TRANSCRIPT OF PROCEEDINGS

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 15 June 2022 at 9.38am

(Day 12)

PRESIDENT NEAVE: Thank you, Ms Rhodes.

MS RHODES: Good morning, Commissioners. Our first witness today is Jodie Stokes from Anglicare, I ask that she be called and sworn in.

<JODIE CATHERINE JEAN STOKES, sworn: [9.38am]

<EXAMINATION-IN-CHIEF BY MS RHODES:

MS RHODES: Q. Ms Stokes, could you please state your full name?
A. Jodie Catherine Jean Stokes.

Q. Would you mind just speaking up a little bit so that everyone can hear you.
A. Sorry.

Q. That's okay, thank you. What's your professional address?
A. 31 King Street, Devonport.

Q. And what is your profession?
A. It's Regional Manager of Anglicare on the north and north-west.

Q. You prepared a witness statement or statutory declaration for the Commission which is dated 8 June 2022; is that correct?
A. Yes.

Q. Have you had an opportunity to read through that statement?
A. Yes, I have.

Q. Is there anything in that statement you wish to change?
A. No.

Q. Is the statement true and correct to the best of your knowledge and belief?
A. Yes.

Q. Ms Stokes, you say you're the Regional Manager of Community Services Anglicare at the moment. What is your professional history in the community service space?
A. So, I've been in Anglicare for just over two years and

before that I worked at Mission Australia in the north, north-west as area manager, managing community services, and before that I worked at Relationships Australia.

Q. How long were you with Mission Australia?
A. 10 years.

Q. What do you do in your current role with Anglicare?
A. I manage several programs from the west coast to the east coast, Burnie, Devonport and Launceston. We have about 40 different programs ranging from alcohol and drug, mental health, families, children and youth, and I have about 110 staff.

Q. And so, you're supervising or managing the 110 staff?
A. I have 11 program managers and an area manager that manage the staff and the programs, and I'm responsible for the contract KPIs of those programs and supporting the program managers to run those programs.

Q. One of the programs that Anglicare offers is the Supported Youth Program?
A. Yes.

Q. Which you talk about in your statement from paragraph 12 onward. Could you just explain for the Commissioners and also those people watching what the Supported Youth Program is?
A. So, it's a program for young people between 10 and 18 years old, and their eligibility or criteria is for those children that may be homeless or at risk of homelessness or engaged with maybe Youth Justice, family violence, not attending school, those sorts of things.

Q. Are these children on Child Protection Orders, Child Safety orders?
A. No, we're not allowed to work with children on Child Safety orders.

Q. One of the main criteria, I understand, for being eligible for the program is for the child to be homeless or near homelessness.
A. Yes.

Q. In your experience, what would lead a child into that position where they are near homeless or are homeless?
A. So, years of trauma maybe caused by drug and alcohol

with their parents, family violence, sexual, physical, emotional abuse.

Q. And what does the program aim to do with these children?
A. Predominantly work with the family so the children can go back to immediate family, extended family, or friends, or into safe accommodation if they can't go back to their families, but basically to keep them safe.

Q. If these children are homeless, where do they stay?
A. They sleep rough or they may couch-surf or they may choose to live in another unsafe environment.

Q. The Commission has heard a lot of evidence about children who are in out-of-home care on orders who may be leaving their placement and being at high risk of child exploitation; would the cohort that you work with be in a similar position with not having stable housing being at risk of child exploitation?
A. Absolutely. So, children being so young, often are not able to make decisions around what is safe or what they deem is safer than what they've run away from. So, for instance, we've had a situation where a 14-year-old girl has chosen to live with a 60-year-old man who has exploited her, but her reasoning is, she was a lot safer than in her home with her parents.

Q. What can your service do to help a child like that?
A. Well, if we deem them to be unsafe we will contact the Strong Family Safe Kids Advice & Referral Line to hopefully make a Child Safety notification. Because if the child especially is under 14, you know, there really is no safe situation unless Child Safety are working with them in our view.

Q. In your experience, what has been the response of the Child Safety Service when you make those reports?
A. Well, two things; that we need to share the risk, and the other one is that the young person is self-selecting, but a young person who's going through adolescence and going through their brain being rewired are not always making - are capable of making those decisions, so it is quite frustrating at times when we're told that they're self-selecting, because then that means the option of residential care or foster care for that young person is not an option through Child Safety, so then we have to look

at other options: maybe a shelter, that's usually only six to eight weeks. There really isn't a lot of options in Tasmania for under 16 young people that are homeless.

Q. We've heard the term "self-selecting" quite a bit and my understanding, I believe, is that the child is making the active choice to live where they want to, so whether it's at home or not at home or couch-surfing, that's their choice; is that a correct understanding of self-selecting?
A. Yes.

Q. How young are the children that the department are saying do this, from your experience?
A. Sometimes as young as 12 years old.

Q. Why do you see that it's Child Safety's responsibility to step in in those situations?
A. Because they're a statutory service, we're a voluntary service.

Q. What does that restriction, if any, of being a voluntary service for you to helping these kids?
A. Well, we can suggest to a child a safe accommodation choice, but we can't make them go there because we're voluntary and, if they say no, we don't have any powers to make them choose that safe choice.

Q. You referred to being told "sharing the risk": can you explain to the Commissioners your understanding of what that means?
A. Okay. So, over the last 12 years there's been a gradual case where we are working with families and children that the risk is much higher, and we've been told that we all need to share the risk, which may be fair enough, but we don't share the same risk assessments as Child Safety, we don't necessarily always get the same training as Child Safety, so it means that, if we're going to train our staff to be able to assess the level of risk of the families that we're working with, we often have to cost that ourselves within the organisation, but yeah, it makes it really hard to be able to share that risk when we're not all on the same page, we don't share the same data systems, that sort of stuff, we don't always have the same information or the background or the history of the family or the young person, so that makes it very hard to be able to do that.

PRESIDENT NEAVE: Q. Can I just clarify that? When you say you're told to share the risk, that means sharing the risk between the state and Anglicare? Is that the idea?
A. And other community organisations, yes.

Q. Yes, okay. And it follows from that, does it, that you're required to pick up costs? What does sharing the risk mean? It's the child's risk really, isn't it, we're talking about the risk to the child of having something dreadful happening to them, but what does that mean, that concept of sharing the risk mean?
A. So, maybe 10 years ago Child Safety would have worked with a young person that was 14 and living on the streets, but now it's our responsibility to try and work with that young person with really limited options, and I think that's what they mean by sharing the risk, that we are now working with families and young people at higher risk which in the past hasn't always been the case, it's just been a gradual thing, but the referrals we're getting now are much higher risk than we got probably 10 years ago, eight years ago. Does that answer --

PRESIDENT NEAVE: Yes, I understand, thank you.

COMMISSIONER BENJAMIN: Q. And hence the example or the analogy or story you provided earlier with the 14-year-old and the 60-year-old, you have the capacity to try and persuade, but you have limited options in terms of practical solutions that you can offer apart from, perhaps, six to eight weeks in a shelter, you can't provide that young person with any sort of permanency of accommodation, can you?
A. No.

Q. So do you then, as a matter of practice, give notice to the department or the ARL that you consider that child is at risk?
A. Yes, we make a wellbeing concern, which used to be called a notification or mandatory report.

Q. Yes.
A. And we'll do that quite regularly, even if it's once a week, around a young person that we deem unsafe. We'll also try and work within our power with that young person to give them other options and explain that we feel they're unsafe.

Q. What then happens, what do they do?
A. As I said earlier, they're often self-selecting.

COMMISSIONER BENJAMIN: Thank you.

MS RHODES: Q. With your service provision, my understanding is that you spend one hour a week with these children; is that correct?
A. At the minimum one hour; it depends if they're in crisis, it could be up to five or six hours a week, because we also do therapeutic intervention as well as case management, so it just depends where they're at or how much support they need.

Q. How many children approximately are you currently servicing?
A. We're contracted to - across the north and north-west in Supportive Youth Program to about 70 children a year.

Q. How many workers do you have working in the program with those 70 children?
A. I have three in the north and 2.8 FTE in the north-west.

PRESIDENT NEAVE: Q. Did you say 2.5?
A. No, 2.8, so nearly --

Q. 2.8, thank you.
A. Yeah, nearly 3.

MS RHODES: Q. With this concept of sharing the risk, did you get any training or explanation from the department about what sharing the risk means or what it would look like or anything like that?
A. No. At my last organisation we actually invested in risk training which cost the organisation about $60,000 to train about 10 staff, so when they were making assessment around risk there was no way that - it would be an individual's opinion, it was based on solid evidence that where they landed with that risk was quite a true account of that, so yeah, it was very expensive but we felt, because the risk was continuing to increase and the intensity of the families we were working with, that we felt that it was best practice to do that training ourselves, and at our cost.

Q. And have you - sorry, I thought someone had a question

and I talked over the top?

COMMISSIONER BROMFIELD: I did actually, sorry. I did.

Q. In terms of the risk that you're talking about, can I just confirm that this is risk as defined in the relevant legislation, defining a child in need of protection? Is that what we're talking about?
A. Yes.

Q. And so, when you're sharing the risk, then you're actually sharing the state's statutory obligations under the Act?
A. I don't really now how - if I can answer that. I mean --

Q. That's all right.
A. -- obviously, if something goes wrong with that child, because we're working with them we are accountable. We're continually trying to assess risk and have the best possible outcomes for that young person, but it is high risk for the organisation as well.

Q. And it's my understanding that the Advice & Referral Line, that notifications are defined by the Advice & Referral Line, not by the caller; so you can't say this is a notification of a child in need of protection?
A. Well, we're encouraged to call it a wellbeing concern now, we can name it up as a wellbeing concern, but we have no power as to, if that's going to go to Child Safety or not.

COMMISSIONER BROMFIELD: Thank you.

COMMISSIONER BENJAMIN: Q. So in many ways you're not sharing the risk, you're sharing the responsibility, aren't you?
A. Yes.

Q. And, from what you're saying, you work very hard to work with the department because in your statement you say you have ARL officers working in your offices and you work closely with them.
A. Yes.

Q. And if you have a concern about a young person you give notifications and do the best you can to develop the

statutory - or to bring in the statutory protections, and then you work as hard as you can with that child in the voluntary situation that you referred to to find solutions, but that needs the child to agree?
A. Yes. We are limited because we're not a statutory organisation.

Q. Are you free to have robust exchanges with the senior officers of the department or is there a bit of a power imbalance there?
A. No, no, as I said, it is a really good partnership and we can voice our concerns, but yeah, we do get often pushback from Child Safety.

COMMISSIONER BENJAMIN: Thank you.

MS RHODES: Q. And with this shift of responsibility has your service received any resources to help with that extra risk that your organisation is taking on?
A. Not that I'm aware of. I've only been with the organisation for two-and-a-half years and I haven't seen any.

Q. You work in the north and the north-west region of Tasmania; what are the resources up there in terms of housing and mental health services that your service tries to engage young people with?
A. My opinion, and I've held this one for a long time: the further you get away from the south and end up in the north-west, there's less services to engage in. So, that's also an added responsibility. Often our workers are doing more on behalf of the young person because those services might not be available or have got a long waiting list. So I find it is difficult for us because there are a lot of gaps in the north, and especially the north-west, and then if you go to Smithton or West Coast you often - our West Coast workers will have to travel to Burnie or try to do the therapeutic interventions themselves because there's just not the services available.

Q. I understand that for a young person to be put on the SYP program as you put it, the supported youth program, there needs to be a referral through the ARL; is that correct?
A. Yes.

Q. Can you explain to the Commissioners your experience

with that referral process?
A. My understanding is, there's less community liaison officers in the north compared to the north-west and the south, so I think sometimes with resourcing we're aware of some referrals that have been presented to ARL, but sometimes takes a couple of months to actually be referred to us which is a concern because that young person could - you know, not getting any help, the crisis intensity could build during that time. So, if we're aware of someone, we'll work really closely with the community liaison officer and they'll work with the ARL to try and get that referral through, but yeah, I am aware of some cases that have taken some months to get through.

COMMISSIONER BROMFIELD: Q. Ms Stokes, would it be beneficial if you could accept community referrals in that instance?
A. They have to go through the Advice & Referral Line for this particular --

Q. That is the case now, but would it be beneficial if your eligibility criteria were changed to enable you to accept community referrals? Would that speed that process up?
A. It would be beneficial, although I think the reason going through the Advice & Referral Line is that you're getting a build-up of that information and history. There's been some occasions we've known of community referrals and we've helped them go through the Advice & Referral Line or through the community liaison officer to speed it up.

COMMISSIONER BROMFIELD: Thank you.

MS RHODES: Q. Ms Stokes, would you mind just moving in a little bit just so that the microphone can pick up your answers?
A. Sorry.

Q. No, that's fine, thank you. In your statement you talk about the need for early intervention and the Commission has heard from other people about early intervention; could you explain to the Commissioners why you believe early intervention is a good thing?
A. With the introduction of NDIS and the programs on offer, I think in the state for under 5s is really good. I think we often see children over 5 when they go to school,

maybe education is expected to fill that gap, I'm not sure, but there's not a lot of that early intervention prevention services aimed at over 5-year-olds, so by the time they come to us at 10 or 12 and then maybe being excluded from school for a period of time or for a long time, you know, we're at the pointy end so it's really hard to work with those children. I just feel, if there was more services on offer in the state between that age group that could hopefully pick up that gap, they wouldn't be so intense, you know, at aged 12 or 13, yeah.

COMMISSIONER BENJAMIN: Q. When you say "more services", can you expand on that and tell us what services you think they may need?
A. I haven't - I don't have particular ideas, but it's really that early intervention prevention around children that may have ADHD or on the spectrum, or there's family violence and there's more services to really work with the family so the children don't fall in the gaps.

Q. So, you're talking about two things: one, safe housing so they're safe from the circumstances which may have caused them to get into that situation; is that fair?
A. Yes.

Q. And secondly, significant mental health access so they can address the trauma that they've probably likely suffered?
A. Yes.

Q. Yesterday we had evidence from Dr Robyn Miller from Victoria who talked about secure welfare facilities in Victoria for children who are homeless. Do we have anything like that in Tasmania, apart from Ashley and I don't know that that falls into that category?
A. I'm not really sure if I'm qualified to answer that; I know that there's residential care for children in out-of-home care.

COMMISSIONER BENJAMIN: All right, thank you.

MS RHODES: Commissioner Benjamin, if I can clarify, there is no service like that in Tasmania.

COMMISSIONER BENJAMIN: I thought so but I was asking in case I had missed something in my reading, that was all, but thank you.

MS RHODES: Q. Ms Stokes, when you talk about early interventions, are you talking about behavioural interventions?
A. Yes.

Q. And so, could you explain what the behavioural interventions would be?
A. I haven't put a lot of thought into it, but it's really picking up things early and working with the children and the families so they don't escalate to the point where children are disengaging when they're older.

Q. With disengaging, a lot of children in your program have disengaged from education; is that correct?
A. Yes.

Q. From your experience what is the benefit of education for the safety of children?
A. So, if they've disengaged at an early age, then in the long run it is really hard for them to get secure employment, to get a qualification, and as we know that then helps them secure housing as they're older, it just puts them behind at an early age.

PRESIDENT NEAVE: Q. So, just to make this concrete, I assume you're talking to some extent about children who for whatever reason might have difficulty in learning to read and write, for example, and if that's left till they're 12 to address it's going to be much harder to help them?
A. If children are traumatised it's very hard for them to regulate and concentrate.

Q. Of course, yes. Yes, yes.
A. And then often for them day-to-day it's about thinking how they're safe, not how they're going to get to school.

PRESIDENT NEAVE: Of course, yes.

MS RHODES: Q. You've said that your service is a voluntary service, so that means the young person has to consent to being part of your program?
A. M'hmm.

Q. What happens if the child doesn't consent to being part of your program but you see that they do need intervention?

A. So, obviously because we're voluntary we can't force them to work with us, so then we would contact the Advice & Referral Line and let them know that they've disengaged with us.

Q. Would you offer any other service, perhaps outreach, or anything like that to help the child if, say, Child Safety Service wasn't able to pick them up?
A. If they're with our program, often there's not a lot of options for them to go to other programs, it depends on each individual. If there was something else we could refer them to, we would.

Q. I understand that the government has announced the Under 16 Youth Homelessness Policy Framework; are you aware of that?
A. Yes.

Q. Was Anglicare involved in the development of that framework at all?
A. Yes, my manager, Noel Mundy.

Q. And what is your understanding of that framework?
A. It's to try and address the gaps facing young people under 16 around homelessness.

Q. And what gaps are they?
A. Probably a lack of housing options mainly.

Q. What role, if any, does Anglicare have within that framework?
A. We've been given some extra funding across the north and the north-west to add one FTE youth wellbeing officer to the north and one to the north-west, and then we're just at the moment rolling that out and working on what that will look like with Communities Tas, and their role is to specifically work with children under 16 that are homeless or are at high risk of homelessness.

Q. Do they have a therapeutic element like your SYPs workers or are they more restrained in their service provision?
A. Given the circumstances it's more likely that they'll concentrate on intense case management to help them find appropriate and safe housing with the emphasis on family preservation.

MS RHODES: They're the end of my questions, Commissioners. If there's any questions for Ms Stokes?

PRESIDENT NEAVE: Thank you, Ms Rhodes. Do you have any extra questions?

COMMISSIONER BROMFIELD: Q. Just a couple, Ms Stokes, and thank you for your evidence, it's been very helpful. With this case management role and the focus on family preservation, to your knowledge how often are you finding that the family of origin is unsafe and that the child's not able to safely return there?
A. That's hard to answer, but I would say about 40 per cent of our young people are homeless or at risk of homelessness when we connect with them or become homeless while we're working with them, so yeah.

Q. And getting back to that first example you gave with the young girl who was living with the 60-year-old being exploited because she deemed her family to be unsafe, and I guess I'm wondering if that is an extraordinary case or representative of children's concerns, young people's concerns about being unsafe at home?
A. It's really hard because, if a young person is saying that they're unsafe, I mean, we need to work with them, whereas other parties might be saying it is a safe option, so I mean it's really hard to define percentage-wise. But as I said before, if they're working with us it's usually at the pointy end where there's been an accumulation of family violence or abuse and often leaving home is their last resort after a lot of years of putting up with that and their choice is that they are safer out of the home.

COMMISSIONER BROMFIELD: Thank you.

COMMISSIONER BENJAMIN: Q. But the policy seems to be, does it, from what you've explained, and I'm happy to learn, that if they've come out of a situation where their homes, from their perspective, are unsafe, one of the significant legs to what you can do to assist them is to put them back in that home by way of reunification. Does that present a practical problem when you're dealing with a child who's in those circumstances?
A. What we try and do is work with the family or refer the family to other programs, like Integrated Family Support, so we can try and address that situation or we provide mediation with the family and the young person. We

work with a lot of other organisations. Sometimes it's not the immediate family, it may be a family member like a grandparent or an aunt or uncle or an older brother or sister, but obviously it's voluntary and that young person has to, you know, agree to that.

COMMISSIONER BENJAMIN: Thank you.

PRESIDENT NEAVE: Thank you very much for your really helpful evidence, Ms Stokes.

MS RHODES: Thank you, Commissioners, I will now pass to my learned leader to take the next witness.

PRESIDENT NEAVE: Thank you. Ms Ellyard.

MS ELLYARD: Thank you, Commissioners. The next evidence is a panel witnesses of two officers from the Tasmanian Aboriginal Corporation, Ms Heather Sculthorpe and Ms Sally Blanden. I'll ask them to come into the witness box to take the affirmation.

PRESIDENT NEAVE: I think they might prefer to be called "centre" rather than "corporation".

MS ELLYARD: Sorry, I did say "corporation", I should have said "centre", I apologise.

<SALLY ANNE BLANDEN, affirmed and examined: [10.14am]

<HEATHER LEE SCULTHORPE, affirmed and examined: [10.14am]

<**EXAMINATION BY MS ELLYARD:**

MS ELLYARD: Thank you, Commissioners. Ms Sculthorpe, I'll start with you if I may. Please feel free to take a seat. Can you tell us please again your full name.

MS SCULTHORPE: Heather Lee Sculthorpe.

MS ELLYARD: Your professional address.

MS SCULTHORPE: 198 Elizabeth Street in Hobart.

MS ELLYARD: And you're the Chief Executive Officer of the Tasmanian Aboriginal Centre?

MS SCULTHORPE: Yes, that's right.

MS ELLYARD: Ms Blanden, could I ask you your full name.

MS BLANDEN: Sally Anne Blanden.

MS ELLYARD: And your professional address?

MS BLANDEN: What is my address?

MS SCULTHORPE: 198 Elizabeth Street.

MS BLANDEN: Thank you. 198 Elizabeth Street, Hobart.

MS ELLYARD: Thank you. You also hold a role in the Tasmanian Aboriginal Centre?

MS BLANDEN: That's correct.

MS ELLYARD: What's your particular area of responsibility?

MS BLANDEN: Coordinator of the Families Teams.

MS ELLYARD: Ms Sculthorpe, you've made a statement to assist the work of the Commission and it's a statement which is dated today.

MS SCULTHORPE: Yes.

MS ELLYARD: It has a number of attachments to it.

MS SCULTHORPE: Yes.

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

MS SCULTHORPE: They are.

MS ELLYARD: You've attached to the statement a number of other documents that you consider are relevant to the evidence that you've given.

MS SCULTHORPE: I have, yes.

MS ELLYARD: May I ask, starting with you briefly, Ms Sculthorpe, can you summarise, please, the work of the

Tasmanian Aboriginal Centre as it relates to the Commission's terms of reference which relate to children and keeping them safe from sexual abuse in institutions?

MS SCULTHORPE: Yes, thank you. We have a very broad remit and we do very many things as you would have seen in the statement. In relation to children and out-of-home care our main focus under Sally's team is to keep children out of care, so we work with children at danger of coming into care. Before that, we also work with parents, mothers in particular, during pregnancy and straight after birth. We do that through our Aboriginal Health Service. Then we try to keep in touch with the children and their families throughout their life by providing services, particularly in health.

So, for the children, if it turns out that our team thinks it's unsafe for children to remain at home, then we have been pretty successful at finding other members of the family to look after those children. We look much further than their immediate family, we look to their extended family and, further than that, to people within the community if we can't find anyone within the family.

And we have means then of keeping those children and families in touch with each other and with the rest of the community through attendance at the number of services we provide but also at community events and particularly festivals, music and other festivals, cultural programs that we run, school holiday programs that we run, where the kids in out-of-home care can meet up with their birth parents and with their siblings, often there are quite a few siblings, and that's in a safe environment that that happens and there's lots of people around, everyone's together so they don't lose touch with their community.

On the occasions when - I'll call them welfare because I'm old - but on the occasions where welfare moves the children and we lose touch with them, we find it can take a long time for those kids to find their way back to the community. They almost invariably do, but they can get in a lot of strife and go through a lot of heartache before they make their way back to their family and community.

So, it's our experience over half a century that that's the way to do it and it's best - the holistic approach of following kids from before birth right through

is the way to go and it has the best results and --

MS ELLYARD: Sorry to interrupt you, Ms Sculthorpe, but to unpack a little bit of what you said. Firstly, it sounds like what you're describing in the work of the TAC working with children before birth and at birth is what we've heard described as early intervention, being involved as early as possible in the lives of families that might be vulnerable to risk?

MS SCULTHORPE: Well, it is, but we don't often always see it as intervention, we just do that, we provide those services to the whole community. So, kids and families aren't singled out as being, you're an at risk kid, or an at risk family, it's the Aboriginal community coming together doing stuff together, so that's our primary focus, and then we have special programs for children in holidays and during those teenage years if there are those special risk factors.

MS ELLYARD: You've said that the focus of the work that the TAC does is on keeping children out of care, that is, keeping children in the care of their family or extended family and community rather than becoming part of the statutory system. What are the particular vulnerabilities for Aboriginal children if they do enter the statutory system.

MS SCULTHORPE: Well, they get lost to us because the community has then no decision-making, it's totally in the power of people in welfare to decide where the child goes, who they see and don't see, what services they attend. Now, our services do their best to try and influence that, and Sally's team in particular, but we're not empowered to do it, it's only if we can convince the welfare authorities that we're able to do it, so we say we have to be empowered to make those decisions instead of having all the time to try to convince other people.

What we've also found is that we're often not believed about the bad things that are happening in care, and I'm not saying this happens all the time, obviously, but we have occasions where we have really very forcefully put the case to welfare that those children are not safe with those people, they are being either neglected and/or sexually abused and they need to be moved, and we have been ignored and there's been nothing that we could do about it, and

those kids then get moved around different programs and, you know, terrible results.

MS ELLYARD: Do you make any observation of the differences regionally around Tasmania in relation to the extent to which advocacy by the TAC is or isn't well received by Child Safety Services.

MS SCULTHORPE: Yeah, it is unfortunate that it is so person-dependent. If you've got a good bunch of people and managers and the on-the-ground workers are good that's much better, but we do find that north-west we have more trouble with and we have most success in Hobart; maybe because there's a broader range of people to work with in Nipaluna Hobart, I'm not sure of the reason. But we have tried again with the management to say there's got to be more uniformity in how things are done, and we've tried to - we have drafted protocols that we think will help with that and tried to get whoever's in charge, and that changes pretty often, tried to get people to agree to following the protocols that we have developed, but it just doesn't happen; some of it might happen but it never seems to make its way into the manual or get adopted by the top people to ensure that it happens and who will reward it happening and no penalties for it not happening. So, we think there's a whole range of things that can be done better about that.

MS ELLYARD: One of the things that you touch on in your statement is the sense of intergenerational disadvantage or intergenerational trauma and the significance of that in the lives of Aboriginal children. Can you speak briefly to intergenerational trauma both as a function of the history of Aboriginal people in Tasmania but also the impact of becoming involved in the Child Safety System and whether that seems in your experience to have a positive or a negative outcome on the family?

MS SCULTHORPE: Well, it's our experience that it's often the families who previously had their children removed who continue to have children removed down the generations, and we say that is not mainly or at all because of their behaviour but because of the reputation or the record-keeping. You know, I understand the need for record-keeping and I know bad things have happened because records have not been kept, but I also know bad things happen when records are kept in very great detail. We've heard recently about how kids' educational record follows

them all through their lives and therefore they often don't have a second chance education because their record says they're no good at school.

It's the same thing with families, that there's detailed records, very detailed records about some families all through different levels: education, courts, Child Protection, everywhere, and those families do seem to get singled out, and it's often the case that they have a harder time staying out of state control than other families.

MS ELLYARD: So that families where the parents weren't removed are less likely to have their own children removed?

MS SCULTHORPE: Yes.

MS ELLYARD: One of the things you talk about in your statement is the status of the Tasmanian Aboriginal Centre as an Aboriginal Community Controlled Organisation and the significance of what Aboriginal Community Controlled Organisations can do. What's the significance of an organisation being controlled by the Aboriginal community for its capacity to protect Aboriginal children?

MS SCULTHORPE: I think it's hugely significant, and I can't - I was going to quote it but I can't find it at the last minute, but the Royal Commission into Aboriginal Deaths in Custody, I think it's paragraph 1.7-something, they said that underlying all their findings, all their reports, all their recommendations is the knowledge that this happens because of the disempowerment of the Aboriginal community. I think they said "the almost total disempowerment", so that the way to fix any of this is to empower the Aboriginal community to resume its place as the guardian of its own children, as the determiners of our own future, rather than handing it off to people who are the descendents of the invaders, because that is still remembered and it's felt keenly in the Aboriginal community.

Unfortunately, I think a lot of times politicians don't take that seriously, and it's not just, you know, activists saying that, it's the Royal Commission into Aboriginal Deaths in Custody, esteemed judges, so a heap of people are saying it and too often it's ignored by inquiries and by the politicians and by the bureaucrats who

make the decisions.

MS ELLYARD: You've linked that relevant section of the Royal Commission's reports as attachment 8 in your statement, Ms Sculthorpe, so I know the Commissioners will look to that.

MS SCULTHORPE: Thank you.

MS ELLYARD: This leads into a discussion of one of the particular reports that you did, Ms Sculthorpe, which is of relevance to the Commission's work and which you've attached to your statement, and that's a piece of work you did which culminated in a report you did in 2014 making some firm recommendations to the Tasmanian Government about the way the approach to Aboriginal children in out-of-home care should be changed. Can I ask you to explain briefly, what's the background to the making of that report? It's at page 15 of your statement that you speak about it, but why did you write it?

MS SCULTHORPE: Thank you. As for the reasons I've mentioned, the Aboriginal community wasn't being sufficiently listened to in decision-making about children, and our inquiry said, well, we think as an organisation that the community wants to be more empowered so let's ask the community, let's ask the families. So, we did a sample of 93 families and talked to them, and we had lots of community meetings where anyone could attend and talk about it. So, it became clear to us it wasn't only the leadership of the organisations that were thinking like this, it was the Aboriginal community overall who said, yes, we can do this, we are able to make the tough decisions and sometimes people say that we will leave children at risk because we just want to say that we've got the power.

People say, that's not what we'll do, that's never been what we'll do, the safety of children is our paramount consideration; but we do believe too that the safety of children is best guaranteed within their own culture, within their own community, and that the success of the community ensures also the success of the children. So those two are pretty well tied up together, it's just a matter of finding which family in relation to which kids are best placed to look after those children at any particular time.

MS ELLYARD: One of the things you say in your statement is that, in your view, one of the reasons why Aboriginal children are vulnerable to sexual abuse is because they're over-represented in institutions like out-of-home care, and the number one recommendation you made in your 2014 report was that there should be a transfer of jurisdiction over child welfare and child protection for Aboriginal children to the Aboriginal community. I take it that you would still make that recommendation today?

MS SCULTHORPE: I certainly would, yes.

MS ELLYARD: And can I ask you to explain a bit, what would that look like?

MS SCULTHORPE: A lot of the work of our Families Team is spent trying to convince Child Safety Officers to do what they know to be right for the child and the family. If the Aboriginal community itself was making those decisions, not having to convince people from a different cultural background without the same knowledge of the community, then the work's getting done but without all the wasted effort that goes into having to convince other people of the justice of what is being recommended and without all the non-productive reporting that happens, the detailed reporting that goes on so often when for the most part often we do manage to convince the Child Safety people of what we're recommending, that that's the right thing to do - not always, but the amount of effort it takes to get to that point is wasted effort and it is disempowering to the Aboriginal community. So, if there were that transfer of jurisdiction, we've got the protection of the children and we've got the empowerment of the community so it's a win/win.

PRESIDENT NEAVE: Can I just ask a question about that. So currently a child is in danger and there's a decision made that an application should be made to get a Protection Order, for example; what's the process by which you would be consulted or involved? Is there some formal process where you're always contacted if this is going to happen? How does it sort of work, I just want to know the practical way it happens on the ground.

MS SCULTHORPE: Do you want to talk to that?

MS BLANDEN: Yes. So, I think at the moment if Child Safety are aware that the family would like TAC to be involved or invite TAC to be involved, then along the way those decision-making forums to TAC, we'll be invited to participate.

PRESIDENT NEAVE: In the - before the application is made to the court?

MS BLANDEN: At Territory meetings and in certain decision-making forums that Child Safety have.

PRESIDENT NEAVE: So there will be, and I'm not saying this is ideal by any means but I'm just trying to understand how it works. So, there would be a situation where consideration was being given to what should be done and there would be meetings perhaps with the family, perhaps with somebody from the Aboriginal Centre?

MS BLANDEN: Yes, that's correct.

PRESIDENT NEAVE: Is that how it works?

MS BLANDEN: (Nods.)

PRESIDENT NEAVE: Okay, and how often does that happen? Does it happen 50 per cent of the time, not at all? How often does it happen?

MS BLANDEN: If Child Safety are aware that TAC are involved with that family, then the majority of the time it would be nearly 100 per cent, but it's just that not knowing if the TAC have knowledge of that family; that's the difficulty there.

PRESIDENT NEAVE: Would they make a contact with you when they've thought that --

MS BLANDEN: Absolutely, yes.

PRESIDENT NEAVE: When they've thought maybe you were involved?

MS BLANDEN: That's correct.

PRESIDENT NEAVE: I see, thank you.

MS SCULTHORPE: If I could just add, too, that sometimes the lengths that the department goes to to avoid Aboriginal decision-making is pretty extraordinary, and I want to instance the case of funds given to the religious organisations around the state for liaison positions. To liaise - for those organisations to liaise with us about children referred, and I think, why would that happen rather than giving those positions directly to us? So, fortunately some of those religious organisations came to accept that that was indeed the right way to work, so they gave the money to us. But, you know, the fact that they had to go a long way around it just seemed extraordinary, so that seemed to me to be a political decision somewhere in the government not to give the money to us. So, I don't understand why that happens, I think we've proven that we are very fit and able to do that work but there is some reluctance to fund us to do it and to recognise the role that we have and I wish someone could tell me why.

MS ELLYARD: One thing that might be said perhaps in answer to your recommendation, Ms Sculthorpe, about a transfer of jurisdiction is that there are other ways in which Aboriginal children's connection to culture can be maintained, for example, through the Aboriginal and Torres Strait Islander Child Placement Principle, and that that's a principle that exists to serve the interests of connecting Aboriginal children to culture. I'm interested in your perspective on, firstly, is that principle sufficient; and, secondly, in your experience is it observed in the way in which children are placed in Tasmania?

MS SCULTHORPE: Well, what we do is implement the Aboriginal Child Placement Principles, that's what we do. It's not enough just to say that those principles should be implemented because the state doesn't always do it, and because there is an overrepresentation of Aboriginal children in out-of-home care, it's clear that they don't do it; and neither do they do things like have cultural plans for every child, which they're meant to do - they don't do that. If they place a child in accordance with the placement principles that's because we find those places for them and then sometimes we have to convince them more strenuously than on other occasions of the appropriate placement.

So, yes, we agree with the principles, but we say we

are better able to implement them than the state is.

MS ELLYARD: Some of the examples from other jurisdictions in Australia that the Commission is going to hear about include such matters as there being a Commissioner For Aboriginal Children, which is a position that exists in Victoria, or a Deputy Guardian For Aboriginal Children which exists in New South Wales. Do you on behalf of the TAC or in your own capacity have a view on whether that would be a meaningful change in Tasmania?

MS SCULTHORPE: To me, that's tinkering; it's tinkering around the edges and it avoids coming to grips with the principal point which is, who gets to decide? Now, it's not the role of a Children's Commissioner, Aboriginal or otherwise, to make the sorts of decisions about whether a child is safe or where the child should live, that's not their role.

One of my recommendations is that we have such a position but to have the position without doing the other things in the 10 recommendations, I think it was, then that is not going to fix the problems.

MS ELLYARD: Another model that the Commission will hear about a bit later today is a model in Victoria which means that in certain circumstances where a child is placed under a guardianship order, the guardian that's appointed is the CEO of an Aboriginal Community Controlled Organisation rather than the Secretary, and the Commission will hear that in Victoria there are a couple of hundred children now whose guardian is that person rather than the state. Do you see any benefit in that kind of model in Tasmania?

MS SCULTHORPE: Well, I suppose there's a benefit but again it's incremental, you know, put this position there, well-funded no doubt, then some other position there and give more money to have all this new apparatus developed, but again, it's avoiding the fundamental issue of who decides and can the community do it itself, because just those sorts of positions is not getting at the fundamental point of the need to re-empower the Aboriginal community because of all the things that were taken away including those decisions. Yeah, it's better than what we've got now, but if it's going to distract from getting to where we really need to go, which is making the decisions, then it's short-termism and is not going to be all that useful in the

long run.

MS ELLYARD: And so, just to unpick a bit more what you would see as the model where decision-making about the placement and guardianship of Aboriginal children is in the hands of the Aboriginal community, what would that look like? What would the practicalities of it be?

MS SCULTHORPE: Thank you. It's a development on what we do now. We would get, I hope, referrals directly to us. At the moment they go to gateways or the department or, you know, other organisations, and eventually they come to us and we either know the family or we don't - normally we do - so then our workers make enquiries if they don't know already. They might talk to the family, they might talk to the school, talk to people who know the family to see if anyone else has concerns, and then we just take it from there. If there are things that our team can fix readily, then they'll do it. Mostly it's not a ready fix, I have to say.

There are difficulties, we know that, but things like, if our team finds out, well, there's a lot of domestic violence going on, our team will work with the mother and try and empower the mother to make the decision that needs to be made for the protection of the children. And again, if we were empowered, if that doesn't happen and if the abuser stays in the house, then we would firmly tell the mother, "You've got a decision to make because your kids can't stay in this environment".

We do think that the current situation where police involvement in domestic violence cases does punish the women because there's not - it's not the role of the police to attempt to see what else can be worked out. They have to record, you know, if kids are there, the reports go into welfare, people are getting marks against their name. The mother is in danger, and often does, lose the children because of violence by the father or the man in the house, so the women are punished again, and we, our point of call would be to do the utmost for that not to happen. And we've been pretty successful of finding different ways so that the children can be safe and the mother not punished. But we have also found when we can't do that there have been occasions when we have said and would agree that it's not safe for the children to stay.

MS ELLYARD: And what you would then envisage, I take it, is a system or a structure where there would be alternative places where those children could be placed and kept safe away from home?

MS SCULTHORPE: Yes.

MS ELLYARD: Can I ask you about the importance of cultural plans and connection to culture and to do so by reference to a program that I understand is called Many Colours One Direction which you touch on in your statement as being a program about which you had some concerns. So, that's where I'm going but can I just start with, what's the significance for an Aboriginal child or young person in having a connection to culture and to country? What will it do for them and what do they lose if they don't have it?

MS SCULTHORPE: Well, it's the whole reason why they're Aboriginal kids and why they're Aboriginal families, because they're growing up in family and community, they know who they are, they're getting some means of standing up to the racism and discrimination that's so often faced by Aboriginal people, including by being told they're not there and they can't be Aboriginal, all that sort of thing; if they're safe in their family and community it doesn't hurt so much.

We have been funded for an alternative to incarceration programs for young people, and that was on an island in Bass Strait, and we got funding so that kids didn't have to go to Ashley, kids didn't have to get sent away. In the end the state defunded that because not enough kids were using it, and we tried to say, well, we can't just put people on that island to look after kids. When Ashley decides to let a kid leave, we can't just find people then, we have to have them all the time and equipped to look after the children who are there.

There's also some difficulty in young people not wanting to be isolated there and wanting to spend time with their mates, so it was not well-attended but it was certainly not well-funded: I think it got $140,000 a year. And then when we get defunded along comes Many Colours, the state's sending children to an entirely different place and spending millions on a handful of kids to go to the Northern Territory, totally away. I mean, the Northern Territory, imagine why someone thought that would be a good

place to send Aboriginal kids from Tasmania. But again, we weren't listened to, despite our advocacy, despite our lobbying, despite our complaints, no-one listened, again, because we weren't the decision-makers. But the amount of effort that it takes to try and get people to see sense, and then more enquiries, oh, we'll send people to have a look, "Oh, yes, it seems all right there now". Okay. So, just ignoring everything that they've been told.

MS ELLYARD: The Commission has heard some evidence or will hear some evidence from the Secretary later this week about an expert panel's review into what the new solution should be instead of the Many Colours, One Direction program, and I understand there is a suggestion that there should be comparable programs built in Tasmania to meet the needs of Tasmanian Aboriginal children. Has the TAC been consulted about that?

MS SCULTHORPE: I'm not sure which program they're talking about at present. There was a bush adventure program being developed that we were involved with as an alternative, but more than that, we thought it should be - because there's not that many kids who would participate in these programs, for an Aboriginal program.

Our idea was that we should tailor programs to each child, and because there were so few children, we knew that we can do it. We have a whole range of properties, of infrastructure, houses, land, vehicles, that we are confident that we can - and we know the community and we know who the people are - we are confident that we could tailor programs to each child. So, rather than having a one-size-fits all program of bush adventure, for instance, we would tailor it to the needs of each particular individual.

Bush programs, bush adventure programs clearly have value and could be part of that solution, but not every kid might want to follow that program, and we thought with our individualised approach it would have a better chance of being successful. But again, then the staff in communities, Child Safety people, move on, get promoted, get moved sideways; we never get an outcome to that. It would cost far less than Brahminy or Many Colours, but they don't engage back with us to say why our program and our idea is not any good, what's wrong with it? So we don't get to have that sort of dialogue, if they've got concerns,

they need to talk to us about it.

Because we have now got quite a team, Sally's team throughout the state, of people - you know, we've even got social workers now, Aboriginal social workers, and we employ, you know, psychologists and counsellors and Aboriginal health workers, doctors, the whole array of people that we know would be useful for kids in trouble as well as all the community contacts that we have.

COMMISSIONER BROMFIELD: Ms Sculthorpe, appreciating your comments about not tinkering, taking your broader recommendation about the transfer of jurisdiction, can I check whether you have any view as to whether, within your current holistic approach to responding and supporting families, whether having Aboriginal community controlled home-based care providers would make any kind of difference? There is no Aboriginal community controlled out-of-home care provider in Tasmania; is that correct?

MS SCULTHORPE: Well, I think the Aboriginal Centre is it, because we find the people. We don't ourselves provide the home, we don't have a home to send people to; that's not the model we want to pursue. But I'd say we're the provider, because we find the people to look after the children.

And, I mean, we've thought about that. You know, we have properties that we could potentially use to have people in to look after children there, but in reading all the evidence from other jurisdictions, we thought that would be a last resort because it's so individualised, it's so, you know, insular. It's repeating the nuclear family, and that's where the trouble happens

COMMISSIONER BROMFIELD: If, just for example, the TAC were, I guess, an out-of-home care provider but able to make decisions about what that actually liked like and work in this more individualised approach, would that kind of arrangement be any assistance?

MS SCULTHORPE: It depends who decides that that child needs that type of care. If we are that decision-maker, that's part of what we would do. I think - are you - I'm not sure. Are you thinking about an actual home, like a care home?

COMMISSIONER BROMFIELD: No, I'm thinking about, once a decision is made to remove a Palawa kid, who decides where, then, they get placed? Who makes the arrangements there? So I guess I'm thinking about, after the decision to remove has been made, who then has further decision-making about what that child's care looks like and where it is and who it's with?

MS SCULTHORPE: The department does, but I think they'd generally be asking our Families Team about that. We'd have more - is that right, Sally?

MS BLANDEN: That's correct, yes. So they we will ask, and if we're resourced for it, we can provide it. But I think it's one of those things; we don't want to be totally resourced. You know? We don't want to have lots of. We want to be able to react when we need to, so we don't have surplus carers to be able to jump in. And I think that's the difficulty that we have around placements for children.

COMMISSIONER BROMFIELD: I'm trying to get a picture, sorry. Is your idea about the transfer of total jurisdiction similar to, I guess, the models that we would see in Canada, where Aboriginal Community Controlled Organisations do everything, from the referral right through to every statutory decision they're responsible for?

MS SCULTHORPE: That's the sort of model that we'd aim for, yes.

COMMISSIONER BROMFIELD: Okay.

MS SCULTHORPE: I'm not sure how we'd go, I haven't quite got to that detail. I'm not sure how we'd go about, you know, sending someone off to prison for the abuse they've inflicted on a child. I think that would be easier to do that in the American reservations. So, you know, those niceties are yet to be sorted out. "Niceties"? I don't mean "niceties"; I mean the detail of how those punitive decisions would be implemented.

PRESIDENT NEAVE: Well, leave aside the punitive decision about perhaps punishing a perpetrator. What about the decision to actually remove the child? I think Commissioner Bromfield was assuming that that would be made in the normal way and then the Aboriginal-controlled

organisation would do all of the arrangements about where the child was going to live, et cetera, et cetera. But you would still, under that model, I think, have the same body that makes the decisions, the order that removes the child from their parents still doing that. Now, would you want to have an Aboriginal sort of court process separately from the rest of the court process to make those decisions?

MS SCULTHORPE: I understand the reason why one might not do it, because it's not going to be popular with the parents.

PRESIDENT NEAVE: Leaving aside that, yes.

MS SCULTHORPE: So it's a very hard decision to be made. But I think our workers - I think, Sally - the experience is that if the workers are up-front with the parents, make it clear why they're doing it, explain the process, why it has to happen, it's quite remarkable really that it seems that decision - which it would be a decision - seems to be more readily accepted than one might think. Not always. What do you think, Sally?

MS BLANDEN: No, I agree. I think that transparency, the understanding of what's happening, our involvement, and just helps walk alongside the families in that understanding of what's happening to them and their family.

MS ELLYARD: I think what you're indicating is that if that painful decision needs to be made, the parents are having their children removed, it might be a decision that they'll accept from you without needing a court order because it's being done within the Aboriginal community; is that the model that you're thinking of?

MS SCULTHORPE: Yes, that's been known to happen. Yes.

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

COMMISSIONER BENJAMIN: No, I'm just listening and absorbing and thinking.

MS ELLYARD: Can I turn to a different question, noting the time. It's clear from the statement and from the answers that you've given that the TAC works in a variety of areas and that some of those areas are funded in

different ways, as I understand it, by government, perhaps from different pockets of money in different places. Ms Blanden, can I ask you perhaps to reflect from your experience on the challenges that arise when you're doing a number of things, perhaps for the same family, but the money for different things is coming from different places?

MS BLANDEN: I think Heather touched on it before. I think we just need to be resourced and make those decisions that we need. The reporting that we need to do for each specific pocket, as you say, is so time-consuming and it takes away from that front-end work that we need to be doing. I think, does that?

MS ELLYARD: And so, when you say, "We need to be resourced", as I understand it at the moment some of the programs that you provide for children and families are programs that are provided with money from the Department of Communities?

MS BLANDEN: That's correct.

MS ELLYARD: And there might be other programs that are provided that are also funded by the Department of Communities but from a different stream and/or with different reporting requirements?

MS BLANDEN: That's correct, yes.

MS ELLYARD: But overall, the amount of money is not that big.

MS BLANDEN: That's right.

MS ELLYARD: But there's a lot of accounting and reporting obligations which come along with the different little bits of money?

MS BLANDEN: That's correct.

MS ELLYARD: And so what would, from your point of view, the solution be? Thinking about an organisation of your size and scope, what would be a more efficient way for the government to fund you to do the work that you're doing?

MS BLANDEN: I think we just - that service just needs to be given and resourced accordingly to be able to make the

decisions as needed. I think the idea that little pockets need to go here, there and everywhere, it comes back to, you know, we don't want to have this amount of money for this one project when that might not be what's happening right now for that family and that might not be the trend, the issue, you know, the big worries. So, I think that funding - just, the resourcing needs to sit with the TAC in the familiar Families Team and then reacted to as needed.

MS ELLYARD: So do I understand that, just to have an example, you might have a pot of money that's available for a particular kind of intervention, but in fact the need in the community is for a different intervention which you're not funded to give, so that money's wasted because you can't apply it over here? That's the kind of problem that you identify?

MS BLANDEN: That's correct.

MS ELLYARD: Commissioners, those are the questions that I had, but I want to look to Ms Sculthorpe to see if there's anything further that she would wish to say to the Commission about the work that it's doing or matters that you'd like the Commission to keep in mind, Ms Sculthorpe, in framing recommendations about the out-of-home care system and the protection of Aboriginal children.

MS SCULTHORPE: I think we've covered it pretty comprehensively. Thank you for your questions.

MS ELLYARD: Thank you, Ms Sculthorpe. Commissioners, were there any other questions?

COMMISSIONER BENJAMIN: No, just thank you for the time and effort you've put into informing us and assisting us with our work.

PRESIDENT NEAVE: Thank you very much indeed.

MS ELLYARD: Thank you, Commissioners. If we could take the morning break.

PRESIDENT NEAVE: Yes, we'll adjourn till 11.20. Thank you.

SHORT ADJOURNMENT

MS ELLYARD: Thank you, Commissioners. The next session of evidence will be a panel comprising Professor Muriel Bamblett and Mr Richard Weston. They both appear via video, and I'll ask the clerk to take them through the formalities.

<RICHARD JAMES WESTON, sworn: [11.23]

<MURIEL PAULINE BAMBLETT, sworn:

<EXAMINATION BY MS ELLYARD:

MS ELLYARD: Q. Professor Bamblett, may I begin with you and invite you to introduce yourself to the Commissioners.

PROF BAMBLETT: Hi everyone. Obviously, I'm not going to go through all of my details within my submission, so I just want to begin by, obviously I'm a Yorta Yorta, Dja Dja Wurrung, Taungurong Bunnerong woman from Victoria. I'm CEO of the Victorian Aboriginal Child Care Agency.

I just want to take this opportunity to acknowledge the traditional owners of all the lands that we are on. I am on the land of the Wurundjeri people in Victoria, and so I just want to acknowledge their Elders past and present and emerging and also Richard Weston and his family, his elders and his traditions and ceremonies that he brings to that meeting. Thank you.

MS ELLYARD: Thank you, Professor Bamblett. You've made a statement to assist the work of the Commission, which is signed by you on 10 June 2022?

PROF BAMBLETT: Yes, I did.

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

PROF BAMBLETT: Exactly, yes.

MS ELLYARD: Thank you. Mr Weston, may I turn to you and invite you to introduce yourself to the Commissioners.

MR WESTON: Thank you. I'm Richard Weston, and thanks for that acknowledgement, Muriel. I'm a Meriam man from the Torres Strait. I was born on Gadigal land but grew up on Nyoongar Boodja in WA. I currently live on Wiradjuri

country on the Riverina region of New South Wales. My job is as the Deputy Children's Guardian for New South Wales, and I work in the Office of the Children's Guardian.

I pay my respects to Elders past, present and emerging and also pay my respects to Muriel, who's here with us today. Thank you.

MS ELLYARD: Thanks, Mr Weston. You've made a statement that's dated 10 June 2022 to assist the work of the Commission. Have you got that statement with you?

MR WESTON: I do, yes.

MS ELLYARD: Are the contents true and correct?

MR WESTON: Yes.

MS ELLYARD: Thank you. Taking your point, Professor Bamblett, I'm not going to ask you to go through all of your professional history in detail, but perhaps by drawing your attention to paragraph 6 and 7 of your statement, could I ask you to summarise briefly the roles that you've held and the work that you do that's relevant to the work of this Commission, which is investigating child sexual abuse in the out-of-home care context?

PROF BAMBLETT: Yeah, I guess, really, I've been 23 years at the Victorian Aboriginal Child Care Agency in Victoria. So we are a dedicated child and family welfare, but as you can see through our submission we operate many programs and services across the state.

I am also chair of SNAICC, the peak body for Aboriginal and Torres Strait Islander children nationally. And so, I served for a period of time as chair and then stood down but have come back in 2021 to take up the position of chair again. So that's really relevant to today. Thank you.

MS ELLYARD: Thank you, Professor. And Mr Weston, you've introduced yourself as the Deputy Guardian for Children in New South Wales, but by reference to paragraphs 5 and 6 of your statement could I invite you to summarise your professional work history as it relates to the work of the Commission?

MR WESTON: Yes. Prior to coming into this role, I was the CEO at SNAICC for 15 months, from October 2019 to January 2021, and prior to that from September 2010 to August 2019 I was the chief executive of the Healing Foundation, which is a national body focused on addressing trauma and supporting healing across the nation. It was something that came out of one of the initiatives of government that came post the apology, and we spent a lot of time working with communities on developing and designing locally-led healing projects to address trauma.

MS ELLYARD: Thank you. May I stick with you for the moment, Mr Weston, although I'm conscious that both of you can speak about the work of SNAICC.

At paragraph 25 and following of your statement, Mr Weston, you refer to a number of pieces of work that were done by SNAICC or under its auspices during the time that you were the CEO, and you go on at paragraph 29 to reflect on, in particular, some of the findings of the Family Matters Report of 2020. Can I invite you to summarise what the findings of that report were in relation to Aboriginal children in care?

MR WESTON: Yes. And look, certainly Muriel can talk to these issues. Look, the Family Matters Report has been an annual report that's been led by SNAICC since about 2012, and it focused primarily on the overrepresentation of Aboriginal and Torres Strait children in the out-of-home care system across the nation, but it has regularly found that Aboriginal children are over-represented in the system, the child protection system, by some close to 10 times the rate of non-Aboriginal children coming into the system.

There were projections done a couple of years ago when I was there that told us that if that rate didn't change, so if nothing was addressed to arrest the number of children coming into care, it was likely to double over the next 10 years. So it still remains a major challenge for systems across the country.

MS ELLYARD: Thank you, Mr Weston. Turning to you, professor Bamblett, you've identified that you're the CEO of VACCA, which is an Aboriginal community controlled organisation, and it does more than childcare, but "childcare" is in the name, and we understand that your

organisation is an organisation that, amongst other things, cares for Aboriginal children who have been removed. Can I ask you to summarise the origins of VACCA and why in your view it's important that there be Aboriginal Controlled Community Organisations doing this work?

PROF BAMBLETT: A complex answer. I guess when you look at VACCA was established because of the high numbers of Aboriginal children that were presenting to the Aboriginal Legal Service with a history of being removed and placed in out-of-home care with non-Aboriginal carers and losing total connection to their family and community. And so, our founder, Aunty Mollie Dyer, was alarmed and concerned about preventing so many children, wholesale children, being removed from communities and placed in non-Aboriginal care and not having any way of knowing who they were, what country they're participating in. So she fought to have Aboriginal children be able to get an Aboriginal service from Aboriginal people. And so, from those small beginnings we see now where we're taking on the control and the guardianship of Aboriginal children in Victoria. And so, VACCA was the first organisation in Australia to take on guardianship of Aboriginal children.

MS ELLYARD: I'm going to ask you about that in more detail shortly, Professor, but as I understand from your statement, although VACCA is the largest Aboriginal child welfare agency in Victoria, it's not the only one now; is that right?

PROF BAMBLETT: No - yep, and I guess from - we've always had - since I've started, there were six Aboriginal Controlled Community Organisations delivering very small numbers. You know, 23 years ago when I started we had 35 staff and 26 children we were funded for, but 200 children we were actually looking after. And those other six other organisations were run in very small, very small numbers. Now, we have 16 Aboriginal Community Controlled Organisations across Victoria and a lot of their funding comes for foster care, for kinship care and for a range of other child and family welfare services. But they also provide - they're community-based controlled organisations, so they're health-focused, they're early years-focused, and so they very much run a whole-of-family, whole-of-community type service regionally.

MS ELLYARD: Professor Bamblett, one of the comments that you make at paragraph 42 of your statement is the significance of family violence as an issue that brings children into care and is relevant to the out-of-home care sector. Can you speak from your awareness about the size of that problem as a contributing issue for children coming into care?

PROF BAMBLETT: Yeah, I guess I can - you know, you can trace its roots back to when Andrew Jackomos was the Commissioner for Victoria, he did what we called Taskforce 1000. And he examined 1,000 children that, at that time, were in the care of the child protection system. He went across the state to investigate what was happening for those children to come up with a report. And so, he actually found in that, that 88 per cent of Aboriginal children at that time were coming into care because of family violence. Obviously not family violence alone: Drug and alcohol, mental health, and homelessness and other justice issues, so more broadly, but predominantly three areas: Drug and alcohol, mental health and family violence.

MS ELLYARD: Mr Weston, if you turn to you, at paragraph 35 of your statement you reflect on the significance of words like "healing" and "trauma" when we speak in this area, and I wanted to invite you particularly to speak about the significance of trauma when we contemplate appropriate responses to Aboriginal children who find themselves in out-of-home care or at risk of the out-of-home care system?

MR WESTON: I think those issues that Muriel just mentioned as being risk factors for Aboriginal kids coming into care have been long-standing issues, and they've arisen as a result of the genocide and the colonisation process that has taken place in Australia over the last 200 years. And it's that experience of colonisation and genocide that has had a lasting impact. The trauma, you know, was widespread, it was in particular through the 20th Century with the Stolen Generations that there were many thousands of Aboriginal children removed from families. And trauma's had a lasting impact, not only within families and within communities, but across generations from one generation to the next.

One of the roles of the Healing Foundation, the things

we really wanted to do was understand what trauma was, how it impacted on people's behaviours, how it impacted on relationships, and how it led to those at-risk behaviours like violence, like substance abuse, mental health and other issues that are at the core of driving our kids or driving families into a place where they're experiencing hardship or vulnerability, and then how those families come into contact with the out-of-home care system.

MS ELLYARD: Picking up those words "hardship" and "vulnerability", you say something in your statement, Mr Weston, about I think you would prefer to talk about "hardship" rather than talking about "vulnerability". Can you unpack for us why you see that as being a meaningful distinction?

MR WESTON: Look, just for me it's really about trying to come at language that is not as - is not deficit-based. I think "vulnerability", I think, carries a connotation that people are vulnerable forever, so if a family becomes vulnerable, then they can never get out of that status or that state.

I like "hardship" better because I think it implies that people - we all, I think most people would understand what hardship is. We all experience, sometime in our life, a period of hardship and it doesn't necessarily stay with us forever.

And I think the things that are - the unpacking that goes on when we're looking at families that are experiencing hardship in coming into contact with the child protection system just keep throwing up more and more problems and issues and deficits, and it just becomes an overwhelming set of issues or circumstances that many families will find very difficult to address and, you know, potentially retain - keep their children in the family or, if they are removed, to getting them back.

So it's really important to understand what are the strengths we should be looking at, what are the strengths in our families that will help mitigate that hardship they may be experiencing, but also mitigate other risks for families that bring them into contact with the system.

And at the centre of all the work the Healing Foundation did was culture, Aboriginal knowledge,

connection to identity and community all. And we did many, many projects. We did - I can't remember the number. It's 175 projects over nine years. All sorts of different types of projects, but the common theme through all of them, the common thing that made them work well was this idea of we're looking at the problem through an Aboriginal lens, it's led by local people, addressing local issues, and it focuses on having a strong connection to culture and identity, and those are the things that made a difference.

MS ELLYARD: Thank you, Mr Weston. Professor Bamblett, looking to you, you refer at paragraph 24 of your statement to Cultural Therapeutic Ways as a program that's been implemented throughout VACCA as a whole-of-agency approach to guide and improve responses. Could you explain to the tribunal a little bit what the program is and why you would see it as significant?

PROF BAMBLETT: I think that it builds on a lot of what Richard was talking about, the importance of culture, but being able to embed Aboriginal culture into all of our work, and so, not just as an add-on or something that - because if you think about it, we're an Aboriginal organisation; what does that mean? We run Aboriginal programs. What's the Aboriginal component of all of our programs? How do we actually inform our staff, train our staff? How do we make sure our organisation is embedded in culture?

And I think Richard touched on a couple of things, you know, like the language very much about our families is that we're dysfunctional and, you know, it's deficit language. And I think what we want to do is really sort of build empowerment back into our service system and have our families believe that change can happen, that they're not coming from a defeated people. And so I think it's very much from our point of view we use culture as the tool. So, we run a lot of camps, we do a lot of possum skin cloak songs, ceremonies. We get children to be involved in Naidoc activities.

We just had a Coalition of Peaks meeting and there were people from the Northern Territory there. And I said to them, "You may not have the services, but you've got what we want in Victoria. You've got a strong cultural base. You can see your ceremony, you can hear your language, you can speak your language." All of those

things are things that have been taken away, particularly from us in Victoria, and similarly in Tasmania. And so, how do we - we have to be able to manufacture or put things in, and Cultural Therapeutic Ways is about embedding stories, ceremonies and bringing back, for children, strength in who they are and empowering children to be strong.

So we do a lot of cultural support planning, we do a lot of genealogies for children, confirmation of Aboriginality. Those things are critical, important for children. We do a lot of t-shirts for children so that they can wear the Aboriginal flag, they know what they are. And so, we know how important the Aboriginal flag is. And I know that Margaret Rowell that used to work at the Aboriginal Health Service, she told me one time that, she said, Aboriginal women working with Aboriginal children, what they found is, when they asked children "What makes you feel safe?", 85 per cent of children drew the Aboriginal flag. And so, for us in our work it is about empowerment, it's about therapeutic, it's about healing.

MS ELLYARD: Thank you. And Mr Weston, I see you nodding. I take it that you're in agreement with some of the things that - or perhaps all of the things that Professor Bamblett just referred to?

MR WESTON: Yeah. I think Muriel just puts more meat on the bones to what I was saying. But the - just, Aboriginal organisations like VACCA, for example, they're the best placed to embed these cultural approaches into their services and programs. You know, we care the most about our mob, we care the most about our culture, we know the most about our mob, we know the most about our culture, and we're best placed to do it.

So, you know, that's something that the SNAICC work through the Family Matters Report has always talked about, is growing the Aboriginal presence in the out-of-home care Child Protection sectors and also empowering communities to play their role as well.

MS ELLYARD: At paragraph 49 and following of your statement, Mr Weston, you talk about the position in New South Wales where, as I understand it, there's a focus on growing the role of Aboriginal Community Controlled Organisations. Can I ask you to perhaps speak in a bit

more detail about the significance, not just of Aboriginal Community Controlled Organisations, but perhaps the importance of there being a diversity of such organisations across a state?

MR WESTON: Well, New South Wales is one of the biggest Child Protection jurisdictions in the world, let alone in Australia, and we have a large number of Aboriginal children in the out-of-home care sector - it's about 6,600, just over 6,600 as of the end of the last financial year, and probably will grow come the end of this financial year.

We have 22 Aboriginal organisations providing out-of-home care; 17 of them are active in the Child Protection space, which means they are caring for children. There's another five that are accredited to provide that care, but they haven't been allocated children as yet.

We just know, the Family Matters work tells us, that this is a problem, this issue of overrepresentation of growing numbers of children coming into the system is going to continue to grow. And it's not just enough to have a system that removes children and then places them in foster care and then we have this battle to keep them connected to culture and kin and identity. I mean, that's best done by Aboriginal agencies, but Aboriginal agencies also operate holistically, so they don't just look at what we call the tertiary end of the system which is when the decision to remove has been made and then it focuses on the placement, but Aboriginal agencies are actively lobbying, working with the Department of Communities and Justice here in New South Wales to grow more early intervention and prevention approaches, and these are the ones that I think can make a bigger difference and take some pressure off the system. And it's Aboriginal people, Aboriginal knowledge systems and Aboriginal organisations that have the ability to develop those models and those programs. The challenge is, is getting them resourced. They're often resourced as pilot projects or short-term projects, there's an evaluation perhaps possibly, sometimes there isn't, but the funding tends to dry up; there's no kind of - there's no kind of systemic thinking about how do we start to build and grow those early intervention approaches, more involvement of the community and strengthening our Aboriginal out-of-home care sector.

MS ELLYARD: Professor Bamblett, can I ask you about this

question of early intervention. It's clear from your statement that the work of VACCA, although it does extend to caring for children who are on statutory orders starts well before that in the lives of Aboriginal children. What's the significance of getting in early to support children and families from your perspective?

PROF BAMBLETT: I think at the moment we offer 11 supported play groups, and so, by having the opportunity to work with young mums earlier and dads in parenting and being able to engage throughout COVID, we've been able to do that virtually as well, but it actually provides us an opportunity to work much earlier. I think there's a number of touch points for us; we actually provide Cradle to Kinder which is moving to a different model but it's actually - a lot of it is around unborn notifications, we're able to respond to those to work with really vulnerable young mums during pregnancy and so to make sure that we do all of the work to make sure that baby's born safe and healthy and so there are a lot of touch points.

But I guess when you look at specifically the early intervention dollars in Victoria, and there's been like this issue across the nation, an under investment; I think most Aboriginal Community Controlled Organisations are ambulance chasers, we're at the bottom of the cliff waiting for families, you know, really sort of getting to the tertiary end.

In Victoria only 7 per cent of the early intervention funding for Child Protection goes to Aboriginal community control. So there's a body of work that we're doing across family violence, we're looking at Child Protection and we're looking at how do we transition. Because we've transitioned into out-of-home care and we've been really successful in transitioning Aboriginal children back to Aboriginal community control but we haven't been able to get the resources for early intervention, so the Victorian Government's really looking at, how do we transition the most critical part of the system, which is early intervention.

But at the moment we've got legislation that's being tabled in Parliament and it is about that Aboriginal Community Controlled Organisations take on investigations, so we think that will have a better capacity to be able to prevent children because we know, and all of the research

says, that children don't just go into Child Protection, there's quite a few notifications, and so how do we respond and be able to work with families much earlier when they first come to the attention of the system, whether it comes through education, whether it comes through family violence, whether it comes through mental health, being able to provide the services and I think that investigations gives us an opportunity to do that.

MS ELLYARD: Thank you. Mr Weston, at paragraph 43 of your statement you make reference to the Child Placement Principle which, understood in its full terms as I understand it, includes the question of prevention, it's not just about what kind of foster care an Aboriginal child goes into after they're removed, it's meant to inform the whole way in which the Child Protection and out-of-home care system engages with children. Is that right?

MR WESTON: Yeah, I think that's as it's used in the Child Protection System. There's five elements to the Child Placement Principle: prevention, partnership, connection, participation and placement.

So placement, the way it's applied in New South Wales at the moment, it tends to be focused on placement. So, the decision has been made, and as Muriel described, there's a whole bunch of processes to go through and then a child - the decision is made for the child to be removed, and that tends to be when the Child Placement Principle issue is applied in New South Wales and it becomes about placement. But even in the placement there's a hierarchy of placement so that the preference is to have the child, if the child does have to be removed, that they're placed with Aboriginal kin and then there's other levels of placement. So it's really aimed at, even if the child does have to be removed, that they're staying connected to culture and community and their identity and then supported in that placement to maintain those connections.

At the moment the placement principle operates in New South Wales more as a guideline rather than as something that should be the way the business is done. But I think the principle itself and the five elements, if we use that as the framework for developing - you know, for argument's sake, a new system, a new approach to how we support families in our community so that the kids are safe, they're in the home, they're connected to culture and

identity and community, if we applied that principle with the five elements as the framework, we'd get much better outcomes because it would have all the things that Aboriginal people are asking for. Aboriginal people would be leading it, there would be programs that are developed locally through organisations and through community to keep kids connected. Families that need support would get it, so that, reducing - hopefully reducing the need for children to be removed from their families. It's done in partnership with communities and organisations, and it's empowering, so people get to participate in the decisions that affect them including children and their families, so it ticks a lot of boxes.

MS ELLYARD: Thank you. Turning back to you, Professor Bamblett. At paragraph 61 and following of your statement you discuss in detail something that you've mentioned already which is that in Victoria now there's the capacity for children who are placed on what previously would have been guardianship to the Secretary orders, to instead be placed on an order that makes you their guardian.

PROF BAMBLETT: That's right.

MS ELLYARD: I wonder could you summarise for us what's the history of this legislative change which I understand did take quite a while to come to fruition after a lot of lobbying from VACCA.

PROF BAMBLETT: Yeah, I mean, I think it started in 2005 when it was put into legislation and it was discussed. At that time Gill Callister was the Secretary of the Department and she basically said, you know, in our current position Aboriginal people had very static, no influence and no capacity to really change the trajectory, and she really sort of put a diagram on the board and basically said, "We want you to move to dynamic influence to be able to change the trajectory".

And so, her and Kym Peake they worked on putting - and we'd been to Canada, we'd all been to Canada, we'd seen guardianship in action in Canada and we'd seen their results. I think that terrified us a lot because they gave the whole of the Child Protection System to the First Nations people and we thought, no, we don't want to do the whole of Child Protection.

But we came back and I guess in 2005 the legislation was there but there was particular issues because all of - the delegations were given to the principal officer, which was the CEO, but they couldn't be transferred to anybody and so it meant that we had to go back and change the legislation. But today, anyway to cut a long story short, I guess in 2017 we were able to launch our program, and so, our program is really about obviously the Secretary transferring guardianship to the CEO of an Aboriginal Community Controlled Organisation.

I currently have guardianship of over 100 Aboriginal children and the results we've seen have been outstanding and our work with a dedicated Aboriginal Children's Court has seen many children go home. And so, the department's reunification rate for children to go home is 12 per cent, and what we're seeing is our reunification rate is as high as 24 per cent in one of our regions. So, it means that, if we applied that to the 2,000 children that are in care in Victoria, we could potentially see 1,000 of those children going home potentially, if we transferred the authority and decision-making to Aboriginal - and we believe taking on investigations means that we get into families much earlier.

The department has a history of not doing the hard work with Aboriginal families. There's complexity, but they often don't see the strengths in Aboriginal families, and they're not prepared to put the hard yards in. What we've seen with our workers is the fact that they will put the hard yards in.

During COVID our retention rate across our whole organisation was, you know, it was really challenging but in the Nugel team our staff there feel so valued and feel that - can see what they're doing every day and their retention rate was very low - very high, sorry, and so, staff stay because they see the value of the work.

MS ELLYARD: And so, Professor Bamblett, I imagine that, I mean it's never a good thing for a family to feel that their child's being taken away from them and placed in the care of somebody else and that guardianship responsibility is sitting with somebody else, but it sounds that your experience is that it's less painful and potentially still something that can be worked on and improved for Aboriginal families if their child is in the care of your organisation

and under your guardianship as opposed to in the care of a mainstream organisation and the care of the Secretary?

PROF BAMBLETT: I think what's different for us is that all the parents have to give me permission to take on guardianship, and so, the fact that they want me to take on guardianship. But, as I said, with some of the families some are - these are really complex families, and we're not talking about, you know, first time, we're talking about people that have been two or three children moved over a number of years and, you know, we're getting these children home. Families that have been torn apart, we're seeing - and, you know, Magistrate Macpherson who works for the Children's Court has given us videos and said the work that we've been able to achieve together to get children home and I think I just see that we - the work that the workers do on a daily basis really is about making sure that children are connected; if they need to go, leave, but we do not leave children in unsafe - I think there's a view out there that we've got lower thresholds for risk and that we will leave children in unsafe: I believe that we've got higher thresholds for risk and I think we will more likely remove a child if a child's not safe.

MS ELLYARD: When you say that you've been able to send a lot of children home, what you mean is, they've been able to go home safely.

PROF BAMBLETT: Exactly.

MS ELLYARD: Because the issues that would have made their home unsafe have been addressed.

PROF BAMBLETT: I mean, you know, in Child Protection, children can go home on a reunification order, but the fact is that we've put the resources and the supports into mum and dad. I think the biggest issue for us is that in the past we only worked with mum in isolation from dad. What we're finding is that being able to work with both mum and dad and being able to address dad's trauma as well as mum's trauma and not see children as, you know, the parent - having one parent in the relationship; there's two parents and we need to work with both.

MS ELLYARD: Can I turn to you, Mr Weston, and ask for your reflections. At paragraph 32 and following of your statement you reflect on some of the particular barriers

for Aboriginal people or the particular concerns that might arise that might make them vulnerable to going into the child protection system or vulnerable to not getting the kind of positive outcome that Professor Bamblett has been talking about. Can you tell us about that?

MR WESTON: I think, look, Muriel's just described that delegated authority or that guardianship model for Victoria is something that New South Wales is exploring through our community control sector, so there's some active conversations going on about that, but there still is, as Muriel described it, there's this element of risk or the perception of a risk in doing that, of relinquishing some of that control.

But I think the things that Muriel spoke about earlier that put families at risk, like violence in particular, is an issue in New South Wales. And the way it tends to work here at the moment is that it's the mother that - you know, the mother who's experiencing the violence and then reporting it is then held accountable for the safety of the children. And, you know, the father, the perpetrator, well, he's dealt with by the law, but he's not accountable for his behaviour in relation to the children and creating that unsafe environment, so that does lead to rushed reports or risk of serious harm reports, and it creates a challenge for women in terms of having the confidence to report when there's violence around because there's this fear of how agencies are going to respond to them; they don't respond.

The response tends to be punitive rather than supportive, and that's why I think there's a difference between the way Aboriginal organisations work with our communities than government agencies like police and the out-of-home care system like the Department of Communities and Justice. There's more of an insight and understanding about the causes of issues like violence in our communities, the understanding of trauma, the need for healing and the need for support, non-judgmental support.

And, look, it doesn't let men off the hook, men still have to be accountable for their behaviour, but they still have - you know, they have their own trauma as well that leads to their problematic behaviour around violence. And I think Aboriginal people can see that, we don't - these people are still part of the community, we don't try to

ostracise them or just lock them up as a simple solution, because we know it doesn't work, it doesn't. The figures for our kids coming into care just keeps going up, it doesn't change things.

MS ELLYARD: Can I turn then to this question of therapy and support, thinking particularly in accordance with this Commission's terms of reference about therapy and support for children who are victims of sexual abuse.

Professor Bamblett, at paragraph 141 of your statement you refer to the establishment of a specialist service to provide culturally safe services for victims of sexual abuse. Can you tell us a bit about that, please?

PROF BAMBLETT: I guess for a number of years we've been really strong advocates to have the government look at particularly family violence and the impact of family violence and sexual abuse, and we've had a number of reports, and constantly throughout those reports they name sexual abuse and the historical sexual abuse and how it's hidden particularly in Aboriginal communities. I think New South Wales has been pretty open about putting, you know, sexual abuse and they've done a lot of work through - I think Marcia Ella did a lot of work in New South Wales around sexual abuse in Aboriginal communities.

But it's very much, and we've looked through all of our data and it's very hard to see sexual abuse as the primary indicator for child abuse in Victoria; it tends to get masked with other - there's sexualised abuse and it doesn't get picked up.

But we really have - we're part of a forum, the Dhelk Dja Family Violence Forum, and we've been pushing to address the issue of sexual abuse, and so, there's been a piloting of three programs across the state for Sexual Assault Services. Three different models in three different services, so one in the Victorian and Aboriginal Health Service, so they've got a Koorie Kid Mental Health, they've got a mental health sort of, and so, they've aligned it with therapeutic, and Jenny McIntyre has been a strong advocate of sexual abuse for many years and really has done great work in responding.

The other one went to a healing service in Sale, and so they run a healing service and so they've taken that

approach. Our approach at VACCA is really to embed it in across all of our programs in the one region, and we're starting another one in the west, but it's under-developed, it's under-reported and we think it's going to create lots of issues.

I've spoken in the last few weeks with a number of my relatives who have talked about the issue of sexual abuse and how rampant it was as we were growing up, so I think it's undisclosed, I don't think we ask that question and I don't think that many of our people want to speak about it.

MS ELLYARD: Mr Weston, at paragraph 60 and following of your statement you talk about some of the work done and some reports published by the Healing Foundation, thinking specifically about healing interventions for Aboriginal people who are victim-survivors of child sexual abuse. Firstly, can I ask you to speak about this question of healing and the healing journey and the significance of that as a concept?

MR WESTON: I think Muriel, it's a great segue really, because Muriel's talked about that stigma or that shame factor, that people don't want to talk about these issues in communities. So, at the Healing Foundation we did some work with the Royal Commission and around the issue of child sexual abuse, you know, around that time when the Royal Commission was sitting. We put some thought into what it looks like, what a safe model - model for safety looks like for Aboriginal communities. We worked with a knowledge circle that came up with a number of values of approach, so that included things like safety, how we would create safety and warmth for children, for example, and everything about children matters is important so that children become really central to - well, they're central to Aboriginal culture anyway, but we enact that in the way we create safe spaces and create safety for children.

Really important that children have that confidence to speak up about things that might be viewed as shameful, that they don't have to keep them secret; nothing is so bad that it has to be kept a secret, and that creates an environment where communities can't ignore the issue, we can't just keep sweeping it under the carpet, so we need frameworks that create that safety for children.

But other values we thought about were respect,

respect for lore and culture, empathy. So, understanding that even perpetrators have a story and that they need support, but without excusing their behaviour.

Reciprocity, so that communities are working towards stronger connections for children and families. Giving back to culture is really important. And unconditional regard for children, or an unconditional positive regard for children is seen as important too.

And really I think children are at the core of our culture, that's always - that's how we - that's why our culture has survived for thousands of years is because we invest a lot of care and love and attention and education into our children - that's been the way, how we've passed that knowledge on. And truth-telling is really important, so exercises like this Commission of Inquiry is an important exercise in truth-telling. Because we have to get to the truth of what's happened to people and people take a long time to disclose it, but we can't wait for them to disclose it so we have to start to create safety now around children, we just have to consider all children, particularly going into the out-of-home care system to be at risk, some risk, or potential risk of being sexually abused, so we have to create these environments of safety around them.

Truth-telling is really important to get the policy right, to get the approaches right. Without an understanding of the impact of trauma and how it - you know, genocide and colonisation, all those things that we've talked about, how those broke down those mechanisms we had to keep our children safe and our culture strong. And understanding what, you know, the colonisers, the people that came and settled Australia, what attitudes they brought to children. You know, they had challenges; we didn't really see any emphasis on the rights of children until the mid-20th Century or early 20th Century, so they brought a way of treating children that they passed on to us.

And empowerment is really important and all of these things are important to give hope to our communities. So, healing is a - and I know that when we first started at the Healing Foundation healing wasn't a term that was well understood. It was understood a lot of times in the policy areas when we were talking to government about it; it was

understood as a kind of boutique hippy-type culture of healing and crystals and all sorts of other things, but for Aboriginal people it's been a part of Aboriginal culture for a long, long time. So, having things that Muriel mentioned before, things like activities around creating possum skin cloaks or artifacts being out on country, storytelling, yarning circles, all the things that we do because we see them as really important, that's why we focus on them. Mainstream organisations and historically mainstream organisations and government agencies haven't seen our culture as important.

I mean in New South Wales, I mean 20 years ago when people tried to get funding for cultural activities, you'd go to Sport and Recreation because it was seen as some kind of side issue that wasn't central, wasn't a core solution or a core issue.

MS ELLYARD: Thank you. Professor Bamblett, can I shift tack slightly and draw your attention to paragraphs 142 and following of your statement. One of the very difficult issues and themes that the Commission's considering here is the theme of children who engage in harmful sexual behaviours, in many cases arising out of their own experiences of abuse. You offer in that section of your statement a powerful example of a particular case that confronted your agency and I'd be grateful if you could speak to that case and some of the solutions, including culturally-based solutions that were employed to help those children.

PROF BAMBLETT: The case you're speaking about was three young people that had come into a camp, and so, we placed them in a residential setting and I think we were, I guess, really challenged by their behaviours. We ran at the time a 24-hour bed unit and so basically we had 24-hour workers with these three young children but we weren't prepared for, I guess, the level of sexual interaction between the three of them. The reports I was getting was, you know, you'd be turning around and stopping, you know, two of the children from having sex with each other, and then the other one would be beginning to target, so there was huge issues that we'd never ever seen, and it came from the fact that [redacted] - trusted people in their lives - [redacted] had been sexually abusing these three children. And these were children that, beautiful children that had no exposure to their Aboriginal culture, so a lot

of our work in the initial stages was to really address their sexualised behaviour. Because we couldn't protect all three we put one of the other ones - the [redacted] one went to [redacted] placement. In that placement, they were placed in a 24-hour, one person - one child unit. He trashed that whole unit. It was one of those houses that was supposed to be untrashable, he absolutely trashed it. And that was a million dollar placement a year house and we were virtually all running, you know, a significant amount of trauma, lots of grief, lots of cultural - what we found particularly with the young people is when we involved - they were [redacted] - and so when we involved them all in cultural activities with men starting to sort of do return to country and letting them do ceremony-based, painted up. We had pictures of them painting up, but we were putting all these things in place but we knew that eventually we had to find a placement for them.

Their [redacted] came over to visit, met with the young people, put their hand up to take the children with all the additional supports, so we put in a targeted care package around the children to provide supports. The [redacted] were able to take the three children to [redacted]. The package was approximately $300,000 a year but it provided all of the supports that [redacted] needed to take those children and they provided a level of stability and love and support and trust, they were regaining trust so it was a critical element to be able to find that type of placement. But what we find is family, love and nurturing often is a much better therapeutic approach than a residential setting that we were offering.

[redacted]

[redacted]

MS ELLYARD: Staying with you, Professor Bamblett, one of the other reflections you offer in your statement is your

observation about children in residential care being at risk of sexual exploitation, and that's something that we heard about from Dr Robyn Miller when she gave her evidence yesterday. You make some observations at paragraph 153 of your statement about the way in which VACCA is re-imagining its residential care units. I wonder, could you tell us about that?

PROF BAMBLETT: Well, I think that we know that we need to look at trauma, we need to make sure that we're protecting children. But we're really trying to prevent the - in Victoria, the paedophile rings are very sophisticated in the way that they get into the lives of vulnerable children, particularly adolescents, and so they go through peers, they go through all - they use really sophisticated networks. And, you know, my time when I was on the Youth Parole Board we saw really sophisticated people getting access to young people through the Juvenile Justice network. And so, peers taking off and basically securing young people to become involved in offending, prostitution, child sex exploitation. And so, Robyn would have spoke about it, and so, her work was really to encourage the police to do more, to respond more to support residential. But it's still a big issue. You actually have to catch the child in the act and you have to - by the time the police get there. So there's still really big issues.

But for us, we want to be able to instill in young people that that behaviour and that acceptance of that behaviour is not acceptable, and I think the critical element is focusing on the young person, not focusing on what's happening outside, because you can't - there's all of these things external that are always going to happen, but we need to work on the young people themselves.

MS ELLYARD: As I understand it, part of the way you propose to work on the young people is to think of all residential care as being therapeutic residential care.

PROF BAMBLETT: That's right.

MS ELLYARD: What's the significance of that distinction?

PROF BAMBLETT: I think for us - I mean, everything we do, as you know, is embedded in culture. But we've always sort of thought of foster care as different from residential care, or residential care as a setting. But I think what

we're really sort of looking at, how do we bring it into the broader system of VACCA and how do we actually ensure that young people and children in residential care actually are linked to the community that our work is that they're able to still participate.

I think part of the struggle for us, we went from cottage parent where we had two parent people in there, the consistency, and there was very much a home-like environment, but the complexity of our young people now has driven us to a residential care model. But what these young people are missing is the fact that they want to be a part of the family. So our therapeutic model will be about how do we actually as well move these children into other types of foster care rather than leave them in residential care for the whole of their life.

MS ELLYARD: Thank you. Can I turn then to ask both of you some questions about the importance of systems and structures for doing this kind of work.

Turning first to you, Mr Weston, you describe in your statement the various roles that the Office of the Children's Guardian have, which relevantly includes, as I understand, it a role in relation to the Reportable Conduct Scheme in New South Wales.

At paragraph 19 of your statement, you refer to a couple of particular examples that you've seen of the Reportable Conduct Scheme working well to support Aboriginal children. Can I ask you to give us perhaps more details of those examples and why you saw that scheme as operating to the benefit of children?

MR WESTON: Well, in those two instances, I guess the first one was related to a school in Western New South Wales which had a high proportion of Aboriginal kids and a large number of children with a disability. So the complaint was, or the issues raised by staff and community, was about the treatment, the way some of the Aboriginal children were being treated.

The Education Department did an investigation, but they didn't - it didn't satisfy the people that had made the complaint. So we got involved. We were alerted through an email that came through the Ombudsman. And so, we started a conversation with the community members that

had raised it and then we put them in touch with our Reportable Conduct Directorate, our team, and they investigated. And So, they did.

And they started just by writing a letter to the Education Department which outlined the particular legislation and the acts that were relevant to the complaint, and they got almost an immediate response. Because when there's a reportable conduct issue the agency itself has to conduct an investigation and then our team, our Directorate reviews that investigation and sort of makes a decision about whether that's been an adequate investigation and an adequate outcome. But it resulted in a major, I guess - well, an investigation by Education, particularly into what they call their PES, which is their Professional Employment Standards team or directorate that looks after these kinds of issues.

And they immediately, in a very short space of time, owned up to the fact that they hadn't conducted their initial investigation properly or to a required standard, and then that led to a whole range of other things. So they went back and they redid it. They wrote apologies, formal apologies, to community members and staff, the people that had made complaints. It resulted in that Professional Standards group employing - creating two Aboriginal-identified positions and recruiting to those to ensure that they were responding better to Aboriginal community and Aboriginal issues that are raised in the workplace. So, in that instance it got quite a good response.

It does continue to throw up other systemic issues about the behaviour and the leadership at the school and the relationship with the community, but I just thought that the response was quite swift. All of that stuff happened within about six months, after it had been sitting with the Ombudsman for probably 18 months prior.

So, just the use of legislation and those powers to be able to conduct those sort of investigations does have an impact.

MS ELLYARD: And you said there was another example that related to out-of-home care?

MR WESTON: Yeah, the other one was in [redacted], in New

South Wales, and it was the mother had had her children removed 10 years ago, [redacted]. And she'd been fighting, she'd been fighting for the last eight years through the Children's Court, trying to get access to the kids. Not necessarily reunification, but she just wanted to be in their lives and access them, and so she's had to jump over quite a few hurdles.

But there was a - the foster carers had care of the children, and then the [redacted] children who turned [redacted], the [redacted], self-placed back with the mother. And it's left these [redacted] other siblings in a placement, a foster placement, that is, has been, through an investigation that was - well, it was conducted by the agency, but it resulted from our approach to the agency about some of the complaints that the mother was making about this foster placement. And it turned out that, you know, the parents were - well, they were deemed as being at an at-risk placement. And so, it just ramped up the level of, I guess, monitoring by DCJ. They were in there every week.

[redacted]

MS ELLYARD: Professor Bamblett, can I come to you on the question of Child Safe Standards. You give a lot of detail in your statement, starting first at paragraph 92, about the Child Safe Standards and the way in which they frame or are relevant to the work that you do. And you go on to describe a lot of internal and external processes that sit underneath that. Can I ask you to speak to us about how those processes were developed and what you see as their significance for the safety of the children that engage with VACCA?

PROF BAMBLETT: I guess you can sort of time it to, you know, where all of these standards came from, and Victoria's very prompt response to the Royal Commission into Institutional Sexual Abuse and so past those standards we took it to the next level to, you know, put it into

Victoria's practice. And so, now in July it's going to be even - those standards will be even tougher.

I think that as the CEO of an Aboriginal organisation you want to be able to know that your practice - that everything you do is about protecting children. And I think that - I'm very proud of the work that we've done around quality, I'm proud of the work that we do around understanding and responding to issues across VACCA, and I think that even though it's quite onerous and quite hard, you can see that - you know, like, we've got mandatory reporting, critical incident reporting, quality of care, Reportable Conduct. All of those things that I guess Richard has spoken to are things that an Aboriginal organisation, particularly if you take on guardianship, if you take on greater accountability, you've got to have all those systems in place. And Reportable Conduct, Child Safe being able to - you know, be Child Safe.

So we've invested a lot into our own internal capacity around quality. We have, obviously, onerous reporting, but we also have lots of auditing of our organisation, of our carers, of our workers, of our case management. And I do believe I can sleep much better at night knowing that all these things are in place; that I have people that are constantly looking after the best interests of our Aboriginal and Torres Strait Islander children.

[redacted]

[redacted]

MS ELLYARD: And I take it from what you've said, it sounds, Professor, that because the child was in a kinship placement there was perhaps an assumption made about their safety --

PROF BAMBLETT: That's right.

MS ELLYARD: -- that meant that they got less attention from their guardian, the State?

PROF BAMBLETT: That's right. And so, I think, at VACCA we take on kinship care. And so, in Victoria we take on Kinship Support Services, so we get funded to help kinship carers buy beds to be able to support them to provide case management. I think a lot of kinship carers, they fall between the cracks, particularly if there isn't statutory involvement. They still need supports. And I think that's where the issue is, particularly for Aboriginal, for grandparents who are struggling to raise their children.

I think the biggest, I guess, pressure relief that we've seen is targeted care packages in Victoria. We're able, through targeted care packages, to wrap supports around vulnerable kids, vulnerable kinship carers, vulnerable foster carers and support grandparents to take on their children.

MS ELLYARD: And so, perhaps to come back to the point you made about how well you sleep at night, Professor Bamblett, I take it then that it's the combination of all of these things that means that you have a degree of confidence that the children who are in your guardianship are safe or if they weren't safe, you would find out about it?

PROF BAMBLETT: Well, I think the thing is that we've got a lot of eyes on children. And so, even during COVID we were still visiting families, seeing children; you know, face-timing children, being able to connect with children. And I think that the important part of it is that we don't make the assumption that children are well; be able to see the children, be able to talk to children, interact with children. It's critical that we have that relationship with children and young people and that they are flourishing.

And so, we run camps; a lot of our young people go away on camps with us. And so, we have elders go and storytelling and involve them in ceremony. And so, we have homework clubs. We do at lot of out-of-school work with young people, and I think it's critical to do that work.

MS ELLYARD: The last question I wanted to ask very briefly, firstly of you, Mr Weston, relates to workforce and training. At paragraph 68 of your statement, Mr Weston, towards the end you identified that part of the findings of the work of the Healing Foundation was the need for upskilling in workforces so that they could deal particularly with survivors of abuse. Can you tell us about that?

MR WESTON: Yeah, we did some work with the Royal Commission into Institutional Child Sexual Abuse and, yeah, we were funded to do, I guess, work with Aboriginal agencies around the country, to upskill the workforce around understanding trauma, understanding issues around child sexual abuse and so forth.

And look, we found that at lot of our sector just weren't prepared; they weren't prepared for the work that was coming. And this was a few years before the Royal Commission finished properly. So, we did develop a skillset, a Healing Skillset to help - while that should be accessed by all agencies that want to access it, but really focused in on skilling people up around trauma and the importance of healing; we just saw those two things as going hand-in-hand, not just being about trauma-informed care, but also understanding the importance of healing.

I still think there's a way to go, or I suspect there's still a way to go. I don't know if that Healing Skillset is actually being made available more broadly as yet, but it's still, it's sitting there with the Healing Foundation.

Yeah, I think there's - you know, we have a lot of workforce issues in New South Wales in terms of getting people into the out-of-home care space. It's a very complex system. And, you know, there's just not enough caseworkers on the ground; there's a whole range of shortages or gaps in the system, but even more so when you're wanting to engage Aboriginal people in the system. So there really does need to be an effort, well, to not

only build the workforce, but reduce the number of kids coming into the care, because it just starts to overwhelm the system.

MS ELLYARD: Thank you. Professor Bamblett, could I invite you to comment. It's clear from your statement that VACCA puts a fair bit of resourcing into training and upskilling staff, but I'd be grateful for your reflections on any challenges that workforce or workforce training issues pose for your work?

PROF BAMBLETT: Yeah, I think we've just read a recent report in Victoria that talks about a 10 per cent vacancy rate across the whole of community services, but also a 15 per cent vacancy rate across health services, so we're in an absolute crisis with regard to workforce in Victoria.

But in the Aboriginal space, because of Close the Gap, the Commonwealth's Close the Gap, there's now a lot of transitioning. We've got a government that's talking about a treaty. There's just so much pressure on government to change, and there's system transformation and authorising environments. So the government's moving away from old ways to new ways, but we just don't have the human capital at the moment to be able to - and we're all, you know, cutting each other's throats to take staff away from each other, but our primary investment is really in getting everybody skilled as they come through the door, setting up traineeships.

It costs us approximately $2 million a year to do organisational workforce development to put students, to backfill, to be able to get, you know, the particular - to meet accreditation, because you would know through Victoria's family violence there's been a massive investment. In 2018, we got $500,000 for family violence. Now, in 2022, we're getting $15 million for family violence, and there's a pressure to build your workforce, and so, how do we align and build an Aboriginal workforce to be able to meet that? Because basically, the family violence system is saying that everybody must have a qualification. And so, if that's the pressure that government's to put on, we need to be able to make sure that we get as many people qualified as possible. We're not getting them from the universities, we're not getting them from the TAFEs, so how do we create our own and be able to generate a workforce?

MS ELLYARD: Thank you, Professor. And thank you, Mr Weston. Commissioners, those are my questions. Any questions from the Commissioners for the panel?

COMMISSIONER BROMFIELD: Hi Professor Bamblett, Mr Weston. Thank you very much for your evidence today. We've heard a lot about the role of ACCOs and their critical importance in self-determination and transferring responsibility, but I noticed, Professor Bamblett, you mentioned Closing the Gap. And one of the other focus areas in Closing the Gap is also building up the capacity within non-Aboriginal organisations, and particularly in governments, to be culturally safe. I wondered if either or both of you would care to comment on what you see as the priorities for non-Aboriginal organisations in being culturally safe?

PROF BAMBLETT: Look, I mean, obviously there are a number of mainstream organisations delivering services, and services that Aboriginal can't deliver. And so, being culturally safe, being able to engage Aboriginal people, having culturally respectful practice, I think that clearly there's a massive gap because our Aboriginal people aren't getting the services, our Aboriginal people don't feel that they have the same rights to the service system that others have.

And so we know that non-Aboriginal Australia would say, you know, I need parenting programs and somebody needs to deliver it. Our people see that as, "My parenting's being judged, I'm going to be found guilty, I'm more likely to have my children removed." So, I think that mainstream, there needs to be a greater awareness of the particular issues with Aboriginal people using their services, but also develop - particularly the bigger institutions, the hospitals, the universities, the TAFEs, they do not engage our people in actually understanding their colonisation, how their colonisation has impacted on Aboriginal people, and unless they decolonise their systems, then Aboriginal people will be forced to work in an environment or go to a school in an environment where their culture is not valued.

COMMISSIONER BROMFIELD: Thank you.

COMMISSIONER BENJAMIN: Mr Weston, a bit out of left field. I see you're based in Wagga, and there's a New South Wales child detention facility in Wagga. Are you a

regular visitor to that facility?

MR WESTON: No, not in my role. My role is focused on the out-of-home care system, that's where - that's kind of the lane that I operate in. We do recognise that many of the Aboriginal kids in New South Wales coming into the juvenile detention space or juvenile justice have an out-of-home care history.

We produced a report last year - well, finished it this year, but earlier this year, but we looked at an initiative, or I guess it's a policy, called the Joint Protocol, which was about addressing that kind of transition that goes on, that Aboriginal kids seem to be graduating out of home care into juvenile justice; still a lot of work for that to be done, but there is - I guess the system is conscious of that issue and how they can stop that trajectory for young Aboriginal people.

COMMISSIONER BENJAMIN: Thank you.

PRESIDENT NEAVE: I have a follow-up question on that, Mr Weston. The work of the Healing Foundation, it sounds as if some of that work could be usefully applied in the context of juvenile detention if people do end up there. Did the Healing Foundation do any work in that area, in Youth Detention facilities?

MR WESTON: No, not specifically. We did do some work with a school up in Brisbane, an independent Aboriginal and Torres Strait Islander school, and we invested in, I guess, a healing team and a healing program there which became quite successful in achieving some measurable benefits. We did a cost-benefit analysis of it, and we found that some of the benefits were driven by a reduction of children in contact with the juvenile justice system up there; reduction of children contact with the out-of-home care system, better health outcomes, better educational outcomes. So there was a return to the taxpayer of about nearly - I think it's $1.85 or something for every dollar spent.

But I think I do agree, I think, with you, I guess, your initial comment there about, you know, that healing, healing models or healing programs could work well in the Juvenile Justice setting, because I think it involves - it needs to understand the impact of trauma, where children

have come from, and I think it also needs to understand the importance of those connections for - particularly for young males, but young females as well, their connections to culture.

And I think one of the important things for that connection to culture, it's not just about a nice - it's not just about your identity or, you know, your connection to community. It's about the responsibility that goes with it as an Aboriginal person. You know, that's one of the bases of Aboriginal culture, is the responsibility you have to your family, your kin and your community. So instilling those kind of values and supports for young juvenile offenders hopefully could help them, because they just seem to get into a pathway where they're heading towards sort of adult justice systems. But creating pathways for young people to - you know, that's not going to take them down that trajectory.

And we did see that the work at the Murray school or the school that I mentioned earlier, once young people who were problematic - you know, they were very, very challenging behaviours, had poor relationships with their peers and their families, but once they got out onto country and started to do those cultural activities and connecting up with elders and really getting a sense of who they were in the world, what their culture was, what their identity was and instilling some fight in that, the changes were remarkable.

Kids who were on a trajectory for dropping out of school became the first children in their families to achieve year 12. So there's quite a few stories like that. And it was really just run by the school; we just gave them money, they created the cultural framework and applied it. And, you know, a lot of it was done on country. And yeah, quite phenomenal results.

PRESIDENT NEAVE: Thank you very much indeed, both of you. Thank you, Professor Bamblett. Thank you, Mr Weston. That was really very, very helpful. And we'll now adjourn till 1.30.

MS ELLYARD: As the Commission pleases.

LUNCHEON ADJOURNMENT

PRESIDENT NEAVE: Thank you, Ms Darcey, I've got some orders to pronounce first.

Yesterday I explained the Commission's general approach this week will be to avoid identifying particular communities, carers, families, young people and children.

The next two witnesses are giving evidence publicly: Mr Davenport has agreed to be identified but Ms Brown, after careful consideration, would prefer that her identity not be publicly reported. In this context, to protect Ms Brown's identity and the identity of other relevant people, the Commission has decided to make two publication orders. The Commission is satisfied that the public interest in the reporting on the identities of certain people who may be discussed during this hearing is outweighed by relevant privacy considerations.

I'll now briefly explain how these orders will work. Firstly, an order requires that any information in relation to Ms Brown's identity not be publicly reported. This means that anyone who reads the information given by Ms Brown to the Commission must not share any information which may identify her including those for whom she briefly or currently works.

Secondly, the orders also contemplate the use of pseudonyms in relation to a number of people. Any information in relation to the identity of those people must be kept confidential. This means that anyone who watches or reads the information given by the next two witnesses must not share any information which may identify the people who will be referred to as, "Beatrice, Dora, Esme, Fergus, Hank, Kirk, Lillian, Lyle, Mabel, Mildred, Winston, CH1, TG1, TL1, the Area Child Safety Manager for the region, the department's Acting Director for the region, and the Director of Child Safety Services". This information is not limited to their real names and may include other information which may identify them such as where they live or work.

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

Thank you, Ms Darcey.

MS DARCEY: Thank you, Commissioners. We'll now be hearing from two witnesses who both have extensive experience in Child Protection and the out-of-home care sector, Ms Caroline Brown, who is with us via video link, and Mr Jack Davenport, and if the witnesses could be affirmed, please.

<JACK MICHAEL DAVENPORT, affirmed and examined: [1.36pm]

<CAROLINE BROWN, affirmed and examined:

<EXAMINATION BY MS DARCEY:

MS DARCEY: Q. Yes, thank you. If I could start with you, Ms Brown. Would you please tell us your full name?
A. Caroline Brown.

Q. Ms Brown, you've provided a statement dated 9 June 2022 to the Commission in anticipation of the evidence that you're going to give today and that statement has subsequently been redacted. Do you have a copy of the redacted statement in front of you?

MS BROWN: I do.

MS DARCEY: Are you content that the content of that document in its redacted form is true and correct?

MS BROWN: I am.

MS DARCEY: Thank you. Now, Ms Brown, you're giving evidence today in your personal capacity; that's correct?

MS BROWN: Correct, yes.

MS DARCEY: Thank you. For the benefit of the Commission, are you able, please, to detail the roles that you held when you were employed at the Department of Health and Human Services, now the Department of Communities, between 2003 and 2009?

MS BROWN: Yes. From 2003 to, it was actually 2007, I was employed in the Department of Health and Human Services, now known as the Department of Communities, initially as

the manager of what was called the Divisional Support Unit in the Child and Family Services division, which was working in Child Safety Policy and Practice Oversight.

I also spent about six months working as the state manager of the then Child and Family Services section of the division responsible for Child Protection in out-of-home care, and I spent approximately six months as Acting Director of that division as well, and worked for almost two years as the Director of Disability Services

MS DARCEY: Yes, thank you. And, Mr Davenport, would you please tell the Commissioners your full name?

MR DAVENPORT: Jack Michael Davenport.

MS DARCEY: Thank you. You have provided a statement to the Commission which was affirmed on 3 June 2022; is that correct?

MR DAVENPORT: Yes.

MS DARCEY: Since that time that statement has been redacted?

MR DAVENPORT: M'hmm.

MS DARCEY: Do you have a copy of that redacted statement in front of you?

MR DAVENPORT: I do.

MS DARCEY: Are you satisfied - well, actually as a preliminary matter I think there is one amendment that you would like to make to your statement?

MR DAVENPORT: Yeah, it's to paragraph 5. I'm no longer the State Convenor for the Tasmanian Greens, so I imagine it could be amended just to say:

I'm making a statement in a personal capacity and my comments should not be taken as a reflection of my current employment.

MS DARCEY: Thank you. So, yes, at paragraph 5 if we could simply remove the first sentence of that paragraph.

COMMISSIONER BROMFIELD: Excuse me, Ms Darcey, I think we would also need to remove the words, "The Tasmanian Greens policy or perspective".

MS DARCEY: We certainly can.

COMMISSIONER BROMFIELD: At point 5.

MS DARCEY: How about we just make paragraph 5 read:

> *I am making this statement in a personal capacity.*

Full stop. Thank you. With that amendment made, Mr Davenport, are you satisfied that the contents of that document is true and correct?

MR DAVENPORT: I am.

MS DARCEY: Thank you. Would you please detail for the Commissioners the roles that you have held at the Department of Communities, and I believe it's during the period 2017 to 2021?

MR DAVENPORT: Yes, certainly. I was first employed as a clinical practice consultant and educator starting in October 2017, and my role then was to consult with Child Safety Officers, team leaders and other staff on matters relating to children, families, cases that they were involved with. I also served in positions including as acting manager for short periods of time, acting assistant manager and also as a principal analyst as well.

MS DARCEY: Thank you. Both of you have given lengthy and detailed statements to the Commission and the Commissioners will have the benefit of reading that material closely. Today, because of time constraints, we're really only going to be dealing with a snapshot of the evidence that you have provided.

I'd like to start off, if I may, please, with a discussion about the reporting of child sexual abuse and other serious abuse by both professionals and members of the public, and I'd like to start with you, Ms Brown, please. I understand that throughout your career you've been in a position at various times to hear from people who

have been trying to report allegations of abuse, including sexual abuse and neglect via the Advice & Referral Line or the ARL; is that correct?

MS BROWN: Correct, yes.

MS DARCEY: Could you please explain to us, what sort of advice have you given to people about what they need to do when they call the ARL to make it clear that the report being made is serious and it is intended to constitute an allegation of abuse or neglect?

MS BROWN: So in the months following the commencement of the ARL, the Advice & Referral Line, I did receive a number of calls from members of the public who were randomly calling agencies from the phone book to try and get some support to address the concerns that they had with their own family members harming children, and I recall that they felt that their reports were not necessarily taken seriously or recorded and documented as a notification of abuse, so I spent some time talking with them about how to frame their information and the kinds of language that they needed to use in order to express the seriousness of their concern.

I also have spoken to people about the need to put their concerns in writing so that what you are communicating is exactly what you wanted to say and not interpreted by the person who is receiving or responding to you on the phone.

MS DARCEY: Why is it, do you think, that people needed or need to be so explicit about the intent of their call?

MS BROWN: I think that the Advice & Referral Line is managing a wide range of concerns and calls and some of them are at the lower level and people are seeking advice, but there are a small number - smaller number of calls that need to be treated as a Child Protection notification, and I do feel there is a reluctance to record calls as a notification and to treat them with the seriousness that they deserve at that front-end sometimes.

MS DARCEY: So is it fair to say that, from what you heard anecdotally, that the ARL try to shift responsibility back to the caller no matter the level of seriousness of the concern that's being raised?

MS BROWN: That's certainly been the feedback that I've received, yes.

MS DARCEY: Thank you. Did you have any concerns, or do you have any concerns with respect to the ARL in relation to timeframes for their responses to being notified of concerns and any difficulties in ensuring that allegations are being properly directed to Child and Safety Services?

MS BROWN: Yes, I do have a number of concerns actually, and some of those go to children being referred for investigation that don't receive a timely response. You know, children can't wait for safety, children can't wait to have abuse cease and for protective strategies to be put in place, so it really is concerning the number of children reported by the department to be in active transition, which really means they're waiting to have their investigation actioned, I believe, and that is of concern; you know, children cannot wait for safety.

The other area where I'm concerned is reports made about children already involved in the out-of-home care system, already known to Child Protection Services, where sometimes that notification is directed back to the allocated worker, so they may already have a Child Safety Officer responsible for their case, and if that worker happens to be away on annual leave or sick leave or for some other reason they tend to need to wait the return of that worker, which again could be several weeks or months waiting for that report to be actioned, and again, that is a concern.

MS DARCEY: Thank you. Mr Davenport, I understand that your main insight into the ARL referral system was through the review of processes and assessments and looking at decision-making processes; is that correct?

MR DAVENPORT: Yes, it's probably also worth mentioning, when I was assistant manager I had a bit more direct involvement, but primarily it was when CPC, through that review process, yes.

MS DARCEY: Do you have any reflections about the general consensus of your colleagues about the ARL? Was there any consistent views about it?

MR DAVENPORT: I think very much there was a sense of frustration about the poor timing of when the regional office would be contacted. So, if you get a call early in the morning at, say, 9 o'clock you have much more time to respond to urgent matters compared to a call at 3 o'clock, 4 o'clock in the afternoon; and so, there didn't seem to be a great deal of flexibility around being able to plan around it, so if anything came in in the afternoon it was treated as though it had to be responded to immediately, which tends to put more of an anxiety on the staff, so they felt they were under pressure to respond when those calls came in but they became aware that the original call had maybe come in days before or hours before and a lot of time had been lost because consultation hadn't taken place, when one phone call might have resolved some of those matters and they can just say, "Just send it through and we'll take it on", so I think that was probably the most principal concern, yes.

MS DARCEY: Thank you. Do you have any reflections on the standard of the information that was received from the ARL?

MR DAVENPORT: Yeah, I felt it was inconsistent, that's for sure. My first role post-qualification as a social worker was to actually work in a very similar team, a very similar screening system, and so, Western Australia and South Australia where I've worked also have centralised systems, and it seemed to me that for the Tasmanian system there was a lack of consistency about the detail coming through; it wasn't quite clear why some things were made a priority 1 but others were not. And certain information was either disregarded or appeared to be minimised in favour of other information, but then you might get another call for a different child where they'd effectively swapped that priority, so it wasn't quite clear why in one case it was - a certain piece of information was mitigated but then in another case it actually seemed to be - make it a higher risk factor.

So, a lot of those inconsistencies were there, and I was on the clinical support team, some of my colleagues were working on Advice & Referral, but I certainly didn't feel I had a sense of insight into some of those dilemmas other than a kind of, it was a work-in-progress; like, we're trying to get to a point where we want to be at. But I wasn't - I can't really profess to say how much insight into - as to what was delaying that ability to move

forward.

MS DARCEY: Thank you for that. Once the information had been received I understand that it came to the local response team; is that correct?

MR DAVENPORT: Yes, that's correct.

MS DARCEY: I understand that you've done a number of reviews of that point in time, if you like, and that you've become alerted to a number of issues about the local initial assessment that is undertaken by the Child Safety Service's response team.

First of all, what was your impression of the general skill level that staff brought to the assessment process?

MR DAVENPORT: I think "inconsistent" is the word that comes to mind. There were a number of individual workers that, to me, definitely had the capacity to work at a high level but for various reasons that did not happen on a consistent basis. And again, drawing from my experience as a social worker, I was quite influenced by the idea of the social work triangle of knowledge, values and skills, and it's a bit like the fire triangle, if you take one away you don't have an effective social worker.

And it seemed to me that, while there was a skills deficiency, there was also a deficiency in terms of knowledge around applicable theories of practice and theories of - you know, human theories, human behavioural theories, psychological theories, and also the values base about often judgmental opinions being made about families. Particularly if they knew the family and had dealt with them before, they were viewing it more through the prism of that prior experience and some of that was inherited by us as well from past workers and just gossip and rumour.

And it seemed to me that, if we're talking about skills, for me it's wider than that around the knowledge and values, the lack of consistency, the lack of structure for these workers, and consistent role modelling for them as well. So, even the workers that I felt were quite capable and had a really good skill base were not given the role modelling to have the confidence to sort of do the things that they felt were important, and that was also a major challenge.

MS DARCEY: Thank you. In your statement from paragraph 33 you describe a binary response from Child Safety officers. Could you expand and explain that, please?

MR DAVENPORT: Yeah, I've given this some thought because I've been trying to think of an analogy in terms of human behaviour or something you can observe, but I really have struggled because there seemed to be a wild shift between complete inactivity and at the other end real over-activity and over-anxiety as well, and it wasn't quite clear why they were acting in those ways at different times. Because it could be that they would be completely inactive over a matter, but then a similar concern would drive them into over-activity and jumping to conclusions basically.

And so, that binary was either to sit on that referral for weeks or months and not do anything, often with a sense of powerlessness as well; the sense of, like, we want to do all this but we can't, we don't have the capacity; compared to, we have to get out there right now, the use of requirements to - it was often discussed and often in terms of, we need to go out there and speak to them about the requirements rather than we need to go out there and assess the situation or speak to the child and have that conversation, speak to the family about safety; it was much more in terms of already making a defined path to the child coming into care which was that extreme over-activity, and so, the middle ground, the nature of assessments is much more shades of grey and that just didn't operate.

MS DARCEY: Just in terms of what you mean by "requirements", you're talking there about a reference to sections 20 and 21 of the Children, Young Persons and Their Families Act; is that correct?

MR DAVENPORT: Yes.

MS DARCEY: So these are serious decisions that need to be agreed to by various family members?

MR DAVENPORT: Yes, and usually without any access to legal advice but they're handing over the care of their children, so for me the risks around that and the ethical questions around that were huge but seemed to be completely missed within any kind of system or process there.

MS DARCEY: Would it be fair to say that the ARL, or the experience that you've either heard of or personally witnessed in relation to the ARL and also this initial assessment phase, raised - well, there was a shared characteristic of a lack of ability to critically analyse, assess and manage risk. Is that a fair statement?

MR DAVENPORT: Yeah, I would definitely say so, and I think not just the ability to analyse but the unwillingness to carry certain risks, to understand there's a limit to how much information you can interrogate or have at any given time, and therefore it produced that extreme behaviour: either we haven't got enough information to act so we do nothing, or there are serious gaps but we're really worried so we have to get out there straight away, so for me, yeah, that created a lot of challenges.

MS DARCEY: And, Ms Brown, would you broadly agree with that proposition?

MS BROWN: Yes, I would agree with that, and actually I think taking that a step further: in working in out-of-home care I've always thought there were a good proportion of children who actually didn't need to be there, and there were also children still living at home who probably did need to come into care, so again, representing that kind of extreme reactions that Jack just spoke of, that somehow decision-making is really varied in individual cases.

MS DARCEY: Thank you. Ms Brown, I note at paragraph 66 of your statement you've said that in your view:

> *A specific lack of training related to child sexual abuse in general may also have contributed to a general lack of operational knowledge including in how to identify and investigate child sexual abuse.*
>
> I take it, you still adhere to that view?

MS BROWN: Yes.

MS DARCEY: And, Mr Davenport, at paragraph 47 of your statement you make the observation that in your view:

... there was virtually no comprehensive understanding of the impact of trauma and its relevance to establishing context around particular actions or behaviours of children and adults.

Do you still maintain that position?

MR DAVENPORT: I do and it's very much my perception, it wasn't just about skills or knowledge, it was also about values judgment against that child; blaming them for their behaviours rather than examining more deeply what had been going on for them.

MS DARCEY: Thank you. In that context I'd like to move to the case study of Beatrice. So, Ms Brown, you've provided, firstly at paragraphs 59 to 65 of your statement, a quite distressing account of a particular child who has been de-identified and named "Beatrice", and then you provide more detail in relation to that child at paragraphs 114 to 116.

Could you please start by briefly describing the family's circumstances in which Beatrice was living at the time that there were some serious concerns about her safety?

MS BROWN: Yes, certainly. So, Beatrice was a middle primary aged child at the time of this incident and she was living in a foster care arrangement with [redacted] and [redacted] at the time.

MS DARCEY: Thank you. What was the nature of the disclosure that Beatrice made?

MS BROWN: So, Beatrice disclosed that the [redacted], a boy who was significantly older than Beatrice, had penetrated her vaginally in the foster home that they lived in together.

MS DARCEY: What was nature of the investigation that was undertaken by Child Safety Services?

MS BROWN: There was an investigation and that included taking the child to a medical practitioner for an internal examination. Unfortunately that medical practitioner was just a general GP and they didn't have appropriate forensic

investigative training. And nevertheless they did - the GP did identify that there was physical harm and injury to the child, but the evidence was limited because the Child Safety Officer was unaware of the fact even that forensic investigators and forensic medical practitioners even existed within our health system.

MS DARCEY: I see. What was the conclusion that the Child Safety Officer reached after considering that medical evidence that was available?

MS BROWN: There were also interviews with the children by the department investigator and the conclusion reached was, while there was inappropriate sexual activity, there had been no force from the boy to Beatrice, and that it couldn't be proved that penetration took place. There was a claim that Beatrice's injury could have been from self-masturbation with her own finger, and it was really considered a mutual act and therefore the boy would not be investigated as a person believed responsible for harming or for conducting a sexual abusive act.

MS DARCEY: Was there also a belief that the perpetrator had not coerced this child?

MS BROWN: That's correct as well. The belief that there was no coercion was expressed, even though the boy had threatened not to play with Beatrice if she didn't participate in this act but that wasn't considered coercive.

MS DARCEY: The child perpetrator, who we're calling Hank, was a risk assessment conducted on Hank by the department?

MS BROWN: I believe a risk assessment was conducted but the risk was deemed to be low because he was a small boy for his age; was described as not being particularly bright, and he hadn't previously displayed any sexualised behaviour.

MS DARCEY: What do you think the inference was from the fact that he was deemed not to be very bright?

MS BROWN: I think the inference was that he was not able or capable of planning and carrying out a sexual assault.

MS DARCEY: I see, so we have a conclusion of low risk.

Was any support extended to Hank?

MS BROWN: Hank was referred to Family Planning really for education and to develop his skills at saying no to girls when they jump on him.

MS DARCEY: I see. So, I take it there was no therapeutic intervention at all?

MS BROWN: I believe that was recommended at some stage but it hadn't - to my knowledge it hadn't actually happened. The Family Planning - intervention seemed to be the focus of Hank's - the response to Hank.

MS DARCEY: Thank you, and did you later discover something about Hank's history which might have made him more vulnerable to being a participant in harmful sexual behaviours?

MS BROWN: Well, I actually knew this at the time, but I believed Hank to be the same child who several years earlier made a disclosure to a worker about feeling unsafe in a placement with his foster carer. I recall him being removed from that placement and an investigation was undertaken by Child Safety Services into the behaviours of that carer, and that carer was ultimately assessed as having harmed a child via grooming behaviours and the carer was placed on the Persons Believed Responsible Register as a result of that determination in relation to grooming.

MS DARCEY: Do you know if at that stage there was any therapeutic support extended to Hank then? You may not know.

MS BROWN: Yes, I do actually know the answer to that. Yes, Hank was referred to a counselling service at that time.

MS DARCEY: Just reflecting on the events that you've just related, how did you feel - what deficits did you identify at the time that you were involved in these meetings about Beatrice?

MS BROWN: I have to say, this is one of the most frustrating cases I think I've ever had the experience of in my career, because it seemed - it was so obvious to me that there had been a serious assault perpetrated by, you

know, a young boy; and while we weren't - I wasn't looking to blame or sanction that child, he actually needed intervention to support him to understand that that behaviour was wrong and to set him on a better pathway for the future.

I was concerned that the department workers used words like "the girl fantasising about the sexual activity", that she needed help to address her perpetrative behaviours towards older boys. I was concerned about the view that, "The boy needed to learn how to say no when girls jump on him". There was some value-based issues here that were playing out.

I was also concerned that department staff were very reluctant to even use proper terminology for what had occurred, and in fact a departmental worker nearly walked out of the case meeting when I said "a child had been raped". They're reluctant to use names for what has occurred, use names, the correct names of body parts, and there was this - I recall this intense level of discomfort having this conversation about what might have occurred for Beatrice and Hank, and that's a real - that's a concern, a serious concern.

MS DARCEY: So, do you think this narrative about, there was no force, no coercion, there was no corroborative evidence, there are alternative causes of injury, was that a genuinely held belief in your view?

MS BROWN: I struggle to see how it really could have been a genuinely held belief by a group of trained professionals. So, this was not just one worker, there were three or four Child Safety workers involved in this discussion. But, yeah, I think that the level of critical reflection and really thinking through of this case was seriously lacking in that case conference, and it doesn't pass the kind of common sense test or the person in the street test. If you ask someone who knew nothing about child safety whether an assault had occurred in this case, they would say yes.

MS DARCEY: Thank you very much for that. Mr Davenport, have you in your more recent times in the department had cause to consider that workers within the department still might be making assumptions, be influenced by stereotypes, engaging victim blaming, or otherwise seem to hold

attitudes that aren't reflective of contemporary professional practice?

MR DAVENPORT: Yeah, absolutely, and I think it comes down to the heart of an issue about the sexualisation of children and that values base. So, even with the skills and knowledge, the general values that are held about children and negative imagery about children, which is a widespread problem, is being carried into that work and then bias is being carried forward.

And I'm quite intrigued about the idea that, in this particular case they might not have acknowledged certain words or terminology and I feel that's because, if you begin to acknowledge that something has happened you have to do something and act about it, act on it; and so, by refusing to acknowledge it you can therefore displace that away from your responsibility and you're no longer carrying - you don't carry risk for something that has never happened, and that, I think, I find very plausible.

The final observation I make is that the inability to understand the difference between an assessment made on the balance of probability as opposed to evidence beyond all reasonable doubt, very often I find workers are much more in that latter category of thinking of the criminal justice level of decision-making and evidence as opposed to the way that we should be working in Child Protection, which is balance of probability: yes, you are carrying a risk that your evidence level is less, but you still have evidence and there are many compelling aspects of this information that will make me think it more likely than not that we would be substantiating for sexual harm in this instance from what I've heard. But I think, yes, there is a fundamental misunderstanding that you need this absolute certainty of evidence and that's now how Child Protection operates.

MS DARCEY: Thank you for that. Before we move on to the next case study I would just like to make the observation that neither witness has previously met; is that correct, as far as you know?

MS BROWN: I think we might have had an online meeting once or twice. I was aware of Jack's name, but we certainly haven't worked closely together or have any kind of relationship really.

MS DARCEY: And previously to meeting this morning you hadn't discussed the subject of this next case study, the person that we're calling "Kirk"?

MS BROWN: No, no. In fact, I don't - I haven't spoken to Jack for a very long time.

MR DAVENPORT: Yeah, that's correct. I am a bit similar, I recognise the name and I imagine that at some point we may have talked professionally, but yes, in terms of this, no, I have not had a conversation, no.

MS DARCEY: Thank you for that. Now, Ms Brown, I'd like to take you - or take myself, correctly, to paragraphs 121 to 126 of your statement where you have made some observations about a Child Safety Services worker who has been identified, and we will refer to him as "Kirk".

And, Mr Davenport, you have discussed in paragraphs 157 to 185 of your statement that same person, so we are getting reflections from Ms Brown and Mr Davenport about the same person but very distinct time periods.

Ms Brown, if I could perhaps start with you, please. Could you please, if you recall, tell the Commission about when you first came across Kirk and the circumstances?

MS BROWN: Yes. So, I recall first meeting Kirk in the mid-to-late 2000s, not exactly sure of the year, but I was working for a not-for-profit counselling service at the time, and we had a case meeting about a young girl and her family and in that meeting Kirk was advocating and supporting - perhaps "advocating" is too strong a word - supporting a young girl who was well below the teenage years being provided cigarettes by her mother as it was a lesser evil than taking drugs like her parents did.

MS DARCEY: I see, and did that cause you some surprise and concern?

MS BROWN: Of course, yes. Yes. You know, and I recall saying that, "Smoking by children under the age of 16 is actually illegal in this state, and surely the department wants to uphold the law and at least attempt to intervene in this matter?"

MS DARCEY: Did you have cause to give some further consideration to Kirk in circumstances where he had given a child a gift?

MS BROWN: That's right. He had given a child a gift and told the foster carer to keep that gift secret. Fortunately the child did not comply with that request and did disclose to the carer that they had received this gift, and they also - then the carer alerted the foster care agency, a non-government provider, who was able to respond to that giving of the gift and to address that concern, not only with Kirk but with at least two line managers, because it was what I considered to be a boundary breach and it - you know, whenever you talk about secrecy in child safety it raises concern. You know, we don't want children to be keeping secrets about things that can impact on their safety and their security.

MS DARCEY: Had you ever observed directly or been told about Kirk inappropriately writing to guardians, and again, we've got an element of secrecy there, I believe?

MS BROWN: Yeah, I actually do recall reading the letter myself. So, this particular Child Protection worker wrote to foster carers to let them know that he was their worker and to talk about the rules of engagement really. In that letter I recall him using the word "secret" and telling carers that the communications and conversations that he had with children on his caseload were secret and were not to be shared with the foster carer, and the foster carer wasn't to ask the child anything about their conversations with the worker.

MS DARCEY: Were there any other examples of boundary breaches or violations by Kirk that you were aware of and had any involvement with?

MS BROWN: Yes, there were numerous boundary breaches that my team reported to me at different times; these include taking children to his own home, one to deliver an animal during a contact visit with a child. He's also had children stay at his own home overnight which he said his manager had "unofficially" approved of. The staff to me have reported claims that he openly ignores manager's direction. As an example, taking a child alone on a full day activity in order to connect with them on their own and

then subsequently claiming that the child made significant sexual abuse disclosures during the outing; contacting foster carers and staff members in the not-for-profit organisation directly to request an ongoing relationship with the child after no longer being the child's case manager, saying that it was for the benefit of the child that he maintain a relationship with them despite having another allocated caseworker. So, there have been numerous acts and with numerous people quite openly described over many years.

MS DARCEY: So it's fair to say then that Kirk's supervisors or line managers were aware of these boundary violations?

MS BROWN: They certainly were aware, and I personally had meetings and discussions about some of those breaches with their line managers, and was really told, "There was nothing to worry about. That's just Kirk", is the kind of language, but it worries me because, you know, boundary breaches are such an important matter that requires addressing in the child safety and out-of-home care space immediately, and it concerns me that he has held a senior role, been there a long time, and I wonder about the modelling that younger or more junior staff experience; and, in organisations where boundaries are not adhered, it creates an environment for potential sexual abuse.

MS DARCEY: Yes.

MS BROWN: I'm not suggesting, I don't know anything about whether Kirk is a potential abuser, but we know that there are opportunities being created by these boundary breaches and that's what needs to be addressed early and strongly.

MS DARCEY: Yes; no, thank you. And, Mr Davenport, you've had cause to interact with Kirk.

PRESIDENT NEAVE: Can you just refer me to the paragraph?

COMMISSIONER BENJAMIN: 157.

PRESIDENT NEAVE: Oh, 157, thank you.

MS DARCEY: Thank you. Are you able to explain your impression of Kirk's reputation within the department?

MR DAVENPORT: Yes. I think I must have first met him probably when - almost after I started in 2017; at the time he was on a case management team so held cases where children were in care. My initial impressions were of a general trepidation about him and his behaviours, and I remember being part of a handover meeting and he became quite - I won't say aggressive, but certainly quite agitated about questions being made about judgment or - you know, I was asking questions that I thought were quite rudimentary in terms of, like, trying to clarify why certain decisions had been made, but I certainly got a sense then that he was - did not like to have that kind of questioning of his approach. It was certainly a feeling around, that he was having time with children in care for prolonged periods and, to be clear, that in itself is not necessarily unusual where workers have assigned roles to have one-on-one time, but that is always organised, it is part of an ongoing case or care plan; it's usually done with clear consult with the foster carer, maybe even the parents as well, and there would be oversight. You know, if it was a support worker, they would be reporting to the Child Safety Officer and the team leader; if it's the Child Safety Officer, would be reporting to the team leader, maybe the manager as well, people like myself, the consultant. But these kind of actions were completely outside the scope of that and it wasn't quite clear what plan they were following, and I certainly got the impression that staff, particularly in senior positions, were afraid of challenging him.

There were lots of oblique references to concerns about him in conversation but no definitive action being taken to manage his performance or deal with those issues and him getting tacit approval, where he would - I have seen emails where he's obviously asked for permission to have one-on-one contact, but he's clearly couched it in very broad general terms and then the actual contact he's been having has gone way beyond anything that I would consider to be acceptable contact with children, many of whom are in vulnerable situations, and yeah, that became a real concern.

And finally, his aggression against staff which, you know, I've reported an incident with me which actually, compared to some of the things that I've heard about him was fairly mild. We're talking about things, being right in the face of female colleagues who felt trapped in the

room and concerned, so I have serious concerns about his conduct.

MS DARCEY: Were there any examples of boundary breaches by Kirk where children were under orders and that you became aware of which had similarities to the sorts of scenarios that Ms Brown has discussed?

MR DAVENPORT: Yeah, the one that I picked up on was about the going to the home and the dog; that was where I started to see some real serious red flags about behaviour, because the children in question were victim-survivors of child sexual abuse, they were in a vulnerable situation, and I wasn't even quite clear that he was meant to be having contact with them at that point.

And the scenario of meeting them first in a public place but then saying that - something about being stared at, and it always made me wonder who would be staring at them unless it was someone that knew the child, because members of the public generally in a - I think it was a fast food restaurant, would not have a reason just to randomly stare at a man with a child. So I was trying to think of what was the most likely scenario and therefore was it pre-planned to have that meeting there and then go back to the house as a - the house being a place of safety. Like, I have no idea if that's what happened but I was thinking objectively, if I had that information, what would I think was going on here? And it's those kind of behaviours where, at the very least, a clear breach of any real boundaries; putting a child in a very difficult situation, no oversight, completely inappropriate insertion into their life as well, yeah, very troubling behaviour.

MS DARCEY: As far as you know, were Kirk's superiors aware of this sort of conduct from him?

MR DAVENPORT: Yes, but I think they were powerless to stop it or take action and were afraid of him and his reaction if they said no.

MS DARCEY: What would make them powerless? They didn't have the statutory power to act or they were personally powerless?

MR DAVENPORT: I think personally, I think they felt they would be threatened by him physically. I think also, [redacted]

Some of the things he did just on an individual basis, just one or two of them, I've seen social workers lose their ability to practise in the UK for less, and he'd been doing this for many, many years and the red flags were just building up, and all I got was oblique references from my manager about, "Don't assume that nothing is happening", or this idea that something might be happening in the background but no clear process on how that was working, so I think that also empowered him to feel he had carte blanche to do whatever he wanted to do, and that troubled me as well, was the failure of the human resource section to be able to call him to account.

MS DARCEY: Thank you for that. We have a few minutes left and I'd like to, if I could, ask you a few questions about what sort of things you might feel could be implemented to achieve some positive change.

Both of you in your statements have made very detailed submissions about certain things and we're probably not going to get a chance to cover all of that but the Commission is interested in your views.

I'll continue with you, Mr Davenport, if that's okay. You've made a couple of suggestions or detailed submissions

really in your statement. I would be interested to hear from you about your views in the benefit potentially of a decentralisation of Child Safety Services.

MR DAVENPORT: I think the nature of the work that is undertaken, if early intervention, which is a principle I support, is to have any kind of meaning, the ability to work with families and to work with agencies and community, it is impractical to expect that to happen from a centralised location as we have at the moment, and having workers that are embedded within those communities is much more powerful and much more effective; and it may well be that there's an associated cost, but I feel like, if you're going to look in terms of material costs the savings later on will pay for this.

I feel like the localisation of having those workers who can be much more proactive and have some of that statutory role removed from them so there is more trust would also be a very powerful factor, because I feel like that's also one of the biggest barriers for Child Safety work is this idea that child protection workers are going to turn up and take your children; like, welfare's going to come and take the children, and sometimes Child Protection has acted on that basis, so some of those fears, particularly for First Nations families, are very real because that has been the consistent history.

And so, having some self-awareness about that and changing the very nature of it, and it comes down to a fundamental question for me about critical self-reflection, is at an institutional level is it possible that a government actually can unmake its core assumptions and unmake itself; can the Child Safety Service unmake itself and say, everything we've tried has failed and we need to radically change what we are doing because it certainly couldn't be any worse than what we have at the moment. And I feel like that's the kind of question, can the state as a body actually do that, break itself into its constituent parts and rework itself, and that's really - and that's a debate that may go beyond this Commission's ability - but I feel like that's the kind of discourse that we need to have in public, and that for me is the real fundamental question and localisation is a manifestation of that.

COMMISSIONER BROMFIELD: I just want to pick up on something, Mr Davenport. Your reflections, if I recall

from your statement about having more community-based or local approaches within Child Protection came from your work in another jurisdiction, and I recall you also had reflections comparing I suppose the approach to the First Nations clients in that other jurisdiction compared to Tasmania. I wonder if you could just speak to some of your observations about the way in which Aboriginal families are dealt with?

MR DAVENPORT: Yeah, certainly. My experience came from Western Australia primarily, but actually also from South Australia, and on reflection over the past few months I've had reason to reassess my observation in Western Australia, which I always held to be a very positive role model for trying to build up work with First Nation communities. But with recent events about a cultural audit and the failure to publicise that cultural audit and its findings, it's made me question actually my observations, because clearly there were substantive failures and actually understanding the way - knowing many of the people that I used to work with there and how those assumptions have started to fail, I still feel like there was a lot of good work where there was trust in community, there was moments when community members were brought in and then the workers would leave and then the community members would discuss safety for a child. There was a willingness to make decisions where children could return to live in community and be looked after by community members and trust that the community members would keep the child safe without orders and have that kind of faith; like, that was really important.

It wasn't perfect, there were times where, you know, some workers would say things like, "At least the child can be with community and in country on their land, but they'll probably never go to university", and I felt like that was a problematic perception of, why can't you have both? So there were challenges there and I can see why WA has had some of the problems with a cultural audit.

But I found in South Australia where we had many Aboriginal workers, we had an Aboriginal elder and they were employed based on their own skillset, but they had some real local wisdom that in many respects was better than the more procedure fashion in WA, and looking back I feel like I should probably have paid more attention to South Australia and that opportunity of having Aboriginal colleagues rather than a First Nations system, if that

makes sense.

And so, I feel like coming to Tasmania and the challenges here about just the lack of awareness and also appears to be - like for me I've called it institutional racism, and I'm thinking in terms of something like that Macpherson Report, about Stephen Lawrence and his murder, and that definition of institutional racism from what I've seen, and I feel like that's where having a much better grounded sense of First Nations working but also trusting First Nations people to make decisions about themselves, that's the important step, and that comes back to what I said before about, can you unmake itself?

Because it seems to me, I'm not a lawyer, but it seems to me the legislation in this country is heavily weighted on colonial attitudes, it's not designed to integrate with First Nation families or culture in any way except in some of the most - some very basic forms like the placement principle, and that needs to change as well. So, the opportunity is there but there's some significant problems in the Tasmanian context, and trusting Aboriginal people, I've always found, has always led to better outcomes every time, and I feel that's a real vital lesson; wherever you go if you take that lesson, you're willing to carry that risk, and able to make good decisions about assessment and risk and safety, then you can really make it work.

COMMISSIONER BROMFIELD: Thank you. Sorry, Ms Darcey.

MS DARCEY: Not at all. A slightly more specific question in relation to the assessment process; you've made some comments about that, and we're talking about a context where there is a criminal or complex Child Safety matter in existence. What changes do you think might be considered in the assessment process in order to keep children safe?

MR DAVENPORT: I think in terms of the assessment process, this is one where I would definitely take a model from Western Australia, which is Child First for the most serious allegations and concerns of sexual harm, where you have co-working between child protection and police and they take on, I guess, the burden of that process and that investigation so that the Child Safety can be more focused around supporting the family and safeguarding the longer term about therapeutic interventions and building safety over time; rather than getting caught into this trap of

trying to work out whether a crime has been committed and feeling like you're contained by that.

But at the same time I feel like the standard of assessment is where we need greater professionalisation and that's why I've talked about - I feel like the basic standard needs to be social work because I feel like that's the qualification that gives the best grounding, the best opportunity for specialism in the wide variety of areas that Child Safety works in, and yeah, I feel like that's going to start to resolve many of those challenges.

MS DARCEY: Thank you. Is there anything else that you would like to say in relation to change and drivers of change before I revert back to Ms Brown?

MR DAVENPORT: I think the only other thing that I would say needs to change, and again I don't know if this is going beyond the remit of this Commission, but speaking not just as a practitioner but as a survivor of child sexual abuse, I feel there needs to be a shift in the discourse. Many of the workers I have met are taking on values they have from society, and if there is an outcome that comes from this - you know, there are things that have changed already in government, there are hopefully changes that will come, but there needs to be a much wider public discourse about how we view sexual abuse, harmful sexual behaviours and how we view children as agents of their own destiny with their own agency as individuals, and to remove this damaging harmful perception about sexualisation that we for some reason as a society still take for granted, when so many reports, so many inquiries have been held, and I feel like that's - that may be the biggest change that can hopefully come from this, is that education for the public and how that is done and I would hope there's some serious consideration to that.

MS DARCEY: Thank you.

PRESIDENT NEAVE: Can I just have a follow-up question on that? By that do you mean ensuring that the community as a whole understands child sexual abuse better and understands what the signs of it are and the children and parents, if they're not the abusers, are more aware of what to do if you have a suspicion of child sexual abuse; is that the sort of cultural change that you're talking about?

MR DAVENPORT: Yeah, definitely. I think it's a cultural change around also media and politicians, like, how politicians act, how journalists act and how institutions behave and act. It's also about TV and programs; like, the scale of it is quite big, I guess, but I think if we're looking at education for communities and how best they can respond in their education fora; it's also about education in schools and for parents and having that access to them, I think those are also really vital drivers, and that's where that community basis is also important particularly for smaller isolated communities, yeah.

PRESIDENT NEAVE: Thank you.

MS DARCEY: Thank you. And, Ms Brown, finally to you in relation to change, there are a couple of themes running through your statement. Do you have a view about the possibility of a shift by government away from the traditional role of service provider and how that might influence the safety of children?

MS BROWN: Yes. I do think the role of the department here is confused and conflicted; they struggle to really hold the statutory responsibility alongside of the provision of direct service delivery, and also the purchasing of the services from the not-for-profit sector and the management and quality assurance of all services.

So, in my view Child Safety Services should be really strong in its statutory role, its investigative role, and the legal processes where they're needed, but I agree with Jack about, you know, there needs to be more work in the community and we've taken some steps forward with the Intensive Family Engagement Service which is an attempt to work with families in a more collaborative way and avoid the need for statutory intervention.

I think we also really need clear standards. As well as having clear roles, we need really clear standards, and we need a service system that is open and reflective and it has a learning culture. There's been a lot of talk in the Commission about training and I don't think training is the answer. I think it's part of the answer but it's not the whole solution to the problems that this system has.

We really need to become more critically reflective, a more learning-focused system that really reflects on what

we're doing and why we're doing it and being open to that discussion and to valuing different opinions and the sector wants to be a part of that with the department.

I think the reason Tasmania doesn't have standards in place for out-of-home care at the moment is largely because the government couldn't meet them themselves; the department couldn't meet those standards, and that's a real worry. I think the department needs to be really clear about its role and then work effectively with the non-government sector to really deliver on that to ensure safety for all children in foster care and more broadly in the community generally.

And I think there needs to be a significant piece of work looking at the organisational culture of Child Safety Services. You know, one of the reasons they have the high vacancy rate and then some of the challenges that they have is about organisational culture. Governments used to have the advantage of stability and higher wages to keep staff, but they're not the things that are attracting people in a modern workplace anymore. People are interested in what else they - what other benefits, the non-monetary benefits from work, the culture of the organisation, the learning that they can gain through working with that organisation and how they can build their own skills and their competency and make a difference: they're the drivers for workplaces in this space and government doesn't have that culture at the moment, the department doesn't currently have that culture of critical reflection, open learning and valuing partnerships with the non-government sector as much as it could.

MS DARCEY: Thank you very much. I'll hand over to the Commissioners, I'm not sure if they've got any additional questions?

COMMISSIONER BENJAMIN: I don't have a question but I've got a comment I'd like to make, if I may?

PRESIDENT NEAVE: Yes.

COMMISSIONER BENJAMIN: I wanted to thank each of you for your strength in giving us insights into the strengths and weaknesses of the Tasmanian system. That's not an easy thing to do, particularly when it's your profession, so I thank you for that.

In particular, Mr Davenport, I wanted to thank you for being brave enough to tell us about your abuse and so we can understand that part of where you come from is your desire to protect others into the future.

COMMISSIONER BROMFIELD: I echo Commissioner Benjamin's comments.

PRESIDENT NEAVE: I'd like to endorse the same things that Commissioner Benjamin said, so thank you very much indeed, and we'll now take a 20-minute break.

SHORT ADJOURNMENT

MS ELLYARD: Good afternoon, Commissioners, the final panel for today will involve Ms Jenny Wing and Dr Gemma McKibbin, and I'll ask that they both be sworn in.

<JENNIFER WING, affirmed: **[3.08pm]**

<GEMMA TAMSIN DUNNETT MCKIBBIN, affirmed:

<**EXAMINATION-IN-CHIEF BY MS ELLYARD:**

MS ELLYARD: Q. Thank you very much. Can I start with you please, Dr McKibbin, you've said your full name already. Can I ask you for your professional address?

DR MCKIBBIN: Certainly, so I'm based in the Alan Gilbert Building at the University of Melbourne, which is 161 Barry Street in Carlton.

MS ELLYARD: And you're obviously currently employed at the University of Melbourne. What's the role that you presently hold there?

DR MCKIBBIN: Okay, so I'm a Research Fellow in the Department of Social Work at the University of Melbourne and I'm part of a research team called the Violence Against Women and Children Research Team, which is led by Professor Cathy Humphreys.

MS ELLYARD: You've made a statement to assist the work of the Commission which is dated 6 May 2022. Have you got that statement in front of you?

DR MCKIBBIN: Correct. I do, I have it here.

MS ELLYARD: I know that there's a matter of clarification that we'll go to in your evidence. But other than that are the contents of the statement true and correct?

DR MCKIBBIN: Yes, they are.

MS ELLYARD: You've listed at paragraphs 6 and 7 of your report current research interests and past publications which may be of interest to the Commission and its work.

DR MCKIBBIN: Correct.

MS ELLYARD: Thank you. Turning to you, Ms Wing, could you tell us, please, your full name?

MS WING: Yes, Jennifer Wing.

MS ELLYARD: And your professional address?

MS WING: Is 675 Victoria Street in Abbotsford in Victoria.

MS ELLYARD: You presently work for the Australian Childhood Foundation?

MS WING: That's correct.

MS ELLYARD: What's the role that you hold?

MS WING: I'm the General Manager of Therapeutic Services across Victoria and Tasmania.

MS ELLYARD: What's the professional background that sits behind the role that you've got?

MS WING: I'm a qualified social worker and family therapist.

MS ELLYARD: You have made a statement to assist the work of the Commission dated 8 June 2022, have you got that with you?

MS WING: Yes, I do.

MS ELLYARD: Are the contents of it true and correct?

MS WING: Yes.

MS ELLYARD: Thank you very much. May I start then by turning to you, please, Dr McKibbin. The focus of this afternoon's evidence is going to be harmful sexual behaviours in the broad and various ways in which those behaviours can be identified, understood and responded to.

At paragraph 11 of your statement you offer a definition of what we mean when we say "harmful sexual behaviours". Can you summarise that for us, please?

DR MCKIBBIN: Certainly. So, you know, really when we think about harmful sexual behaviour we're thinking about sexual behaviour that's carried out by children and young people, so we're not thinking about adults who are sexually abusing, we're thinking about children and young people who are carrying out sexual behaviour that can be harmful towards other children and young people, often younger children; it can be harmful towards themselves and it can be harmful even towards, you know, an adult at various times.

So, really I tend to work with Simon Hackett's definition of "harmful sexual behaviour" and he sets out a continuum of behaviours that range from normal, through inappropriate to problematic, abusive and violent, and harmful sexual behaviour is the umbrella term for the problematic, abusive and violent kinds of behaviours, yes.

MS ELLYARD: Perhaps that helps me ask the question of Ms Wing. In your statement you've referred to problematic sexual behaviours and sexually harmful behaviours or sexually abusive behaviours. Is there a relevant distinction or is it as Dr McKibbin has said, that that's another way of describing the umbrella term?

MS WING: No, I would agree with Dr McKibbin, that we would used "harmful sexual behaviours" as the umbrella term that encapsulates all those behaviours along the continuum from problematic to abusive.

MS ELLYARD: Is there clinical significance in separating out problematic from abusive?

MS WING: In terms of the treatment of the behaviours,

yes, because it helps you to understand the, you know, the nuances inherent in the behaviours and the severity of the behaviours, who the harm - who's most at risk of harm. You know, as Dr McKibbin said earlier, that factors such as, is the behaviour more harmful towards the young person using the behaviours, harmful towards others, both, so really helps us to understand the detail of what's happening for that young person.

MS ELLYARD: Thank you, so when we think about strategies to respond to harmful sexual behaviour, that strategy will have to have multiple strands because there's actually a variety of the kinds of behaviour that might occur?

MS WING: Yes. It needs to be tailored to the needs of each child or young person, there's no one size fits all.

MS ELLYARD: Dr McKibbin, at paragraph 13 of your statement you reflect on whether or not it's useful or appropriate to think about the terms of victim and perpetrator in this context; can you tell us about that?

DR MCKIBBIN: Yes, of course. So, you know, the victim-perpetrator binary is quite problematic in the harmful sexual behaviour space. We certainly have shifted away from referring to children and young people who display harmful sexual behaviour as perpetrators or, you know, mini-paedophiles or sex offenders, juvenile sex offenders, so we're not using that language anymore because it's stigmatising and it actually inhibits their ability to recover and to get back on a better pathway.

So "perpetrator" doesn't really hold up in this space. The issue with victims is that I still do tend to use the word "victim-survivor" for a person, a child who has been sexually harmed by another child because children - victim-survivors when you talk to them or when - I'm thinking of a particular case in mind here. When I was talking to a young woman who had been sexually harmed by a child when she was younger she was very distressed at my use of the term "harmful sexual behaviour" and she wanted me to use the term "perpetrator" because she felt that, by using the term "harmful sexual behaviour" that didn't validate her experience of being a victim and the impact of the abuse on her.

The other thing of course for kids with harmful sexual

behaviour is that they've often been victims themselves, not necessarily of child sexual abuse but of any number of forms of abuse and childhood adversity. So, it's a little bit unfair, you know, to think about them only as perpetrators when actually their own abuse history and trauma has not been addressed properly.

So they're just some of the issues in the space.

MS ELLYARD: Can I ask you, Ms Wing, for your reflection particularly on this question of whether or not it's appropriate to use the term "perpetrator" at all, when obviously the victim will experience it as having been perpetrated on them by somebody?

MS WING: I don't think that it's appropriate to use the term "perpetrator" or any of those other terms that Dr McKibbin has alluded to that are often used to describe young people who engage in harmful sexual behaviours because it's not reflective of who they are.

And one of the concerns that I have is that children are in a developmental stage where they are - particularly as they emerge into adolescence, where they are starting to really make sense of who they are and this is where identity formation most commonly occurs, and to attach a label like perpetrator or paedophile or monster or any of those other labels can become integrated into that young person's identity and understanding of who they are, and then they carry that forward with them, and so, as Dr McKibbin said, that inhibits their trajectory for recovery from being able to process and recover from their own harm that they have experienced as well as being able to address the behaviours that they do need to be held accountable for and need support in changing. But they are not being - you can't hold them accountable by labelling them. What will happen is they become stigmatised and shamed and then are less likely to be able to address those behaviours.

MS ELLYARD: What can you say about the prevalence of harmful sexual behaviour? You speak about this at paragraphs 15 and following of your statement. So, perhaps by reference to that, what can we understand about how frequently this happens?

DR MCKIBBIN: Well, we don't know much about it, to be

honest, we really don't know much about the prevalence of harmful sexual behaviour in Australia, and that's why it's terrific to see that well-funded child maltreatment study that's going on led by Ben Matthews and Daryl Higgins, because I'm hopeful that we'll have a better idea about prevalence from that.

The way that prevalence tends to be talked about in the literature is - you know, there's one study that I mention here by Radford and colleagues, and it was a general population study, so it wasn't a treatment sample or kids who have had contact with a treatment service, so in that way it's quite interesting.

So, 215 children reported that - well, 65.9% of those children reported that they had been - their sexual abuse had been carried out by another child or young person. Other sort of estimates that come out of the US are much lower, but they're based on, you know, "juvenile sex offender statistics", so kids who have come into contact with the Youth Justice System in the US, and those statistics tend to think about one-third of all child sexual abuse is thought to be carried out by children and young people.

I'm really ambivalent about some of these figures, especially that really high figure, because I think we don't know and we don't have enough evidence in that space, and I think children are better at getting caught than adults. And I'm ambivalent about, you know, over-talking harmful sexual behaviour in the sense that I don't want to take it away from adult-perpetrated sexual abuse, yeah.

MS ELLYARD: Thank you. Ms Wing, on the basis of the work that you do, do you have any observations about the prevalence of harmful sexual behaviours in comparison with other kinds of sexual abuse that children might experience?

MS WING: I think it would be in line with what Dr McKibbin's saying. I think children are better at being caught, they're not as sophisticated in their, you know, offending or their use of harmful sexual behaviours.

In the service that I work in and across the network of services in Victoria most of our services would also work with children who have experienced sexual harm, and so, by the very nature of that we work a lot with sibling

sexual abuse because families can come to one centre and have counsellors working with all the different parts of the family, including the parents. So, in our services we would tend to see a lot of families, or a lot of children where the sexual abuse has occurred as a result of another child or young person harming them.

Having said that though, we also work with a large number - probably half of, in my service, half of the children who have experienced sexual abuse that we work with would have been sexually abused by an adult.

MS ELLYARD: Thank you. Can I turn then to the question, and perhaps a complicated question, of how children come to engage in harmful sexual behaviours. At paragraph 21 and following of your statement, Dr McKibbin, you refer to a research project that's been undertaken and you summarise at paragraph 23 what you call in your statement "pathways" but I think you would wish to use a different term now. So, can I invite you to tell us the different term and perhaps summarise for us what the researchers identified as the six different elements or routes into which children might go to display harmful sexual behaviours?

DR MCKIBBIN: That's right, thank you, Counsel Assisting, that's terrific. So, basically the six pathways that we've identified here, that when we were writing this witness statement that paper was under review for an international journal, and in response to the reviewer's comments we've actually decided to reframe the notion of "pathway" as "risk factor clusters", because we realised that we perhaps weren't theorising pathways to the degree that we needed to theorise what a pathway is, and that actually what we were talking about were clusters of risk factors that precede onset of harmful sexual behaviour.

And having said that, we're undertaking another piece of work for the WASAPP project, so that's Worried About Sex and Porn Project For Young People which is a scoping review of the evidence base about pathways to onset of harmful sexual behaviour, and we've actually identified 11 pathways, and we're doing a much more rigorous theorisation of what a pathway is in that paper, and we're still writing that one up. Yes, so that's the clarification, yeah.

MS ELLYARD: For now is it still useful to speak to these six clusters of risk factors as a meaningful although

perhaps not perfect analysis of the kinds of circumstances which might contribute to a child engaging in harmful sexual behaviour?

DR MCKIBBIN: Yes, absolutely. So, basically, and these six clusters of risk factors, these were generated through interviews with professionals in the harmful sexual behaviour space, so this is what practitioners and applied researchers think about the way risk factors cluster in this space, so this evidence comes from that.

So, if we talk about the sexual curiosity or arousal sort of cluster, and this is kind of when sexual arousal is actually the sort of driver or the trigger for harmful sexual behaviour onset, often in combination with pornography use and, you know, a lack of adult supervision in the house or in the family. And the professionals thought that this kind of cluster of risk factors was particularly pertinent for kids living with disabilities, and that there was a sense that there was this kind of, you know, perhaps overwhelming or impulsive sexual arousal and there wasn't the cognitive ability to think about or, you know, understand the nuances of sexual relationships, et cetera. So, that's that cluster.

MS ELLYARD: I might pause you there and turn to you, Ms Wing. From your work, do you recognise what has been described as one set of circumstances or risk factors that has emerged in the children and young people that you've worked with?

MS WING: Yes, that is a common set of circumstances that we would see, a combination of those factors, yes.

MS ELLYARD: And in particular, as I understand it, the significance of a child who by reason of neurodiversity or a cognitive impairment might have an impaired capacity to restrain themselves or moderate their behaviour?

MS WING: Yes, and to understand those personal boundaries, yes.

MS ELLYARD: Thank you. Can I ask you about the next one, Dr McKibbin?

DR MCKIBBIN: Certainly. So, the next one that we've identified here is the sexual interest in children pathway,

and really, you know, this is a very small proportion of the kids we see with harmful sexual behaviours, but there is a very small proportion of kids who actually do realise by the time they're about 14 that actually they're sexually attracted to younger children and they start to notice that, you know, they're not interested, like their peers, in people, in kids their own age; so, they come to sexually harm in a way that is triggered by that actual sexual attraction, yeah.

MS ELLYARD: Ms Wing, do you recognise that? I gather the suggestion is that it's a very small cohort, but it is a cohort of children who will engage in these behaviours?

MS WING: Yes, it is. It is definitely a cohort and it is small. I've been working in the sexual - in the harmful sexual behaviour field since 2008 and I could count on one hand the number of children that I've worked with or in the services that I've managed where we've identified that the child or the young person has a sexual interest in children. So, while it does exist, it is very, very small in my experience.

MS ELLYARD: Thank you. Dr McKibbin, the third one that you identify is childhood trauma risk factors.

DR MCKIBBIN: That's right. So, there's an absolute cluster of risk factors around childhood trauma and childhood adversity, and really, in the out-of-home care space this is what we're seeing a lot of. So, it's when kids live with various forms of abuse or domestic and family violence, you know, key attachments to carers are disrupted, you throw into the mix pornography, so harmful sexual behaviour can emerge in that kind of very fraught family environment, sometimes even as a way of self-soothing, sometimes as a way through social learning. So, if you're watching your dad sexually assault your mum, okay, you're learning that that's what sexual behaviour is about.

Of course, there's also that cohort of kids who have been sexually abused themselves in childhood and then go on to develop harmful sexual behaviour, and I think Ms Wing talked about how about 50 per cent of the kids they see have had that experience, so in ways that's - when I talked to, for example, a young man in my PhD research he talked about how he wanted to try out what had been done to him

because he didn't understand why, what the person was thinking who had abused him, so he wanted to try it out, so it was a direct - you know, a very direct link to his own experience.

MS ELLYARD: Ms Wing, you do say something in your statement about a correlation between experiences of family violence and displaying harmful sexual behaviours. Would it be right that this is quite a large cohort amongst the cohort of children who display these behaviours?

MS WING: Yes. So, Quentin's research in 2009 points to 94% of that research study and people in that research study having experienced family violence, and I would say that the vast majority of children and young people that we see in our services across Victoria in our harmful sexual behaviour services would have that trauma risk factor and a range of kind of, I suppose, what we would call developmental trauma; so trauma that occurs, family violence, sexual abuse, you know, severe neglect, all of those factors that Dr McKibbin was mentioning in the context of a child's development has a greater impact.

MS ELLYARD: And would it be right in assuming that those things have a greater impact where they haven't been addressed, where not just that the child has experienced those traumas, but the child hasn't received therapeutic intervention for those traumas in a timely way?

MS WING: Yes, that's right, and also where there hasn't been any intervention to stop those - the behaviours that are occurring or the, you know, the harm that's occurring in the environment that they're growing up in. The only response that children have in those situations is to try and figure it out for themselves and try and survive that, you know, what is for them their life experience.

MS ELLYARD: Thank you. Dr McKibbin, you then identify the fourth and the fifth pathways, one of them's anti-social behaviour and then the fifth one's about contextual violence; can I invite you to speak briefly to those two?

DR MCKIBBIN: Certainly. So, there's a cluster of risk factors around anti-sociality and contextual violence, you know, problematising the word anti-sociality or anti-social because, you know, we really do understand that actually

lots of anti-social behaviours develop out of trauma and poverty, intergenerational trauma, poverty, et cetera. But for the purpose of this the anti-social risk factor cluster is about, when a child's living in an environment where, say, the law is not respected, where there's criminal behaviour, where there's perhaps, you know, drug use, where there's violence, then at puberty that kind of, you know, anti-socialness or anti-social behaviour is sexualised. So, kids sexually harm, sometimes not for sexual gratification, but because it's just another way of hurting someone or harming someone, so that's what we think about the anti-social cluster.

The contextual violence cluster, so that emerged in the context of a researcher talking about her work in Aboriginal communities and how what she observed when she was in Aboriginal communities working around harmful sexual behaviour is that there was a lot of violence that was displayed publicly, so issues and troubles were aired very publicly and very abusively, and she felt that that was very confusing for Aboriginal children and that that contributed to their onset of harmful sexual behaviour.

MS ELLYARD: In a later week of these hearings the Commission's going to be considering the Youth Detention facility in Tasmania and evidence that there are children who in the context of abusive or overly violent conduct towards them sexually harm other children. It sounds like that might match one or other of those clusters of risk factors that you've been discussing.

DR MCKIBBIN: Yes, I would think that there could be a link with either of those clusters actually, yeah.

MS ELLYARD: Ms Wing, do those two clusters too reflect experiences you've had in practice?

MS WING: Yes, they do, and just in thinking about your comment around Ashley, I think in the context of poor training and supervision by carers or poor training and lack of supervision, then these environments where there is, you know, kind of accepted anti-social behaviour that is - you know, enables the kind of continuation of those behaviours, and also where there's contextual violence, I think it just increases the propensity for harmful sexual behaviour to occur.

MS ELLYARD: Thank you. Then Dr McKibbin, you've identified pornography as the sixth risk factor. You've referred to it already as well, but I gather that the evidence suggests that it's a cluster of risk factors on its own?

DR MCKIBBIN: Yes. So, I think that pornography is a - forms its own driver for harmful sexual behaviour, and we're seeing a kind of new cohort of children and young people who don't have any of the traditional trauma risk factors and whose harmful behaviour is being triggered directly by pornography.

I think pornography weaves its way through all of the other risk clusters, and we have meta-analytic evidence now that pornography - there's a causal relationship between viewing pornography - not even violent pornography, not child abuse material - viewing pornography and carrying out acts of sexual aggression. So, the evidence is there that actually pornography is a causal factor, yeah.

MS ELLYARD: Ms Wing, is that your experience?

MS WING: Yes, and what we hear from the young people we work with is that the pornography that they view, there generally is violence inherently involved in that - in what they're viewing. So, it's not that they're seeking out particularly violent pornography, but that the nature of pornography over the past five to 10 years has changed and, you know, for whatever the industry's reason is in making it more, I don't know, sensationalised or for whatever reason, that there's no story lines in pornography anymore, it's simply, you know, getting right into it and there are high levels of violence being used. And what confuses young people who are watching it who are turning to porn for their sex education, is that generally the women or if it's homosexual pornography the person who is I guess on the receiving end is - looks like they're enjoying it even where the acts are quite violent. And so, for a young person learning about sex, they think that that's normal and they think that that's - they miscue around the facial expressions and don't understand that it's painful. So, they don't necessarily set out to engage in sexual harm towards, you know, generally a peer or a partner, a sexual partner, they're doing what they've learnt to do by viewing porn and the result is that the other person experiences sexual violence.

MS ELLYARD: Yes, thank you. Dr McKibbin, you say in your statement that understanding the pathway or the cluster of risk factors that sit behind a young person's harmful sexual behaviour is important particularly, I think, in relation to early intervention strategies, and I take it that in making that comment you are thinking of this as a problem where there might be opportunities to intervene early or even to prevent as well as the need to respond once behaviours emerge. Is that right?

DR MCKIBBIN: That's correct, yes.

MS ELLYARD: So if we're thinking about it as a public health problem with the idea of there being primary, secondary and tertiary levels of responding?

DR MCKIBBIN: Correct, yes.

MS ELLYARD: And, Ms Wing, your work would primarily be understood as sitting at the tertiary end; is that right?

MS WING: Predominantly, particularly the direct intervention with children and families, although we do as part of our work do a lot of education into - across the service system, particularly in schools, and Allied Health and other services that are working with young people to help early identification.

MS ELLYARD: The Commission has the benefit of a statement, although he's not coming to give evidence, from a Mr Dale Tolliday who works in the field in New South Wales, and one of the things that he speaks about in his statement is the need for appropriate tools that will enable perhaps frontline services, whether it's schools or other agencies, to understand in a broad sense the nature of harmful sexual behaviours and whether or not there needs to be referrals to specialist services or whether it can be dealt with in another way. Do you agree with that?

MS WING: I do agree with that, and I think - that I'm often asked, "How do we help young people identify harmful sexual behaviour in other young people?" And what I would say to that is, what we need to do is help adults around children and young people understand how to identify concerning behaviour, so where it's at that more problematic end so that they can catch it early.

Adults that work with children, such as educators or caregivers in out-of-home care, or early childhood educators, need to be able to identify concerning sexual development, even in young children, and compare that with healthy or normative sexual development. Where a child has a disability, they also need to have an understanding of what sexual development might look like for that child and what they might need to help them to learn healthy sexual development. If the adults around children can understand that and also be quick to respond when they identify that, you know, this behaviour's going a little bit off track, then the whole service system is better equipped to respond in ways that's supportive for children before the behaviours develop into something more harmful.

MS ELLYARD: And so, not every child who displays harmful sexual behaviours needs to be automatically referred to a service like yours?

MS WING: No.

MS ELLYARD: There may be interventions that can happen in their school or their home or their placement that can meet their needs?

MS WING: That's right. I think, if there's a therapeutic approach, and I use that word very broadly, to how we respond to children developmentally as they're learning; how to express themselves, if they do have unmet needs or a trauma history, those experiences need to be expressed in some way, and if we have people around children who are able to support them to express their needs and help to guide them onto a pathway that is much more in line with healthy relational development, then it's less likely that those children will need to come to specialist services like mine.

MS ELLYARD: Dr McKibbin, this seems a good moment to ask you about the Power to Kids program which we heard a bit about from Dr Miller yesterday. You deal with it at paragraphs 81 and following of your statement, and as I understand it, an aspect of that program was about resourcing those caring for young people in residential care to have conversations and be skilled up to respond to children who might be at risk of a variety of forms of harm, but including the potential for engaging in harmful

sexual behaviours?

DR MCKIBBIN: Yes, that's correct. So, basically the Power to Kids program is a child sexual abuse program for kids in out-of-home care. It started as an action research collaboration between the University of Melbourne and MacKillop Family Services, and we really co-designed three strategies that we thought could prevent and improve responses to harmful sexual behaviour, child sexual exploitation and dating violence in out-of-home care.

So we trialed this intervention in residential care and then in home-based care. Do you want me to describe the three strategies?

MS ELLYARD: I think we understand the strategies as I understand, I'm just looking to the Commissioners to see, but I think the strategies are described in your report and we also have the benefit of the full research papers in Dr Miller's evidence. But perhaps picking up Ms Wing's point about the way in which there can be a kind of early intervention because of a higher knowledge base amongst the adults around a child, I'd be grateful if you could speak to what the analysis of the Power to Kids program revealed worked to improve the safety of children and to reduce those kinds of behaviours.

DR MCKIBBIN: In the residential care trial what really worked was empowering and upskilling residential carers to have what we call brave sexual health and safety conversations with children and young people. So, we work with this model of brave conversations that was developed at the University of Texas, and that brave conversation model has sort of two ways that really kind of help resi carers to have those conversations in a safe way.

So what we found was that when the resi carers were empowered to have these conversations they started to feel confident that they could have those conversations, because previously they felt that they weren't allowed to talk about sex with children and young people because they'd be accused of grooming children and young people. So, we had to really kind of, you know, let them know that it's okay to have these conversations safely in a trauma-informed way.

And when they started to have those conversations,

actually what happened was that the relationships between the carers and the workers, the quality of that relationship improved and that worked as a - that's a huge protective factor around a child living in residential care is having a safe and trusting relationship with a carer in the home, and that stopped them going missing so much, and going missing, of course, is the biggest red flag of being sexually exploited. So, that was one of the things we found in the resi care trial.

MS ELLYARD: Thank you. Can I turn then to you, Ms Wing. At paragraph 20 and following of your statement you refer to the standards of practice for those services which, like yours, engage in treatment of children with harmful sexual behaviours. At paragraph 23 you talk about the standards of practice being based on an ecological model. The Commission's heard about the ecological model before in the context of children with disabilities. Can you explain the relevance of that model for responding to a child with harmful sexual behaviours?

MS WING: I think it goes back to what we were talking about before, in terms of working with all parts of the system around children. Children don't grow up in isolation of other people; they grow and develop in relationship predominantly with adults and then as they get older with other children and with their peers. And so, in our treatment services working only with the young person who's engaged in the harmful sexual behaviour will only take us so far, because they live in an environment and in relationships with others who will be far more influential on their lives than what one hour a week in therapy will be.

And so, we need to be working with the significant family members, particularly carers and parents, we need to work - if they're living in the care system with their carers, including residential carers, rostered care staff, home-based carers, we need to be working with their schools, we need to work with everybody who - or all the systems around children so that what we can do is upskill those other people in terms of how to respond. How to understand the behaviours, how to understand the needs that the child and young person are trying to have met through those behaviours and how to respond to those behaviours in ways to help the child to learn new ways that are more healthy and safe to have their needs met.

So I think something that Dr McKibbin said just before I think really rings true for me in terms of the Power to Kids program; it's about providing those adults with a language to be able to have conversations and to feel comfortable in the conversations and clear about where the lines are around, you know, making sure they're appropriate conversations to have with children and young people, so that then they feel like this is someone I can talk to about this if I'm worried about the behaviour, if I'm thinking about doing something, if I'm confused about what I've done.

A lot of young people that we see in treatment are really confused as to why they're there, because they might have seen, you know, other children or other young people - you know, they might have seen another young person walk up to a young person and give them a kiss and a hug, and they think, I'd like to do that and so they go and do that, and they may not understand. And often this occurs a lot with children and young people we work with who have disabilities or might be on the autism spectrum, or just might have some deficits in their kind of relational development, that they don't understand the context in which that behaviour can occur, and so they think, I want to do that so they go and do it, then they get a bit of a shock that it wasn't received in the same way that they saw it received before.

And so, I mean, as I say it out loud that kind of sounds like an excuse, but for a lot of the young people we see, particularly younger people burgeoning on adolescence or, as I say, young people with disabilities or relationship deficits, it's not an excuse, they are really confused; and, whilst they need to be held accountable for that behaviour, they need to learn how to get their needs for connection met through more appropriate ways; we also need to help them understand why what they did was not okay. And they can come to a specialist treatment service to understand that or - and some might need to do it as well, but most if you catch it early enough can have those conversations with really trained carers or teachers or, you know, other adults in their kind of natural world.

MS ELLYARD: The Commission is considering this question of harmful sexual behaviours, particularly this week in the context of the out-of-home care system, and I take from

something you said earlier that not every child displaying harmful sexual behaviours needs to come and see a service like yours for 18 months; there are many children who might be able to be assisted through other means. Whose job is it to make that assessment of what kind of response the child needs and what skillset sits behind making that assessment?

MS WING: I would always say, if you're unsure, then refer them to us and we'll make that assessment and provide some advice around that. But I think, generally speaking, if we had - I keep going back to it - if we had a skilled and knowledgeable workforce across the service system that understand how to identify concerning sexual behaviours, then they are well placed to be able to understand whether, is this a behaviour that we need to kind of watch and support the child to change, or is this a behaviour that continues on even when we're trying to redirect or intervene; even after we've explained that this is not okay; where someone's been harmed and the child or young person doesn't necessarily have an understanding of the harm, then you know, those are all different factors to take into consideration around whether to refer to a specialist service.

The other option is, people can always call a specialist service for a consultation to talk in a de-identified way about the young person and the behaviours that they're displaying and be supported to make a decision about whether a referral needs to occur.

MS ELLYARD: Because of course as I understand it, one of the clusters of risk or pathways that might be sitting behind the behaviour is that the child is themselves being abused and could be themselves simultaneously both a victim and someone engaging in behaviours?

MS WING: Yes, that's correct, and so, it is a very careful and nuanced approach. It would not be appropriate for people without any kind of knowledge or understanding to be trying to find out where these behaviours have come from, for example; to engage in a conversation with the child about, "Well, have you ever been abused and what's happened?", you know, because that can be really unhelpful if not done in a skilled way.

MS ELLYARD: So, thinking about the kind of professionals

who revolve around a child in out-of-home care, carers, Child Safety Officers or Child Protection officers, should it be in the skillset, for example, or is it in your experience in or should it be in the skillset of a Child Safety Officer or a Child Protection officer to know how to do that kind of preliminary analysis?

MS WING: Yes, I think so. I think Child Safety Officers are well placed to be able to make those initial assessments.

MS ELLYARD: Turning to you, Dr McKibbin, the Power to Kids program and the skilling up that you talked about in the context of, I think, first residential care but then after home based care, was that one of the aims of the program, to create that preliminary investigation or triaging point for children displaying behaviours of concern?

DR MCKIBBIN: That's right. So we really wanted the carers, because they're the ones spending time with the kids consistently, we wanted the carers to be able to identify indicators of harmful sexual behaviour, and we wanted them to be able to recognise it so that then they could - look, the way it happens at MacKillop is that when these behaviours are identified by carers, a consult with the clinical team is called and then a therapeutic response is it put into place, a therapeutic intervention led by the clinical team at MacKillop, which may or may not involve a service like Jenny's - Ms Wing's, pardon me.

Yeah, so I think what works really well as MacKillop is having that clinical internal team. Because actually, they're very experienced practitioners and often they've worked at services like, you know, harmful sexual behaviour treatment services. So it's kind of in-house. And that works very well, but upskilling the carers to be able to identify in the first place is really important and not to catastrophise or minimise.

MS ELLYARD: So then, Ms Wing, let's assume that there's been a referral made to your service. You say at paragraph 22(a) that part of the standards of practice deals with the various treatment models, and you identify a range of treatment models. Can you talk us through what's the process when a child is referred? How is that assessment made about where the behaviours are coming from

and what's the kind of treatment that will work for them?

MS WING: Okay. So, initially we would engage in a whole-of-family assessment, which may not include every member of the family but will include, where possible, the parents and/or carers, if the young person's living in care, to help us understand issues around risk and safety; and, you know, immediately we need to develop a safety plan that is realistic and can be implemented by the caregivers.

We need to understand the developmental factors around the child. We need to understand their life experiences so far, you know, whether there's a been trauma and what that trauma is. We need to understand the attachment relationship between the child and their parents and their caregivers. So we try to develop a full understanding of the child's experience: how they fit in the family, what the family dynamics are, what are the relationships that are occurring around them in the house and that include them in the house.

Once we have a really good understanding, we're able to form our assessment around need for not just the child. We can develop a therapeutic treatment plan around the work we will do with them. We also need to develop a therapeutic plan around the work that might need to occur with the family system around the child or the care system the child's living in, so that we can work closely with the caregivers predominantly as well.

Where we're working with someone where there's been sibling sexual abuse and both siblings are living in the home, it's not - we've shifted away from - in the past, we would always separate the children. We've shifted away from that as a standard practice now, but we do a very careful assessment immediately around safety planning and whether it's feasible for both children to remain in the home. There's factors that we take into consideration that relate predominantly to the parents and caregivers and their capacity to, you know, acknowledge that the behaviour has occurred, believe that it's occurred, provide support to both children, because they have different needs but both are in need of support; that they're able to implement a safety plan that includes high levels of supervision that keeps everybody safe, and that that's realistic.

MS ELLYARD: And can I just interrupt you there? What if

the result of that assessment is that you're not satisfied or the clinician's not satisfied that the - to pick your example of two siblings, but the Commission's heard of examples of multiple children placed in a placement. What if there's a concern about the extent to which the child who's been the victim will be safe and protected? What can or should the clinician be doing?

MS WING: Then we would need to, at least for a time until it's safe - and for some children it's never safe - we would need to have children placed separately.

MS ELLYARD: When you say, "We would need to do it", who does it?

MS WING: Well, we as a, system I would say. It would be a recommendation, a strong recommendation from the treatment provider. It would be, if the children are living with their - you know, in their kind of family of origin, it would need to be a big discussion with the family, and we need to look at what the options are and there are other family options, extended family options where the child - usually the child who's engaged in the harmful sexual behaviour would be the child that we would be identifying as needing to reside elsewhere for a period of time, because, you know, predominantly to preserve the support and care for the victim who has already experienced harm. Having said that, though, it's not always as clear-cut as that. So there's an assessment about where the placement needs might be.

And at times, parents won't agree to that. They might minimise that the abuse has occurred; it might be all too hard. Which it is, you know? Just imagine, you have two children you're trying to do your best with and you have to prioritise both of their needs and their needs are competing. So, it might be just too hard or they might just simply not believe it. And often that can be when Child Safety becomes involved. And then they would be the decision-makers around placement.

I do understand that in Tasmania - as with, I think, you know, definitely in Victoria and the rest of the country - we don't have a plethora of placement options here in Tasmania. I know particularly in the north-west we have, you know, lots of foster families that have large numbers of children in their care, and we need to be really

careful about not just ensuring that the child's family of origin is safe by removing a child, but that the family that they go to is also safe and well resourced to support the child.

MS ELLYARD: You made a passing reference to an hour of therapy a week. I accept from what you've said that the therapy with every child would be different, but we're concerned to understand therapeutic approaches, and I'd be grateful if - let's pick an example of an older child in an out-of-home care placement who has engaged in sexually harmful behaviours towards a younger child, and let's assume for the sake of this example that they've come voluntarily and not through a court ordered system, which I know can happen in Victoria. What's the process of working with that child to move them beyond those behaviours?

MS WING: Let me be clear. Even children and young persons who come to our services voluntarily, it's with their arm twisted behind their back most often. We do have young people who return to our services voluntarily and will self-refer if they find that they're at a different developmental stage and they're thinking some of their thoughts are returning or they're not sure how to navigate, you know, their first consensual sexual relationship. You know, they might want to come back and do a bit of work. So they will come back voluntarily then, but usually the first point of contact, the young person themselves, is not putting up their hand to attend. It's usually another adult person in their life who is volunteering them to attend.

So the first part of the work that we need to do, and this is occurring through the assessment period, is building a safe and trusting relationship with that young person, being really clear about limits to confidentiality, being really clear about all those things that you would expect in any counselling situation. So there's nothing about harmful sexual behaviour treatment at that point in time; it relies on the strength of relationship and honesty in that relationship.

And so, we don't expect that initially young people - in the example that you've given, an older young person - is unlikely to acknowledge the behaviour; they're more likely to try and minimise or deny. And that's related to the stigma and shame they feel about what they've done.

Now, even if they weren't aware that it was wrong, they really know now that it's wrong and they - you know, it's not necessarily that they don't want to take responsibility for it; they just don't want to look at it. They don't want anyone to talk about it ever again because they feel shame.

So a lot of our work is in trying to build a relationship where we try to reduce shame and also at the same time talk about the behaviour, so we can be really clear that this is the behaviour that we understand has happened and not expect them to agree with that. And often the young people we see will loudly disagree with that. But we, you know, we will then enter into a conversation with them about, "Well, you tell me about what happened. This is what I understand." So we start that kind of therapeutic process there.

Even with older young people, we find that a range of modalities beyond talk therapy is really useful. You know, we have 16, 17-year-old young men who, you know, are quite, I don't know, like to think of themselves as grown up men, who will engage in play therapy and sensory motor therapies where they're using their bodies and art therapy, music therapy. So all the various modalities of therapeutic process that you would expect with children, we would use with young people, matched to what will work for them.

So we need to understand who these young people are. We need to interest their interests and what they like and what they don't like. You know, often young people like music, and so we'll get them to talk to us about what their favourite song is. They'll play it for us. Often it's songs that I'm not all that interested in, but what I'm interested in is knowing what is speaking to them, what parts of that song is speak to them. And often, it's themes of isolation and loss and being kind of mistreated, those sorts of things, which helps us understand some of their lived experiences.

So, all of that's a process that takes time, and the purpose of it is to help us to understand what's beneath the behaviours. And we need to get to that place because, as Dr McKibbin alluded to or said before when we were talking about the terms "victim" and "perpetrator", a lot of the young people - most of the young people - that we've worked with have been a victim of something. And what

feels really unjust to them is that they're being held to account for their behaviour, but the people or person who has harmed them is not being held to account. And we need to address their own experiences of harm. Not necessarily before, but it can be at the same time, but while we're addressing their harmful behaviours. So that all takes time, which is why the treatment process is usually between 12 and 18 months.

MS ELLYARD: How are you measuring - I mean, ultimately measure of success is no further engaging in the behaviours of concern, that you're aware of. But what's the measure of success? When do you know that it's time to stop the therapy?

MS WING: Part of that is the goal setting at the start as part of the therapeutic treatment plan. Partly, it's about our ongoing assessment of risk and safety, and our ongoing assessment of the young person and the skills they've developed, their insight. It's always great if they can acknowledge and take responsibility for their behaviour, but we don't necessarily require that. What we need is to know that they have insight into what kind of behaviour is harmful and how to engage in - you know, depending on what need was being met; if it was a need for connection and nurture, which often in my experience that's what it is, if they're able to talk to us about, but also share examples that are happening in their life now of connection and nurture that they're receiving and how they're giving and receiving that. That's a big predictor.

The other thing, which also goes back to the ecological model, is what we're hearing from the people around them, you know, what's being observed by parents and teachers and youth workers and Child Safety Officers and all those other people in terms of changes in behaviour and attitudes and language and all of those things that we've identified as issues.

MS ELLYARD: Presumably, part of the cure - and I use that word advisedly - is also change in the child's surrounding circumstances. If the underlying driver for the behaviour was isolation or unmet needs, you the clinician aren't going to meet those needs; the child's ecology needs to change to meet the needs that were going unmet. Is that fair?

MS WING: Correct. And that's why we work with the family system. It's not to blame the family and to say, "This is your fault that this has happened", but we work with the family at the same time that we're working with the young person, separately and bringing them together, so it's very resource intensive.

The work with the family is really about helping them identify how this behaviour might have occurred; what are some of the structures and routines and practices in the family; what are some of the kind of family traditions that might have in some way contributed to the behaviour, you know, without trying to cast blame.

Often what we see with the sibling sexual abuse is, and it's a common thing, that older children will look after younger children for a couple of hours after school, you know, before the parents get home. Or, you know, maybe the family can't afford after school care or childcare. And so, there's often older siblings have caretaking responsibility for younger siblings. We'd be working with families and working with the service system to see whether, you know, there's other things that we can put in place, that can be put in place, to provide the appropriate supervision and the structures. So that works needs to happen.

Because it's like, you know, I use the analogy of when people have a drug addiction and then they go into detox, and then they come out and they have all the best intentions. And then they're right back in the environment with the friends and with, you know, all the people they've used substances with; it's much harder to change a behaviour.

MS ELLYARD: So, it sounds like a therapeutic response to harmful sexual behaviours isn't just the pure therapy, it's what I think Dr McKibbin calls a multi-agency response all around the child?

MS WING: Yes, that's right.

COMMISSIONER BENJAMIN: And, Ms Wing, if we've got children in out-of-home care who have regular change in placement, regular change in Child Safety Officers and perhaps sometimes inability to have a long-term relationship with a therapist, this just adds layer on

layer on layer, doesn't it?

MS WING: Yes, that's right.

COMMISSIONER BENJAMIN: And probably proves almost impossible to remedy?

MS WING: Well, I think what it does is reinforces - because often children who go into care will have had disrupted attachments throughout their early childhood. And then changes of caregivers - maybe their favourite caregiver moves to another, you know, placement or another resi house, or the child's placement changes to another caregiver, that's another disrupted attachment so it just reinforces the earlier trauma that children experience when their attachments are broken. So, it becomes harder and harder, and at some point, and we often see this with our adolescents who are in care, they just give up trying to form relationships because what they've learned is, adults particularly aren't unreliable, they don't stick around and they don't really care about me.

COMMISSIONER BENJAMIN: One of the areas where children often do have a consistent relationship is at school, and you talked about the skillset of the Child Safety Officer. What skillset is needed in school and where should it come from? I sit back, because we've heard stories in the past of children either in out-of-home care or just in ordinary circumstances; where should that skillset be in the school?

MS WING: I think at every level. I think it needs to be, a culture of inclusion and support needs to be led by school principals and the leadership team. But I think at the level of classroom teacher or the first aid nurse, or everybody in the school community needs to be equipped to be able to have conversations with children; not necessarily around harmful sexual behaviour, but just around, you know, understanding children's needs, particularly children in out-of-home care who have a range of harm that they've experienced; they need to be in an environment where they feel understood and cared for and supported. Because, I agree, and I think teachers can be the most enduring relationship and it might be that child's prep teacher who stays in the school for the next seven years and is the teacher that that young person as they get older will still have that relationship with.

And often schools that - I go into schools quite regularly where we're working with young people who - in a treatment capacity, and work with the - depending - if it's a small school I'd work with the whole education team; sometimes if it's a larger school it might be just that year level, and help them to understand - to identify and understand harmful sexual behaviours, help them to develop responses including a language, and also a way to support the young person.

I mean, I think schools are in a difficult position because they have a duty of care to all children in the school, including the child who's engaging in the harmful sexual behaviour, but also all of the other children. So, I do a lot of work in schools helping the school to come up with a plan themselves around things like identifying a teacher - not necessarily that child's classroom teacher, but a teacher in the school that has a good relationship with the child, that the child, when they start to feel disregulated and start to feel unsafe within themselves, that they've got maybe a signal, a word that they say to their classroom teacher that they both know, without having to announce it to everybody in the classroom, that this child needs a bit of space and they need to go to the safe person in the school and they'll be able to leave the classroom and go to that teacher, who might be the prep teacher. And then the prep teacher will bring them into the classroom and give them a job like they're the monitor for the day.

So, for all the other children it's not spoken about, "Oh well, Johnny's come in because he's feeling aroused and he might engage in harmful sexual behaviour"; of course they're not saying that, but all of the teachers who need to know this is part of his safety plan. "Johnny's gonna come into the classroom and I'll give him a job, help him to calm down", or, "I might talk to him at playtime", you know, those sorts of things. If he needs supervision out in the yard to ensure that he keeps himself safe and other children are safe, then how does a school implement that in a way that's not making him, you know, sit in one kind of painted square of the quadrangle where everyone knows he's in trouble for something? How can they supervise him without having to be right next to him but he's in line of sight? It's very nuanced and based on individual children's needs, and at the core of it I think it is relational, and I think schools play an important part -

back to your original question - schools play an important part because they are often the longest standing relationships children can have.

One of the things that worries me, and sometimes it's unavoidable, is when children change placements and in changing placements it means they have to change school.

COMMISSIONER BENJAMIN: And lose their friends and peers.

MS WING: Lose their friends, lose those adults that know them and they feel safe with and then have to start again somewhere else, and that contributes to them thinking, what's the point of even trying.

MS ELLYARD: I wanted to go to, Dr McKibbin, on the question about whether it's a job for teachers, this job of triaging and being aware, because at paragraph 62 and following of her statement she touches on this and says that it is exactly a role for teachers. So, can I, with the Commission's leave, ask Dr McKibbin to summarise what she sees are the key elements of what a frontline worker might need to be able to do in this space and why she thinks that teachers are amongst those who could do that work?

DR MCKIBBIN: Yes, absolutely. May I just say one thing about something I'm observing in the conversation before I do that?

MS ELLYARD: Of course.

DR MCKIBBIN: I'm just observing, in terms of when we're thinking about prevention, early intervention and treatment and we're thinking about a child's ecology, those six clusters of risk factors I talked about, they're across the child psychology.

So, for example, pornography sits right out really I would say in the societal kind of area for the child, and so that in ways we need to go beyond targeting children and families, if you like, and we do need to be targeting risk factors in other ways. So, if we can actually stop children accessing pornography we'd probably half harmful sexual behaviour. So, what can we do to, you know, public policy-wise to be targeting these bigger areas of risk and, you know, not just - not to be always focusing on the child

and the family, even though of course that's absolutely necessary in treatment. So, I just wanted to say that.

MS ELLYARD: Thank you.

DR MCKIBBIN: In terms of --

MS ELLYARD: The building blocks model that you've identified.

DR MCKIBBIN: The building blocks, yes. So, that was a scoping review about the evidence about how frontline workers could best respond to harmful sexual behaviours and most of the literature in the scoping review ended up being about educators, so it's most relevant for educators. And really what we found is that there's no - you know, there's no one quick fix for educators. I think they are ideally placed to identify and respond to harmful sexual behaviours and to seek help on behalf of children, and evidence suggests that they are encountering harmful sexual behaviour or perhaps inappropriate sexual behaviour on a daily basis, so it seems that it would be a good idea to kind of upskill them in identifying behaviours; being able to think about those behaviours across a tiered sort of continuum so that, if there's two 8-year-olds and maybe one flashes another, that's inappropriate behaviour but that can be responded to by the educator with psychoeducation and it doesn't need a referral to Ms Wing's service, for example.

So, helping educators to really be able to identify behaviours across a continuum, but that also then involves building their skills, so what do they have to - you know, how can they respond in the moment when little Johnny's just flashed Rosie? So what's the kind of trauma-informed, non-shaming way to have a conversation with that child. How do they respond to more serious incidences? So these are all things that need to be addressed.

Of course, there needs to be guidelines and policies, but training about mandatory reporting just doesn't go far enough in this space, so there needs to be guidelines and support and training and coaching all around this identification, and responding and referring, and engaging with the parents; and when do you bring the police in, and how do educators actually engage with their multi-agency partners to plan a response for a child that's particularly

difficult when there's a victim in the school and also a kid who's sexually harmed that victim in the same school, that can often be very, very poorly managed and lead to huge distress, particularly for the victim.

So we need to be really thinking pretty carefully about educators' roles in this debate, but they do have a pivotal role and they should be really supported also by supervision, supportive supervision like you'd get if you're a clinician. If you're dealing with harmful sexual behaviour you need support and supervision, otherwise they're going to burn out and that's not fair.

And what Ms Wing said is so important, is creating an institutional culture of respectful relationships, so where leaders are strongly, loudly, daily, talking about the importance of respect and consent and inclusion so that you're creating a culture where it's actually not - harmful sexual behaviour is actually not tolerated in that culture and kids are safe to disclose. I'll stop there.

MS ELLYARD: Thank you. I'm conscious of the time but there's a couple of discrete points that I want to raise with Ms Wing and I would love the opportunity to go to Dr McKibbin on the police and disruptive processes but I'm conscious we did hear about that from Dr Miller yesterday.

So can I look to Ms Wing. Ms Wing, firstly, there's a section in your statement on Therapeutic Treatment Orders which are a mechanism in Victoria by which a young person can be compelled to attend a service like yours. I understand from your statement that perhaps there's an observation that over time that the practice of attending for treatment has been normalised so that there aren't that many TTOs. Is that right?

MS WING: That is right. When the Children, Youth and Families Act came into being and the provision around Therapeutic Treatment Orders was enacted, in planning for that there was, I guess, concern that the service system as it existed then, which was essentially four services predominantly based in Melbourne that worked with harmful sexual behaviours, that those services would be swamped and would be inundated with Therapeutic Treatment Orders. So, what the Department of Human Services back then needed to do was resource a service system statewide that would be able to respond to what they thought would be an inundation

of Therapeutic Treatment Orders, and so, that's how we've ended up with a statewide service system with 12 providers who are place-based and, you know, some regions are quite extensive, so there is outreach and lots of travel involved, but there's a service that's no more than a couple of hours away across a large state like Victoria.

What we found, though, once the provisions of the Therapeutic Treatment Orders came into being, was that, because of the extensive education campaign that was undertaken prior to the proclamation of those provisions in the Act, we'd worked with Child Protection and police and the treatment service providers, had done a lot of work together to help each other understand their role in this space; and helping the police to understand, who were coming from a position of, these are perpetrators, if we have evidence to convict we will convict because they're committing sexual offences; to shift from that position to really understanding that these are children first and foremost who are in a particularly critical developmental stage of their life where we're able to get in early and change the trajectory of these behaviours so that they are then less likely to continue to offend and what they need is early intervention through treatment.

We were able to partner with police in over time then, rather than seeking to charge a child or to use a Therapeutic Treatment Order provision through the Children's Court, what we started to see very quickly was that police and Child Protection were deferring children away from those pathways and into our services through a voluntary pathway.

So, while, I think since 2009 there's only been 270-odd Therapeutic Treatment Orders that have been made, which is a very low number, what we have seen is around 1,600 children and young people a year come into our services across the state in total, so most of those are as voluntary clients. So what the Therapeutic Treatment Order provisions actually did do for Victoria was ensure that there was a resourced treatment service system that was able to respond to young people with harmful sexual behaviours.

In terms of the therapeutic process for young people when they come into our service, the pathway in doesn't really make a difference. The provisions in the Act do say

that one of the criteria for a Therapeutic Treatment Order is that the young person is unwilling to engage in treatment. So, if they're willing to engage, they are not eligible for a Therapeutic Treatment Order.

MS ELLYARD: But they can come to your service and get treatment?

MS WING: They can come to our service anyway, doesn't mean that they are really willing to engage, as I said earlier, and young people who are on a Therapeutic Treatment Order, because they're not willing to engage, that doesn't necessarily mean they're not willing to talk to us either, it means other people might not be willing. So, once they're in the service, regardless of how they got there, the work we're doing is fairly the same.

MS ELLYARD: You mentioned before that it might not necessarily be a requirement that the child acknowledge what they've done. What if they have been charged and they've been convicted of a sexual offence arising from harmful sexual behaviours; does that change their work with you or disentitle them to keep working with you?

MS WING: They can keep working with us. So, what was known as the Male Adolescent Program for Positive Sexuality, which is the mandated program for - it's based out at the Parkville Youth Justice Centre, and young people who are on Youth Justice orders, some of them are incarcerated, some community-based orders, most often will have their - do their treatment through that program; that program's also part of our network of services. But young people who might have already engaged with one of our community-based services prior to being charged with a sexual offence or through the process while they're waiting for an outcome, while they're waiting to go to court, they might have engaged with our services and most even they'll continue to engage after the order has been made because they've already engaged with us.

I think what it does in terms of our treatment process, in some ways it makes it easier to have some conversations, because even if they disagree and deny that they've engaged in any kind of harmful sexual behaviour, we're able to say, "Well, you've been found guilty of a sexual offence so let's start from there. There's been enough evidence to say that you've done this".

MS ELLYARD: Two other quick points, Ms Wing, and I'm conscious that Ms Wing has a flight to catch so I don't want to keep her behind. One of the things you talk about at paragraph 77 of your statement by reference to a practice in New Zealand is the question of children in out-of-home care and where to place them if they're engaging in harmful sexual behaviours and how that process can be appropriately managed. Can you tell us, perhaps briefly because it is in your statement, but what's the key point you would wish to make about the learnings perhaps from New Zealand about placement of children and these behaviours?

MS WING: Thank you for asking that. I was thinking about the program over there when Dr McKibbin was speaking. What I found when - I was able to do a study tour over to New Zealand to visit one of the out-of-home care providers that has residential programs specifically for young people with harmful sexual behaviours.

So, in Australia and in Victoria, at least, we tend to try to not place young people who have harmful sexual behaviours together for fear that they will continue to engage in the behaviours with each other. In New Zealand, in this particular program, in a lot of ways they've embraced the idea that you can place young people together and it can be, you know, I guess, the environment can become a therapeutic environment that helps young people, while they're in treatment, to practice the changes in their behaviour.

And the key point I would make about what I observed as a key ingredient to that model working was that all of the carers were qualified youth workers, they all had done additional and substantial training in harmful sexual behaviour, in identifying, responding, understanding the behaviour. They were all involved in the treatment process with the young person, so they knew what the treatment plan was, they knew where the young person was at in this stage of treatment, they were brought into the therapy sessions from time to time to be able to make observations in front of the young person to the therapist about what they're observing in terms of the young person's behaviour, both what was still concerning and the strengths and the gains that the young person had made.

They were trained and supported, through that ongoing supervision that Dr McKibbin was alluding to before that is needed for teachers. They were supported to have conversations, so to use words. You know, I have an example in my statement, so won't go into it now. It was a good example. But to be able to have conversations that were very transparent and clear with young people. What I observe in residential care programs that I visit is that, even with the carers who had done some training and they, you know, are really keen to support young people, they just don't have the words. So, they might walk into a room and they'll see two young people sitting on the couch with a doona over them and they can see that there's some sexualised touching occurring, and they literally don't know what to say, so they turn around and walk out of the room; and that's unhelpful. Or they'll say, "What are you doing?", and they overreact. So, each of those responses is unhelpful.

What the youth workers in New Zealand were trained to do was to know how to have conversations with young people and how to interrupt the behaviour that they were observing in a way that was non-shaming and non-judgmental. They also, I think - I keep going back to them being qualified youth workers. What I, and it kind of speaks a bit to the Commissioner's earlier question, I spoke with a number of those youth workers and asked them things like: How long have you been working in this house? You know, those sorts of things. And the youth worker with the shortest kind of experience of working in one house was five years. The longest was 12 years, and that was how old the program was. And what they all said to me was, "This is our vocation." So, they were trained youth workers who this wasn't a stop along the way in their career while they were studying or they were waiting for something better to come along; this was --

MS ELLYARD: The thing they wanted to do.

MS WING: The thing they wanted to do. And they were supported and sustained in the work, so they didn't move on. So, those young people had long-term, for as long as they were in the house, connected and attuned relationships with caregivers who they knew were reliable, who would have honest conversations with them, who would call them out if they were doing the wrong thing, but also who would be nurturing and supportive of them.

MS ELLYARD: Thank you, Ms Wing. Thank you very much. Commissioners, those are the questions that I have, and I thank both witnesses. I'm conscious of the time, but of course don't want to shut the Commissioners out if there's any final questions.

PRESIDENT NEAVE: Thank you very much.

COMMISSIONER BROMFIELD: I'm keen for you to get to your plane.

PRESIDENT NEAVE: You don't have any?

COMMISSIONER BROMFIELD: No, thank you.

PRESIDENT NEAVE: Thank you so much, Dr McKibbin and Ms Wing. That was really very interesting. Thank you, we'll adjourn.

AT 4.36PM THE COMMISSION WAS ADJOURNED TO THURSDAY, 16 JUNE 2022 AT 9.30AM