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

HOBART

TUESDAY, 26 OCTOBER 2021
(1st day of hearing)

BEFORE:

THE HONOURABLE M. NEAVE AO - President and Commissioner

PROFESSOR L. BROMFIELD - Commissioner

THE HONOURABLE R. BENJAMIN AM - Commissioner
COMMISSIONER BENJAMIN: My fellow Commissioners and I pay respect to the traditional and original owners of this land - the Muwinina people. We pay respect to those who have passed before us and acknowledge all of Tasmania’s Aboriginal people who are the custodians of this land.

I am Commissioner Robert Benjamin and I am joined today by Commissioner Leah Bromfield. President of the Commission, Marcia Neave, joins us from Melbourne. I would like to invite Commissioner Neave to make her opening remarks on behalf of the Commission.

PRESIDENT NEAVE: Thank you, Commissioner Benjamin. I also wish to acknowledge the traditional owners of the land I am on today in Melbourne, the Bunurong Boon Wurrung and Wurundjeri Woi Wurrung peoples of the Eastern Kulin Nation, and to pay my respects to the Elders past and present.

I and my fellow Commissioners have been given the task of examining the Tasmanian government's responses to child sexual abuse in government institutions, particularly within State schools, health services, youth detention, out of home care and other services substantially funded by government.

We must consider and acknowledge the history of child safety in Tasmanian government institutions and the past harms revealed by previous inquiries. But our terms of reference require us to focus mainly on current responses to child sexual abuse. This includes examining ways to prevent child sexual abuse from occurring in the first place, but also to ensure quick and effective responses when it does occur. Our recommendations take into account what has been learned by previous inquiries and will build upon their recommendations. We will aim to ensure that wherever possible perpetrators are held accountable by the criminal justice system. We will also aim to make sure that the experiences of those affected by child sexual abuse in government institutions are recognised and not dismissed, that their disclosures are taken seriously and that all of them receive trauma-informed care, treatment, support and redress for their harm.

Our inquiry will look at the policies, decisions, culture and actions of government departments and bodies acting on behalf of government in the non-government
Together we bring a range of skills and perspectives to this task. Our fundamental role is to listen, to learn, to weigh the evidence and provide an honest assessment of Tasmania’s approach to child safety in government institutions. We will do this so that we are equipped to recommend the reforms that the Tasmanian government should make.

Although I am joining this hearing from Melbourne, over the course of the inquiry all three Commissioners have spent lengthy periods of time in Tasmania conducting consultations and sessions with a Commissioner. Commissioner Benjamin has effectively been working full-time in Tasmania for several months. Both Commissioner Benjamin and Commissioner Bromfield were born and raised in Tasmania and have a longstanding connection with the Tasmanian community.

Unfortunately, the COVID-19 pandemic has prevented me from returning to Tasmania at this time. However, we thought it was important for us to proceed with this hearing today to provide an overview of our progress and foreshadow the next stages of our inquiry. We are also joined today by one of our counsel assisting the Commission, Maree Norton, who will be making submissions on behalf of her fellow counsel, Rachel Ellyard, Elizabeth Bennett and Alexandra Darcey.

Before I share information about our progress, I wanted to make some general observations about the issues we are examining. First, the impact of child sexual abuse in institutional settings. As a society we have learned many important things from the work of the National Royal Commission into Institutional Responses to Child Sexual Abuse. People sometimes think that child sexual abuse in institutional settings is a problem of the past. This is not true. It is a terrible fact that some children continue to experience abuse and harm in settings where people believe they are safe. While we often worry about strangers harming children, the majority of sexual abuse is perpetrated by a person known to a child, most commonly in family settings. But we know from the work of the National Royal Commission that sexual abuse by those in positions of trust in institutional settings - teachers, doctors, nurses, carers and youth workers - is also more common than
we would like to think, as is sexual harm caused by other children and young people. Many of the children displaying harmful sexual behaviour are themselves victims of childhood trauma. The harm victim-survivors experience as a result of the sexual abuse can be compounded if the institution betrays them as well by not believing them, by not acknowledging their suffering and trauma, and by not protecting them from further harm.

Institutions are only as committed to child safety as the people within them. We will be exploring any shortcomings of current policies and practices, but our inquiry is also based on the idea that all of us have a shared responsibility to protect children from harm. This seems self-evident in principle, but it is not always straightforward in practice, particularly in environments where raising concerns may be difficult or even discouraged. We will be examining the attitudes and practices that can contribute to risks to children and that lead to complaints not being addressed at the earliest opportunity.

While confronting the reality of child sexual abuse is challenging, it must be done. When its impact is not met with action and empathy, it is often devastating and lifelong. Some do not survive it. We have already heard many stories filled with grief and despair from victim-survivors, but we have also seen their extraordinary resilience in living in a society that can be unsympathetic to the day-to-day realities of living with trauma. We have also witnessed the bravery and persistence of victim-survivors taking action to protect other children from harm, often at great personal cost.

Some victim-survivors have told us how their abuse has affected their ability to form close and trusting relationships. Some failed to reach their potential in their education or career, and lost their ability to do activities they previously enjoyed. As one survivor said, 'They survive but don't thrive.' Some have sought respite from their anguish in drugs, alcohol and other addictions, or found themselves enmeshed in criminal offending or cycles of homelessness and poverty.

Despite these challenges, many victim-survivors have worked exceptionally hard to overcome their childhood experiences. They offer hope and encouragement to others
that healing is possible. Often they are driven to contribute to change for children today and we intend to honour their commitment as we continue our work.

Those who support victim-survivors also experience the aftershocks of child sexual abuse. We know that friends and families of victim-survivors bear witness to their private suffering and do the often invisible work of caring for them as they come to terms with their trauma. While done with love and without question, we know that distress and trauma vicariously carries its own impacts on mental health and wellbeing.

We have also heard from courageous people who are deeply affected by the profound injustices they have witnessed, either in their personal or professional lives. We are grateful for their trust in us.

Next, the work of this Commission of Inquiry. It has been nearly four years since the National Royal Commission reported and made over 400 recommendations for reform. Some of these recommendations have already been implemented or are in progress. However, some key recommendations have not yet been implemented by the Tasmanian Government and we are keen to understand why.

While the National Royal Commission provides an important foundation for our inquiry, our task is to examine what is happening on the ground in Tasmania. We know that there are specific concerns that led to this Commission of Inquiry - particularly concerns about sexual abuse in state schools, hospitals and in Ashley Youth Detention Centre. Some of these issues were not examined by the National Royal Commission, so it is the role of this Commission to undertake the necessary work of examining those areas.

There have also been a range of other inquiries in Tasmania that touch on aspects of child safety within institutions, including a recent independent review about child sexual abuse in state schools by Professor Stephen Smallbone and Professor Tim McCormack. We will be taking account of the submissions made to that review and its report, but we emphasise that its publication or implementation should not be delayed on our account. Similarly, it is vital that the Tasmanian Government maintains its momentum and commitment to implementing the
National Royal Commission's recommendations in parallel with our inquiry. Where opportunities have already been identified by the National Royal Commission or other inquiries, they should be acted upon promptly. The community would be rightly concerned if changes designed to protect children were not put in place as soon as possible.

Next, what have we done so far. Since the establishment of the Commission we have been gathering as much information as possible. We have engaged experts to help us hear directly from children and young people with varied experiences of institutions in Tasmania about their experiences of safety. Children have important views and perspectives, particularly on current approaches to protect their safety, and we want to hear their voices and views to inform our findings and recommendations.

Aboriginal children are overrepresented in certain government institutions, including in the out-of-home care system and in youth detention. We have been working with Aboriginal and Torres Strait Islander communities to ensure that our consultation processes are culturally safe and inclusive and that First Nations perspectives are heard and reflected in our findings.

We have held a series of consultations across the state, from Launceston, to Burnie, Devonport and Scamander through to Queenstown and Hobart and have spoken to over 100 people. We invited local police, teachers, health professionals, social workers, psychologists, sexual assault counsellors, academic experts, community leaders and staff from local organisations to talk to us in an informal setting. We have also held targeted meetings with organisations that regularly deal with child sexual assault matters, and conducted site visits, including to the Ashley Youth Detention Centre. We will continue to meet with a range of agencies that have useful information to share with us.

The Commission has a range of powers under the Commissions of Inquiry Act to compel the production of documents and we have used these to obtain over 21,000 documents to date, from government departments, agencies and individuals. We are working methodically through all of the material we receive, and expect to request more documents and materials over coming months.
On 13 May 2021 we published a brief information paper and invited written submissions from organisations and individuals who wished to share their views or experiences. We publicised a phone line that people could call for information and help. We also made arrangements to ensure that people who needed help to make a submission were assisted to do so. We received 111 submissions from a wide range of agencies and individuals. We are deeply grateful for the contributions received, particularly from those sharing painful and traumatic experiences, sometimes for the first time.

We have also invited people to participate in a session with a Commissioner to speak directly and privately about their experiences. These sessions may be difficult and distressing for victim-survivors. We have taken care to ensure these sessions are trauma-informed and that there is a qualified counsellor or psychologist available to provide support. Participants have control over how the information they share is used and may choose to provide information confidentially or request that it be used in a way that does not identify them. To date, 23 people have spoken to us through these sessions and we will be speaking to many more throughout the course of the inquiry.

We continue to encourage victim-survivors, family and supporters of people with information to contact the Commission about child sexual abuse in government institutions that has occurred or been reported since the year 2000.

What are our next steps? Our public hearings will be held in February and March next year in Hobart and Launceston. We will hear from a wide range of witnesses - including academics and experts, people in government positions or those with direct knowledge and experience of the issues we are considering. Victim-survivors and their supporters will be invited to share their experiences as part of these hearings. Our hearings will be ably led by our counsel who have been appointed to assist the Commission. All of them bring independence and a wealth of experience to this inquiry.

Members of the public and the media will be invited to watch the hearings in person, unless they are closed to protect the privacy of a witness. They will be live-streamed to our website and transcripts will be made
available to all to read.

We had intended to commence our public hearings this year. However, the delay in our hearings due to matters outside our control, and I'll invite counsel to speak to that issue, may have an impact on our ability to meet the reporting deadline of 31 August 2022. We are acutely conscious of the importance of this inquiry and will work hard to minimise the impacts of any delays; however, we will also recognise the importance of being thorough and considered in arriving at our findings and recommendations.

In conclusion, some people have expressed hope and optimism about this inquiry, but others have expressed weariness about 'yet another review'. We are aware of an understandable degree of cynicism about the appetite for genuine change. While we are pleased with the good faith engagement we have received to date, we are conscious there are many Tasmanians who have stories to tell, who may be wary about talking to us. We acknowledge that trust in our independence and commitment to the task may need to be earned.

It is my hope, which is shared by my fellow Commissioners, that this Commission of inquiry is not 'just another inquiry' to be filed away and collect dust.

Our upcoming hearings may well be confronting for the Tasmanian community. Child sexual abuse creates ripples that extend far beyond a victim-survivor. True healing requires an acknowledgment of what has occurred, a commitment to repair trust within the community and courageous leadership to drive necessary change. Our Commission - by its very nature - will not be able to tell every story, examine every problem and change every mind. But we will work to give Tasmanians confidence that our inquiry gets to the heart of the issue. We will give an honest assessment about the Tasmanian Government's response to child sexual abuse in its institutions. We will give a clear way forward to better protect children into the future.

I will now invite counsel to announce their appearances and to provide an overview of the structure and contents of our hearings.
MS NORTON: Thank you, President Neave. If the Commission pleases, my name is Maree Norton and I appear today with Ms Darcey as Counsel Assisting the Commission of Inquiry. I would like to begin by paying respect to the traditional and original owners of this land, the Muwinina people. I pay my respect to those who have passed before us and acknowledge today's Tasmanian Aboriginal people, who are the custodians of this land.

This opening address is made on behalf of all members of the Counsel Assisting team. As noted by President Neave, the other members of that team are Rachel Ellyard, Elizabeth Bennett and Alexandra Darcey. Both Ms Darcey and I are members of the Tasmanian Independent Bar. We grew up in this community. We live and work here. Our children attend Tasmanian schools.

Ms Ellyard and Ms Bennett are members of the Victorian Bar who each bring a wealth of relevant experience regarding the operations of government institutions and public inquiries more generally. Ms Ellyard has held various Counsel Assisting roles in Victoria, including last year's Hotel Quarantine Board of Inquiry and the Family Violence Royal Commission. Ms Bennett has worked on inquiries connected with disability and mental health.

We believe that the combination of local knowledge and interstate perspective that the Counsel Assisting team brings will make a valuable contribution to this inquiry.

The work of the Commission is supported by many dedicated and hard working staff who we recognise and acknowledge for their breadth of experience and capabilities, and I will provide some further detail in relation to the various teams assisting the Commission a little later in my address.

The purpose of today's hearing, as the President has said, is to provide an update on the work the Commission has undertaken to date and to set out in general terms the areas that will be the subject of future work, including at public hearings to be held next year. Commissioners, I expect to speak for about an hour this morning in relation to these matters.

Before I outline the role that this Commission has
been asked to perform, I would like to provide some important context relating to the National Royal Commission into Institutional Responses to Child Sexual Abuse and why, in addition to the work of that Commission, there is a need for a Tasmania-specific inquiry.

The National Royal Commission ran over five years and generated a final report that comprises 17 volumes. The volume tabling its recommendations alone is 114 pages long and contains over 400 recommendations. The learnings derived from that Commission are vast. They include a greater understanding of the nature and impact of child sexual abuse, the people who perpetrate it, and the circumstances in which it occurs. Later in this address I will have more to say about what the National Royal Commission has taught us.

Against this backdrop, as the President has noted, questions might well be asked about whether it is really necessary to have a Tasmanian inquiry. What will it achieve? Will it be 'just another inquiry', where recommendations are made but not adopted, or adopted but not fully implemented, with the result that little or nothing changes?

The distressing reality is that, despite the work of the National Royal Commission, concerns continue in relation to responses to child sexual abuse within Tasmanian Government institutions. The words chosen by the Premier of Tasmania, the Honourable Peter Gutwein, when announcing the Commission of Inquiry in November 2020 bear repeating. Mr Gutwein said:

I am concerned that as the number of allegations coming to light continues to grow, we must take every step to ensure we identify any systemic gaps and put in place measures to fill them. This situation is nothing short of terrible and we must take further action. I believe that one of the greatest responsibilities is to learn from the past and commit to not repeating its mistakes.

But, as President Neave has acknowledged in her remarks, the issue is not a purely historical one. We have heard about recent cases where institutional responses may have
failed to take allegations seriously and where
victim-survivors and people who raised concerns may have
been punished rather than supported. For these reasons it
is both necessary and appropriate for this Commission to
take the language, understanding and tools developed in the
National Royal Commission and apply them in a present day
Tasmanian context. The Commission's role is not to
duplicate the work that has already taken place at a
national level, but to use that work as the guide and a
measure. This will include considering whether the
Tasmanian Government has taken sufficient action to
implement the National Royal Commission recommendations and
whether, in some cases, those recommendations need to be
tailored to recognise matters such as Tasmania's smaller
population and more limited resources.

I'll now turn to outline the role that the Commission
has been asked to perform more broadly.

The Commission's task is defined and limited by its
terms of reference, which are available on the Commission's
website. By way of overview, the Commission has two
principal functions. The first is to investigate the
adequacy or otherwise of past and present responses to
allegations of child sexual abuse in government
institutions, including schools, hospitals and at the
Ashley Youth Detention Centre. The second is to make
recommendations on reforms to address any inadequacies
identified and to better protect children against child
sexual abuse in institutional settings in the future.

The terms of reference also emphasise the need for
those affected by child sexual abuse to have an opportunity
to share their knowledge, to assist with personal and
social healing.

In outlining what the Commission will do, it is
important to recognise the limits on what it can do.
Through its work, the Commission will learn from the past
while focusing firmly on the systemic reforms of the
future. Any reforms must be informed by accounts of how
the system has already failed Tasmanian children.
Victim-survivors and their supporters will have an
opportunity to share their experiences of the response of
government institutions to child sexual abuse since 2000,
including during the public hearings. It is important to
bear in mind that, although the Commission is concerned
with fact finding in relation to the government's response
to allegations of child sexual abuse, it is not the
Commission's role to prosecute every individual case of
child sexual abuse. That is the role of the police,
prosecutors and the courts. The community should rest
assured, however, that the Commission can and will refer
matters to the police and other regulatory bodies if it
considers it appropriate to do so.

The Commission's work is confined to responses to
child sexual abuse in government institutional settings.
This might include abuse that takes place on the premises
of a government-run hospital or youth detention centre. It
can also include abuse that is committed by a person who
has had contact with a child through their role with an
institution, such as a teacher at a government run school,
regardless of whether the abuse takes place on school
grounds.

While the Commission's main focus will be on
institutions run by government departments, it may also
cover publicly funded non-government institutions whose
activities represent an outsourcing of traditional public
functions. Out-of-home care providers fall within this
category; sporting organisations, local clubs and
non-government schools do not.

Turning now to the establishment of the Commission.
The intention to establish the Commission of Inquiry was
announced by the Tasmanian Premier in November 2020. Some
within the community might have expected public hearings to
have commenced by now, but before hearings could be held a
great deal of other work had to be done and the Commission
has been very busy doing that work.

This is the first Commission of Inquiry in Tasmania
since 2000. Needless to say, it is a very significant
undertaking. Existing legislation and regulations needed
to be enacted or amended to be fit for purpose. Many
processes needed to be established from the ground up.

It was necessary for amendments to the Commissions of
Inquiry Act to be drafted and ultimately passed by
Parliament. Those amendments did not come into effect
until 1 March this year. Following the amendments, the
Commission was formally established by an order of the then
Governor on 15 March 2021. It was only from this point
that staff could be recruited or seconded to the Commission.

Liaison with government was necessary to put in place appropriate legal and payroll arrangements. Office space had to be found and IT resources set up. The Commission's office and staff are primarily based in Hobart, including the Chief Executive Officer and the Chief Operating Officer. Some other staff are situated in Melbourne and Adelaide.

Commissioners, you are well supported in your work by your strategic adviser and by staff in four teams: the Policy and Research Team is comprised of policy officers and an investigator. It is responsible for research strategies and programs informing the strategic direction of the Commission, developing and understanding investigation plans, and ensuring the Commission is well informed to make robust recommendations that are capable of implementation.

The Community Engagement Team is responsible for supporting the Commission's consultation processes. The team comprises members with years of experience assisting vulnerable people, including victim-survivors of child sexual abuse.

The Operations Team has established the Commission's offices and is responsible for coordinating staff across three states. This team is also tasked with securing venues for public hearings and other venues necessary for the Commission to do its work.

Finally, the Solicitors Assisting and Counsel Assisting Teams comprise lawyers responsible for administering inquiry processes and procedures, developing investigation strategies and programs, and assisting in the proper and effective conduct of hearings. As your Counsel Assisting, our role in the public hearings is to assist you, rather than to represent any individual party or point of view. We are responsible for identifying, calling and questioning witnesses to explore issues in a full and fair manner and provide useful evidence which you can then use in your deliberations.

While the work of these teams got underway, the Commissions of Inquiry Regulations needed to be enacted.
before the Commission could begin gathering information and
cconducting its consultations. This did not occur until
14 July this year. The Regulations have the effect of
disapplying certain legislation that would otherwise have
applied to and constrained the work of the Commission.
Among other things, the Regulations allow State Service
employees to provide information to the Commission without
breaching their employment obligations. The Regulations
were also necessary to permit other people to come forward
and share sensitive information with the necessary
protections in place.

Even with those protections, we are aware that some
people have been reluctant to come forward. The Commission
has taken an active approach to build trust and identify
and reach out to people with relevant information and
insights. These things take time, Commissioners, but the
work of the Commission is now well underway.

I would like to spend some time now discussing the
purpose of the public hearings, before outlining some of
the matters that we expect to explore through them.

The public hearings serve several important functions.
They will inform the community about how child sexual abuse
occurs and how inaction may have allowed this abuse to
continue in government institutions. We expect the public
hearings to bring home the importance of responding
promptly when child sexual abuse is suspected.

They will also provide an opportunity for some
victim-survivors and their advocates to speak of their
experiences and for the Commission, and the community more
generally, to bear witness to their accounts.

Next, the public hearings will enable the Commission
to examine the response of government institutions to
incidents or allegations of child sexual abuse since 2000,
with a view to identifying poor practices that need to
change.

Finally, the public hearings will be a forum for the
Commission to hear from experts across a range of fields
about what should be done to better protect Tasmanian
children and to achieve best practice in the reporting of,
and responses to, allegations of child sexual abuse.
Most hearings will be in public, though in some cases it may be necessary or appropriate to receive evidence from a witness in a restricted or private hearing. Public hearings are planned for February and March next year in Hobart and Launceston. Any interested party may apply for leave to appear in accordance with the relevant practice direction. Such applications will be considered by the Commissioners. In this regard I acknowledge the presence of the Tasmanian Solicitor General and Assistant Solicitor General in the room this morning. I anticipate that the State will in due course seek leave to appear before the Commission.

The Commission may issue notices to appear in person to give evidence. Counsel Assisting will determine a suitable timetable for witnesses to give their evidence and each witness will be provided with reasonable notice and, where required, assistance in preparing for the hearing. Procedural fairness will be extended to all witnesses, particularly if an adverse finding against an individual or a department is a possibility.

Commissioners, you can make findings of fact, including findings of misconduct, where there is a proper evidentiary basis to do so.

The public hearings are likely to feature unsettling and upsetting accounts of child sexual abuse within institutional settings in this state. We may hear accounts that will challenge our assumptions about the value placed on the safety and welfare of children. Victim-survivors will give us insight into the suffering that comes not only from being sexually abused, but also from having their experiences disbelieved or diminished to protect other interests. We expect to hear from people who have witnessed conduct that contradicts their moral beliefs and values, as well as examples of people falling short in meeting their obligations to children. We will also hear from those whose efforts to expose problems may have been resisted.

While the Commission's main focus is on government institutions, not individuals, as the President has said, in the end institutions can be no better than the people working in them. If people or departments have erred, the role of the public hearings is to assist the Commission to identify those errors and explore models for reform to
ensure that they are not repeated.

I would now like to return to what the National Royal Commission taught us about child sexual abuse before outlining the case studies that we will explore at public hearings.

First, the National Royal Commission reminded us that child sexual abuse takes many forms. It involves any act which exposes a child to, or involves a child in, sexual processes that are beyond his, her or their understanding or are contrary to accepted community standards. It includes both penetrative and non-penetrative acts, as well as masturbation, voyeurism, exhibitionism and exposing a child to or involving a child in pornography. It also includes grooming which refers to actions deliberately undertaken with the aim of befriending and establishing emotional connection with a child, to lower the child's inhibitions in preparation for sexual activity.

The definition of child sexual abuse in the Commission's terms of reference accommodates all of these features.

Second, the National Royal Commission taught us more about perpetrators. Contrary to popular or common belief, perpetrators do not fit a typical profile. They do not conform to the notions we hold in our imagination - of evil, sinister predators on the fringes of society. To the contrary, victim-survivors often describe perpetrators as charming, charismatic and popular. They are not all male. Some hide in plain sight. Some occupy positions of trust - teachers, health care professionals, foster carers, police and youth detention staff - positions that enable greater access to children for those inclined to exploit it.

We, as members of the community, overestimate our ability to identify abusers, who may sometimes be our friends, colleagues and neighbours. It is precisely this ordinariness that often leads us to make excuses for the behaviour of abusers and to disbelieve those they abuse. Sometimes it's the extraordinariness of abusers in terms of trust or service to the community which might cause people to say, 'X? No, X wouldn't do that.' These damaging myths must be dismantled so that we can better understand, recognise, prevent and address abusive behaviours in
Perpetrators must of course be held responsible for their actions, but we must also recognise that they are often enabled in their abuse by a broader web of individuals. It is important to note that the definition of child sexual abuse in the terms of reference incorporates matters related to child sexual abuse, including conduct designed to assist an abuser to avoid detection.

We know that ordinary people might turn a blind eye to something that seems wrong. They might try to convince themselves that a child was ‘confused’ when they disclosed abuse, or feel that addressing the problem was someone else’s job. These actions can seem callous or negligent with the benefit of hindsight, but often reflect common human behaviours in the face of a difficult or frightening situation.

In a different category altogether are calculated efforts to cover up sexual abuse of a child to protect a perpetrator or preserve an organisation’s interests or reputation. This can include failure to report abuse when required to do so, tampering with documents and outright corruption. Some organisations can close ranks and reinforce a culture of secrecy. They can ostracise or penalise those who are not willing to be complicit. Known abusers can be shuffled off to unsuspecting communities and the risks they pose to children minimised or ignored.

It is also the sad fact that children themselves sometimes engage in harmful sexual behaviours towards other children. Research commissioned by the National Royal Commission indicates that a substantial proportion of institutional child sexual abuse that was reported to police between 2010 and 2014 was carried out by children. Despite its prevalence, there is little community understanding of this type of child sexual abuse. Services targeted to prevent and respond to this abuse are also lacking. The Commission will look at these issues in the course of its work.

Next, the National Royal Commission taught us about the circumstances in which child sexual abuse occurs. The extent of child sexual abuse in institutional settings in Australia is significant and longstanding. Cultural,
organisational and environmental factors can enable child
sexual abuse to occur more in some institutions than
others. These factors include leadership, attitudes
towards children, day-to-day practices, complaints
processes and responses, as well as the nature of physical
and online spaces and whether they enable perpetrators to
access children out of view. A lack of vigilance towards
children in institutions and in out-of-home care can allow
children to be targeted and accessed by perpetrators.

Finally, the accounts of victim survivors over the
course of the National Royal Commission make plain that the
impact of child sexual abuse is far-ranging and often
lifelong. It can have devastating effects on all aspects
of the lives of victim-survivors. It also affects their
families and the community more broadly. Through its work,
the Commission has and will continue to hear accounts of
the impact of child sexual abuse, as well as the resilience
of victim-survivors. Some of those accounts may be shared
during public hearings. They will be distressing and
members of the community should prepare themselves for
this.

The Commission has been asked to examine responses to
child sexual abuse within specific institutional
settings: education, the provision of health care and youth
justice. As I have already foreshadowed, the Commission
will also examine responses to child sexual abuse in
out-of-home care.

The work of the Commission, particularly during the
public hearings, will focus on case studies in each of
these four areas as a way of understanding how the
Tasmanian government responds to child sexual abuse and
identifying what needs to change in the future.

At this stage I am not in a position to delve into the
case studies in detail. I will, however, provide an
outline of the themes and lines of enquiry that have
emerged to date. But before I do so, I would like to pause
to acknowledge the commitment and professionalism displayed
by so many State Service employees in the areas of
education, health, youth justice and out-of-home care,
employees who do act in the best interests of children in
their care. The Commission's case studies are not in any
way intended to detract from their efforts. Indeed, we
expect that those employees will welcome the Commission's
work in calling out failures where they have occurred and
in using the case studies to develop solutions.

Beginning then with the education case study. Schools
are places for children to be nurtured and to learn.
People within the system occupy a particular position of
trust and confidence in the community. Students often look
up to them. Teachers are required to be registered, must
be of good character and fit to teach, and must observe a
code of professional ethics.

While the education experience can be formative and
fulfilling, the submissions received by the Commission
suggest that this has not been the case for all. The terms
of reference specifically require consideration of the
adequacy and appropriateness of the response of
the Department of Education to allegations of child sexual
abuse in Tasmanian Government schools.

We recognise that the work of this Commission follows
the independent review carried out by Professor Smallbone
and Professor McCormack, completed in June this year. We
do not intend to invite the Commission to unnecessarily
duplicate the work of that review, but we do expect that
the Commission will consider at least some issues in common
with it. We are also likely to ask the Department of
Education to explain its position on the review and the
status of its response to the recommendations of the
review.

The Commission will hear case studies about the way in
which educational institutions or the department have
responded to complaints or suspicions of inappropriate
conduct. We will examine the systems, processes and people
tasked with ensuring that Tasmanian children are able to
access their education free from fear and harm.

The way in which students, parents and care-givers are
able to raise issues or concerns will be a central part of
our work in this area. We will consider the options
available to students wishing to raise concerns, and
whether they feel safe and supported to do so. For
example, we will consider how principals and teachers react
when they become aware of incidents and allegations of
child sexual abuse and what they do about allegations of
children harming other children within schools.

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Next, we will examine the ways in which schools and the department deal with concerns or issues that have been raised. It is important, Commissioners, that investigations are person-centred and trauma informed. It is critical that they are independent and robust, with proper oversight from the relevant authorities. Through our case studies we will explore whether this has been the case. We will also examine the efficacy of investigations, including the circumstances in which they are carried out internally or are referred to Tasmania Police for further consideration. We will look at whether the complaints of children or their advocates were listened to, or whether there was a tendency in some cases to doubt the accounts of children or to minimise concerns about conduct like grooming. Conversely, we will be alert to identify a readiness to defer to the response of adult perpetrators.

Some of the submissions received by the Commission discuss responses to behaviour that has not historically been criminal - such as grooming - and how that has been placed in the context of risks to children. In recent years concerns of this kind have extended to online communications.

Having identified the risks and deficiencies in existing systems, we will explore evidence and put before you ideas about how systems and processes can be improved going forward.

Moving on to the health case study, the vulnerability of children under the care of hospitals run by the Tasmanian Health Service cannot be overestimated. Not only are these children in need of medical care, they are also away from their families and support networks. Family members and other loved ones cannot necessarily keep a bedside vigil at all times. When children are left in the care of hospital staff, families and carers assume, very reasonably, that they will suffer no harm at the hands of those entrusted with their care. Commissioners, evidence led via this case study may demonstrate that that trust has been betrayed within government-run hospitals in this state.

Many members of the public will be familiar with child sexual abuse allegations made in relation to a former paediatric nurse, Mr James Griffin, who is now deceased. Those allegations have been published in the media and have
been explored in detail in the podcast *The Nurse*.

Mr Griffin was charged with child sexual offences in 2019. At that time he was a nurse at the Launceston General Hospital, often known as the LGH. He had also spent time working at the Ashley Youth Detention Facility, which is the focus of a separate case study. It appears that concerns and complaints in relation to Mr Griffin may have been made as far back as the early 2000s and periodically thereafter. A key area of inquiry for the Commission will be to understand, if such complaints were made, how they were handled and whether appropriate or any action was taken in response, including action to protect paediatric patients at the LGH. The conduct of the Tasmanian Health Service and the Department of Health will be examined. Senior hospital employees and departmental representatives may be called to give evidence to explain their action or inaction in the face of complaints made.

Commissioners, questions regarding the adequacy of the LGH's response to complaints of child sexual abuse do not appear to be limited to those involving Mr Griffin. The Commission has already learned of other children who may have made complaints against staff members at the LGH and whose complaints may have been ignored or not dealt with appropriately.

Nor are the issues necessarily limited to Launceston. The Commission has received allegations of similar patterns of abuse and failure to respond to complaints at the Royal Hobart Hospital. While the LGH will be the focus of the health case study, the Commission will also seek to understand the extent to which failures within particular hospital settings might reflect broader governance and cultural issues within the Tasmanian Health Service and the Department of Health.

Over the coming months we will take statements from a range of people, with a view to exploring these important issues during the public hearings.

Commissioners, we expect this case study to raise uncomfortable questions, including whether the response of persons and institutions --

COMMISSIONER BENJAMIN: Ms Norton, could I just get you just to stop for a moment. Are you okay?
MEMBER OF THE PUBLIC: I'm fine, thank you.

COMMISSIONER BENJAMIN: Thank you.

MEMBER OF THE PUBLIC: Thank you for checking; I appreciate it.

COMMISSIONER BENJAMIN: Thank you, Ms Norton.

MS NORTON: Thank you, Commissioner Benjamin. We do expect this case study to raise uncomfortable questions, including whether the response of persons and institutions to allegations of child sexual abuse in health settings might have involved negligence, wilful blindness or, worse still, deliberate cover-up. At this stage we cannot rule out the possibility that the evidence might support findings of misconduct in relation to persons of concern. Whether such findings are made is of course a matter for you, Commissioners.

Next, the Commission's terms of reference expressly call on you to consider the adequacy and appropriateness of the Department of Communities Tasmania's responses to allegations of child sexual abuse within the Ashley Youth Detention Centre.

Ashley is Tasmania's only youth detention facility. The children who are placed there can be as young as 10. Disadvantaged and indigenous communities are overrepresented within the cohort. The facility is located in Deloraine, remote from most children's families and support networks. It is a closed or 'total' institution, meaning that children placed there have limited or no contact with anyone other than Ashley staff members. It is well recognised that children in such institutions are particularly vulnerable to sexual abuse.

The Commission is aware of allegations of child sexual abuse occurring from 1970 to the present time. Those allegations have been made by or on behalf of children placed at Ashley, as well as by people who have worked there. Some have been made publicly and have been the subject of media reports or again the podcast The Nurse. Others have been disclosed to the Commission in confidential settings. The allegations include not only that there have been multiple perpetrators amongst Ashley
staff who have sexually abused children, but also that there are older children who have sexually assaulted younger children and have done so without any proper intervention or response by staff.

It has also been alleged that staff at Ashley have covered up the abuse, that they have destroyed records or failed to report abuse at all. Those raising concerns about the treatment of children at Ashley will perhaps have been glad to hear of the Tasmanian Government’s announcement in September this year that Ashley will be closed within three years and that different arrangements for youth justice will be put in place, including a therapeutic model of care for those who are placed in new youth justice facilities.

That proposed closure does not change the importance of the Commission examining the practices at Ashley and how allegations of child sexual abuse have been treated there. There are children held at Ashley right now. In the course of the coming three years more children will be placed there. Without change, three years may be too long a time for the State to continue to house some of its most vulnerable children at Ashley.

The scope of the allegations made about Ashley invites consideration of whether there is an institutional culture there which has normalised, facilitated or enabled child sexual abuse. On one view the experiences of children and staff from decades ago are mirrored in the experience of those at Ashley in more recent years. Ashley’s location and role as a major employer in a regional area appears to have contributed to the facility remaining open despite many reviews over many years having identified concerns about the safety of children detained there and the appropriateness of the prison model which, despite a purported move to a trauma informed approach, appears to continue to inform the way that Ashley is run.

There is also an apparent incongruence between the nature and extent of allegations which are known to the Commission and the much smaller number of complaints which have been made to oversight bodies. It appears that the structures which ought to be ensuring appropriate oversight may not be working as they should and that the result is that child sexual abuse may have been occurring at Ashley at rates significantly higher than reports to oversight
bodies would suggest. It may be that children either
didn't know they could complain, didn't know how to
complain, or were fearful of making a complaint.

It might also be that there has been deliberate
cover-up either of abuse or risks of abuse. There may have
been failures to report harm; victimisation of children and
others who make complaints. There may have been attempts
to discourage complaints.

Another question warranting exploration is
institutional inertia. Why has it been, on the evidence,
so hard to make some of the changes that reports over many
years have suggested should be made to better protect
children from the risk of child sexual abuse and other
kinds of harm? Is there conscious resistance to change
and, if so, what is driving that resistance?

The government's plan for new youth detention
buildings may not be sufficient to ensure the safety of
children in youth detention if a culture which has failed
to prevent abuse at Ashley is not identified and prevented
from being transferred to new facilities. Part of the role
of the Commission will be to understand the slow pace of
progress of reforms that other reports and bodies have
recommended. Where necessary, the Commission will call
people to account for that lack of progress.

The Commission will hear from witnesses about
policies, procedures and practices of Ashley and the
Department of Communities, including in relation to
Ashley's structure, the training of staff and the extent to
which external professionals are able to gain access to and
offer support to children.

We will hear about how complaints are made and
investigated, including how records are kept and
notifications made. We will look at how staff are trained
to treat children and how they in fact do treat children,
including whether there is improper use of strip searching,
isoaltation, and threats of being placed at risk of harm from
other children.

How children displaying harmful sexual behaviours are
identified and treated will also be looked at, as well as
how children are protected or not protected from the risk
of harm from other, and often older, children.
Finally, the role that is or should be played by Communities Tasmania, the Tasmanian Police, the Health Department, the Custodial Inspector and the Commissioner for Children and Young People will be looked at.

As foreshadowed, the Commission is also considering responses to child sexual abuse where the child is under the guardianship or custody of the Secretary of the Department of Communities Tasmania and living in out-of-home care. In the past such children would have lived in institutions like orphanages or children's homes. Now they will usually be in a foster care or kinship placement or in the care of government funded services as part of the child safety services system.

Children in the guardianship or custody of the Secretary will often have histories of trauma, disrupted attachments and abuse or neglect in their families of origin which will make them vulnerable to future exploitation, including child sexual abuse. They will have come into the guardianship or custody of the Secretary because they needed care and protection which they were not able to receive in their families of origin.

The cohort of children in out-of-home care includes an overrepresentation of children with disabilities or mental health problems, children who are indigenous or from culturally and linguistically diverse backgrounds, and children who have already been subjected to child sexual abuse. The out-of-home care system should be a safe place for these vulnerable children, a place where they can be supported to grow from childhood to adulthood without coming to further harm.

Sadly, there are indicators that, far from being a place of safety, the out-of-home care system can itself place children at risk of being sexually abused. The information already gathered by the Commission through submissions, consultations and a review of past reports into the system suggests that children can be at risk from foster carers and Child Safety Services workers; from grooming and other exploitative behaviour from adults outside the system who take advantage of the vulnerability of the children inside the system; and also they can be at risk from other children in the system who, often as a consequence of their own trauma and experiences, engage in
harmful sexual behaviours towards other, often younger, children.

Each of these risks needs to be separately identified and addressed in any system which truly protects children from child sexual abuse. In considering the extent to which the present system is actively reducing those risks, the Commission will be inquiring into matters of both culture and process, including the proper role of government in setting and monitoring standards for out-of-home care.

Questions including the following will be asked. Are those working in the system, including Child Safety Services staff, third party guardianship holders, and carers appropriately resourced, assessed, trained and supported to identify and respond to risks of child sexual abuse, including the risks posed by harmful sexual behaviours among children and the signs and risks of grooming and sexual exploitation?

Are there risk assessments, safeguards and complaint processes which can be relied upon to identify and exclude adults who pose a risk to children from having any role in out-of-home care?

How are children who are in care and engaging in harmful sexual behaviours responded to and supported in a way which doesn't place other children in care at risk? How are child safety and out-of-home care providers protecting children in State care from sexual exploitation?

Finally, does the recent introduction of the Strong Families Safe Kids Advice and Referral Line serve its intended purpose of providing early responses to concerns about the safety and wellbeing of children, including in relation to child sexual abuse?

The public hearings will include evidence relevant to these questions from a range of perspectives, including the experiences of children in care and care leavers, governmental and non-governmental providers of out-of-home care and associated services, experts and the relevant staff from Communities Tasmania.

While each case study will involve its own issues, we anticipate that certain themes and lines of enquiry will
transcend individual institutions. The information available to the Commission invites the conclusion that child sexual abuse within Tasmanian government institutions has consisted of more than just isolated incidents of predators gaining access to children within an otherwise safe system. Rather, we are concerned that such abuse may have been made possible by structural weaknesses in how these institutions understand and respond to child sexual abuse. The reasons for this are likely to be complicated and to require detailed exploration.

The public hearings will examine the extent to which institutions such as schools, hospitals and Ashley display the attributes of child safe institutions. Do they respect children? Are children given agency and a voice? Do senior staff, in particular, place the welfare of children at the centre of their work and above questions of reputation, economics and efficiency? Do these institutions recognise the risk of child sexual abuse as real and take action accordingly? Are children and concerned adults encouraged to raise complaints, and are they listened to when they do?

The work of the Commission thus far suggests that not only have some children had terrible experiences in institutional settings in this state, there may also have been failures to respond to those experiences in ways which gave paramount concern to child welfare and the prevention of further harm.

The issue of staff culture will be at the forefront of our inquiries. How is it that child sexual abuse has occurred in government institutions? Do staff feel supported to raise concerns? Was there wilful blindness or indifference to the risks of abuse? Perhaps there was a genuine lack of knowledge about how perpetrators groom and abuse their victims. Perhaps it was in part a failure of imagination about what abusers are capable of, or borne of assumptions about the reliability of children who complain of abuse. At worst, there may have been an active culture of cover-up or minimisation to protect reputations and institutional interests. These are confronting questions, but they must be asked.

The evidence also raises difficult questions about the extent to which institutions may have become desensitised to the risks posed by child sexual abuse, especially where
the children belong to cohorts with additional needs - for instance, children who are identified as young offenders or troublemakers. There may be a failure to recognise that children's behaviour is the result of trauma, and a lack of training and support for staff who have the role of caring for and supporting those children.

Next, we will examine the investigative and disciplinary processes which apply to public servants against whom allegations of child sexual abuse are made. While criminal prosecutions and convictions take time and may not always be achieved, appropriate and decisive action taken at a managerial level within government institutions is essential to reducing the likelihood of continued offending while the criminal process plays out.

The Commission has been furnished with information about internal disciplinary processes applied within the Departments of Education, Health and Communities where allegations of child sexual abuse have prompted the stand-down of State Service employees. We will examine whether those stand-downs have occurred in a timely way following the application of robust departmental policies, including the extent to which stand-downs may have been prompted by external scrutiny rather than internal rigour.

Finally, the role of the State and its obligations as a model litigant in the national redress scheme and in civil litigation will be considered in light of the impact that current policies and procedures may have on claimants or litigants who have suffered child sexual abuse in government institutions. Has the State’s conduct of civil claims on occasions served to exacerbate the harm suffered by victim-survivors? Are appropriate support services available? If they are not, how can systems be reformed to alleviate the impact of child sexual abuse on victim-survivors?

We also expect the public hearings to look beyond the specific areas of education, youth justice and out-of-home care to consider other key Tasmanian agencies and officeholders whose work responds to or influences how child sexual abuse is viewed and treated in those specific areas.

We will look at information sharing and oversight. How do different agencies and officeholders work together
in a coordinated fashion to avoid fragmentation and silos? If they don't, why is this the case? We will consider calls for a reportable conduct scheme to be introduced, as well as the available models. We may also invite the Commission to consider whether the State's integrity system is equipped to identify, investigate and address misconduct in relation to child sexual abuse. If it is not, should it be reformed or replaced?

Child sexual abuse includes many forms of conduct which are criminal offences. Where it occurs and is reported to the police, the criminal justice system is engaged. Perceptions of how those within that system, particularly the police and the Director of Public Prosecutions, will respond to complaints may be a factor which influences whether children disclose abuse in the first place, and the assumptions, practices and structures within those systems may affect whether children who do make reports to police will have their reports taken seriously and investigated.

Whilst a detailed examination of the criminal justice response to child sexual abuse is beyond the scope of this Commission, it is necessary and appropriate to consider how children can be best supported after they report sexual abuse, including as they give evidence in criminal proceedings.

The recent introduction of a pilot scheme of intermediaries - trained persons who are present to assist as child witnesses give their evidence - is one example of a reform which may reduce stress on children and improve their experience of being questioned in court. But there may be other changes which would make the system safer for children and better ensure that perpetrators are brought to account without exposing children to further traumatic experiences. These might include providing greater support to victim-survivors once offences are reported, the creation of a specialist policing unit, or training for those who engage with child victim-survivors in the criminal justice system.

Commissioners, these inquiries will be conducted with a view to both understanding past and current practices, and informing the recommendations you make for systems reform. The public hearings will present an opportunity for the Commission to hear from leading thinkers in
relation to how systems and processes can be improved,
having regard to both best practice and the needs and
resources of the Tasmanian community.

Again, the work of the Commission is not intended to
duplicate the work of past bodies and reports, but the
reality is that across all the institutional context that
the Commission will be examining that past work has not
always borne fruit. We expect that one of the themes for
the Commission's work must be why have past reviews and
reports not been able to solve the problems they have
identified. Are there cultural or structural reasons why
these problems persist? To what extent have Tasmania's
size and demographics affected past responses? If they
have, how can your findings and recommendations take
account of those State specific issues while not
compromising on what is needed to keep children safe?

In this context we will examine concerns regarding the
Tasmanian Government's lack of response to key
recommendations of the National Royal Commission. In
particular, limited progress has been made on the
introduction of a reportable conduct scheme, or the
implementation of the National Principles for Child Safe
Organisations, which were endorsed by the Council of
Australian Governments in 2019.

The consultation phase for the draft legislation, the
Child Safe Organisations Bill 2020, was completed in
February this year but legislation is yet to be tabled in
Parliament. Criticisms have also been made by the
community sector about the content of the draft legislation
and whether it is consistent with the National Principles.
Questions will be asked about why this significant area of
reform remains outstanding and whether what is proposed is
sufficient.

The public hearings will also be an opportunity to
review the Government's progress towards reforms or
recommendations that are already within its capability to
implement. The report of child sexual abuse within the
Department of Education and the issues which have led to
the intended closure of Ashley are matters which the
government can be taking action on now. Where Government
has the tools to make Tasmanian children safer in Tasmanian
institutions today, it should use them. It should not wait
until the outcome of this Commission is known to take
action which it already knows is necessary.

The recommendations you make will need to be sound in both principle and practice. They will need to be informed by the best evidence of what needs to be done, but to also take account of the context in which they are to be given effect. This means that questions of how to make the Commission's own recommendations capable of speedy and full implementation, and how to make sure its recommendations are in fact implemented, will be a matter of utmost concern to the Commission.

The task before the Commission is a challenging and complex one. In some areas the Commission's work may show that there are good practices and substantial progress has been made in protecting children from child sexual abuse in Government institutions in this state. The work may also demonstrate that there have been failures that will have lifelong implications for victim-survivors.

The importance of your work to the Tasmanian community cannot be overestimated. The Tasmanian Government, through its institutions and agencies, is the largest employer in the state. It is the primary provider of the core services of education, health, youth justice and out-of-home care. Children must be safe in public institutions. Complaints of child sexual abuse must be listened to and acted on. Perpetrators must be dealt with. Victim-survivors and other complainants must be supported when they come forward.

Commissioners, at the end of it all your task is to produce a final report and make recommendations that provide the Tasmanian Government with a blueprint for practical and concrete steps aimed at protecting the safety of Tasmanian children within public institutions. It will then be a task for Government to do the work necessary to make its institutions child safe places of the future. It is the solemn hope of all involved in the work of this Commission that it will be anything but 'just another inquiry'. If the Commission pleases.

COMMISSIONER BENJAMIN: Thank you, Ms Norton. We will now adjourn.

AT 11.30AM THE HEARING ADJOURNED