14
15   MS BENNETT: What role do you have as head of State
16   Service in overseeing or the implementation of any of the
17   recommendations?
18
19   MS GALE: So, I have no role in that. The Department of
20   Justice is leading the implementation, as I said.
21
22   MS BENNETT: Perhaps I've misunderstood. You lead the
23   state public service, don't you?
24
25   MS GALE: Only insofar as the employment framework is
26   concerned as a delegate of the employer, and there are
27   specific functions and powers under the State Service Act
28   that shape the role of head of State Service.
29
30   MS BENNETT: You're the senior public servant in the
31   state; is that right?
32
33   MS GALE: Some people describe it in that way, yes.
34
35   MS BENNETT: But you've got no accountability in relation
36   to the implementation of the Royal Commission
37   recommendations; is that right?
38
39   MS GALE: Not in the way that we've determined our
40   implementation plan. It's the Department of Justice. So,
41   my role is really as I said in relation to the functions
42   and powers of the employer under the State Service Act.
43
44   MS BENNETT: Let me turn to you for a moment, Ms Webster.
45   As I understand it, there's a Royal Commission Response
46   Unit; is that right?
47

1   MS WEBSTER: That's correct.
2
3   MS BENNETT: And that sits within your department?
4
5   MS WEBSTER: It does.
6
7   MS BENNETT: And there's an individual responsible for
8   that unit who reports directly to you about it; is that
9   right?
10
11   MS WEBSTER: That's correct.
12
13   MS BENNETT: And that's Ms Mignot.
14
15   MS WEBSTER: That's right, Mignot.
16
17   MS BENNETT: So does that mean that you're responsible for
18   Royal Commission implementation?
19
20   MS WEBSTER: Yes.
21
22   MS BENNETT: Does that include implementation of those
23   recommendations which are assigned to the Department of
24   Justice and those that have been assigned to other
25   departments?
26
27   MS WEBSTER: Yes, so if I can describe it this way: the
28   department leads the whole of Government response to those
29   recommendations, and whilst we wouldn't be responsible for
30   other agencies and their implementation, we would certainly
31   be responsible for getting information about how progressed
32   they are; assisting in terms of any barriers that might
33   exist in its implementation, and compiling the report, the
34   reporting process that's required.
35
36   MS BENNETT: So, is it fair to say that - and I just want
37   to be really clear what I'm asking: in terms of
38   accountability, if I were to come to you and say
39   Recommendation 73, not enough has been done. If that does
40   not fall within the remit of the Department of Justice,
41   would you say to me, go and talk to the Department of
42   Education, that's theirs?
43
44   MS WEBSTER: It would depend on the actual recommendation.
45
46   MS BENNETT: Assume it's one that's been assigned to the
47   Department of Education, would you send me to them?

1
2   MS WEBSTER: Yes, I would, yes.
3
4   MS BENNETT: And if you believed that the Department of
5   Education were lagging in implementation, are you
6   accountable for that?
7
8   MS WEBSTER: I'm certainly - I think there's dual
9   accountability around those recommendations, is the way
10   that I would describe it. We'd certainly assist, as I
11   said, with any barriers that might exist; maybe the
12   barriers are legislative barriers, so we could assist with
13   that, and we'd certainly help - if someone personally came
14   to me it would depend where they were from, who they were
15   and whether I could assist them to find their way to the
16   Department of Education, for example, to break down some of
17   those barriers, so it's a very collaborative approach
18   around that, if I may.
19
20   MS BENNETT: Yes. When you say "dual accountability", my
21   concern about that is that dual accountability means no
22   accountability and let me explore that with you. Is there
23   somebody who will answer for delay? Will it be ultimately
24   you who says, this recommendation has not been implemented
25   in a timely way and respond on behalf of the government of
26   Tasmania?
27
28   MS WEBSTER: Yes, I believe that to be so.
29
30   MS BENNETT: And so, do you have any control or capacity
31   to direct other departments in their implementation?
32
33   MS WEBSTER: No, I don't direct; I can't direct other
34   heads of agency.
35
36   MS BENNETT: When these recommendations have been farmed,
37   and I don't mean that in a pejorative sense, but have been
38   farmed to other departments, do you lose control over their
39   implementation?
40
41   MS WEBSTER: It would have to - look, I'd have to have a
42   bit more specific information about the particular
43   recommendation. So, at what sort of detail level we're
44   talking implementation, if that makes sense?
45
46   PRESIDENT NEAVE: Can I just ask a question there? Do you
47   have some sort of inter-departmental committee structure

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1       which looks at these things?
2
3       MS WEBSTER:    Yes, we do.
4
5       PRESIDENT NEAVE:    Right, thank you.
6
7       MS BENNETT:    Do you chair that?
8
9       MS WEBSTER:    Yes, I do.
10
11      MS BENNETT:    Commissioner Bromfield, I feel as if you want
12      to ask a question.
13
14      COMMISSIONER BROMFIELD:    No, I'm all fine, I'm just
15      listening, sorry, and recovering from COVID obviously.
16
17      MS BENNETT:    I'll just have a look at this document and
18      see if I can bring it up on screen - oh, it's the
19      statement, okay.  In your statement, Ms Webster, at
20      paragraph 29, you talk about the Office of Safeguarding
21      Children.
22
23      MS WEBSTER:    Yes.
24
25      MS BENNETT:    Now, that's an organisational reform within
26      the Department of Education; is that right?
27
28      MS WEBSTER:    That's correct.
29
30      MS BENNETT:    So, that's the recommendation the
31      implementation of which the Department of Education's
32      responsible for?
33
34      MS WEBSTER:    That's correct.
35
36      MS BENNETT:    I'm going to suggest to you in a hypothetical
37      sense, let's say, that that recommendation was lagging and
38      not enough was being done, and can I just emphasise, I'm
39      not putting that proposition to you.  If that were so, what
40      power do you have to move it along as the person with
41      accountability for the implementation?
42
43      MS WEBSTER:    So, just so we're - if I can just clarify, if
44      I may?  My understanding of that recommendation is from the
45      independent review that was done separate by Professors
46      Smallbone and McCormack rather than the Royal Commission
47      recommendation.
```

1
2   MS BENNETT: Let's assume it was the Royal Commission
3   recommendation.
4
5   MS WEBSTER: But if it was a Royal Commission
6   recommendation then it would be raised as part of the IDC,
7   which is the inter-departmental committee that the
8   President referred to. But, of course, if I had concerns,
9   I could raise them and would raise them with the head of
10   the Department of Education or the relevant Deputy
11   Secretary or the member of that committee, the relevant
12   delegate that's on that committee.
13
14   MS BENNETT: And if there were legislative barriers you
15   could take steps about that within your role?
16
17   MS WEBSTER: Yes, I could, but obviously the legislation
18   is a matter for government, of course, and it would also
19   depend on whether the legislation sat under the
20   Attorney-General and Minister for Justice as opposed to
21   another Minister.
22
23   MS BENNETT: And if there were budgetary barriers, would
24   you be able to overcome those for the Department of
25   Education?
26
27   MS WEBSTER: No, not for the Department of Education, no.
28
29   MS BENNETT: What would they need to do?
30
31   MS WEBSTER: They would need to either make a budget
32   submission or allocate internal allocation of - sorry,
33   allocate internal funding to a particular recommendation or
34   priority.
35
36   MS BENNETT: It sounds to me, Ms Webster, that you have
37   accountability and oversight in the sense that you compile
38   the reports on the implementation and you identify where
39   things are up to, but can I suggest to you that you don't
40   have any power to actually move forward some of the
41   recommendations if they've stalled, if they sit outside
42   your department?
43
44   MS WEBSTER: I think that probably doesn't take into
45   account the collaborative approach that we have, but I can
46   certainly, from a technical perspective I don't have the
47   line of accountability to, you know, over the head of

1   another department, so to speak.
2
3   MS BENNETT: So the distinction I guess is between
4   accountability and power; you are in a somewhat unenviable
5   position I might say of having accountability but limited
6   power.
7
8   MS WEBSTER: For some recommendations.
9
10   MS BENNETT: In relation to those that have been assigned
11   to the Department of Justice, there are no such
12   limitations?
13
14   MS WEBSTER: Only in as much as of course legislation
15   ultimately is a matter for the Parliament, of course.
16
17   MS BENNETT: Yes.
18
19   MS WEBSTER: And any other individual barriers or issues
20   that may come up in accordance with each, but of course if
21   it falls within my department, I have a lot more power - to
22   use your word, Ms Bennett - to deal with it.
23
24   MS BENNETT: And is it a priority for your department to
25   implement the recommendations?
26
27   MS WEBSTER: Yes, it is.
28
29   MS BENNETT: Are you satisfied with the progress of the
30   implementation of the recommendations?
31
32   MS WEBSTER: I think I would, of course, always like
33   things to move faster, but there - I think one of the
34   things I've heard this week is absolutely confirms that
35   this is a complex system and there are a number of
36   stakeholders that have to be taken into consideration. So,
37   I'm very - to answer your question in perhaps a different
38   way, Ms Bennett, I'm very comfortable that it is a priority
39   for our department and that we are taking the action we
40   need to take; of course, I'd always like things to move a
41   lot faster than they do in lots of areas.
42
43   MS BENNETT: Have you done everything you think - has your
44   department done everything it can, in your view, to
45   implement the recommendations of the Royal Commission?
46
47   MS WEBSTER: Without going to every single recommendation,

1   I think broadly we have done a lot of work to implement the
2   recommendations.
3
4   MS BENNETT: You mentioned something that you've heard
5   this week; what is it that you were referring to?
6
7   MS WEBSTER: I was referring to the number of people who
8   have given evidence, of course, and what we were speaking
9   about at the beginning around the lived experience. So,
10   you know, of course, if there's things that I could do
11   differently, I think as Ms Gale said, we all felt sickened
12   and sad that these instances occur, and so I take those
13   responsibilities very seriously.
14
15   MS BENNETT: These aren't news to you though, are they,
16   Ms Webster?
17
18   MS WEBSTER: No.
19
20   MS BENNETT: And you've been aware of them for a very long
21   time that these are issues in the community?
22
23   MS WEBSTER: Yes.
24
25   MS BENNETT: Ms Gale, it's the same for you, isn't it,
26   while this has been starkly illustrated this week, none of
27   this is news to you, is it?
28
29   MS GALE: No.
30
31   MS BENNETT: And the suffering that comes from child
32   sexual abuse and the obligations of the Tasmanian State are
33   not news to you?
34
35   MS GALE: No, they're not.
36
37   MS BENNETT: How often, Ms Gale, are you updating your
38   Minister, the Premier, about the implementation of the
39   Royal Commission recommendations?
40
41   MS GALE: So, that is done through the Department of
42   Justice up to executive government.
43
44   MS BENNETT: And so, that's Ms Webster your role?
45
46   MS WEBSTER: Yes.
47

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1     MS BENNETT:    Who do you brief about the implementation
2     progress?
3
4     MS WEBSTER:    So, I would brief the Minister for Justice
5     and the Attorney-General.
6
7     MS BENNETT:    And, if there were barriers that were in your
8     way, would you go to the relevant Minister?  Would you go
9     to the Minister for Education and say, we've got a problem?
10
11    MS WEBSTER:    No, that probably would not be through me
12    personally.  Certainly, I would raise them with Jenny and
13    the Head of Education, to use your example, and of course
14    any issues would be raised with the Attorney and the
15    Minister for Justice as I've said, if they were relevant to
16    the ministerial --
17
18    MS BENNETT:    I'd like to test something with you,
19    Ms Webster.  Would it be appropriate for the person with
20    obligations and accountability for the implementation of
21    the recommendations to have a free rein about who they talk
22    to about it?
23
24    MS WEBSTER:    Yes, and I should say that I don't feel
25    fettered in that at all.  Just to explain, I think there's
26    a process that I would take that I would speak to Jenny and
27    I would speak to - Ms Gale - and I would speak to the Head
28    of Education and I would speak to my Minister, but I don't
29    feel fettered if I had a real problem that I couldn't speak
30    to someone about that.
31
32    MS BENNETT:    How would you escalate a concern?
33
34    MS WEBSTER:    It would be through the relevant head of
35    agency or the head of - the chief of staff perhaps of the
36    Office of the Minister.
37
38    MS BENNETT:    So, you wouldn't go direct to the Minister
39    themselves?
40
41    MS WEBSTER:    I may if I felt strongly enough about it,
42    absolutely, but yeah, hypothetical.
43
44    MS BENNETT:    I'm just curious about the level of
45    importance that's been attached to the implementation
46    within government?
47
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 1    MS WEBSTER:   So, if I felt that there was a barrier being
 2    put in my way by others, I would feel absolutely unfettered
 3    in removing that barrier and going directly to someone that
 4    I thought could assist me.
 5
 6    MS BENNETT:   Standing where I stand, I'll start with you,
 7    Ms Gale, it seems to me that there is a degree of siloing
 8    going on in the implementation of the Royal Commission
 9    recommendations.  Do you see it that way, Ms Gale?
10
11    MS GALE:   No, I don't.
12
13    MS BENNETT:  Is that a risk anyone's taken into account?
14
15    MS GALE:   Sorry?
16
17    MS BENNETT:   Is that a risk that anyone's taken into
18    account, the risk of silos?
19
20    MS GALE:   I don't believe that it is a siloed approach.
21    We have a whole-of-government approach that is coordinated
22    by the Department of Justice, as Ms Webster said.  We have
23    reports that do go up to executive government, and by that
24    I mean to the Cabinet, and so Cabinet has an opportunity to
25    view the reports as they go up, and they have an
26    opportunity to make decisions in relation to any barriers
27    that they may see on particular matters and that would be
28    the case with all of our whole-of-government implementation
29    including for the Royal Commission.
30
31    MS BENNETT:   Ms Webster, do you think there might be a
32    slightly siloed approach given the responsibility or power
33    is at least bifurcated between different departments?
34
35    MS WEBSTER:   No, I would agree with Ms Gale in that there
36    is that accountability up to, and I should have mentioned
37    there is a reporting process, a written reporting process
38    that does go to Cabinet through the Minister for Justice
39    and Attorney-General.  So, no, I don't think it's a siloed
40    approach at all.
41
42    MS BENNETT:   And, how often is Cabinet getting updated,
43    are you able to say, Ms Webster?
44
45    MS WEBSTER:   I wouldn't be able to answer that directly
46    off the top of my head, Ms Bennett.
47
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1    MS BENNETT:   Weekly, monthly, yearly?
2
3    MS WEBSTER:   It would be more than yearly.  I directly
4    update the Minister on a weekly basis in terms of Royal
5    Commission recommendations.
6
7    MS BENNETT:   You mean your Minister?
8
9    MS WEBSTER:   Sorry, yes.
10
11   MS BENNETT:   And in terms of Cabinet updates you'd be able
12   to tell us that if we needed to know?
13
14   MS WEBSTER:   Absolutely, yes.
15
16   MS BENNETT:   We spoke earlier about the Child Safety
17   Standards, and I'll like to return to them as one of the
18   recommendations of the Royal Commission.  You are aware,
19   Ms Webster, that they were one of the recommendations
20   coming out of the Royal Commission?
21
22   MS WEBSTER:   Yes.
23
24   MS BENNETT:   Ms Gale, you're aware of that?
25
26   MS GALE:   I am aware, yes.
27
28   MS BENNETT:   Tasmania appears to be seeking to depart from
29   the nationally - the national approach to the Child Safety
30   Standards.  Ms Webster, starting with you, why?
31
32   MS WEBSTER:   I think if I might clarify.  There's original
33   approach that we - we released a Bill for consultation at
34   the end of 2020.
35
36   MS BENNETT:   2020.
37
38   MS WEBSTER:   December 2020, thank you, and the Bill went
39   out for public consult for around about six weeks as is
40   normal approach.
41
42   MS BENNETT:   Let's just pause there.  That Bill contained
43   in it Child Safety Standards that departed from those
44   recommended in the Royal Commission?
45
46   MS WEBSTER:   Yes, and if I can perhaps shortcut to that,
47   there is a new bill that will come and the government has
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1   accepted the feedback we got, quite significant feedback
2   around that bill in a number of submissions. There will be
3   a subsequent approach where we will develop a comprehensive
4   Child and Youth Safe Organisations Framework that will not
5   depart from the National Principles and, if I may say, that
6   was probably a communication error around the way that
7   should have been communicated, the adoption of those
8   principles will be very much as part of that new Bill.
9
10   MS BENNETT: Can you tell the Commission about that
11   communication area you've just referred to?
12
13   MS WEBSTER: I think it was just the way the information
14   was drafted, so it's about the drafting instructions and
15   also the drafting, I think.
16
17   MS BENNETT: About the standards?
18
19   MS WEBSTER: Yes.
20
21   MS BENNETT: Is that concerning, if I can suggest, a
22   misconception that the standards are directed to the
23   prevention of child sexual abuse alone?
24
25   MS WEBSTER: No, I think - I'm not a drafter but I think
26   there's a range of things that are often taken into
27   consideration and it was certainly something that we would
28   have sought to correct, we just didn't get a chance to do
29   that, so we would have sought to correct that in the
30   revised Bill, if that ...
31
32   MS BENNETT: What I wanted to understand - if I could ask
33   the operator to show me TRFS.0007.0115.0004-1. This is
34   taken from, I believe it's your document, but you can tell
35   me if I'm mistaken about that. Do you recognise that
36   document?
37
38   MS WEBSTER: Yes, I do.
39
40   MS BENNETT: You can see the second box down, 6.5,
41   concerns the Child Safety Standards.
42
43   MS WEBSTER: Yes.
44
45   MS BENNETT: That's in the form that they were
46   recommended?
47

1   MS WEBSTER: Yes, that's correct, my understanding, yes.
2
3   MS BENNETT: And then the general barriers to
4   implementation under that, the first paragraph there, if
5   the operator could zoom in on the first paragraph under the
6   heading:
7
8   *The Royal Commission was limited by its*
9   *terms of reference in that the Child Safe*
10   *Standards are focused primarily on child*
11   *sexual abuse, as opposed to a broader scope*
12   *of all forms of child abuse. As such,*
13   *states and territories have had to consider*
14   *the scope of the application of the*
15   *Standards and whether they need to be*
16   *broadened for their particular*
17   *jurisdiction.*
18
19   Now, that's not right, is it?
20
21   MS WEBSTER: I'm not sure that I - I think what we were
22   trying to say there is that there's - each jurisdiction
23   will have different, slightly different legislation that
24   will need to, or different approaches that we would need to
25   consider, so that's my understanding.
26
27   MS BENNETT: Did you receive a report about the evidence
28   of the National Children's Commissioner who identified as
29   the most common misconception, that the Standards were
30   limited to the protection of children from child sexual
31   abuse, whereas they were intended to operate more broadly?
32   Did you hear that evidence?
33
34   MS WEBSTER: I didn't hear that evidence, no.
35
36   MS BENNETT: I see. I'm just trying to understand, if so
37   far as you can tell us, this was part of that
38   misunderstanding or if you consider that to be a reflection
39   of your current understanding of a barrier to the
40   implementation?
41
42   MS WEBSTER: Yeah, it may have been and I would have to
43   take that and consider that, absolutely.
44
45   MS BENNETT: If the operator can bring that down. The
46   other barrier that's identified there, having just asked
47   the operator to take it down. I'll ask the operator to put

1   it back, with my apologies. The other barrier that is
2   identified there is sector readiness. Are you aware of
3   that as a barrier?
4
5   MS WEBSTER: Yes, I am.
6
7   MS BENNETT: Did you hear the evidence yesterday of
8   TasCOSS and Dr Burton?
9
10   MS WEBSTER: Yes, I did.
11
12   MS BENNETT: Did you hear him say that the sector was
13   ready?
14
15   MS WEBSTER: I did, and I think that was clearly what was
16   in the submissions that came through. We had, I think, 22
17   submissions to that revised Bill. However, I think the
18   sector broadly, when we talk about the implementation of a
19   child and youth safe organisation's framework for the
20   state, we are talking around about 8,000 organisations.
21
22   So, our view would be that some of those
23   organisations, and particularly members of TasCOSS, would
24   be absolutely ready and in fact we'd be looking to them to
25   help us with the implementation. But there are around
26   about 8,000 child-related services including clubs,
27   associations throughout Tasmania who would be mandated to
28   comply with Child and Youth Safe Organisations Framework,
29   so I think the readiness of that wide group would be at
30   very different levels, I think.
31
32   MS BENNETT: So what's your timeline?
33
34   MS WEBSTER: So, we're expecting to have a revised Bill
35   shortly, you know, certainly within the next - you know,
36   before the end of the year certainly. But I think, to
37   culturally embed and to properly embed the Child and Youth
38   Safe Organisations Framework, including an independent
39   oversight and Reportable Conduct Scheme, that will be part
40   of that Bill, that new revised Bill. I think we would
41   anticipate that that would probably be a three-year
42   implementation process because we will need to take into
43   consideration the information from, you know, a range of
44   people, but we haven't really got down to that level of
45   detail. But I think definitely there would be an
46   implementation period that would be required to make sure
47   people are aware of what the new framework is about.

1
2   MS BENNETT: Let's just separate that out for a moment.
3   The Child Safe Standards, aside from a Reportable Conduct
4   Scheme, are they now being made to wait for the
5   implementation of a Reportable Conduct Scheme?
6
7   MS WEBSTER: It would certainly depend on the way that the
8   Bill is and the Act is finally implemented by Parliament.
9   So, it could be that certain parts of that Act could be
10   implemented earlier and some parts of it might be later.
11
12   MS BENNETT: So, there's no intention to link the two as
13   far as you're aware, there's no intention to link the two
14   in terms of timing?
15
16   MS WEBSTER: My understanding is certainly, like, I don't
17   think we've got the level of detail and I think one of the
18   things that we've heard throughout the consultation process
19   and the public submissions was that we really need to
20   consult with people about how we do this.
21
22   MS BENNETT: I just want to explore that with you because
23   this has been a recommendation for 18, 19, 20 - about
24   four years now; is that right?
25
26   MS WEBSTER: Yes.
27
28   MS BENNETT: You've seen the successful implementation in
29   other jurisdictions, haven't you?
30
31   MS WEBSTER: I think three jurisdictions now, I think,
32   would be correct.
33
34   MS BENNETT: Yes, you've seen that happen?
35
36   MS WEBSTER: Yes.
37
38   MS BENNETT: You've learned some lessons from what they
39   have done?
40
41   MS WEBSTER: Yes.
42
43   MS BENNETT: Is it your evidence that there's another
44   three years before this recommendation can be implemented
45   in Tasmania?
46
47   MS WEBSTER: I think our project to implement all of those

1   recommendations around the adoption of the National
2   Principles, the Reportable Conduct Scheme, the independent
3   oversight, there's some information sharing requirements
4   and some legislative change around child safety across
5   government and non-government organisations. I think that
6   that is not a quick process and we want to make sure that
7   they're embedded and they're understood.

9   MS BENNETT: Well, enacted is the first step, isn't it?

11   MS WEBSTER: Absolutely, yes.

13   MS BENNETT: And then embedded and understood.

15   MS WEBSTER: Yes.

17   MS BENNETT: But you haven't yet taken the first step, is
18   that right?

20   MS WEBSTER: No, we haven't.

22   MS BENNETT: And there are a number of years, it sounds
23   like, until that first step is taken.

25   MS WEBSTER: I think that's a matter we'll have to work
26   through once we get the next version of the bill.

28   MS BENNETT: So as we sit here four years after the
29   recommendation, you are unable to tell the Commission about
30   the timeline for the implementation of that key
31   recommendation?

33   MS WEBSTER: I'm unable to give you an exact timeframe,
34   that's right.

36   MS BENNETT: I suggest that that's not reflective of the
37   implementation of these recommendations being a priority
38   for the State of Tasmania, would you agree with that?

40   MS WEBSTER: No, I wouldn't agree with that.

42   MS BENNETT: Ms Gale, would you agree with that?

44   MS GALE: I don't have the detailed knowledge that
45   Ms Webster has but I would not agree that this is not a
46   priority for Tasmania.

1   MS BENNETT: Would you agree that the timeline tends to
2   suggest that this is not being pressed with the urgency
3   that it might demand?
4
5   MS GALE: To some degree the timeline is out of control of
6   agencies, in that it has to go through a legislative
7   process, and obviously there are steps in relation to
8   legislative processes that are unavoidable and take,
9   sometimes do take longer than we expect they might.
10
11   MS BENNETT: Are you saying that Parliament is the
12   roadblock?
13
14   MS GALE: No, I'm just saying that it's a process. We'd
15   normally go through Draft Consultation Bills, we get the
16   feedback, we respond to that, we make amendments and so on,
17   with the goal to making the best possible legislation that
18   we can.
19
20   MS BENNETT: While we're speaking about processes, can I
21   segue to employment processes and to disciplinary
22   processes. Now, Ms Gale, I think they are a matter of your
23   responsibility; is that right?
24
25   MS GALE: Through the State Service Management Office, we
26   provide the guidelines, but the processes are determined by
27   the employment directions which are issued by the Premier
28   of the state.
29
30   MS BENNETT: Who issues the employment directions that we
31   refer to colloquially as ED4, ED5, Employment Direction 4,
32   Employment Direction 5.
33
34   MS GALE: As I just said the Premier, the Minister
35   administering the State Service Act who is the Premier.
36
37   MS BENNETT: Are you responsible for their day-to-day
38   implementation and operation?
39
40   MS GALE: No, I'm not, heads of agencies - well, I am as
41   head of agency for DPAC, but heads of agencies are
42   responsible.
43
44   MS BENNETT: And your role as head of the State Service
45   doesn't involve any additional responsibilities in relation
46   to those processes?
47

1   MS GALE: It might involve the State Service Management
2   Office which is part of my department in providing any
3   additional guidelines and support that agencies might need,
4   but in terms of implementation and enacting, that is a
5   matter for each agency.
6
7   MS BENNETT: Do you have guidelines or support that you
8   proactively provide to agencies or departments around ED5?
9
10   MS GALE: The guidelines are in ED5 itself.
11
12   MS BENNETT: How often are they updated?
13
14   MS GALE: I think I would have to take that on notice, but
15   I think ED5, the date was 2013 from memory.
16
17   MS BENNETT: I think 13 for implementation and 14 last
18   review date, but yes. Have they been reviewed since?
19
20   MS GALE: They are in the process of being reviewed and
21   have been for quite some time in fact.
22
23   MS BENNETT: I think it was the Auditor-General who gave
24   some evidence this week that he had identified some
25   concerns about the ED5 process back in 2018. Is that your
26   recollection?
27
28   MS GALE: I think the Auditor-General provided a report
29   into managing under-performance which is different to ED5.
30
31   MS BENNETT: So that didn't feed into your consideration
32   of ED5?
33
34   MS GALE: Not ED5, no, because it relates to a different
35   employment direction.
36
37   MS BENNETT: Have you received any feedback to the effect
38   that ED5 is not fit for purpose?
39
40   MS GALE: Yes, we have feedback, we have feedback from
41   agencies in relation to their practical implementation of
42   ED5 through the State Service review, the Tasmanian State
43   Service review conducted by Ian Watt, there was feedback
44   again mostly from agencies in relation to that, and there
45   was an Integrity Commission report into managing misconduct
46   in the State Service which also provided some
47   recommendations and some good practice suggestions to take

1   into account.
2
3   MS BENNETT: Is it fair for me to suggest to you, Ms Gale,
4   that there has been relatively sustained criticism of the
5   ED5 process even in the years leading up to the Watt
6   Review?
7
8   MS GALE: There are certainly concerns that agencies have
9   in relation to the practical application of ED5, yes, I
10   would agree with that.
11
12   MS BENNETT: And one of those is in the - well, let me:
13   you tell us in your statement that ED5 is not constructed -
14   this is paragraph 29, second dot point.
15
16   MS GALE: Thank you.
17
18   MS BENNETT: That ED5 is not constructed with the primary
19   purpose of "facilitating a trauma-informed or child-centred
20   investigation process". That's your evidence, isn't it?
21
22   MS GALE: That's correct, there is only one reference --
23
24   MS BENNETT: I'll just pause, sorry. And it is the
25   process that is used in the Department of Education in
26   response to allegations of misconduct against a teacher; is
27   that right?
28
29   MS GALE: That is correct.
30
31   MS BENNETT: And it is also used in other aspects of the
32   Tasmanian State Service that are child-facing; is that
33   right?
34
35   MS GALE: That's correct.
36
37   MS BENNETT: And that that might require an investigation
38   into misconduct that is related to child sexual abuse?
39
40   MS GALE: Correct.
41
42   MS BENNETT: Having regard to those matters, why is it not
43   constructed with the primary purpose of facilitating a
44   trauma-informed or child-centred investigation process?
45
46   MS GALE: It's part of an employment framework and there
47   are other Acts and other processes and policies that

1   agencies with those child-facing services have to take
2   account of, for example the Children, Young Persons and
3   Their Families Act and so on. So, the primary purpose of
4   the employment directions are to set high level guidance in
5   relation to the way in which these things should be done.
6
7   MS BENNETT: Do you accept from me though that if the ED5
8   process intersects with children and with misconduct
9   concerning children, that the children should be at the
10   centre of the process?
11
12   MS GALE: Yes, they should, um --
13
14   MS BENNETT: Is it fair that children should be at the
15   centre of that process?
16
17   MS GALE: They should be, yes.
18
19   MS BENNETT: And they're not in the context of ED5.
20
21   MS GALE: Well, ED5, as I indicated earlier, is part of an
22   employment framework. Where it does take account of
23   children being involved in the process, there is a
24   reference in ED5 which talks about the sensitive handling
25   of interviews and so on where the children are concerned.
26   But ED5, the employment directions are not solely the
27   legislation that agencies have to take into account when
28   they are working with children and young people, as I've
29   said.
30
31   MS BENNETT: No, but this is an investigation that we're
32   talking about into potentially misconduct involving child
33   sexual abuse; that can be encompassed within an ED5
34   investigation, can't it?
35
36   MS GALE: ED5 covers all alleged breaches of the code of
37   conduct.
38
39   MS BENNETT: So a sexual assault by a teacher could be
40   investigated under ED5?
41
42   MS GALE: It could be.
43
44   MS BENNETT: And there's no other process within the
45   Department of Education or within the Tasmanian State
46   Service to carry out that investigation, is there?
47

1   MS GALE: Well, I should point out first of all that in
2   matters where there are allegations that may lead to - that
3   may be in relation to criminal activity, Tasmania Police
4   investigations are the first port of call, and then once
5   Tasmania Police investigations are completed, depending on
6   what the outcome of those are, then yes, in terms of
7   whether or not there's been a breach of the code of
8   conduct, ED5 is the process that is used.
9
10   MS BENNETT: And my suggestion to you is that the ED5
11   process doesn't change to account - isn't flexible enough
12   and doesn't embed within it a child safe, child-centred or
13   trauma-informed approach. Is that fair?
14
15   MS GALE: I think in my statement I think I identified
16   that one of the deficiencies of the processes that we have
17   at the moment is that they don't take into account the
18   complainant or indeed victims.
19
20   MS BENNETT: And that's often children?
21
22   MS GALE: Could be children, yes.
23
24   MS BENNETT: And they ought to be taken into account,
25   shouldn't they?
26
27   MS GALE: Yes, I've identified that as a failing and I
28   think they should be.
29
30   MS BENNETT: That's right, and why does the ED5 stand as
31   it does today? Why hasn't it been changed?
32
33   MS GALE: We've been on a very long process of reviewing
34   ED5, and there are a range of, I guess, reasons why over
35   time we haven't made specific changes. I'm not aware that
36   that change, except in the general sense about talking
37   about complainants and so on, has been raised, but we have
38   been - because it's part of legislation and it's a legal
39   document, and we're talking about practical implementation
40   by agencies that have a very diverse range of
41   responsibilities and services and so on, and we do work
42   collaboratively with agencies when we're reviewing things
43   such as ED5, it's very complex to try to come to a landing,
44   I guess. We had done some work on the Employment
45   Directions and had a hiatus in the development of that work
46   due to other priorities. We're a very small jurisdiction,
47   the State Service Management Office that manages all of

1   this work is quite a small unit in Tasmania, and
2   occasionally we have other priorities unfortunately that
3   must be undertaken if we're talking globally about those
4   kind of changes.
5
6   MS BENNETT: I think that's the second time you've cited
7   complexity as a reason that child safe measures haven't
8   been implemented in the State of Tasmania; the first in
9   relation to Child Safety Standards and now in relation to
10   ED5. Can I suggest to you, again, that these are matters
11   that are not receiving the priority that they ought to
12   receive within the Tasmanian State Government.
13
14   MS GALE: I don't believe that is the case, but I state
15   again that there are very complex matters and a range of
16   priorities for government that agencies have to deal with
17   and practically we can't do everything at once and --
18
19   MS BENNETT: I'd understood from your earlier evidence
20   that this was a top priority, children and their safety
21   were a top priority?
22
23   MS GALE: It's certainly a top priority, yes.
24
25   MS BENNETT: So what are these priorities that are taking
26   precedence?
27
28   MS GALE: In terms of the State Service Management Office,
29   as I said, we have business as usual where we have daily
30   employment issues that need to be addressed and dealt with,
31   as an example.
32
33   MS BENNETT: Another limitation of the ED5 process is that
34   it appears that it is being interpreted as being limited to
35   where the misconduct occurs in the workplace. I was just
36   looking for the precise wording but you know the wording
37   I'm talking about in connection with the employment of the
38   person, the alleged perpetrator. You know what I'm talking
39   about when I talk about that?
40
41   MS GALE: Yes, I do.
42
43   MS BENNETT: I think, Ms Webster, you talk about this in
44   your statement at about paragraph 42, that that is a factor
45   which limits investigations under ED5; is that your
46   understanding?
47

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 1        MS WEBSTER:    Yes.
 2
 3        MS BENNETT:    I'd like to understand that and I'd like to
 4        understand how that is understood by your office.  How
 5        closely connected to employment does the misconduct need to
 6        be to be amenable to an ED5?
 7
 8        MS WEBSTER:    I think - sorry, that was for me, Ms Bennett?
 9
10        MS BENNETT:    Yes, it was, thank you.
11
12        MS WEBSTER:    I think the actual points under the State
13        Service Act actually individually say "in the course of
14        employment", so it's very specific.  I think there is one,
15        if - I'm just using my memory here, that is around
16        bringing - this is my colloquialism - the reputation of the
17        State Service into disrepute, if you like.  So, that's one,
18        but the others in my understanding are very much around "in
19        the course of" or connection with employment.
20
21        MS BENNETT:    And I guess what I'm asking about is how
22        close the connection needs to be, so let me give you an
23        example.  I'm going to give you an example from the
24        education space because that's where it most commonly
25        arises.  An adult perpetrator is exposed to and gains the
26        trust of a child while they're a teacher.  They have
27        contact with the child while on school grounds and while
28        they're teaching the child is reasonably appropriate,
29        there's no breach of the code alleged there, but that's how
30        they know the child, that's how they have become "friends"
31        with the child, and let the transcript reflect the inverted
32        commas.  And outside of school in a car parked in a remote
33        place, for example, the teacher assaults the child.  Have
34        they acted - is that close enough to the course of their
35        employment to trigger ED5?
36
37        MS WEBSTER:    Hypothetically --
38
39        MS BENNETT:    Hypothetically --
40
41        MS WEBSTER:    My understanding would be, it is in the
42        course of employment.
43
44        MS BENNETT:    Yes, and the fact that the relationship
45        commenced in the course of employment, although no specific
46        code breach is alleged on school grounds, even where that
47        relationship has a life outside of school and physically
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1   removed from school, the connection would be sufficient in
2   your view?
3
4   MS WEBSTER: Yes, and I should just reiterate what Ms Gale
5   said around police.
6
7   MS BENNETT: Of course.
8
9   MS WEBSTER: Notification of course take that as a given.
10
11   MS BENNETT: I take that as a given, of course.
12
13   MS WEBSTER: But in my understanding, hypothetically, yes.
14
15   MS BENNETT: You would expect that to trigger an ED5?
16
17   MS WEBSTER: I would, yes.
18
19   MS BENNETT: Ms Gale, do you take a different view?
20
21   MS GALE: No, I don't.
22
23   MS BENNETT: You've also identified in, I think it's in
24   your statement, Ms Webster, at paragraph 42, now I might
25   need to go to the precise wording because I simply don't
26   understand.   You reference there:
27
28   *The current code is largely limited within*
29   *the course of employment.*
30
31   And you say then:
32
33   *There are limitations on investigations*
34   *under ED5 where the alleged conduct occurs*
35   *outside the workplace.*
36
37   We've covered that:
38
39   *And where the threshold for a criminal*
40   *investigation or prosecution is not*
41   *reached.*
42
43   What do you mean by that second limb?
44
45   MS WEBSTER: So, if I can just be very clear, I was
46   talking about non-child sexual abuse matters in relation to
47   that particular, so I'm not referring to a child sexual

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 1    abuse matter which would be of course referred to police
 2    and that's a matter for them.  But can I give an example
 3    perhaps Ms Bennett?
 4
 5    MS BENNETT:   Yes, please.
 6
 7    MS WEBSTER:   For example, if someone was working in an
 8    administrative area of my department and they were
 9    investigated for using a home computer to download
10    information that we would consider to be inappropriate, but
11    it doesn't reach a threshold of criminal prosecution or
12    there's evidence - the courts take their or the police take
13    their action and it doesn't reach criminal - there's no
14    criminal outcome.  That has not occurred in the workplace,
15    that person is a private individual using their own
16    resources.  There is no crossover at all to the workplace.
17
18    MS BENNETT:   Let me just check I understand.  So, if there
19    is an allegation of criminal offending and ED5 could be
20    initiated; is that right?
21
22    MS WEBSTER:   It could, yes.
23
24    MS BENNETT:   Is that irrespective of connection with the
25    workplace?
26
27    MS WEBSTER:   That's my understanding, yes.
28
29    MS BENNETT:   Sorry, I should be clear I'm not asking you
30    for legal opinions, I'm just interested in your views,
31    we'll talk to the lawyers later.
32
33    MS WEBSTER:   Yes.
34
35    MS BENNETT:   So, if there's a criminal offence alleged,
36    ED5 is activated, that's your understanding.
37
38    MS WEBSTER:   M'hmm.
39
40    MS BENNETT:   You'd agree with me the threshold for an
41    allegation is not high?
42
43    MS WEBSTER:   No.
44
45    MS BENNETT:   Ms Gale, is there anything you'd disagree
46    with about that?
47
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1       MS GALE:   No.
2
3       MS BENNETT:   And then separate to that where the
4       allegation is one of misconduct alone, it needs to have a
5       connection with the workplace; is that fair, Ms Webster?
6
7       MS WEBSTER:   Yes.
8
9       MS BENNETT:   And Ms Gale?
10
11      MS GALE:   Yes.
12
13      MS BENNETT:   And the connection is one that we've talked
14      about that will take into account the circumstances of the
15      relationship and be construed in a reasonably broad and
16      protective way.  Am I being fair to you, Ms Webster?
17
18      MS WEBSTER:   Yes, I think so.
19
20      MS BENNETT:   Reflect on it and I'll give you the
21      opportunity at the end.  Ms Gale, am I being fair?
22
23      MS GALE:   Yes, I think so.
24
25      MS BENNETT:   I'd like to turn now and speak briefly - I'm
26      conscious of the time - but I'd like to cover the question
27      of civil litigation and each of your departments are
28      involved in civil litigation from time to time; is that
29      right?  Ms Webster, Ms Gale?
30
31      MS WEBSTER:   Yes.
32
33      MS BENNETT:   Ms Gale, you're involved in civil litigation,
34      I'm leaving aside child sexual abuse for the moment, but
35      civil litigation from time to time?
36
37      MS GALE:   Um, I'd have to recall.  I don't believe in my
38      time in the agency.
39
40      MS BENNETT:   You have no involvement in civil --
41
42      MS GALE:   I'd have to give that some thought; I don't
43      believe so.
44
45      MS BENNETT:   In which case, I think it's discussed in your
46      statement nonetheless, Ms Gale, around paragraph 59, and I
47      think you say there you've got no instances of civil
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litigation connected with child sexual abuse; that's right,
isn't it?

MS GALE: That's correct, yes.

MS BENNETT: And, Ms Webster, you tell us that you do have
some - well, your department has some involvement in civil
litigation?

MS WEBSTER: Yes, we do.

MS BENNETT: Do you have involvement with civil litigation
concerning child sexual abuse?

MS WEBSTER: Only in as much as a couple of things. One
would be, depending on the - well, the allocation for the
funding would come through my department, so I simply
sign-off on an amount under the Financial Management Act,
and if a - perhaps there was a particular child abuse
claimant had some involvement in the department, so they
had been in the prison service, for example, they may have
sought records from us.

MS BENNETT: So, just to go back, when you talk about the
allocation of funding triggering your involvement, why
would that funding requisition come to you?

MS WEBSTER: It's just a line item in the budget, it has
to sit somewhere, and the Office of the Solicitor-General
who's a statutory officer, of course, it's a line item in
our budget. So, there's nothing I can do with that money
when it comes, it's allocated to the Solicitor-General, but
the management of that sits within the Department of
Justice's budget chapter, if that makes sense.

MS BENNETT: So is that the funding of that office?

MS WEBSTER: The funding of that office and the funding
for child abuse civil claims.

MS BENNETT: So let's assume that the State of Tasmania is
a defendant in a proceeding --

MS WEBSTER: Yes.

MS BENNETT: -- and the State of Tasmania has decided to
settle that proceeding for $10,000. Now, let's just pause

1   and this is plainly a hypothetical. The $10,000, who's
2   signing the cheque for that $10,000?
3
4   MS WEBSTER: It would depend on the individual claimant or
5   the individual matter. Sometimes it might be the
6   Department of Justice; in some cases my understanding it
7   would be the Department of Education or Department of
8   Communities or Department of Health.
9
10   MS BENNETT: In what circumstance would it be you signing
11   the cheque?
12
13   MS WEBSTER: I'd have to clarify, but I do know that child
14   abuse civil claims there has been a general allocation
15   across government and that's come through the Department of
16   Justice simply for - so it's all in one place if that
17   makes --
18
19   MS BENNETT: So where the State of Tasmania is the
20   respondent, the cheque gets signed by you as a convenient
21   location, is that fair?
22
23   MS WEBSTER: Yes, that's a fair statement.
24
25   MS BENNETT: Ms Gale, you've not had the experience, but
26   are you aware of the circumstances in which your department
27   would be asked to sign such a cheque?
28
29   MS GALE: Yes, if there was such a case, yes.
30
31   MS BENNETT: Are you able to give us an example where that
32   might arise?
33
34   MS GALE: If there was - if we had to - if there was civil
35   litigation and, could be potentially an employment matter,
36   possibly.
37
38   MS BENNETT: I see, yes. You both say that the Office of
39   Solicitor-General has sole responsibility for making
40   decisions in relation to the conduct of civil claims. Now,
41   I'd like to explore that. Ms Webster, don't you instruct
42   your lawyers?
43
44   MS WEBSTER: Yeah, so we provide certainly instructions
45   and advice and information, but the management of that
46   claim and the legal running of that matter is undertaken by
47   the Office of the Solicitor-General.

1
2   MS BENNETT: I just want to be really clear, because you
3   say in your statement the decisions are made solely by the
4   Office of the Solicitor-General, but it's your decision and
5   the Office of the Solicitor-General enacts it on
6   instruction; is that right?
7
8   MS WEBSTER: My decision?
9
10   MS BENNETT: So, let's go back to my scenario where you've
11   decided to settle a claim, there's been a claim made: who
12   decides $10,000 is the right amount?
13
14   MS WEBSTER: The Office of the Solicitor-General, civil
15   litigation.
16
17   MS BENNETT: And you as a matter of course sign the
18   requisition for those funds?
19
20   MS WEBSTER: Yeah, on advice and information from the
21   Office of the Solicitor-General.
22
23   MS BENNETT: So you take instructions from your lawyers,
24   you don't give instructions to your lawyers?
25
26   MS WEBSTER: I don't settle, I have never managed a child
27   sexual abuse claim, so I should say I've never had one in
28   the department. So, it's a signing of the invoice. I have
29   a delegation to a certain amount and I sign that invoice on
30   advice.
31
32   MS BENNETT: And you would exercise independent
33   consideration of the appropriateness of that requisition?
34
35   MS WEBSTER: Yes.
36
37   MS BENNETT: So you do make a decision, don't you?
38
39   MS WEBSTER: Yes, but I am making that on the legal
40   decisions and the decisions about how the case is managed,
41   is the responsibility of the Solicitor-General.
42
43   MS BENNETT: I'd just like to ask again: let's assume that
44   the State of Tasmania, let's leave aside child sexual abuse
45   or not, let's just, any case, you would instruct a
46   Solicitor-General, for example, to put in a defence,
47   wouldn't you?

```
1
2      MS WEBSTER:    We would give factual information and advice
3      would be sought from us around that case, absolutely.
4
5      MS BENNETT:    But who is accountable for the decisions of
6      the State of Tasmania in the way that they respond to a
7      claim against it?
8
9      MS WEBSTER:    The Office of the Solicitor-General is
10     responsible for the management of those matters and the
11     legal decisions.
12
13     MS BENNETT:    So they make the decisions and then instruct
14     themselves to carry it out?
15
16     MS WEBSTER:    I don't think I'd put it that way, I think
17     that the information obviously comes - the agency holds the
18     relevant information.
19
20     MS BENNETT:    What's the relevant information you're
21     talking about?
22
23     MS WEBSTER:    So it might be factual information about the
24     person was in a school, in a prison facility, at a certain
25     time, whether or not the agency has certain information
26     about the particular alleged perpetrator.
27
28     MS BENNETT:    Provide factual instructions.
29
30     MS WEBSTER:    Correct.
31
32     MS BENNETT:    You don't provide legal instructions?
33
34     MS WEBSTER:    No.
35
36     MS BENNETT:    So if you had a case before you, you had a
37     case that alleged wrongdoing and you looked at it and you
38     said, "What happened here was terrible, we should
39     apologise".   Can you instruct your lawyers to apologise?
40
41     MS WEBSTER:    Yes.
42
43     MS BENNETT:    And they will comply with your instruction no
44     matter what they say?
45
46     MS WEBSTER:    Well, I don't want to make a hypothetical
47     situation.
```

MS BENNETT: No, well, I need to explore this
hypothetical. Is it your expectation that the Office of
the Solicitor-General, when acting for the State of
Tasmania, will take instructions from a client?

MS WEBSTER: Yes, it is.

MS BENNETT: So, the decision is yours about how that
litigation is conducted?

MS WEBSTER: No, the legal decisions and the decision
about how the case is managed are made by the
Solicitor-General; of course there is interaction from the
agency who may be involved.

MS BENNETT: I'm struggling to understand that
distinction, with respect, because it seems to me that the
client is the person who gives factual instruction and the
instruction to the lawyers about how to carry out their
wishes. Do you accept that is the general responsibility
of a defendant?

MS WEBSTER: Yes.

MS BENNETT: So, lawyers carry out instructions, don't
they?

MS WEBSTER: They do, that's my understanding.

MS BENNETT: So, the instructions need to come from a
client, don't they?

MS WEBSTER: Yes.

MS BENNETT: What I'm trying to understand is, when your
department is the client, you're instructing the Office of
the Solicitor-General?

MS WEBSTER: Yes.

MS BENNETT: And so, you're the decision maker?

MS WEBSTER: Yes, but the matter is run by the Office of
the - but, yes.

MS BENNETT: Do you effectively act at the dictation of

1   the Office of the Solicitor-General when it comes to
2   matters of litigation?
3
4   MS WEBSTER: No.
5
6   MS BENNETT: So, you've said they make the decisions.
7
8   MS WEBSTER: Yes.
9
10   MS BENNETT: So, you don't feel free to depart from their
11   decisions?
12
13   MS WEBSTER: Sorry, I missed that?
14
15   MS BENNETT: You don't feel free to depart from their
16   decisions?
17
18   MS WEBSTER: I feel free to certainly question and discuss
19   those decisions where I've --
20
21   MS BENNETT: It's not your final choice?
22
23   MS WEBSTER: I haven't been in that situation, Ms Bennett,
24   at all where I've had to depart from that advice that I've
25   been given.
26
27   MS BENNETT: But do you approach it on the basis that you
28   could depart? That's what I'm trying to drive at.
29
30   MS WEBSTER: Yes, I approach it on the basis that I could
31   actually - I could definitely have the discussion with
32   the --
33
34   MS BENNETT: Who has the final say, Ms Webster?
35
36   MS WEBSTER: Well, I think it would depend on the
37   individual matter, Ms Bennett. So, I think I'm not able -
38   I don't want to speculate and I think, you know, I don't
39   want to be - you know, address a hypothetical situation.
40
41   If it's matter, for example, where there's been a
42   workers' compensation matter we certainly do provide
43   instruction, for example, around how the matter - we would
44   like the matter handled.
45
46   MS BENNETT: You said in your statement that the decision
47   is solely that of the Office of the Solicitor-General.

```
 1      Let's say the Office of the Solicitor-General recommends a
 2      settlement of $10,000; is that the sort of thing that could
 3      happen?
 4
 5      MS WEBSTER:   Yes.
 6
 7      MS BENNETT:   What if you said, "No, it should be 20".
 8      What would happen?
 9
10      MS WEBSTER:   I would imagine that there would be a
11      discussion by the head of agency and the Office of the
12      Solicitor-General as to why the head of agency thinks it
13      should be $20,000.
14
15      MS BENNETT:   And they, let's say, extending the
16      hypothetical say, "I think we've done the wrong thing here
17      and it should be 20", and the lawyers say, "It should be
18      10".  Who wins?
19
20      MS WEBSTER:   Well, I think it would depend on a
21      case-by-case basis.
22
23      MS BENNETT:   Well, I'm asking you in this situation, the
24      Head of Agency believes 20, the lawyers believe 10; who has
25      the last word?
26
27      MS WEBSTER:   I think it - I can't answer that question
28      hypothetically, I really don't want to speculate.  I'm not
29      being difficult, I just don't want to speculate on that.
30
31      MS BENNETT:   Well, Ms Webster, I'd suggest to you it's
32      entirely unsatisfactory that you are not able to tell this
33      Commission who bears responsibility for the conduct of
34      civil litigation in this state.  Would you accept that?
35
36      MS WEBSTER:   No, I'm very clear that the Office of the
37      Solicitor-General has the responsibility for civil
38      litigation.  It is a collaborative process where, of
39      course, in my situation when I'm talking about a particular
40      matter, I would discuss the matter with the relevant...
41
42      MS BENNETT:   It seems to me that there is an extent to
43      which you are, with respect, abdicating your responsibility
44      as the client to make the final decision and own that final
45      decision.  Do you accept that?
46
47      MS WEBSTER:   No, I don't.
```

MS BENNETT: Ms Gale, you've heard this exchange, how
would you manage the situation that I've been discussing?

MS GALE: Well, again, as Ms Webster said, I wouldn't like
to speculate, and I've been trying to think of an example
where I have been involved in those kinds of discussions,
and I have not. So, I think that I understand that it is a
collaborative process, there would be discussions, and in
the end a decision would be made and it may be made
jointly --

MS BENNETT: Who makes that decision?

MS GALE: Well, it may be made jointly, so I can't - and,
again, I don't want to speculate because I haven't been in
that situation and I don't have experience of it.

MS BENNETT: Why can't you tell us --

PRESIDENT NEAVE: Can I intervene and ask whether there is
any guidance provided to you, by way of guidelines,
practice guidance or something, about how you would deal
with these situations?

MS WEBSTER: There are the Model Litigant Guidelines from
the Solicitor-General that are published, and there are
also guidelines around the conduct of civil matters.

PRESIDENT NEAVE: And is there anything there which
clarifies what is your responsibility and what is the
responsibility of the Solicitor-General?

MS WEBSTER: Oh, I just have to confirm with those
guidelines.

PRESIDENT NEAVE: Thank you.

MS WEBSTER: But I can certainly provide them.

MS BENNETT: Commissioners, those are the matters that I
seek to explore with these witnesses.

PRESIDENT NEAVE: Any questions?

COMMISSIONER BROMFIELD: Not for me, thank you.

1   PRESIDENT NEAVE: Thank you very, very much indeed.
2
3   MS BENNETT: Perhaps, Commissioners, we could have
4   five minutes, and then I'll close for the week.   Please the
5   Commissioners.
6
7   **SHORT ADJOURNMENT**
8
9   MS BENNETT: Commissioners, your Counsel Assisting team
10   would now like to make some concluding observations at this
11   point in the week.   These are not our closing submissions
12   but observations concerning the themes and ideas that, in
13   our submission, have arisen on the evidence that this
14   Commission has received this week.   We have included some
15   high-level reflections that might be of assistance to those
16   considering their responses to this Commission.
17
18   This Commission started this week when the Commission
19   heard evidence from two very brave women over day one and
20   day two about their experiences of having their trust
21   betrayed by institutions designed to protect their
22   children.
23
24   Commissioners, you heard first about Kim and Kim's
25   daughter Paula.   Paula was a bright, happy and active young
26   girl, she was intelligent and a quiet achiever who loved
27   dancing, netball and little athletics.   During high school
28   she was a student leader who received many awards.   She
29   wanted to be a nurse and a midwife.   She loved her pet
30   Labradors and to have her nails painted.   She enjoyed
31   cooking, shopping and watching sport.
32
33   While Paula was at a vulnerable age an older male
34   teacher caused her to believe he was her friend, and in
35   many respects Paula's story echoes a number of the themes
36   that have emerged this week: the progression from boundary
37   violations on the part of a teacher, to more serious
38   conduct when he kissed her in a remote area parked in a car
39   at night.
40
41   Kim talked about how he then made Paula feel
42   responsible for the fact that he had done the wrong thing.
43   Kim talked about the way that experience changed Paula, who
44   was already going through a difficult time.   It was an
45   example, Commissioners, of the "multiplier effect" that
46   Professor Milroy gave evidence about on Wednesday, and
47   Paula's conditions deteriorated until she needed medical

care.

When Paula was admitted to LGH, to Launceston General Hospital, it was because she needed care and treatment, Commissioners. She and her mother went to a place with people they trusted, including a paediatric nurse named James Griffin.

Griffin, we heard from Kim, groomed those around him and he sought out people who needed help. It aligns entirely, Commissioners, with the evidence of Professor Milroy who talked about grooming and how it operates.

She said:

There's lots of aspects to grooming, which
is why it's a really difficult thing
sometimes to even identify because it can
involve many different aspects.

She explained:

... the person becomes friends with
everybody and is well-liked and trusted by
everybody, but they also set up a negative
reputation for the child. So, when the
child does disclose everyone says, "Oh,
yeah, but that child never tells the
truth."

Griffin's over-involvement with Kim was a red flag, Commissioners but it appears at this stage, Commissioners, that not one of those associated with the hospital were trained to identify and these are issues we'll explore in full in week 4, we have not explored them fully in week 1.

At this stage in her life Paula and Kim both needed support and they believed Griffin was being kind when he invited Paula to come to visit his house on weekends while she was on leave from the hospital to travel with him interstate over the weekend.

All of that conduct, Commissioners, takes on a dark and sinister complexion when considered in light of what we came to understand about Griffin's abuse of children in his care.

1　　　　Paula passed away and her family is now left with the
2　　tragic uncertainty that they can never know what happened
3　　to her, and it appears that no-one has been in touch to
4　　provide support to this family of a long-time patient at
5　　the hospital: another matter that we will return to and
6　　explore properly in week 4.
7
8　　　　The broader issues raised by this case is the extent
9　　to which the circumstances in which Griffin operated
10　　created or contributed to a culture that would permit or
11　　condone inappropriate boundary breaches in that setting.
12
13　　　　We also heard, Commissioners, about how other types of
14　　institutions can create opportunities for situational
15　　offenders, and Dr Palmer explained that situational
16　　offenders are people who do not have an abiding sexual
17　　interest in children, they don't enter youth-serving
18　　organisations with that abiding sexual interest; but once
19　　there, for reasons related to the nature of the
20　　organisation, develop an interest in a specific youth or
21　　child.
22
23　　　　Many witnesses this week highlighted the ways in which
24　　an institution can facilitate child sexual abuse or at
25　　least not identify it. This included closed or total
26　　institutions, institutional cultures that belittled or
27　　humiliated children, it highlighted the significance of
28　　putting children first in every aspect of an institution
29　　and an institution's culture.
30
31　　　　The next lived experience witness that the Commission
32　　heard from was Ms Donohue. Ms Donohue's daughter, who I'll
33　　refer to as "Lillian" has special needs and she has a
34　　wonderful, vibrant personality and she enjoys art and
35　　painting.
36
37　　　　Once again, when Lillian needed medical help, it was
38　　her trusted institution that her family turned to, the LGH,
39　　and during the three-week admission no-one but Ms Donohue
40　　learned or knew, it appears, the bases of how to
41　　communicate with Lillian.
42
43　　　　Ms Donohue gave evidence that her daughter was not
44　　treated like a real person. She said:
45
46　　　　　　*It's very poorly the way she's treated when*
47　　　　　　*she's not communicating with the person*

1   *directly.*
2
3   This is an experience that people with disabilities
4   can face at a much higher rate than others, as explained by
5   Dr Robinson on Wednesday. In her evidence, she explained
6   that in the context of the work that she has done, she was
7   often told by people that:
8
9   *Children and young people have very little*
10   *authority to have input into what happens*
11   *in the way that everything is offered to*
12   *them, so they get Vegemite or peanut butter*
13   *level choices but very little input into*
14   *those bigger level decisions ...*
15
16   And we interpolate, Commissioners, that she means
17   about their care and their safety.
18
19   As Ms Donohue went on to explain, she felt that people
20   in the hospital did not treat Lillian like a person in all
21   the senses of the word. She told you, Commissioners, that
22   no-one knew how to communicate with her, and Lillian was
23   all alone in the hospital with no-one to understand her
24   when her mother had to go home to care for her other child.
25
26   Griffin was one of the people assigned to work with
27   Lillian on Ward 4K, and Ms Donohue talked about her
28   distress when she found cream on Lillian's vagina and she
29   didn't know how it got there or why it was applied. When
30   she helped Lillian shower she found that her skin had come
31   off and she didn't know why. No-one had explained to her,
32   she told us, why it had occurred.
33
34   Ms Donohue explained that she raised the issue with
35   Griffin.   He lifted Lillian's nappy and tapped her vagina
36   with the back of his hand. I pause here to note,
37   Commissioners, that no-one's paused to ask Lillian how she
38   felt about being touched by a medical professional or
39   otherwise.
40
41   Ms Donohue was very concerned, Lillian seemed
42   distressed. She didn't know who to call so she called
43   Child Safety Services. She says at a subsequent meeting
44   she felt her concerns were dismissed.
45
46   Ms Donohue gave evidence that she complained about her
47   conduct, and she believed that a direction that Lillian not

1   be attended by male nurses was written, but she has no idea
2   if it was complied with.
3
4   About 12 months after Lillian came home Ms Donohue
5   heard about Griffin's conduct as it was reported in the
6   media. Ms Donohue said that things fell into place for her
7   then and she said it's affected her trust in healthcare
8   professionals. Ms Donohue explained that Lillian was
9   reluctant didn't to go anywhere without her mother and that
10   Ms Donohue herself was reluctant to leave her children
11   alone.
12
13   Commissioners, you heard then from Dr Michael Salter,
14   a Professor of Criminology, who explained that child sexual
15   abuse occurs in a variety of circumstances and is not
16   dependent on socio-economic understanding. However, the
17   accumulation of factors like poverty or disability or a
18   parent's inhibited protective capacity or the child LGBTIQ+
19   identity can intersect to the create an opportunity for a
20   child sexual abuser to take advantage of.
21
22   Dr Salter also spoke of the power imbalance between
23   adults and children in institutions. Children are often
24   not believed and they are left powerless against the
25   institution that prioritises the protection of its
26   reputation or the status quo. He also explained the notion
27   of adultification of children, and particularly
28   adolescents, where we impute adult characteristics to
29   children to say, "They are close enough to an adult that
30   they can consent to sexual activity".
31
32   Commissioners, you heard as well from the National
33   Children's Commissioner at the start of the week and she
34   spoke passionately about her role. She spoke about how
35   deplorable it is that a child getting help in Australia
36   might come down to chance.
37
38   When asked if she found it disappointing that Child
39   Protection sometimes comes down to luck, she said:
40
41   *Of course, yes. Look, it's really*
42   *disappointing to me; you know, I've been in*
43   *this role now for nearly a year and a half,*
44   *and to find that the safety and wellbeing*
45   *of children in this country is really not a*
46   *national priority. That again and again I*
47   *observe examples where children have taken*

1   *a back seat, their needs are not met, when*
2   *policy is largely designed to address the*
3   *concerns of adults and we see that flow*
4   *through in various ways obviously in the*
5   *state and territory jurisdictions.*
6
7   And she said, powerfully in our submission,
8 Commissioners:
9
10   *... that we should not be leaving the*
11   *safety and wellbeing of children to chance.*
12
13   She emphasised the importance of National Child Safety
14 Standards in protecting children in institutions.
15
16   The Commission has also heard from Ms Fordyce and
17 Ms Maxwell, and each gave evidence about the supports
18 available for victims of child sexual abuse in Tasmania
19 through the work of SASS and Laurel House. And, despite
20 the determined work of those services, wait lists and
21 access issues in more remote parts of the state impact
22 their ability to provide timely support to those who need
23 it. And, while the needs of children are prioritised,
24 those wait lists have particular implications for adult
25 victim-survivors of institutional child sexual abuse.
26
27   Ms Maxwell and Ms Fordyce spoke of the impact of
28 resourcing constraints on the ability of their services to
29 engage in important primary prevention work, and noted the
30 challenges and uncertainty presented by two or three year
31 funding cycles.
32
33   It's important to bear in mind, Commissioners, that
34 the evidence-take as a whole suggests that the long-term
35 savings of efforts spent in prevention and early
36 intervention multiply given that the impacts of abuse only
37 multiply over time.
38
39   Both services are keen to provide therapeutic and
40 other supports to children and young people, including at
41 Ashley Youth Detention Centre, but they have had limited
42 in-reach opportunities.
43
44   Ms Maxwell contrasted the very positive experience
45 that SASS has had in providing support to adult victims at
46 Risdon Prison, and we'd say victim-survivors,
47 Commissioners.

1
2   We heard from Commander Sirec of the Australian
3   Federal Police and she gave a candid and helpful look into
4   the perspective of law enforcement. It was an approach
5   that reflected a trauma-informed philosophy with a focus on
6   the wellbeing of young people.
7
8   Her evidence about the grooming of young people was
9   telling, in our submission; it highlighted the complex
10 relationship between real world and the digital world and
11 the rising risks of grooming in the online space. Her
12 evidence highlighted that the perpetrators who have an
13 association with a victim-survivor through an institutional
14 context, online mechanisms provide an invisible avenue for
15 grooming.
16
17   This evidence was supported by Professor Cashmore this
18 morning, that there are risks associated with the digital
19 world that are new and which we need to grapple with. It
20 might be that this evidence informs the kinds of
21 recommendations that the Commissioners could consider
22 around best practice policing, including as it relates to
23 centralised expertise and avoiding burnout.
24
25   Separately, we expect that the evidence that the
26 Commissioners will hear in future weeks will touch on and
27 reflect these aspects of the issues.
28
29   The panel of Professor McDermott and Dr Malvaso gave
30 evidence about the impacts of trauma on children, including
31 their brain functioning, genetic response, biological
32 response, behavioural response and psychological response.
33
34   Professor McDermott noted that the impact of trauma
35 creates a cascade of events that follows the child through
36 their life. They discussed the importance of people
37 working with children to better identify trauma response,
38 and that no single intervention would work in isolation.
39
40   Dr Malvaso said:
41
42   *We need a series of these interventions*
43   *targeted at different opportunities across*
44   *the developmental periods, across different*
45   *contexts, so there are multiple*
46   *opportunities for us to intervene.*
47

1   Both Professor McDermott and Dr Malvaso agreed that
2   dealing with childhood trauma, including child sexual
3   abuse, is really complex and challenging and there needs to
4   be better designed systems and services for dealing with
5   and responding to complex trauma.
6
7   Commissioner, we expect that their evidence will, in
8   the coming weeks, help inform recommendations for reform.
9   They both talked about coordinated multidisciplinary
10   responses to childhood trauma.
11
12   Professor McDermott discussed the Out-of-Home Care
13   context and intensive care support team, and Dr Malvaso
14   discussed the exceptional care unit. These are services
15   that are designed to put the best interests of the child
16   first with multiple services working together.
17
18   Dr Malvaso suggested that there be a greater
19   commitment to social and political reforms and a commitment
20   to support the evidence-based research into interventions.
21
22   Commissioners, you heard as well from Professor Milroy
23   as I've identified earlier, and she talked about the
24   "multiplier effects" of early intervention. We expect that
25   those will be themes that run through the balance of the
26   evidence that you hear and inform a number of the
27   recommendations that are suggested to you, particularly
28   where they're focused on facilitating early disclosure and
29   providing a safe and appropriate response when a child
30   seeks to make such a disclosure.
31
32   We heard from many witnesses this week that Child Safe
33   Organisations can assist in developing the trust needed for
34   early disclosure and ensuring an appropriate response.
35
36   Associate Professor Moore gave evidence about abuse in
37   institutional settings and the important insights he's
38   gained from participating in research involving children
39   and young people, both in this context and in the National
40   Royal Commission context.
41
42   He explained that children often perceive and discuss
43   safety in ways that are different to adults, and he spoke
44   of the need for adults to be attuned to the difference.
45   Importantly, in order to feel comfortable to disclose
46   concerns, children need to see institutions actively
47   recognising and responding to risks and allegations.

1
2   Associate Professor Moore also spoke of the educative,
3   protective and healing powers of healthy relationships with
4   adults and the need to avoid cultures of fear in
5   residential settings; cultures which can result in an
6   unnecessarily sterile environment, and the denial of
7   beneficial relationships.
8
9   We then heard from a number of people convened to form
10   a panel about the Advice & Referral Line: the ARL panel.
11   The Commissioners were assisted by the helpful evidence
12   from the NGO and government witness speaking candidly about
13   the way in which the ARL operates on the ground.
14
15   In our submission, Commissioners, this evidence
16   supports the hypothesis that the ARL is not well suited to
17   the identification of systemic risks of institutional child
18   sexual abuse. Of course, that's an issue we'll continue to
19   explore, but at this stage we note that there is further
20   evidence to come about the operation of the ARL and it is
21   too soon to form any concluded views.
22
23   The Commission heard yesterday from Professors Pybus
24   and Eccleston. They each had fairly radically different
25   starting points and startlingly similar conclusions. In
26   particular, their evidence was that there is a
27   significant degree of interconnection in Tasmania, and that
28   interconnection brings substantial benefits for the
29   community. It's a strong community that cares for and
30   responds to each other. There are opportunities that that
31   community provides for the state and it should be seen as a
32   strength.
33
34   However, they also gave evidence of a possible counter
35   side: that the interconnection can operate to make people
36   reluctant to report or to rock the boat. These are
37   observations that underscore the importance of independent
38   oversight, and much of that oversight in Tasmania is
39   carried out by the various integrity bodies, Commissioners:
40   the Auditor-General, the Ombudsman, the Integrity
41   Commission, the Children and Young Persons Commissioner.
42   We heard from those bodies about how they operate and the
43   complex ecosystem of integrity that presently is in
44   existence in Tasmania.
45
46   The actual operation of these oversight bodies in the
47   context of the particular case studies will be a matter to

```
 1    which we return, however, at a high level we can make some
 2    preliminary observations and those are that there is
 3    a degree of complexity in the way that the oversight bodies
 4    operate in Tasmania.
 5
 6         There appears to be no set protocol about who bears
 7    responsibility for every aspect of reporting or necessarily
 8    information sharing.
 9
10         There are some questions that arise about whether
11    there are risks to the independence of these bodies arising
12    from the requirement that they seek legal advice from the
13    State's primary advisor or from the variability of funding
14    in which some, but not all, instances is within the gift of
15    the government of the day and these are issues that we will
16    continue to explore with the Commissioners and about which
17    it is too soon to reach any concluded view.
18
19         The Commissioners heard from a media panel yesterday
20    about how they, at times, formed a reluctant last line of
21    accountability for children or adults who had expressed
22    concerns about institutional child sexual abuse.  We heard
23    they can come under pressure from government sources not to
24    publish stories concerning allegations of child sexual
25    abuse, and evidence that these concerns are or could be
26    seen to be motivated by a concern for the children.  The
27    journalists, however, experienced this as a means of
28    pressure.
29
30         The journalists giving evidence talked about the
31    difficult balance that they felt they had to reach between
32    properly accounting for the risk of harm and appropriately
33    holding people to account, and these are undoubtedly
34    complex questions, Commissioners, about which we apprehend
35    will be the subject of further consideration, but they
36    might inform the Commissioners' considerations into the
37    future.
38
39         Commissioners then heard from members of TasCOSS who
40    gave evidence that, as far as they were concerned, the
41    members were ready and motivated to implement the Child
42    Safety Standards and take other measures to comply with the
43    Royal Commission's recommendations.
44
45         This morning, Ms Enkelmann gave evidence that she was
46    told on her first day on the job that it was too hard to
47    bring about change.  She emphasised the tireless work of
```

1   the people who work in Child Protection and repeatedly
2   highlighted the strengths, passion and wisdom of the staff.
3
4   She said there are good outcomes for some children,
5   but said that it is an abusive system overall. She said
6   staff are not being given time to provide the support and
7   case management needed, and she talked about the talk of
8   change but the lack of actual change on the frontline for
9   the workers who are trying to do the job.
10
11   She said that, when she was told at the beginning of
12   her role that "nothing will change", she said, "If we give
13   up now, nothing will change". And, Commissioners, the
14   evidence that she gave reinforces our commitment and
15   determination that this be not another inquiry alone.
16
17   We heard further from Professor Cashmore this morning
18   who reinforced the complexity around making sure that
19   children have access to positive relationships. She
20   reinforced the evidence of Professor Milroy that children
21   often attempt to disclose early, but their disclosures can
22   be difficult to detect. She talked about the difficulties
23   in this space and the perpetrators who can target children
24   with vulnerabilities.
25
26   We heard also today from Victoria's Commissioner for
27   Children and Young People, Commissioner Buchanan, who
28   described her organisation's implementation of the Child
29   Safe Standards and the Reportable Conduct Scheme and the
30   benefits those schemes in protecting children from abuse
31   and ensuring institutions are accountable.
32
33   Mr Kinmond shared his experience of establishing
34   Reportable Conduct and the importance of regulators being
35   proactive, as opposed to passive, in responding to the
36   risks to children. He highlighted the need for strong
37   information exchange and collaboration merely than "wagging
38   the finger".
39
40   Both highlighted the ways in which these schemes can
41   generate rich data and trend insights which can support
42   targeted regulation and give the community a more honest
43   picture of harms to children within institutions. Without
44   such schemes, they noted, so much of this remains unknown
45   and unseen.
46
47   This afternoon the secretaries of the Departments of

1   Premier and Cabinet, and Justice respectively, gave
2   evidence. Both Ms Gale and Ms Webster acknowledged their
3   sadness having heard the evidence given by lived experience
4   witnesses this week. Collectively, they agreed it was the
5   role of government departments and agencies to do all
6   things possible to reduce the incidents of child sexual
7   abuse in Tasmania. Both Secretaries accepted that child
8   safety needs to be embedded in government institutions,
9   even those that are removed from child-facing activities.
10
11   Neither Ms Gale nor Ms Webster believed that child
12 safety principles have yet been embedded as cultural norms
13 at the highest levels of their respective departments.
14 They agreed that this has not yet been a focus.
15
16   Ms Webster said the implementation of the National
17 Royal Commission recommendations was a priority for her
18 department and, while she would like to see things moved
19 faster, it was her evidence that a lot has been done to
20 implement those recommendations.
21
22   In relation to Child Safe Standards, she estimated
23 that the implementation of the new Bill, including Child
24 Safe Principles, independent oversight and reportable
25 conduct would probably be up to a three-year process.
26
27   Neither Secretary agreed that the delayed
28 implementation of these recommendations, four years from
29 their making by the National Royal Commission, indicated
30 that they were not a priority.
31
32   Ms Gale said that she had received feedback regarding
33 the practical application of the ED5 Direction, and she
34 accepted that if an ED5 process concerned conduct with
35 respect to children, the welfare of children should be at
36 the heart of the process. She agreed that a deficiency in
37 the current process is that it fails, or could fail, to
38 take into account the needs of child complainants.
39
40   While the ED5 process is under review, she gave
41 evidence that that review was a long and complex process
42 involving legislative change and consultation with a range
43 of agency. At times that process needed to give way to
44 other priorities.
45
46   When asked for an example of the higher priorities
47 when adapting the ED5 process to better protect children,

1   Ms Gale referred, among other things, to the "business as
2   usual" employment issues she responds to in her role.
3
4   Commissioners, this week has sought to set the
5   groundwork for the factors and framework that will be
6   examined in their full context in the weeks to come. We
7   will hear from people who have been groomed, who didn't
8   recognise that it was happening. We will hear from people
9   who lied to protect their abuser. We will hear from people
10   who tried to make disclosures, and we will hear about the
11   responses to that abuse and how it multiplied the effect of
12   the original offending.
13
14   In the context of these real world examples,
15   Commissioners, we will continue to explore the kinds of
16   recommendations that might be open to the Commissioners and
17   properly respond to the issues identified.
18
19   Commissioners, Ms Norton and I look forward to
20   progressing these hearings before you next week. Please
21   the Commissioners
22
23   PRESIDENT NEAVE: Thank you very much, Ms Bennett, and
24   thank you to all counsel, and Counsel for the State as
25   well.
26
27   I also wanted to thank the heroic efforts of our
28   iCourts team who have been ensuring that our live stream
29   works and that all of the other technical processes, and
30   all of the team really who have been working very, very
31   hard this week.
32
33   This was our first week, it was pretty smooth, and I
34   think that it will get even smoother as time goes on. So,
35   thank you very much and we'll now adjourn.
36
37   **AT 4.05PM THE COMMISSION WAS ADJOURNED TO**
38   **MONDAY, 9 MAY 2022 AT 10.00AM**
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