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**TRANSCRIPT OF PROCEEDINGS**

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

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

**BEFORE:**

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

**On 12 May 2022 at 10.04am**

**(Day 9)**

1 PRESIDENT NEAVE: Thanks, Ms Bennett.

2

3 MS BENNETT: Thank you, Commissioner. Before I commence,  
4 I understood that the President was going to remind those  
5 listening. Please, Commissioner.

6

7 PRESIDENT NEAVE: Yesterday the Commission made a  
8 restricted publication order in relation to the evidence of  
9 the next witness. I remind everyone that that order still  
10 applies to the evidence they give today.

11

12 The order requires that anyone who watches or reads  
13 the evidence given by the next witness to the Commission  
14 must not share any information which may identify the  
15 people who will be referred to as "Brad, Jeremy, John,  
16 Justin, Mark and Wayne".

17

18 In addition, the order also requires that anyone who  
19 watches or reads the information must not share any  
20 information which may identify any school which may be  
21 referred to during the evidence unless the Commission  
22 advises otherwise. A copy of the order is outside the  
23 hearing room and is available to anyone who needs a copy.

24

25 MS BENNETT: Thank you, Commissioner.

26

27 <TIMOTHY JOHN BULLARD, recalled: [10.05am]

28

29 <EXAMINATION BY MS BENNETT:

30

31 MS BENNETT: Q. Mr Bullard, you were sworn yesterday and  
32 you understand you are under that same obligation, don't  
33 you?

34

A. Yes.

35

36 Q. You've made seven statements - sorry, six statements -  
37 can I just make sure that I have them all. I'm going to  
38 use some pseudonyms, do you have a list of pseudonyms in  
39 front of you?

40

A. Yes, I do.

41

42 Q. By reference to that list, have you made a statement  
43 in relation to someone we will refer to as "Mark"?

44

A. Yes, I have.

45

46 Q. Subject to one correction, a typographical correction  
47 in that statement which I will draw the Commissioners'

1 attention to when we come to that statement, is that  
2 statement true and correct?

3 A. Yes, it is.

4

5 Q. Thank you. In relation to the person with the  
6 pseudonym "Brad", have you made a statement connected with  
7 the person known as Brad?

8 A. Yes, I have.

9

10 Q. And, have you reviewed that statement recently?

11 A. Yes, I have.

12

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

14 A. Yes, they are.

15

16 Q. You made a statement in relation to a person we are  
17 referring to as "Jeremy"?

18 A. Yes, I have.

19

20 Q. And, have you read that statement recently?

21 A. I have, yes.

22

23 Q. Is that statement true and correct?

24 A. Yes, it is.

25

26 Q. Have you made a statement in relation to somebody we  
27 have been referring to as "Wayne"?

28 A. Yes, I have.

29

30 Q. Have you read that statement recently?

31 A. I have, yes.

32

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

34 A. Yes, they are.

35

36 Q. You've made another statement which I will refer to as  
37 a general statement; do you know the statement I'm  
38 referring to?

39 A. I do, yes.

40

41 Q. That's been provided in two different tranches but I'm  
42 going to refer to the one you've provided earlier this week  
43 as your fifth statement and I'll refer to that as "a  
44 general statement". Are you aware of the statement I'm  
45 talking about?

46 A. Yes.

47

1 Q. Speaking of that statement compendiously have you read  
2 it recently?

3 A. I have, yes.  
4

5 Q. Are the contents of it true and correct to the best of  
6 your knowledge?

7 A. The contents are true and correct except I think  
8 yesterday under examination we did refer to paragraph 308  
9 under Question 41, and at that point in time I indicated  
10 under examination that I believed that that paragraph was  
11 correct. I have since been informed overnight that in fact  
12 in relation to paragraph (b), termination of employment as  
13 a result of an ED5, there has been one termination, so that  
14 would then make four suspensions.  
15

16 Q. And is that termination in respect of any of the  
17 people whose pseudonyms I've mentioned this morning?

18 A. Yes, it is.  
19

20 Q. Is that the person named "Jeremy"?

21 A. Yes, it is.  
22

23 Q. Thank you. So, I count five statements,  
24 Commissioners, and I'm going to start, Mr Bullard, by  
25 asking you about the fourth of those statements concerning  
26 Wayne. You heard a report of the evidence of Rachel  
27 yesterday?

28 A. Yes, I did.  
29

30 Q. And she spoke about her experiences following the  
31 conduct of Wayne ?

32 A. Yes.  
33

34 Q. Now, the Commissioners will recall both of those are  
35 pseudonyms. It's fair to say Rachel was a student within  
36 the Department of Education in 2005, and that she made some  
37 allegations, her mother made some allegations in 2005 and  
38 she made some allegations in 2007, and those allegations  
39 together concerned the conduct of a person referred to as  
40 Wayne; is that right?

41 A. That's correct, yes.  
42

43 Q. Just to be clear I'd like to understand; we've been  
44 talking a lot about the state Code of Conduct.

45 A. Yes.  
46

47 Q. In 2005 was the state Code of Conduct different in any

1 material way to the Code presently in place?

2 A. No, it was not, however, I do note that in 2005 that  
3 Employment Direction No.5 was in fact known as  
4 Commissioner's Direction No.5 and was different in some  
5 respects.

6

7 Q. So we see in some of the documents a reference to CD5  
8 and ED5?

9 A. That's right.

10

11 Q. And the material parts of the direction remain the  
12 same across the time periods?

13 A. Yes, they do.

14

15 Q. And the Code of Conduct, the state Code of Conduct  
16 which you refer to in about paragraph 47 of your Wayne  
17 statement is materially the same across the period 2005,  
18 2007 to the present; is that right?

19 A. That's correct, yes.

20

21 Q. So, I'd just like to understand before we get into the  
22 detail of that case study about how that Code of Conduct  
23 that you've referred to in your statement is to be  
24 understood by the Commissioners and how its relationship to  
25 what I'll talk about as ED5, we understand that to mean CD5  
26 or ED5 depending on the time period. Is that clear?

27 A. Yes.

28

29 Q. So when somebody comes to - or in 2005 comes to the  
30 Department of Education and says, I have a concern that  
31 there has been inappropriate conduct by a teacher towards a  
32 student, that could trigger an ED5 to determine if the  
33 teacher has breached the Code of Conduct; is that right?

34 A. That's correct, yes.

35

36 Q. And the Code of Conduct as you identify it, relevantly  
37 at paragraph 47, includes a couple of matters I'd like to  
38 understand. First, there's sub-paragraph (4):

39

40 *An employee when acting in the course of*  
41 *State Service employment must comply with*  
42 *all applicable Australian law.*

43

44 And you follow there and extract a definition of  
45 "Australian law"?

46 A. Yes, that's correct.

47

1 Q. Now, do I understand your evidence to be - let me  
2 pause there. That includes any Act of the state or  
3 Commonwealth; is that right?

4 A. Yes, that's correct.

5

6 Q. So it need not be a criminal law?

7 A. No.

8

9 Q. So it would encompass, for example, laws against  
10 sexual harassment, discrimination?

11 A. Yes.

12

13 Q. And at the stage at which the ED5 process is commenced  
14 the question is, will an investigation under that direction  
15 show on the balance of probabilities that there has been a  
16 breach of that code; is that a fair summary?

17 A. Yes. To commence an ED5 investigation I have to form  
18 a reasonable belief that there may have been a breach of  
19 that code.

20

21 Q. And it need not be - at the stage that you're forming  
22 that belief it might be there are facts that you don't know  
23 yet?

24 A. That's correct.

25

26 Q. And indeed, it will usually be the case, won't it,  
27 that there will be facts that you don't know yet?

28 A. Yes, it will.

29

30 Q. And so, an ED5 is a process that is initiated to  
31 determine if there has been a Code of Conduct breach; it  
32 would be the tail wagging the dog, wouldn't it, to ask if  
33 there is a Code of Conduct breach disclosed in the  
34 complaint governing whether or not to carry out the  
35 investigation. Is that how you understand it?

36 A. It's slightly more nuanced than that.

37

38 Q. Okay.

39 A. Because I have to form a reasonable belief that there  
40 may have been a breach. So, I can't say I have facts  
41 before me and I'm concerned about those facts, and so, if I  
42 could give an example that's absent of child sexual abuse?  
43 Say that you've consumed too much alcohol at a sporting  
44 club on the weekend; nothing to do with employment but  
45 someone's come and said, "Gosh, they were a bit under the  
46 weather". There I would have to say, given the facts that  
47 you were in a private capacity at a private club, not as a

1 state servant, can I form a reasonable belief that there  
2 may have been a breach? And in that case I may well form  
3 the view that I cannot. So, the --  
4

5 Q. Without any further investigation? Because let's take  
6 your example because I take it by the fact that you're  
7 raising that example I take you to suggest that you see  
8 that as a clear-cut example; is that fair?

9 A. Yes, that's correct.

10

11 Q. What if you get told Mr Smith was drunk at the sports  
12 club on the weekend?

13 A. Yes.

14

15 Q. And someone's made that complaint to you. Would you  
16 make any further enquiry about the conduct of that person  
17 that triggered the complaint?

18 A. Certainly, absolutely in terms of gathering some more  
19 information: our workplace area would, no doubt, try to  
20 understand the basis of that complaint. Is it that you are  
21 concerned because you know them as your teacher, are you  
22 concerned because you have a relationship with that person  
23 in some other capacity that you see linked to employment?

24

25 Q. He exposed himself on the table while he was drunk,  
26 comes out after some investigation; could that trigger an  
27 ED5?

28 A. So, in that case we would need to be looking,  
29 I believe, at (14) - so, section 9(14), and we would need  
30 to start to think about whether we thought that that  
31 adversely affected the integrity and good reputation of the  
32 State Service, or we would need to form a view under  
33 subsection (4) that in some way he had failed to comply  
34 with the law.

35

36 Q. And on the example I've given you he's failed to  
37 comply with the law, hasn't he? He's exposed himself in a  
38 public place. That started to you as a complaint that he  
39 was drunk. Upon further enquiry it became something that  
40 could trigger (4)?

41 A. Yes, that's right.

42

43 Q. And you've identified (14), we'll come back to that  
44 because I'd like to add to the hypothetical. Let's say  
45 upon further enquiry it turns out there are some kids there  
46 who go to school with that person; is that now under (4)?

47 A. Under?

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Q. Under (4)?

A. Under subsection (4).

Q. Yes?

A. Once we have children who are students, children and young people who are students, certainly (4) would stand, but we would also go to acting with care and diligence in the course of State Service employment.

Q. Absolutely and I'll come back to that, I'm just focusing for a moment - because at the moment the complaint has come in as one of public drunkenness and that's - your example is a clear-cut complaint outside the scope. With two further questions we've come within the scope of two categories of the Code of Conduct. So, you would agree with me, Mr Bullard, that it's not always straightforward to identify at the point of complaint whether you're properly in ED5 or not?

A. Absolutely, and --

Q. It often requires further investigation, doesn't it?

A. It absolutely does.

Q. Let's turn to number (14) because that's another issue. I think we've established that (4) can respond to a broad range of matters and that those often require further investigation: (14) is even broader, isn't it, than (4)?

A. Yes.

Q. So, everything that, if a State Service employee acts inconsistently with Australian law, it will automatically be a (14) as well, is that fair, generally speaking?

A. There still has to be a nexus with employment, is my understanding. So, I'm only hesitating because we're getting into some areas that are legally nuanced about what bringing the integrity and good reputation of the State Service into disrepute may be.

Q. I understand, I am interested though in your opinion as the head of your department which oversees this particular process for Department of Education staff, so I'd like to explore your views, and I accept that you're not acting as a lawyer, as a Secretary, but I just want to understand, wouldn't an employee generally bring the State Service into disrepute by breaching Australian law?

A. You would need to look at the facts of that because



1 under (14) there does still have to be some - my  
 2 understanding and advice is - some nexus with your role in  
 3 the State Service. Now, in terms of how do I treat that,  
 4 as I've previously said I have to form a reasonable belief  
 5 there may have been a breach. I don't act in a legal  
 6 capacity in coming to that and, in fact, in the course of  
 7 reaching a determination I would think, as one of the  
 8 things that I'm going to do in the investigation, is to  
 9 fully understand the facts and then seek legal advice about  
 10 whether, on the facts that I've been presented with, it is  
 11 the view of the Solicitor-General that there is that  
 12 necessary nexus to bring into action clause (14).

13  
 14 Q. Following an investigation, being the key proposition?  
 15 A. That's right.

16  
 17 Q. You can't really do that until you've got all the  
 18 facts before you?  
 19 A. That's correct.

20  
 21 Q. Can I just explore with you about that, because I  
 22 think you said earlier you need to be satisfied, you're the  
 23 decision-maker, you're what we lawyers would call an  
 24 administrative decision-maker; do you know what I mean by  
 25 that?  
 26 A. I do.

27  
 28 Q. It's quite different to a judicial decision-maker,  
 29 isn't it?  
 30 A. Yes.

31  
 32 Q. So when we go back to (4) for a moment, acting in the  
 33 course of state service employment, the employee must  
 34 comply with all applicable Australian law, isn't it your  
 35 role to determine, on the balance of probabilities, if  
 36 Mr Smith exposed himself at the party, and then you say, if  
 37 I'm satisfied of that fact on the balance of possibilities  
 38 does that breach an Australian law?  
 39 A. I would need to make an assessment about whether there  
 40 had - that person had complied or not with Australian law,  
 41 yes.

42  
 43 Q. But it's your determination, isn't it?  
 44 A. Yes, it is.

45  
 46 Q. Can we unpack why, in paragraph 48, you say:  
 47

1           *Whilst an act of child abuse by an*  
2           *employee, if proven in a court of law would*  
3           *constitute a breach of the code by virtue*  
4           *of subsection (4), there are many instances*  
5           *where a prosecution does not proceed or is*  
6           *unsuccessful.*

7  
8           So, just to pause there: you don't need a breach of  
9           law to be proven in a court for subsection (4) to apply, do  
10          you?

11         A.   Well, I'm only - I'm only turning my mind to this now  
12               because custom and practice has been that you would need  
13               to, if you like, have this process operating in reverse;  
14               that there had been a breach; for example, a court had made  
15               a finding that you'd breached an Australian law and  
16               therefore we would activate 9(4) of the Code of Conduct.

17  
18               So, yes, I accept the matters that you've set out and  
19               I accept the process; in terms of our custom and practice,  
20               that has not been the way that we have worked within the  
21               Code of Conduct.

22  
23         Q.   Has the custom and practice been wrong? In your view  
24               as you sit here now before the Commissioners, has it been  
25               wrong?

26         A.   I am not going to make a determination as to whether  
27               it has or not because I would want to seek some more legal  
28               advice about whether what's been expressed here today does  
29               in fact provide me with the scope that you've outlined.

30  
31         Q.   Is it your evidence that this hasn't come up for you  
32               before?

33         A.   The matter in 9(4) is not one that we use as a matter  
34               of practice in terms of Code of Conduct.

35  
36         Q.   Is it generally looked at as being applicable only to  
37               criminal law?

38         A.   It's looked at as being applicable where there has  
39               been a law of the Commonwealth, state or territory that has  
40               actually been breached.

41  
42         Q.   And as far as you can tell the Commissioners sitting  
43               here - you've been the Secretary since 2017 in an acting  
44               capacity?

45         A.   That's right, yes.

46  
47         Q.   And then 2018 in a full-time capacity?

1 A. Yep.

2

3 Q. That's five years you've headed the department and I'm  
4 just trying to understand, in all that time have you ever  
5 had to make a decision about sub-paragraph (4)?

6 A. So, in terms of what normally happens with  
7 sub-paragraph (4), and I wouldn't want to say that I've  
8 never made a decision, we've certainly commenced or sought  
9 to commence a Code of Conduct, but once we reach a point  
10 where someone is even charged with a breach of criminal law  
11 or is found guilty, then they will normally resign from  
12 their employment.

13

14 Q. Well, we have instances in the case studies we're  
15 going to look at today where that hasn't happened. So,  
16 does the department have in place policies and procedures  
17 to actually respond to that situation?

18 A. Where someone removes them - where someone is charged  
19 or?

20

21 Q. Where someone might have - where a child alleges  
22 they've committed a crime, where a child alleges they've  
23 sexually harassed them, where a child alleges they  
24 discriminated against them; I'm just trying to understand  
25 if that has been viewed as something that triggers a breach  
26 of sub-paragraph (4) or if that is viewed as something that  
27 is entirely contingent upon legal processes?

28 A. So, in terms of each of those matters, and just to be  
29 very clear on how we step this through, where there is any  
30 allegation of child sexual abuse or potential child sexual  
31 abuse that is made by a child or young person in our system  
32 they're immediately stood down from duty and we quickly  
33 gather some initial evidence or facts and we move straight  
34 into suspending them under ED4 and commencing Code of  
35 Conduct proceedings.

36

37 You're asking me which of those apply in different  
38 respects or have applied, and my response to that is that  
39 clause (2), clause (3), sometimes clause (14) and  
40 occasionally clause (4) are the clauses that are used to  
41 put those alleged breaches to the employees.

42

43 Q. What I'm really testing with you is your positive  
44 evidence in paragraph 48 which refers to the need or it  
45 adverts to the court of law as being relevant to this  
46 process.

47 A. That's right.

1  
2 Q. And I'd like to suggest to you that your evidence  
3 today suggests it is unclear as to whether or not that's  
4 actually the case or not; is that fair?

5 A. So, the evidence that I'm now giving to you is --

6  
7 Q. Yes, give it to me now.

8 A. -- on the matters that you've raised today is that  
9 clause (4) certainly requires more advice and consideration  
10 as to its applicability.

11  
12 Q. Isn't it something you should be across, Mr Bullard?

13 A. When I am entering these allegation - when I'm faced  
14 with allegations of child sexual abuse my priority is to  
15 ensure that the child who's made the allegations is safe  
16 and that we have a way of further investigating the matters  
17 that have been alleged, and the way in which we do that and  
18 the clauses that we use in section 9 in some respects are  
19 immaterial; we need to make a decision about which of those  
20 clauses it is most appropriate to investigate the matters  
21 under, and we also need to make a determination about which  
22 of those clauses we believe have the highest opportunity  
23 for success.

24  
25 I need to point out that it doesn't matter which of  
26 those clauses that I choose to investigate in terms of the  
27 sanction that I can impose. So, people might assume, if I  
28 went to (4), law is going to bring a higher sanction.  
29 People might assume that, but I am not fettered in any way  
30 when I get to the end of making a determination about a  
31 breach as to which of the sanctions as laid out I can use.

32  
33 Q. I understand that. Why don't we try and illuminate  
34 this by reference to one of the case studies and by  
35 reference to the case study explored yesterday with Rachel  
36 concerning Wayne. Could the operator bring up  
37 TPOL.0002.0004.0061-0008, at page 8. Mr Bullard, this will  
38 be a summary of the initial complaint, part of the initial  
39 complaints. Do you broadly remember what the initial  
40 complaints were?

41 A. Yes, I do.

42  
43 Q. So, we've got the tucking into bed on at least two  
44 occasions, Wayne tucked in Rachel, the "nice arse" comment,  
45 the drawing of a penis with a biro, physical contact by  
46 piggybacking, touching and bruising on the leg, rubbing  
47 shoulders, provision of alcohol. They're roughly the

1       allegations as they were initially.

2

3               There was then subsequently, and I'll just pause  
4       there. Do you need any further detail around those? Do  
5       you broadly know the ones I'm talking about?

6       A.    Yes, I do.

7

8       Q.    I'll ask the operator to bring that down. There was  
9       around the same time a bit later in 2005, added to that  
10       complaint was the "MILF in training" t-shirt, do you  
11       remember that?

12       A.    I do.

13

14       Q.    And, "MILF", you understand means, "Mother I'd like to  
15       fuck"?

16       A.    I do now, yes.

17

18       Q.    There was also some complaints around that time about  
19       contact in breach of a direction that Wayne not contact  
20       Rachel?

21       A.    Yes.

22

23       Q.    And there was also a complaint concerning some  
24       correspondence; do you remember that? Perhaps I'll come  
25       back to that one because I think it arises at - let's just  
26       stick with these ones for now. Those are what I'm going to  
27       talk about as the 2005 allegations. Is that clear?

28       A.    Yes.

29

30       Q.    Okay. Now, those allegations basically arose in the  
31       course of 2005; is that right?

32       A.    That's correct, yes.

33

34       Q.    And you've had a report of Rachel's evidence that  
35       there was more but she felt constrained about revealing  
36       more and that she was confused by the process and affected  
37       by her age. You've had a report of that evidence?

38       A.    Yes, I have.

39

40       Q.    You're aware that the investigation took two years?

41       A.    Yes.

42

43       Q.    And, I think I understand your evidence that that time  
44       period was too long?

45       A.    It was a very long time period, yes.

46

47       Q.    And, was it too long?

1 A. Yes, it was in my opinion too long.

2

3 Q. And at the time did the department, to the best of  
4 your knowledge, have any ability to require that the  
5 investigators justified the time they were taking?

6 A. I can't speak to that, I don't know what the approach  
7 was in 2005.

8

9 Q. Does it today have the power to cause the  
10 investigators to justify the time they're taking?

11 A. Certainly, and in terms of the evidence that I  
12 provided to Ms Norton yesterday, we do check in on where  
13 different investigations are at and have, if you like,  
14 report backs or status reports on those.

15

16 Q. And, can you enquire as to the gender composition and  
17 training of the investigators?

18 A. Yes, we could.

19

20 Q. And, have you ever done that?

21 A. Not to the best of my knowledge, and the point --

22

23 Q. Is there any process for you to do that, is there any  
24 protocol?

25 A. No, there is not, and the points that were made in the  
26 Commission yesterday around that, which were very good  
27 points, have been discussed last night, about what we can  
28 be doing to ensure that there is gender composition and  
29 appropriate balance in the investigators that are provided.

30

31 I saw a summary of Rachel's evidence yesterday, as  
32 I've said, and I've also gone back and reviewed the matter  
33 and I absolutely accept that part of the impact that this  
34 matter had on Rachel was compounded by the way in which the  
35 matter was investigated and the approach that those  
36 investigators took, and I do not accept that we could say  
37 that that was in any way acceptable.

38

39 Q. And my question is, are there any systems today that  
40 are different to the systems in place then?

41 A. So, the change would be - and I think I talked about  
42 this yesterday - that at the time that this was undertaken  
43 there would have been a mosaic of different approaches as  
44 to whether we had internal people looking at it, whether  
45 there was an external investigator, whether there was a  
46 mix; and today we use independent investigators to go and  
47 look at matters such as this, so that would be the change.

1  
2 Q. So, there's no protocol or system presently in place  
3 to make sure that there is a proper approach to gender or  
4 having a trauma-informed approach. Do you, for example,  
5 have a tender process for your investigators where you say,  
6 "Demonstrate that you have these capacities"?

7 A. So, that's been discussed across government and it's  
8 work that we have undertaken to lead. Certainly in terms  
9 of, if you like, trying to put together a panel of people  
10 who have appropriate qualifications, gender mix, balance,  
11 trauma-informed approach; that work is underway, but I  
12 absolutely accept at the moment every agency is going off  
13 and commissioning. And I think, as I said yesterday, in a  
14 small pool, in a small pool in Tasmania of people that can  
15 undertake these investigations to the standard that is  
16 required and expected.

17  
18 Q. So, the answer to my question is, there's no  
19 difference in terms of current systems and processes  
20 between 2005 and the present day, in that respect?

21 A. My response is that the professionalism of the  
22 investigators and the fact that they're independent is a  
23 change in the process from 2005.

24  
25 Q. But there is nothing new in place to take steps to  
26 ensure gender, trauma-informed or qualification status?

27 A. No, not at this point and, as I said, it is a matter  
28 that was under active discussion.

29  
30 Q. I understand. Could I ask the operator show us  
31 TPOL.0002.0004.0061-0011, at page 11, this is from the  
32 investigator's report. We might, if the operator will  
33 forgive me - I'm sorry, that's the wrong reference - if the  
34 operator will forgive me, we might go to page 1 of that  
35 document first, just to show what it is.

36  
37 That's the report that was done by the investigators;  
38 is that right?

39 A. I believe so, yes.

40  
41 Q. Have you read it?  
42 A. I have read it.

43  
44 Q. Could I ask the operator to go to what is marked as  
45 page 11? I just want to draw your attention to a comment  
46 that the investigator makes having investigated the 2005  
47 comments. The investigator says:

1  
2       ... it is apparent on the evidence  
3       obtained ...

4  
5       Perhaps we could, at the first line 8.6:

6  
7       ... it is apparent on the evidence obtained  
8       during the course of this investigation  
9       that the respondent continues to assert  
10      what might be arguably categorised as an  
11      artificial delineation as to his contact  
12      with Rachel when in school, and when not in  
13      school.

14  
15      Although the respondent as a  
16      [REDACTED]-year-old male may find it easy  
17      to make this distinction, a somewhat naive  
18      [REDACTED]-year-old school girl may not be  
19      armed with such a level of understanding.

20  
21      Now, that's what the investigator put to the  
22      department in 2005. You've read that before?

23      A.   Yes, have I.

24  
25      Q.   And you'd agree with that analysis?

26      A.   The analysis as --

27  
28      Q.   That one should perhaps not be so quick to draw  
29      artificial delineations between the contact of an older  
30      male teacher and a younger school girl?

31      A.   Absolutely. Yes.

32  
33      Q.   Yes, could I ask the operator to bring that down?

34  
35      Going through each of the allegations in 2005, I can  
36      take you to this as required, I'll bring that up briefly as  
37      a matter of fairness to you. Could I ask the operator to  
38      show TPOL.0002.0004.0179-0002, page 2. These are  
39      the [REDACTED] 2006 findings in respect of the 2005  
40      allegations. Have you familiarised yourself with those?

41      A.   Am I able to see the document?

42  
43      Q.   Yes.

44      A.   Is that the letter from the then Secretary to Wayne?

45  
46      Q.   Yes.

47      A.   Yes.



1  
2 Q. Let's leave it there because I'm not sure about the  
3 redactions. I'll come back to the addressee. You will see  
4 there the finding of the department is that the tucking  
5 into bed on at least two occasions was upheld?

6 A. Yes.

7  
8 Q. The "nice arse" comment was upheld. The drawing of  
9 the penis with a biro was upheld. The physical contact by  
10 piggybacking was upheld. The touching, the bruising on the  
11 leg was upheld. The rubbing shoulders was dismissed. The  
12 provision of alcohol was upheld. And the contacting while  
13 under a direction not to contact was upheld. That's your  
14 understanding of the outcome of that investigation?

15 A. At that point in time.

16  
17 Q. At that point, yes. And there were additional matters  
18 concerning the MILF t-shirt?

19 A. Yes.

20  
21 Q. And that was upheld?

22 A. Ah --

23  
24 Q. Well, let me put that another way: it was accepted  
25 that the t-shirt was provided?

26 A. Yes.

27  
28 Q. And it was found ultimately that it wasn't worn and so  
29 wouldn't bring the state into disrepute?

30 A. That is correct.

31  
32 Q. And I think you say in your evidence that that  
33 distinction was not relevant, the fact that the t-shirt  
34 wasn't worn was not relevant, ought not have been relevant  
35 to the analysis?

36 A. I do, yes.

37  
38 Q. Could I ask the operator to bring that down? And, as  
39 I understand it, the conclusion of the department then in  
40 relation to the 2005 allegations was that they either were  
41 not sufficient to bring the State Service into disrepute or  
42 they were outside the course of employment; is that a fair  
43 summary?

44 A. Eventually.

45  
46 Q. Well, do you mean by that, that that's the landing  
47 point in 2007 at the time that the matter was closed?

1 A. That's correct, yes.

2

3 Q. So, there was some more correspondence and then  
4 ultimately it was concluded that either it was not  
5 sufficient to bring the state into disrepute, and that's  
6 the MILF t-shirt?

7 A. Yes.

8

9 Q. And the others were not in the course of employment  
10 and therefore not relevant?

11 A. With the final determination, yes.

12

13 Q. They were upheld in the sense that they happened, save  
14 for the rubbing of shoulders?

15 A. That's correct, yes.

16

17 Q. But they were held to be not in the course of  
18 employment?

19 A. That's right, yes.

20

21 Q. Let's just explore about how that lands with you  
22 today, and as a matter of fairness to you I understand that  
23 you would not make that decision today; is that right?

24 A. Absolutely.

25

26 Q. You would see the conduct of Wayne as being in the  
27 course of employment?

28 A. I would, yes.

29

30 Q. And that's because the student-teacher relationship  
31 was formed while Rachel was a student at the school?

32 A. That's correct.

33

34 Q. And that relationship was relevant to his dealings  
35 with her at all times?

36 A. Yes, that's correct, and I think it's important also  
37 to point out that there's a change in the policy  
38 environment between when this occurred and today which we  
39 use to deal with matters such as this. So, at the time  
40 that this occurred, whilst there were some policies around,  
41 if you want, fraternisation with students or friendships  
42 with students outside, they were not framed - they were  
43 framed more as advisory than mandatory.

44

45 We now have the Conduct and Behaviour Standards which  
46 make it very clear that conduct such as that displayed by  
47 Wayne is not acceptable, and so, that's what we use to

1 bring the Code of Conduct in.

2

3 Q. So, which category of Code of Conduct are you using to  
4 bring that into? Is that bringing into disrepute under  
5 (14) --

6 A. No.

7

8 Q. Is it treating people with respect without harassment,  
9 victimisation or discrimination?

10 A. We normally look at (2), care and diligence because  
11 we're saying that care and diligence involves, or must  
12 involve, acting within the policies and procedures as set  
13 out by the department, but we also use respect and  
14 harassment.

15

16 Q. Just to interrupt: it was the course of State Service  
17 employment that was the barrier to the findings, wasn't it,  
18 in the 2005 complaints?

19 A. The nexus with employment. The argument that was put  
20 up as I understand it in 2005, and you have articulated it  
21 well, is that Wayne had a view, and it was a view that was,  
22 I understand, litigated with some veracity, that the  
23 matters --

24

25 Q. Ferocity?

26 A. Ferocity, the matters that were under investigation  
27 he'd undertaken in his private life and in a private  
28 capacity. The Conduct and Behaviour Standard as framed  
29 does not allow that to occur, so we would say you had  
30 breached a policy or procedure of the department and  
31 therefore it is in the course of your employment and  
32 therefore you're in breach.

33

34 Q. I'm not sure I quite understand the distinction,  
35 because the change is now that a policy operates upon a  
36 teacher more broadly, so your policy expectation, so to the  
37 extent that you direct your employees to comply with  
38 policies, you give them a lawful direction.

39 A. No, I don't give them a lawful direction. Under their  
40 employment arrangements they have to comply with the  
41 policies and procedures of the State Service and we have  
42 developed policies and procedures around conduct and  
43 behaviour that's expected of individuals and they must  
44 comply with those, and the policies are now drafted to say  
45 "must", not "you might want to consider".

46

47 Q. So, is it your evidence that the change in policy has

1 led to a change in the department's understanding of when  
2 someone acts in the course of their employment?

3 A. The policy has expanded what "in the course of  
4 employment" means.

5  
6 Q. And so your position is that, in the absence of those  
7 policies, the position would be unchanged from 2005?

8 A. I would be concerned that in the absence of those  
9 policies the position would be unchanged.

10  
11 Q. I'll come back and explore with you what your evidence  
12 is about what caused the change and the impact of legal  
13 advice upon that change. I had understood that there was  
14 some relevant legal advice that caused a shift in your  
15 understanding of when someone acts in the course of their  
16 employment; is that not the case?

17 A. In terms of Wayne or in terms of other matters?

18  
19 Q. Generally speaking, that you had some advice that  
20 changed your view about when someone acts in the course of  
21 their employment?

22 A. Generally?

23  
24 Q. Generally?

25 A. I have received advice pertaining to particular  
26 matters that I've had under consideration; I don't know if  
27 there is a particular piece of advice, but you might wish  
28 to point me toward part of my statement so that I can  
29 refresh my memory on that.

30  
31 Q. Okay, as I understand your evidence what we would look  
32 to now to see this done differently is, there is a policy  
33 which changes the way that you see "in the course of  
34 employment"?

35 A. That's right.

36  
37 Q. And, can you tell us the name of that policy?

38 A. It's the Conduct and Behaviour Standards.

39  
40 Q. So, let's return now to 2007 and the matter is  
41 concluding as far as the investigators are concerned, and  
42 you refer in your statement at paragraph 92 to a close-out  
43 meeting which Rachel gave evidence about yesterday. Do you  
44 know the meeting I'm talking about, it was in early [REDACTED] of  
45 2007?

46 A. So, it - are you referring to the paragraph that says:

47

1           *Following conclusion of the investigation*  
2           *Rachel and Anne were advised of the*  
3           *outcome.*

4  
5  
6           Q.   Thank you, you did use the pseudonyms. Yes, that's  
7           right. You're aware that was early [REDACTED] 2007?

8           A.   Yes, to the best of my knowledge, yes. I don't know  
9           that I have the time of that meeting at the top of my time.

10  
11          Q.   And you're aware that at that meeting, and I think you  
12          refer to this at paragraph 112 of your statement, there  
13          were further disclosures made?

14          A.   Yes, I am.

15  
16          Q.   Now, those disclosures were - and you say that she  
17          became visibly upset and informed the investigators her  
18          original complaint had been incomplete. Rachel then  
19          provided a lengthy and detailed set of new allegations?

20          A.   Yes, she did.

21  
22          Q.   And those allegations included kissing, including  
23          after she said "no", that Wayne rubbed his hand up and down  
24          her leg, touched her crotch area over her clothing, put his  
25          finger in her mouth and asked her to do the same, talked to  
26          her about her private life, gave her alcohol, told her they  
27          could date after she turned 18, said "I love you", sent  
28          letters saying "I love you". That's a reasonable summary  
29          of the complaints she later made?

30          A.   Yes, it is, yes.

31  
32          Q.   And you have a report of the evidence that she gave to  
33          that effect yesterday?

34          A.   Yes.

35  
36          Q.   I think there are also some allegations about some  
37          dirty jokes or videos that may have been shown on school  
38          computers?

39          A.   Yes.

40  
41          Q.   At the point of that disclosure, is it fair to say  
42          that those allegations should have been investigated by the  
43          department?

44          A.   Yes.

45  
46          Q.   And, is it fair to say they were not investigated by  
47          the department?

1 A. You've referred to a number of investigations, and my  
2 understanding is that the dirty jokes or videos from the  
3 computer in his office was the subject of further  
4 investigation.

5

6 Q. Yes.

7 A. My understanding is that the other allegations as put  
8 by Rachel were not investigated.

9

10 Q. Yes, and they needed to be investigated, didn't they?

11 A. Yes, they did.

12

13 Q. And they should have been investigated?

14 A. Absolutely should have been.

15

16 Q. And, just to pause there: yesterday when Rachel gave  
17 evidence, in your report of her evidence did you hear her  
18 say that Wayne had in fact kissed her in the office at  
19 school?

20 A. Yes, I did.

21

22 Q. So far as your review of the matter suggests, did  
23 anyone tell her that it might be relevant to the actions of  
24 the department that some of this abuse happened on school  
25 property?

26 A. That's not information that I have around what was  
27 discussed or not discussed with Rachel at that meeting.

28

29 Q. Indeed, there's no suggestion that that was ever put  
30 to her in any of the documents that you have?

31 A. I have no evidence that that was put to her.

32

33 Q. And her evidence yesterday doesn't suggest that it was  
34 put to her?

35 A. That's right.

36

37 Q. And in fact that, after she made those disclosures,  
38 after she made that quite traumatic disclosure, there  
39 wasn't any follow-up about those allegations, was there,  
40 from your department?

41 A. My understanding is that, apart from the dirty jokes  
42 or videos, no.

43

44 Q. And it's fair, isn't it, that, had somebody  
45 investigated, the full scope of even beyond the disclosures  
46 she had made in that meeting might have become apparent?

47 A. Yes.

1  
2  
3  
4  
5  
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47

Q. And it was important that they become apparent because, had those matters been substantiated, Wayne ought not be anywhere near children; is that fair?

A. Absolutely.

Q. I want to just understand as well, just to pause again: at that stage, as you understand it sitting here today, those allegations could constitute a breach of either (14) or (4), couldn't they?

A. Yes.

Q. And they need to be investigated before you can form a view about them?

A. That's correct.

Q. And the department's - and to be fair to you, Mr Bullard, this is something that you frankly, I believe, concede in your statement - that the department's response to this was woefully inadequate; is that fair?

A. The department's response to this was woefully inadequate, and I - as I said yesterday - apologise to Rachel for the manner in which it was handled. I came to this matter as one of the reviews of historic matters and, quite frankly, I was distressed reading the file and the way in which the allegations had been undertaken.

I was also, I have to say - "pleased" is probably too strong a word - that I was able to find additional allegations and they are the ones that are outlined that had not been investigated and therefore an investigation was still open to me, which is what I then commenced to do.

Q. We will come back to that because I want to understand the scope of the investigation you've now commissioned and what limitations there might be around that, but just to pause. If you'll take it from me that Rachel provided written allegations around [REDACTED] 2007 following those allegations.

Can I take you now to your statement at paragraph 106(d) where you refer to additional information received by the department via email about nine days later.

A. Yes.

Q. That's an email of [REDACTED] 2007.

A. Yes.

1  
2 Q. Could I ask the operator to bring that up.  
3 TDOE.0002.0013.0286-0190. While the operator's bringing  
4 that up, Mr Bullard, you don't tell us here what this email  
5 was about, but is it fair to say it was relevant to the  
6 allegations that had been made?

7 A. Yes.

8  
9 Q. So it says, and I'll read it as much as I can:

10  
11 *Regarding our previous discussion ...*

12  
13 This is from the investigator to an officer of the  
14 department:

15  
16 *... I provide details I had gathered in the*  
17 *past as a result of Mr Wayne's behaviour*  
18 *towards his past students.*

19  
20 *[X] was a grade [X] student at 2001. She*  
21 *called Wayne a paedophile on the grounds*  
22 *that Wayne had sent sexual messages to her*  
23 *and co-student [Y]. Also, [X] advised that*  
24 *Wayne was living with another friend, [Z],*  
25 *shortly after she finished grade*  
26 *[REDACTED]. She was made to apologise to*  
27 *Wayne for this comment. Wayne apparently*  
28 *called her a slut in front of other*  
29 *students and staff.*

30  
31 Further, it goes on:

32  
33 *John was allegedly living with a student*  
34 *shortly after she finished [REDACTED] and*  
35 *then got engaged to her.*

36  
37 And I'll just confirm what's under that redaction. I  
38 think that should be "Wayne", it might be an error of our  
39 redaction, which I'll confirm:

40  
41 *There is also another former student of*  
42 *Wayne who has information about being*  
43 *kissed by Wayne when she was his student.*  
44 *The principal has the person's name, but*  
45 *advised that the person is not at this*  
46 *stage [yes, should be "Wayne"] that the*  
47 *person is not at this stage prepared to*



1           *provide a statement.*

2

3           Now, that email, if I can suggest to you on the base  
4 of the documents, went nowhere; is that fair?

5 A.    So far as I understand that's fair, yes.

6

7 Q.    There was no investigation - I'll just ask that  
8 document then come down. So, you have Rachel's very  
9 serious allegations and nine days later these very serious  
10 allegations; is that fair?

11 A.    Yes.

12

13 Q.    The conduct that's talked about there is entirely  
14 consistent with the allegations made by Rachel, isn't it?

15 A.    Absolutely.

16

17 Q.    And, investigating one means investigating all,  
18 doesn't it?

19 A.    Yes.

20

21 Q.    And they all go to whether or not there's been a Code  
22 of Conduct breach under (14) and (4) at the very least?

23 A.    Yes, but I would also look to (3).

24

25 Q.    And (2); their range?

26 A.    And try on (2) as well, yeah, absolutely.

27

28 Q.    Doesn't there need to be, Mr Bullard, a sense of  
29 urgency that this kind of matter is pursued with vigour by  
30 the Department of Education?

31 A.    Absolutely.

32

33 Q.    And there was an absence of that vigour at the time,  
34 wasn't there?

35 A.    Absolutely.

36

37 Q.    And we're going to come back to about how that's  
38 changed and how that will change, but at this stage that  
39 email seems to have gone into a memory hole and not  
40 progressed at all; is that a fair summary?

41 A.    That is a fair summary, yes.

42

43 Q.    All right, I'd like to then see what happens next,  
44 because we accept, I think - and do I take it from you that  
45 even at the time, even on the narrower policies as they  
46 operated in 2007 the information in the 2007 disclosures,  
47 coupled with that email, ought to have triggered ED5?

1 A. Yes, absolutely. I look at the matters in that email  
2 and, as you point out, there are a number of allegations of  
3 alleged conduct of Wayne; each on their own would be a  
4 trigger following --

5

6 Q. Even then though?

7 A. Even though, they should be, yes, but certainly  
8 today --

9

10 Q. Has anyone investigated why it didn't trigger anything  
11 then?

12 A. The file was reviewed by me as part of my review of  
13 historic allegations. To the best of my memory there is no  
14 indication as to why they weren't proceeded with.

15

16 Q. Your review is focused, and appropriately focused may  
17 I say, on Wayne and making sure that everything appropriate  
18 is done in respect of Wayne; is that a fair summary?

19 A. Yes.

20

21 Q. Has there been a separate investigation or  
22 consideration of how the systems of the department broke  
23 down so fundamentally that this went nowhere?

24 A. No, not so far --

25

26 Q. Well, shouldn't there be?

27 A. -- not so far as I'm aware. All of the matters, the  
28 historic matters that have been reviewed are informing our  
29 knowledge of where there have been systemic breakdowns in  
30 processes or the application of legislation or policies;  
31 they all are. So, as part of the work that we are doing  
32 through safeguarding our children and young people, we've  
33 got a rich information set, unfortunately, about things  
34 that have not gone as we would expect.

35

36 Q. What I'm trying to understand though is, is one of  
37 those failures a failure of the systems of accountability  
38 within the Department of Education? Leave aside Wayne for  
39 just a moment: ought there be accountability and oversight  
40 into this failure?

41 A. In terms of, should we now investigate this failure  
42 historically?

43

44 Q. Yes, as to how did this happen?

45 A. Yes, we do need to look at how this happened; only by  
46 looking at the things that haven't worked are we going to  
47 inform ourselves of how to place ourselves to do this

1 properly in the future, and I suppose to provide some  
2 comfort to people who might be thinking what accountability  
3 sits now; all such matters as those in that email would now  
4 come to me. So, there are many steps in the chain  
5 historically about where people could make judgments about  
6 whether or not to progress it to the Secretary for  
7 consideration, and matters such as that would now naturally  
8 come to me for advice about whether to proceed.  
9

10 Q. And I'm going to need to return with you to talk about  
11 how the Commission can see those lines of accountability as  
12 opposed to - how we can see those lines of accountability,  
13 I want to return to that, but I want to stick with this  
14 story for now.  
15

16 So, as at [REDACTED] 2007 you have the Rachel allegations  
17 and the email, all of which I think you accept even at the  
18 time were significant, ought to have triggered an urgent  
19 response and should have been investigated; is that fair?

20 A. Yes.  
21

22 Q. And they were Code of Conduct matters, even at the  
23 time?

24 A. They may have constituted Code of Conduct matters.  
25 So, just to be clear, the allegation in a breach, when you  
26 move into the process you're investigating an allegation.  
27 So, they're not - they're Code of Conduct matters insofar  
28 as they are matters to be investigated, not Code of Conduct  
29 matters in terms of there being an automatic breach; I just  
30 want to make that distinction.  
31

32 Q. Yes, of course, absolutely, so in fact they had not  
33 yet been investigated, so you could not say one way or the  
34 other whether Wayne as at [REDACTED] 2007 had breached the Code  
35 of Conduct or not?

36 A. I think the premise that you're putting to me is that  
37 they should have been subject to consideration by the  
38 Secretary as to whether there may have been a breach of the  
39 Code of Conduct and therefore whether that should have  
40 proceeded to investigation.  
41

42 Q. Yes, and I think we're in heated agreement that they  
43 should have gone for an investigation; is that fair?

44 A. They should have been referred to the Secretary to  
45 make a determination about whether to proceed to an  
46 investigation, yes.  
47

1 Q. And in the absence of that referral the department as  
2 a unit, as an entity, had not yet decided whether Wayne had  
3 breached the Code of Conduct at all?

4 A. On the matters that were in that email? That's  
5 correct, yes.

6  
7 Q. Yes. Or on the matters that Rachel had referred to?

8 A. That's correct, yes.  
9

10 Q. And so there were a number of Code of Conduct issues,  
11 even on the understanding then, that the department had not  
12 formed a view about whether there had been a breach at that  
13 stage?

14 A. There were a number of matters which had come to light  
15 that, for whatever reason, were not put to the Secretary of  
16 the day so that he could turn his mind to whether or not  
17 there may be a breach of the Code of Conduct which would  
18 then follow that an investigation should have occurred,  
19 yes.

20  
21 Q. Well, I don't think there's any daylight between our  
22 two propositions.

23 A. Yes.  
24

25 Q. I'm saying the department should have done an  
26 investigation; you're saying they should have done an  
27 investigation?

28 A. Yes.  
29

30 Q. They didn't do an investigation?

31 A. That's correct, yes.  
32

33 Q. There was an outstanding question over whether Wayne  
34 had breached the Code of Conduct; that's right, isn't it?

35 A. Yes.  
36

37 Q. Now, let me just suggest to you that there was a  
38 mandatory report to CPARS; that's right?

39 A. I'll accept that, I don't have that off the top of my  
40 head.  
41

42 Q. There was no report to the Teachers Registration  
43 Board?

44 A. That's my understanding - well, the Teachers  
45 Registration Board did not exist --  
46

47 Q. In 2007?

1 A. In 2007, yes.

2

3 Q. There was no report in 2007?

4 A. I don't believe so.

5

6 Q. I think that's in your statement but I'll check it.

7 A. Yes, and I apologise if I'm not being straight on my  
8 answers; I'm trying to juggle five scenarios, so if you  
9 could point me to parts in my statement that would refresh  
10 my memory, that would be good.

11

12 Q. Thank you. Can I ask the operator to bring up  
13 document TPOL.0002.0004.0077-0002. So we had the  
14 disclosure by Rachel on [REDACTED], we had the further email on  
15 [REDACTED] and this letter to Wayne on [REDACTED]. Have you seen  
16 that letter? Would the operator just zoom in a little so  
17 that Mr Bullard can see the letter?

18 A. Yes, I believe that's the second - I don't want to  
19 call it a second determination, but it's a second  
20 conclusion that was reached by the then Secretary, yes.

21

22 Q. If the operator could show us the second page, it  
23 says, and I'll quote:

24

25 *... all current investigations are now*  
26 *concluded and I consider these matters to*  
27 *be at an end.*

28

29 Do you see that?

30

A. I do.

31

32 Q. That wasn't right, was it?

33 A. I was unable to determine on the file as presented to  
34 me whether or not at the time that Mr Smyth made that  
35 statement he had any advice as to the fresh allegations,  
36 no.

37

38 Q. Mr Bullard, I'm not asking you what he knew, I'm  
39 asking you as a matter of fact as you sit here now, that's  
40 not right, is it?

41 A. As a matter of fact in terms of that, and remembering  
42 the dates as I do, no, that statement is not correct.

43

44 Q. That's false, isn't it?

45 A. The statement is incorrect in terms of there are two  
46 facts that do not accord with each other. Whether Mr Smyth  
47 was making a false statement as to those is not anything I

1 can comment on.

2

3 Q. I'm not at the moment talking about intentionally  
4 misleading anyone. I'm saying as a matter of fact that's a  
5 false statement?

6 A. It's an incorrect statement.

7

8 Q. Is there a difference between a false statement and an  
9 incorrect statement that I don't understand?

10 A. Probably the weight in which the word "false"  
11 "suggests that there was some wrongdoing on Mr Smyth's  
12 behalf, but if you're assuring me that you're --

13

14 Q. Without imputing intentionality to Mr Smyth, at this  
15 stage that's a false statement, isn't it?

16 A. That's right.

17

18 Q. Thank you. It is a significant failure of the systems  
19 and processes of the department that a letter with false  
20 information, it could be permitted to be sent?

21 A. A letter with false information should never be sent,  
22 but I will just point out that the - from my recollection  
23 the proximity between the new information coming to light  
24 and that letter being sent was fairly close in terms of  
25 timing.

26

27 Q. That might be a reason that the systems failed, but my  
28 proposition I'm putting to you, it is a significant failure  
29 of the systems and processes of the department that false  
30 information was sent under the department's letterhead?

31 A. May I suggest that, in fact, the wording of that  
32 letter is probably one of the failings in this: we should  
33 never say that all investigations are finished and off you  
34 go, you know, I think that a better draft of that letter  
35 would have said, "On the evidence that I currently have  
36 before me the investigations are at an end".

37

38 Q. So, I'd just like you to focus on my question, which  
39 is, it's a significant failure of the policies and  
40 procedures of the department that that letter got sent?

41 A. I would argue that it's a failure that the new  
42 information that had come to light was not put to Mr Smyth  
43 in a manner that was timely and made - allowed him to make  
44 a proper determination as to whether the letter that was  
45 sent was correct or not.

46

47 Q. Again, I'm not sure there's a difference between us,

1 save that you seem to be at pains to insulate Mr Smyth.  
2 I'd like to just put the proposition to you that the  
3 systems and processes of the department failed in allowing  
4 this letter to be sent. Why is that --

5 A. I accept that the processes failed; I think the  
6 proposition you originally put to me was that there was a  
7 significant failure, and I'm saying to you that due to the  
8 complexity of the timing of the information coming to  
9 light, that we would need to understand more around why  
10 that information was not put to Mr Smyth.

11

12 Q. There are systems and processes that ought to have  
13 made sure that Mr Smyth had that information.

14 A. I accept that, yes.

15

16 Q. It is a significant failing of the systems and  
17 processes of the department that it did not get to  
18 Mr Smyth?

19 A. It is a failing of the systems and processes --

20

21 Q. You don't think that's significant?

22 A. If you want me to concede its significance I'm happy  
23 to do that because at the end of the day the matters that  
24 should have been investigated were not, and if we put the  
25 child at the centre, which is what we should be doing, then  
26 we should be taking every action that we can to ensure that  
27 Secretaries have the information that they need to make  
28 proper determinations about the employees who they have in  
29 their systems, so you and I agree on that.

30

31 Q. Mr Bullard, the Secretary was informed in around June  
32 07, I think on your evidence; I'll take you to the  
33 paragraph. No? Perhaps I'll come back to that.

34

35 Some months later there was an ad that was put in the  
36 local paper, and I'll ask the operator to bring that up,  
37 it's TPOL.0002.0004.0071-003:

38

39 *After an extensive investigation, the*  
40 *Department of Education has determined that*  
41 *Wayne has not breached the State Service*  
42 *2000 Act Code of Conduct.*

43

44 *Wayne has been appointed to a Position with*  
45 *the Department in [REDACTED]. He took up that*  
46 *position [in [REDACTED]].*

47

1           If you want me to concede a significant failing, the  
2 placing of that ad is a significant failing.

3  
4       Q.   Well, I will ask you to make that concession, but  
5 before we get there, that is a false statement too, isn't  
6 it? Well, let's break it down, was there an extensive  
7 investigation?

8       A.   No, I don't consider and, for the reasons that we've  
9 already discussed, there was an extensive - or there was an  
10 investigation of a number of matters, but not all matters,  
11 and I don't accept that that was a statement that was true.

12  
13       Q.   As a person reading that public notice, that public  
14 notice communicates, doesn't it, that the department has no  
15 further concerns with any allegations against Wayne; do you  
16 accept that?

17       A.   Absolutely.

18  
19       Q.   And that was false, wasn't it?

20       A.   It was, yes.

21  
22       Q.   It hadn't been extensively investigated and this  
23 notice operates to clear him, doesn't it?

24       A.   Yes, it does.

25  
26       Q.   And it does so publicly, and it provides the  
27 department's support of him by identifying that they have  
28 given him a position?

29       A.   Absolutely.

30  
31       Q.   It expresses confidence in Wayne?

32       A.   It does.

33  
34       Q.   It does so after, months after - this is [REDACTED]  
35 2007 - [REDACTED] 2007, the department is  
36 expressing public confidence in Wayne; that is a  
37 significant failing, isn't it?

38       A.   Yes.

39  
40       Q.   It is false, isn't it?

41       A.   Yes, as stated it --

42  
43       Q.   And it misled the public or had the capacity to  
44 mislead the public?

45       A.   It is misleading, yes.

46  
47       Q.   And it was directed to the public?



1 A. Yes, it was.

2

3 Q. It had the capacity to harm Rachel who had to live in  
4 that small community?

5 A. Horrifying.

6

7 Q. It was a significant failure by the department, wasn't  
8 it?

9 A. Yes.

10

11 Q. I'll ask the operator to bring that down. That was  
12 authorised by the department, wasn't it?

13 A. I understand, yes.

14

15 Q. Do you know who authorised it?

16 A. No, I do not have that information.

17

18 Q. At the time that statement was put and published, was  
19 the Secretary aware of the further allegations?

20 A. Yes, on the timeline that you've set out, yes.

21

22 Q. And so, how is it that the systems and processes of  
23 the department permitted that statement to be published?

24 A. I do not know.

25

26 Q. Has anyone ever looked into that?

27 A. Not so far as I'm aware, no.

28

29 Q. Does that not suggest a substantial lack of  
30 accountability within the department when something like  
31 that can go unanswered?

32 A. Now?

33

34 Q. Yes?

35 A. Well, these are matters that have only recently been  
36 referred and come back to my attention, these are matters  
37 of the past; I'm not saying that as an excuse, but in terms  
38 of things that happened and the reason that they happened,  
39 of course that concerned me, absolutely concerned me, and  
40 that is why, when I re-examined the historical allegations  
41 regarding Wayne, I've already said that that caused me both  
42 personal and professional distress and all of that  
43 information needs to inform the work going forward to  
44 ensure that those things don't happen again.

45

46 Q. Mr Bullard, what I'm really trying to understand is,  
47 does this indicate - does the failure to investigate how

1 the public could be misled in this way suggest, should the  
2 Commissioners take it to be, that there are no systems or  
3 processes of accountability in the department to pick up  
4 things like this?

5 A. Well, there are systems and processes of  
6 accountability. I think that the fact that we had  
7 information that may have pertained to matters of concern  
8 regarding current employees, and we undertook under our own  
9 volition a process by which each of those was in turn  
10 investigated, shows that we are willing to go back and look  
11 at the management actions of previous people.

12  
13 Q. Just to pause. You're not investigating this, you're  
14 not investigating how this came to be published, are you?

15 A. We are using the information that we have to hand to  
16 inform how we improve in the future. I can assure the  
17 Commission that we would never be publishing.

18  
19 Q. All right. The Department of Education did not  
20 proactively report the matters concerning Wayne to the  
21 Teachers Registration Board; do you accept that?

22 A. Yes, I do.

23  
24 Q. Wayne reported to the Teachers Registration Board on  
25 [REDACTED], and I'll ask the operator to show us  
26 TPOL.0002.0004.0071-0001. Have you seen that document,  
27 it's heavily redacted. I'll ask the operator to - that's  
28 from Wayne to the Teachers Registration Board and he  
29 summarises the complaints made against him in what I think  
30 you'll agree is not entirely fulsome?

31 A. Yes.

32  
33 Q. And so, he notified the Teachers Registration Board;  
34 the Teachers Registration Board should have been informed  
35 by the Department of Education, shouldn't it?

36 A. Yes, it should.

37  
38 Q. Of both the 2005 and the later allegations?

39 A. Yes.

40  
41 Q. And you'd accept it's a failing that that didn't  
42 happen?

43 A. Yes.

44  
45 Q. I ask the operator to bring that document down.  
46 Teachers Registration Board then asked you, and I'll ask  
47 the operator to show us, TPOL.0002.0004.0075. This is the

1 response - sorry, this is the Teachers Registration Board  
2 asking you, and I draw your attention to the last  
3 paragraph above, "Thank you for your assistance", it says:

4  
5 *Consequently, I am writing to ask the*  
6 *department to provide a report to the Board*  
7 *about the allegations, the investigations*  
8 *undertaken and the subsequent outcomes for*  
9 *this matter.*

10  
11 You see that?

12 A. Yes I do.

13  
14 Q. That's a fairly orthodox request from a Regulator,  
15 isn't it?

16 A. Yes, it is.

17  
18 Q. The following day there was a response, I'll ask the  
19 operator to show us TPOL.0002.0004.0075-0002. I just ask  
20 that we show the whole letter first. So, this is the  
21 following day, [REDACTED], this letter here:

22  
23 *I refer to your letter of [REDACTED] 2007*  
24 *requesting the Department to provide*  
25 *information to the Teachers Registration*  
26 *Board about departmental investigations*  
27 *into allegations against Wayne.*

28  
29 *I advise that investigations into a series*  
30 *of allegations that Wayne had breached the*  
31 *State Service Act 2000 Code of Conduct were*  
32 *recently concluded. The allegations*  
33 *against Wayne, and the outcomes of the*  
34 *investigations, are summarised in the final*  
35 *letter sent to Wayne on [REDACTED] 2007. I*  
36 *have attached a copy of this letter for*  
37 *your information.*

38  
39 That's the letter that I think we agreed earlier was  
40 misleading, wasn't it, the [REDACTED] letter?

41 A. Yes.

42  
43 Q. That's the information that you provided to the  
44 Regulator. Can I ask the operator to bring that down. The  
45 department misled the Regulator, didn't it?

46 A. Well, it depends what was in the knowledge of the  
47 person that sent that --

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47

Q. No, I'm not asking again, I'm not asking,  
Mr Bullard --

A. And --

Q. -- about intentionality, I'm asking about objectively.  
A. If you are asking me, was that factually correct given  
the further allegations --

Q. Yes.

A. -- then so far as it related to allegations pertaining  
to Wayne: no. As far as it related to the conclusion of  
matters that have been under investigation for a potential  
breach of the Code of Conduct: yes.

Q. No, that's not right either. I think that we agreed  
earlier that the department had before it a range of  
allegations which should have been investigated as Code of  
Conduct breaches but were not. And can I ask you, and I'll  
ask the operator to bring the letter back up, this letter  
communicates to the Teachers Registration Board that the  
Department of Education had considered and concluded all of  
its investigations into alleged breaches of the Code of  
Conduct. Isn't that what it communicates?

A. Well, that letter is talking about a series of  
allegations around a breach of a Code of Conduct.

Q. Yes.

A. And the outcomes of those investigations which had  
been concluded.

Q. Yes, and so, would a reasonable reader of this  
understand that it was the position of the department that  
you had concluded any investigations you might have into  
whether an employee, acting in the course of State Service,  
had complied with all applicable Australian laws?

A. Ah --

Q. Nowhere in that letter does it say there are a range  
of matters of concern which we did not investigate?

A. That's right, I --

Q. And so, it gives the impression, does it not, that you  
had concluded all of the investigations concerning  
potential Code of Conduct breaches?

A. It gives information that the allegations that had  
been subject to investigation were concluded. I'm not

1 arguing with you that there should have been other matters  
2 that were investigated, but it does not go to that, and if  
3 I can look at --

4  
5 Q. No, Mr Bullard, I'm going to ask you to focus on this,  
6 it's really important.

7 A. I understand why it's important, but I also think it's  
8 important to understand that, if you move this into a  
9 contemporary environment the TRB would be advised of all  
10 matters of concern that come to me around potential  
11 breaches or investigations.

12  
13 So, I understand where you're going in terms of your  
14 questioning, and I absolutely - we are in strong agreement,  
15 that for that letter to be comprehensive it would have and  
16 should have outlined that there were some other matters of  
17 concern which were currently being considered in terms of  
18 whether or not to proceed.

19  
20 The letter as it stands there, I read, as relating to  
21 those that had been concluded under the Code of Conduct.  
22 So, I'm not arguing with you around other information that  
23 that letter should have included, but the statement as it  
24 sits there is, as I read it, and you may read it  
25 differently, talking about those matters that were under  
26 investigation to which the --

27  
28 Q. Is that a fulsome disclosure of what the department  
29 had done?

30 A. No, it's not a fulsome disclosure of the position of  
31 the department in terms of having matters that were under  
32 current consideration and had been concluded but other  
33 information that should have been considered.

34  
35 Q. It omitted substantial issues, didn't it?

36 A. It could have referred to the fact that there were new  
37 investigations - well, actually, that there was other  
38 information to hand, but of course what we know is, for  
39 whatever reason - and we don't accept that there should  
40 have been a reason - that a decision somewhere had been  
41 made not to proceed with investigating other matters.

42  
43 Q. The Regulator, it is important that the Regulator has  
44 full and frank disclosure from the Department of Education,  
45 isn't it?

46 A. Absolutely, yes.

1 Q. This is not full and frank disclosure, is it?

2 A. This does not reflect how we would interact with the  
3 Teachers Registration Board today.

4  
5 Q. No, Mr Bullard, I'm not asking you about today; I'm  
6 asking you to tell us, tell this Commission on your oath  
7 sitting here today, is that letter true? Do you read it  
8 now as being a truthful and full statement of the position  
9 as you understand it to have been at the time?

10 A. It is not true by omission.

11  
12 Q. That's right, it is a false letter?

13 A. It is not true by omission.

14  
15 Q. Again, I am not sure what the difference is between a  
16 letter that is not true and a letter that is false, but  
17 perhaps we need not debate the point now.

18  
19 I put it to you again, Mr Bullard, that the  
20 department, by omission, misled the Regulator: do you  
21 accept that?

22 A. Yes.

23  
24 MS BENNETT: Commissioners, I'm conscious of the time, and  
25 I think we said we'd have a break at about this time and  
26 return to Mr Bullard after the break.

27  
28 PRESIDENT NEAVE: Thank you, Ms Bennett.

29  
30 **SHORT ADJOURNMENT**

31  
32 PRESIDENT NEAVE: Thank you, Ms Bennett.

33  
34 MS BENNETT: Thank you, Commissioners.

35  
36 Q. Mr Bullard, we've been through some correspondence  
37 concerning the communications from the Department of  
38 Education around Wayne. There was a further communication,  
39 this time from Wayne's lawyers to the department on  
40 [REDACTED]. This is towards the end of 2007, so as the  
41 timeline runs - I'll ask the operator to bring it up,  
42 TPOL.0002.0004.0084-0001.

43  
44 As the timeline runs we have the initial investigation  
45 from 2005, concludes in 2007, the further email on [REDACTED]  
46 2007, the letter of closure to Wayne on [REDACTED] 2007, then  
47 the publication in the newspaper on [REDACTED] 2007, and then

1 the communication with the Teachers Registration Board  
2 in [REDACTED] 2007.

3  
4 By [REDACTED] 2007 Wayne had become aware of Rachel's  
5 additional allegations against him that were made in [REDACTED]  
6 2007 and his lawyers wrote to the department. Have you  
7 seen this letter before, Mr Bullard?

8 A. It's not familiar to me, but I accept that it may have  
9 been an annexure.

10  
11 Q. If I could ask the operator to go over the page, it  
12 effectively asks a series of questions of the department,  
13 and it asks the department the questions that are there set  
14 out:

15  
16 *Did [the investigators] meet with Rachel*  
17 *and Anne in [REDACTED] 2007?*

18  
19 And those questions follow, I'll give you a moment to  
20 read that. I'll draw your attention in particular to  
21 Question 4:

22  
23 *Did Rachel make further allegations against*  
24 *my client at the meeting with [the*  
25 *investigators]?*

26  
27 *If so, what action did [they] or other*  
28 *Departmental officers take in response?*

29  
30 Would you accept from me, Mr Bullard, that that letter  
31 was sent to the Department of Education in the context of  
32 an ongoing dispute between Wayne and the Teachers  
33 Registration Board about whether he ought to be registered?

34 A. I will accept that from you, I don't have that --

35  
36 Q. You don't have personal knowledge of that?

37 A. I don't have that top of mind, no.

38  
39 Q. If we go back to the first page, I'll just see if  
40 that's obvious on the face of the document. You will see  
41 there the first:

42  
43 *Wayne has been advised by the Teachers*  
44 *Registration Board it has received*  
45 *complaints made against Wayne [by two*  
46 *blanked out names]. The board have also*  
47 *advised they received other documents and*

1                   *statements.*

2

3                   And then it goes on from there. You would accept that  
4 it's reasonably clear from the face of the document that  
5 there's a Teachers Registration Board issue going on for  
6 Wayne?

7                   A. Yes.

8

9                   Q. And that Wayne's lawyers are seeking clarification  
10 about Rachel's allegations for the purposes of that  
11 communication?

12                  A. Yes, I accept that.

13

14                  Q. I ask the operator to bring that down. The response  
15 from the department came on [REDACTED] 2007, so a few weeks  
16 later, it's at TPOL.0002.0004.0085-0001. This is a  
17 response to that letter. You will see that in the first  
18 line, it says:

19

20                   *Thank you for your letter of*

21                   [REDACTED] ...

22

23                  Have a read of that document. Have you seen that  
24 before?

25                  A. Look, again, I may have but I hope that you'll accept  
26 that the volume of documents that we've provided is --

27

28                  Q. I accept that entirely.

29                  A. -- is large and, just for the Commissioners, in terms  
30 of the file regarding Wayne, which I know that we've  
31 provided in full, there was a lot of duplication and it was  
32 quite a disorganised file so --

33

34                  Q. I'm not at all critical, I found it difficult to  
35 navigate too, so this document arose --

36                  A. Yep, I can recognise that as a piece of correspondence  
37 from the Department of Education, yes.

38

39                  Q. Yes, so that's a piece of correspondence which  
40 communicates to Wayne's lawyers in the context of his  
41 ongoing dispute with the Teachers Registration Board that:

42

43                   *I wish to advise that the Department has no*  
44                   *outstanding issues with Wayne in relation*  
45                   *to the State Service Act Code of Conduct at*  
46                   *this time.*

47



1 A. That's right, yes.

2

3 Q. That's not true, is it?

4 A. I think you need to read that as a statement of fact.

5 As I understand the facts as we've discussed, there were no  
6 outstanding issues in relation to the State Service Code of  
7 Conduct; that's a different premise to whether there should  
8 have been, and you and I have agreed that on the facts as  
9 presented and the additional evidence that was provided to  
10 the department, that there should have been additional Code  
11 of Conduct proceedings undertaken.

12

13 Q. It says, Mr Bullard, that:

14

15 *... the department has no outstanding*  
16 *issues in relation to the State Service*  
17 *Code of Conduct ...*

18

19 To pause there. The reasonable reader of this letter,  
20 put yourself in the position of somebody receiving this  
21 letter: you would accept from that, wouldn't you, that the  
22 department had no concerns that this person had, in the  
23 course of acting in the course of State Service, not  
24 complied with any applicable Australian law?

25 A. Coming to that and if I put myself as an objective  
26 reader of that, yes, I accept that.

27

28 Q. And it would communicate to the objective and  
29 reasonable reader that the department had formed the view  
30 that Wayne had at all times behaved in a way that did not  
31 adversely affect the integrity and good reputation of the  
32 State Service?

33 A. No, I think that you're misinterpreting the - how to  
34 apply the balance of probabilities. You're asserting that  
35 there is some determination made around suitability there,  
36 whereas in fact the onus is on the department to prove that  
37 there are elements of behaviour that make - that are in  
38 breach.

39

40 Q. What I'm suggesting to is that that letter  
41 communicates that it had made that determination in Wayne's  
42 favour; do you accept that?

43 A. It makes a statement that there are no outstanding  
44 issues with regard to Wayne with regard to a Code of  
45 Conduct.

46

47 Q. Yes.

1 A. I'm just being particular here because some people may  
2 interpret that as going to his fitness to teach or of being  
3 of good character: that is not what that statement around  
4 the Code of Conduct makes, and the Teachers Registration  
5 Board would well understand that given the structure of  
6 their Act and the matters that they need to turn their  
7 minds to, which do include fitness to teach.

8  
9 Q. May I pause there, I think the President would like to  
10 ask you a question.

11  
12 PRESIDENT NEAVE: Q. My question is this: you've said  
13 that this relates solely to the investigation that was  
14 conducted and completed. If that's so, then people can  
15 have no confidence that the Teachers Registration Board or  
16 the department are actually concerned about the safety of  
17 children, can they? If it's confined in the way that  
18 you've suggested, what is the purpose of this process?

19 A. So, thank you for that question; we need to place this  
20 in a period of time and probably what is more useful is to  
21 say, what is the purpose of the process as it stands today,  
22 because absolutely where do you get confidence from the  
23 process?

24  
25 So, looking at where a decision was made as to whether  
26 or not there was a potential breach that required  
27 investigation is a really important matter here. At the  
28 time that we can see on the evidence that's been provided  
29 and the questioning that has proceeded today decisions were  
30 made at different levels of the organisation; is that a  
31 piece of information or data that we need to put to the  
32 Secretary or not? That does not happen now. Every  
33 allegation that's raised is put through Workplace Relations  
34 to me and then every allegation that is raised is put to  
35 the Teachers Registration Board as a piece of information  
36 to assist their decision-making.

37  
38 MS BENNETT: Q. How do you know, Mr Bullard?

39 A. Because that's the process that we have.

40  
41 Q. Well, with respect, there's been a stunning lack of  
42 accountability for these failings; how do you have  
43 confidence, how can this Commission have confidence that  
44 the systems and processes are now accountable?

45 A. What do you mean by "a stunning lack of  
46 accountability"?

1 Q. Let's go back to this letter for a moment. Do you  
2 think that this letter communicated with the candour that  
3 the Teachers Registration Board was entitled to expect from  
4 the Department of Education?

5 A. No, it does not.

6  
7 Q. It lacks the candour that they were entitled to  
8 expect?

9 A. It does.

10

11 Q. It had the potential to mislead, didn't it?

12 A. By omission, yes.

13

14 Q. Yes, and in fact it is, I suggest to you, misleading:  
15 do you accept that?

16 A. If read - if read broadly as we have discussed, yes.  
17 If read to the letter of what is set out it is correct, but  
18 as I have said, by its omission of other matters of  
19 concern, it may be read as saying that that person has no  
20 matters of concern that are known to the department.

21

22 Q. And what accountability mechanisms are there for the  
23 department to satisfy itself that its processes are better  
24 now than they were then?

25 A. So, the process as it was set out then, as I've said,  
26 was a mosaic of approaches. The processes as it's set out  
27 now is, every allegation that is raised must be referred to  
28 Workplace Relations and Workplace Relations must refer it  
29 to me. Every allegation that is raised must be referred to  
30 the Teachers Registration Board, the Working with  
31 Vulnerable People Check and the Integrity Commission, and  
32 Teachers Registration Board where it relates to a teacher,  
33 and that is the process that sits in place now.

34

35 Q. Can I suggest to you, Mr Bullard, that if I had have  
36 asked your predecessor on [REDACTED] 2007, "Are you  
37 required to be frank and open with the Teachers  
38 Registration Board?", he would have said to me, "Absolutely  
39 that is required"?

40 A. Yes.

41

42 Q. And you sit here today saying to the Commission, "It  
43 is required that I receive all complaints". How do we know  
44 that you're getting them all, is my question?

45 A. Because that is what the requirement and the processes  
46 are in the department. Now, I think we've spoken before  
47 around the importance of culture and policies and

1 procedures here, and we've spoken about the need for  
2 multiple checks and balances. You obviously will want to  
3 be asking me, are 100 per cent of allegations referred to  
4 you?" I cannot say that they are, but what I can say to  
5 you is, principals, school leaders, business unit managers,  
6 are very clear about what is required of them now.

7  
8 Q. Can you say it's 50 per cent? Do you know if it's  
9 75 per cent?

10 A. Well, I think if you look at the number of allegations  
11 that have been referred over years, you will see they have  
12 increased - they have increased, absolutely increased. I'm  
13 sorry, I don't have the figures with me but we could  
14 provide that information.

15  
16 From memory when I became Secretary, I think it was  
17 around two matters that have been referred to me that --

18  
19 PRESIDENT NEAVE: Q. Two per year, sorry?

20 A. Yeah, and I think I would ask for some leniency here  
21 in terms of what I'm communicating.

22  
23 Q. Yes, I understand.

24 A. 2018 I became Secretary, two matters put to me that  
25 involved child sexual abuse. Now, that's gone up - and I  
26 don't want to quote a number, but it's gone, it's 10s, you  
27 know, it's 30, 40, 50, in terms of then the next years  
28 combined together. What that suggests to me is that people  
29 have got the memo: if you have a matter of concern  
30 regarding the potential abuse of children, then don't deal  
31 with it at a local level, don't put it into Learning  
32 Services, you know, to see how you should deal with it,  
33 come through to Workplace Relations and activate a process.

34  
35 Can I just make a reflection on that though? I was  
36 very cognisant, and it made me reflect, of the evidence  
37 given by the professors, Professors McCormack and  
38 Smallbone, that you can risk sending a negative signal by  
39 having such a strict requirement in place. And I think  
40 that there was some discussion around, how could people log  
41 matters of concern that didn't lead to a full-blown  
42 investigation, because in a school setting you might feel  
43 very uncomfortable knowing that, if I go and ring Workplace  
44 Relations about Mike, Mike disappears tomorrow, when Mike  
45 is under investigation.

46  
47 Now, my view would be, we need to know about those

1 concerning instances and have a process by which we can be  
2 dealing with those, but at the moment we don't have that,  
3 and so, we have gone to the pointy end of the process.

4  
5 Q. Can I understand it this way: what's changed between  
6 2007 and today is, you've got policies which expand the  
7 course of conduct proposition, so more things now trip up  
8 the ED5 process; is that fair?

9 A. Trigger?

10  
11 Q. Trigger, yes?

12 A. Yes.

13  
14 Q. There is now a general direction in place that  
15 everything that concerns child sexual abuse comes to you?

16 A. Yes.

17  
18 Q. Does that incorporate grooming and precursor conduct?

19 A. Yes.

20  
21 Q. Would it encompass all of the matters that are the  
22 subject of case studies?

23 A. Where they were recognised as such. So, the other  
24 thing that we have absolutely recognised in the evidence  
25 that we've provided to date to the Commission is that a  
26 number of these issues are very nuanced in what behaviours  
27 you will see and that we need to absolutely invest in  
28 training our workforce to understand something that may or  
29 may not constitute a matter of concern.

30  
31 Q. What are the oversight mechanisms for you to be  
32 comfortable that the changes you need to see are happening  
33 so that it all comes to you?

34 A. So --

35  
36 Q. Oversight mechanisms.

37 A. So, a clear expectation at all levels of the  
38 organisation about what occurs; reviews of where that  
39 hasn't occurred. So, I'm very concerned, and in an  
40 organisation as large as ours there are instances where  
41 something comes to light that's been recorded and dealt  
42 with at a school level and not reported, so we need to go  
43 and understand why that has or hasn't occurred. We've  
44 already recognised that we need to invest in the training  
45 that's available for people.

46  
47 And the other thing is too, quite frankly, ensuring

1 that we're engaging with people on the ground, which I  
2 pride myself on doing, to listen to what their experience  
3 is of how this is - or not operating and the reasons as to  
4 why that can be.

5  
6 Q. So, let me see if I've understood: we've got the  
7 mechanisms presently in place upon which the Commission  
8 should rely to be satisfied that this sort of process that  
9 we've talked about can't happen again, is your clear  
10 expectation communicated to staff, that they should  
11 communicate all matters of any concern level to Workplace  
12 Relations to be escalated to you?

13 A. Yes.

14  
15 Q. Reviews of where that hasn't happened?

16 A. Yes.

17  
18 Q. Training and your personal engagement?

19 A. Yep.

20  
21 Q. It seems to me that those safeguards are reasonably  
22 dependent upon you personally; is that fair?

23 A. Yes.

24  
25 Q. Is that a systems problem from your perspective?

26 A. Yes.

27  
28 Q. So, how are we going to fix that?

29 A. So, absolutely in terms of the work that the  
30 safeguarding - Office of Safeguarding is doing; it is  
31 around ensuring that those things are recorded and  
32 proceduralised, but if necessary legislated to ensure that  
33 they occur.

34  
35 I have come to this role and believe have made  
36 significant improvements. I'm not saying that by any  
37 account it's perfect, but I also accept that a number of  
38 those improvements as they stand rely on my personal way of  
39 operating and the expectations that I set and the  
40 disposition that I come to these matters with, so I accept  
41 that.

42  
43 And I also accept that for an institution that has  
44 perpetual succession and will have a range of Secretaries  
45 over the next 150 years of its existence, that is not --

46  
47 Q. Safe.

1 A. -- safe.

2

3 Q. Before I leave the case study of Wayne, I want to  
4 understand a couple of final matters. I think we've  
5 established on my count there are three communications  
6 which were not frank and contained omissions that came from  
7 the Department of Education, and you have given your very  
8 strong views that that was never deliberate.

9

10 What I'd like to understand, Mr Bullard --

11 A. Well, I haven't - I would just correct you there.  
12 I am - and maybe this is a matter of being pedantic: you  
13 have put to me that those statements are false; I am  
14 interpreting that as that there was an intention to  
15 mislead, that the information that existed that was not  
16 communicated was known. So, whilst I concede that, when  
17 read, they may be misleading, I can't concede that they are  
18 false statements because I do not and cannot know what was  
19 in the mind of the people that drafted those letters at the  
20 time. So, I'm not --

21

22 Q. The question I'd like to ask: I accept that you don't  
23 know if anyone intentionally misled a Regulator, and you  
24 don't know if anyone intentionally misled the public, and  
25 you don't know if there are any other --

26

A. That's right.

27

28 Q. -- intention to mislead. Would you agree with me that  
29 it would be incredibly significant if there were an  
30 intention to mislead in these circumstances?

31

A. Absolutely, I would.

32

33 Q. Has anyone ever checked if it was intentional or if it  
34 was inadvertent?

35

A. No, they have not because --

36

37 Q. Should someone have checked, Mr Bullard?

38

A. Because these matters have only recently been  
39 re-investigated. So, we need to be cognisant of the fact  
40 that, over the 150 years of public education, there are  
41 millions of pages of records that record the actions of  
42 people within the agency.

43

44 The matters that you have pointed out today are of  
45 concern, and I've conceded they're of concern, and so far  
46 as I was able to act upon them to ensure that Wayne did not  
47 continue to pose a risk to children and young people in the

1 Department of Education, I have done that.

2

3 To be forward-looking, we will use the information  
4 that we see in those matters to inform us about what went  
5 wrong and how we can improve, but placed where we are in a  
6 point in time, with the period of time that we've had to  
7 consider those matters, they have not been re-investigated  
8 in terms of the individuals who may have been involved in  
9 them, if we could ascertain who they are.

10

11 I'd also point out --

12

13 Q. Is it --

14 A. Could I also just point out one other thing? So, even  
15 if you were to ask me, "Shouldn't those people be subject  
16 to a Code of Conduct for not acting with care and  
17 diligence?", a number of those people are no longer  
18 employed within the department and therefore do not fall  
19 under the State Service Code of Conduct.

20

21 Q. You don't carry out investigations after people have  
22 resigned under ED5?

23 A. So, can I just be very clear on that? Where people  
24 have resigned and are no longer employees, I don't have the  
25 jurisdiction to carry out an investigation. However, where  
26 that person is employed and I commence an ED5  
27 investigation, and they choose then to resign, I continue  
28 with that investigation, I bring it to a conclusion, I make  
29 a determination that I would have made had they still been  
30 employed and I communicate that to the employee. That is  
31 actually not something that is set out within the  
32 employment direction or the State Service Code of Conduct,  
33 but it is something that I consider is best practice.

34

35 Q. I just want to understand, Mr Bullard: is this viewed,  
36 are these failings viewed as matters that put children at  
37 risk? Is that how they're seen by you today as you look  
38 back, that these are matters that put children at risk?

39 A. Put children at risk at the time or are matters that  
40 still put children at risk?

41

42 Q. By misleading the Regulator, did that have the  
43 potential to put children at risk?

44 A. I'm happy to concede a step further; I'm happy to  
45 concede that, by not investigating the other matters that  
46 were raised by Rachel, that were raised in the email that  
47 you have put to the Commission today, it did put children



1 at risk because it did not allow full investigation of all  
2 matters known to the department.

3  
4 Q. And can I suggest to you that the failures that we've  
5 catalogued in relation to this matter today have not been  
6 responded to with a sense of urgency as it relates to how  
7 the public and the Regulator were misled about Wayne?  
8 There's been no sense of urgency to find out how that  
9 happened, has there?

10 A. It has not been in terms of the work that we've been  
11 undertaking, the focus; because in terms of the energy and  
12 effort that I've put into the matter in relation to Wayne,  
13 it is to investigate Wayne and his behaviours that were not  
14 investigated; it is to suspend Wayne immediately from duty  
15 so that he was no longer in a school; it is to report the  
16 matter to Tasmania Police and the Teachers Registration  
17 Board and Working with Vulnerable People. So, in terms of  
18 the resources and energy of the agency to date in relation  
19 to the matter of Wayne, that has been put into ensuring  
20 that he poses no further risk to children and young people  
21 in our schools.

22  
23 Q. And not into identifying those who may have been  
24 involved in those pieces of misleading correspondence?

25 A. You have asked --

26  
27 Q. Is that fair?

28 A. You have asked a question as to where the energy and  
29 effort of the agency has been put to date, and I have made  
30 it clear that we have put that energy and effort into  
31 ensuring that children and young people are not at risk  
32 from Wayne. I'm not saying that moving forward we won't go  
33 off and do some other work in relation to this matter, but  
34 our priority must always be the safety of children and  
35 young people; the child and the young person needs to be at  
36 the centre of the work that we do, and whilst there may be  
37 matters that need to be investigated further in terms of  
38 the employees' actions, they are matters that we will deal  
39 with as secondary matters.

40  
41 Q. And do you see them as unconnected to the safety of  
42 children? Investigating how a regulator was misled, you  
43 see that as unconnected to the safety of children?

44 A. I see that as a low risk to children and young people  
45 today given the processes that I have explained to you that  
46 we now have in place, which is that, when we are aware of  
47 allegations of child sex abuse we provide a letter, the

1 initial letter, regarding a potential breach to the  
2 Teachers Registration Board. We make it clear to people  
3 who are providing evidence that that information too shall  
4 be provided to the Teachers Registration Board. We provide  
5 the full investigation report and my determination to the  
6 Teachers Registration Board.

7  
8 So, do I see a failing in 2007 to report as a major  
9 risk to children and young people today given the  
10 processes, procedures and information-sharing that we have  
11 in place? I don't.

12  
13 Q. Thank you.

14  
15 COMMISSIONER BENJAMIN: Q. Mr Bullard, what year did  
16 Wayne cease teaching?

17 A. Wayne ceased teaching - I would need to check the  
18 date, Commissioner, but it was only once I re - oh, I  
19 informed him of the fresh allegations against him and of my  
20 determination to undertake a Code of Conduct investigation.

21  
22 MS BENNETT: I think, Commissioner, the evidence will show  
23 that was 2018 when the matter was reported to the - but  
24 I'll ask my learned instructor to confirm. The matter was  
25 reported to the Working with Vulnerable People register  
26 in [REDACTED] of 2018 and I believe it was that process that  
27 triggered a shift in Wayne's status, but I'll --

28  
29 PRESIDENT NEAVE: Did you say 2018, Ms Bennett?

30  
31 MS BENNETT: I'll just check because I don't want to  
32 mislead the Commission. My notes say that's when - there  
33 also might be a distinction between working for the  
34 department and working as a teacher.

35  
36 PRESIDENT NEAVE: Yes.

37  
38 MS BENNETT: And I believe that Wayne went on to work for  
39 the department for some time but potentially not in a  
40 teaching role the entire period.

41  
42 Perhaps I'll ask my instructor to confirm that and  
43 we'll return to it, yes.

44  
45 Q. But it's not so historical when viewed in that way, is  
46 it, Mr Bullard?

47 A. Sorry, what was?

1  
2 Q. It's not so historical when viewed in that sense, is  
3 it, that the matter lay where it was - no, I withdraw that,  
4 we'll move on to the next case study?

5  
6 COMMISSIONER BROMFIELD: Before we do.

7  
8 Q. Mr Bullard, we heard from Rachel yesterday. I just  
9 wanted to give you an opportunity now, though, to make any  
10 observations you choose to in relation to the unnamed  
11 children who were referred to in the email, including the  
12 child who made disclosures about Wayne and allegations of  
13 sexual misconduct who was forced to apologise to Wayne?  
14 A. Appalling. Absolutely appalling. It's very important  
15 that we create an environment where children and young  
16 people have agency and feel heard, and that's an absolute  
17 underpinning of our organisation now.

18  
19 And what I believe is that any indication of an  
20 allegation that isn't believed sends a signal to all those  
21 other children and young people who may have issues of  
22 concern that it's not worth raising, but I also think it's  
23 very adult-centric to have required that child to  
24 apologise, because Wayne may have felt that his  
25 professional standing was in some way harmed by that  
26 allegation. So, it does disturb me that the outcome of  
27 raising an issue, whether it be, you know, through a formal  
28 channel or through a comment that's made, is that you have  
29 to apologise is of great concern.

30  
31 COMMISSIONER BROMFIELD: Thanks, Mr Bullard.

32  
33 PRESIDENT NEAVE: I have one further question.

34  
35 Q. I think you have indicated that you need to have  
36 systems that are not dependent on the personality of the  
37 Secretary?

38 A. Absolutely.

39  
40 Q. And that you have played - you have been very involved  
41 in ensuring child safety issues are taken seriously. I  
42 wondered if you wanted to make any comment on what will  
43 happen when the department expands in size and the  
44 challenges that that might present; you changed the culture  
45 in the context of education, you and your successors will  
46 have additional responsibilities. What are the sorts of  
47 systems you will need to ensure that those matters are

1 dealt with in the way that you're foreshadowing?  
2 A. So, I will start with something that you've  
3 acknowledged has changed, or I hope it was an  
4 acknowledgment around the culture; that's where we  
5 absolutely need to start as we move into being the new  
6 agency of Education, Children and Young People, and that's  
7 the beginning focus of the work as we bring those two  
8 agencies together: who are we, what do we stand for, what  
9 are our expectations, what are the values that guide our  
10 decisions and behaviours? So that is the first layer which  
11 - that work is already underway.

12  
13 To the fore of that, we need to bring those elements  
14 that sit within our culture, and I acknowledge that have  
15 only been amplified since 2021 in our new strategic plan  
16 which is ensuring that children are safe and heard, and  
17 ensuring that as a priority the safety and wellbeing of  
18 children sits front and centre.

19  
20 The second element which is going to be really  
21 important because as we move into a new organisation there  
22 are potentially going to be competing policies, procedures  
23 and approaches, is that we quickly settle, where it relates  
24 to safeguarding children and young people, on our approach;  
25 by "our approach" I mean the approach of the new agency,  
26 and that we move very quickly to communicate that and set  
27 out our expectations in terms of the way that that is  
28 deployed, if you like, through the workforce.

29  
30 That's a big task, I accept, but it is one that we  
31 recognise and it is one that we have resourced internally  
32 to ensure that we're doing that as expediently as possible

33  
34 COMMISSIONER BROMFIELD: Q. Do you expect, with that  
35 quite enormous task from what you've described there, that  
36 you will be able to continue to lead in the way that you've  
37 described here, where you are able to go out to schools and  
38 talk about safeguarding in ways that embed, I guess, some  
39 of those principles that you want schools to run with?

40 A. So, when you come to large tasks in large  
41 organisations you need to be deliberate about where you  
42 spend your time. And, I know from the work of the  
43 department that I could spend every day on the urgent and  
44 important, but I actually need to move into those areas  
45 that are strategic and provide leadership.

46  
47 I'm very taken by the Child Safe Principles that have

1 leadership as number one because that is absolutely where  
2 you're going to set that tone and culture.

3  
4 One of the things that as an executive we are actively  
5 considering is, how do we organise ourselves in taking on  
6 this new organisation to ensure that we provide that space  
7 and time. It's even more important to be out on the ground  
8 and providing the leadership, person-to-person,  
9 leader-to-leader that needs to occur. So, do I think that  
10 that's going to be easy? No. But am I committed to  
11 providing space for me to do that? Absolutely.

12  
13 COMMISSIONER BROMFIELD: Thank you. Ms Bennett.

14  
15 MS BENNETT: Thank you, Commissioners.

16  
17 Q. I'm going to move to, the person you refer to as John,  
18 if you'd like to have a look at your pseudonym list.

19 A. Yes.

20  
21 Q. Now, this is not a person about whom you were asked to  
22 prepare a statement and I'd like to put - as a matter about  
23 which I will have some discussions with the Teachers  
24 Registration Board this afternoon. I'd like to put a  
25 document to you that concerns John, in part, to assist  
26 Ms Kerri Collins who gave her evidence on Monday --

27 A. Yes.

28  
29 Q. -- to understand the sequence of events.

30 A. Yes.

31  
32 Q. So, I understand this is not a period over which you  
33 have any involvement in the department, but I think it's  
34 important that we join these dots together. Could I show  
35 you a document of [REDACTED] 2004, it's  
36 TTRB.0004.0073.0624-0012, at pages 12 and 13.

37  
38 Just to remind you, I'm sure I don't need to remind  
39 you, Ms Collins' evidence was that she suffered abuse at  
40 the hands of John when she was about 7 years old, disclosed  
41 at the age of about 11. Police decided not to take further  
42 steps then. The matter was then the subject of a trial in  
43 around 2001 or 2002; the trial never proceeded. John was  
44 committed for trial but the trial was discontinued at the  
45 request of the DPP.

46  
47 So, shortly after the trial was discontinued this

1 letter was written, five months after the trial was  
2 discontinued, this letter was written to the Teachers  
3 Registration Board by the Department of Education and I'm  
4 going to read it out for those who can't see it on the  
5 screen:

6  
7 *... [John] has endured the frustration of a*  
8 *prolonged period of the matter being before*  
9 *the courts, adjourned and ultimately*  
10 *discharged in [REDACTED] of this year. The*  
11 *allegations were not sufficient to proceed*  
12 *with any prosecution. In fact the*  
13 *Department of Public Prosecutions did not*  
14 *allow the charges laid by the Police to*  
15 *proceed to trial.*

16  
17 *To expedite John's return to teaching in*  
18 *2005 he was advised by me in [REDACTED] 2004 to*  
19 *seek registration as a teacher. Some*  
20 *five months later this is still to be*  
21 *decided by the Board.*

22  
23 *The delay, on top of the previous two years*  
24 *of waiting, has had a dramatic impact on*  
25 *his emotional health. He has been*  
26 *supported in preparing for a return to the*  
27 *classroom in 2005 and he has spoken*  
28 *positively of the prospect.*

29  
30 If I ask the operator to go down, I'll skip some  
31 paragraphs:

32  
33 *The Department of Education has previously*  
34 *decided not to proceed with any internal*  
35 *investigation when John was advised to seek*  
36 *registration. Approve his registration or*  
37 *seek an investigation of the claims that*  
38 *have already been judged twice as*  
39 *insufficient against the standard of*  
40 *reasonable doubt.*

41  
42 *It is not for me to tell you how to*  
43 *undertake your work, and I choose to do so*  
44 *only on this occasion because of the major*  
45 *negative impact the ongoing delay is having*  
46 *on one of our valued employees.*  
47

1 Now, can I pause there, and as I said I bring this up  
2 because I believe it to be critical to the piece of the  
3 puzzle for Ms Collins. Can I ask for your reflections on  
4 the appropriateness or otherwise or how you feel when you  
5 read that letter in light of Ms Collins' evidence to this  
6 Commission on Monday?

7 A. I think that letter is confronting, to be honest. So,  
8 is it appropriate to write and say, look, what are you  
9 doing with someone's registration? I would argue, yes, and  
10 there may be occasions when you just want to understand,  
11 are they going to be registered or not? I'd be interested  
12 to know how that came about because I note that the period  
13 of time, as I understand it and as you've said I have not  
14 made a statement on this, that there was some backwards and  
15 forwarding for a number of years before we got to this  
16 point, and I'm wondering if this is the first time that  
17 he's had to seek registration under the Act which came in  
18 in 2000.

19  
20 There's absolute overreach there in providing your  
21 personal opinion about the fitness to teach or not. They  
22 almost acknowledge, whoever the author is, acknowledges  
23 that, "Oh, I shouldn't really be telling you how to do your  
24 job but, you know, we believe that this person's fit to  
25 teach."

26  
27 I want to make an observation, and again, it is a  
28 change in practice: there seemed to be a view in the past  
29 that somehow you would look to external bodies as to  
30 whether or not someone was fit. So, oh, you've got your  
31 teachers registration, you've got your RWVP, the police  
32 have told us that they're not going to proceed, and  
33 therefore that's fine. I take no signal from any other  
34 decision-making body as to whether or not it's appropriate  
35 for me to proceed to investigate: that's a decision,  
36 I believe, I have to make myself.

37  
38 Q. I understand that, and I just want to return to this  
39 letter for just one moment, I won't ask for it to be  
40 returned to the screen, but I'm just conscious of  
41 Ms Collins and her potentially watching this or reading the  
42 transcript, and I just want to give you a final opportunity  
43 to reflect. Can I suggest to you, it is an entirely  
44 inappropriate letter?

45 A. Yes, I agree.

46  
47 Q. And it's not child-centric, it's not focused on

1 protecting children?

2 A. I agree.

3

4 Q. And Ms Collins would be entitled to feel entirely  
5 betrayed by that letter?

6 A. Absolutely, she would feel entirely betrayed.

7

8 Q. She should feel that?

9 A. Yes, absolutely.

10

11 Q. Are there any other reflections you'd like to offer on  
12 that letter conscious that Ms Collins may be watching?

13 A. So again, on behalf of the department I apologise that  
14 that letter was sent, and my overwhelming reflection on  
15 that letter, absent of the detail of it is, why was an  
16 adult put at the centre of the decision-making?

17

18 Again, I think coming back to your question,  
19 Commissioner, around the apology: why were we more  
20 concerned around an adult feeling uncomfortable or  
21 disgruntled or disenfranchised than we were around the  
22 child or young person who was involved? And that is a  
23 very, very clear example of the crux of the cultural change  
24 that we need to embed in every aspect of our organisation,  
25 and that is, that children have a right to feel safe and be  
26 heard.

27

28 And, whilst we have obligations to employees and we  
29 need to ensure that we're discharging those - I don't  
30 absent myself from workplace health and safety obligations  
31 and ensuring that people feel supported - but whilst -  
32 those two are not mutually exclusively and we need to  
33 ensure that, wherever they come into conflict with one  
34 another, as they do from time to time, that we put the  
35 child first.

36

37 Q. As I said, we'll be speaking with the Teachers  
38 Registration Board this afternoon, I suspect that their  
39 evidence will be that that letter was influential in John  
40 becoming registered and remaining registered for some time,  
41 and I take it that contributes to your sense of sadness and  
42 disappointment that that letter got sent?

43 A. Absolutely, yes.

44

45 Q. Now, I'm conscious of the time and I'd just like to  
46 indicate how I propose to proceed. Tomorrow we will hear  
47 from Mr Leishman in the morning, so I will not now go to



1 that; that is a matter about which you have been asked to  
2 give a statement, and so, I will wait until after  
3 Mr Leishman has spoken at this Commission and I will ask  
4 you to give some reflections after that time and I won't do  
5 so now.

6  
7 There are a couple of other case studies and I'd like  
8 to briefly go through them now and I won't take, you'll be  
9 relieved to hear, the kind of depth and time that I have  
10 taken on the earlier ones but I'd like to highlight some of  
11 the issues.

12  
13 Can I ask you to refresh your memory about Jeremy, and  
14 perhaps you will accept from me or tell me if this is a  
15 fair summary, that the uncontroversial facts are that in  
16 about 2012 there were some reports of conduct by a teacher  
17 in relation to students which demonstrated what could be  
18 called poor boundaries and was otherwise inappropriate. Is  
19 that a fair high level summary about --

20 A. Yes.

21  
22 Q. And I think there's been some evidence this week that  
23 you might have seen that gives us an insight into the  
24 importance of precursor behaviour, and I wonder,  
25 Mr Bullard, if you can reflect on that 2012 behaviour in  
26 light of that evidence?

27 A. Yes, I think it's a good example of the need to ensure  
28 that that evidence is somehow recorded, so a number of  
29 instances of behaviour that, whilst individually may be  
30 considered at sort of lower level touching, inappropriate  
31 comments, et cetera, only when combined show that there's a  
32 potential pattern of behaviour that may be of concern. So,  
33 looking back through the file, and obviously, and I imagine  
34 you will be getting to the more serious matter --

35  
36 Q. Yes.

37 A. -- but looking back through the file you could see in  
38 retrospect, oh, there were some early indicators there that  
39 maybe we needed to have a watching brief on this person.

40  
41 Q. And I think it's uncontroversial and you accept at  
42 about 132 of your statement concerning Jeremy that the  
43 allegations should have been referred to the Teachers  
44 Registration Board but were not?

45 A. That's correct. I'm just checking.

46  
47 Q. That happened because the correct department, I think

1 at paragraph 133, you explained why that didn't happen.  
2 And I think your explanation suggests that that was  
3 because - and I'll just make sure I have it in a manner  
4 that's fair to you - that it should have gone to a  
5 different part of the department. How do you understand  
6 it, about why that didn't go to --

7 A. Are you referring me to 133?

8

9 Q. Yes?

10 A. Well, we didn't have, as I understand it, at that time  
11 a process whereby those matters needed to go to Workplace  
12 Relations, so again, we're back in the mosaic age of, let's  
13 make some decisions around how we might deal with this, is  
14 a conversation from a principal or a senior leader enough,  
15 do we need to go to Learning Services, Human Resources, or  
16 do I need to escalate it? So the issue that I've got there  
17 is, there's a judgment made on the ground about the  
18 seriousness or otherwise, and as you quite rightly pointed  
19 out, until such matters are investigated, how are you going  
20 to know?

21

22 Q. And so, at that stage there was no system that  
23 required the notification to proceed to Workplace  
24 Relations, and it was only Workplace Relations that knew to  
25 escalate it to the Teachers Registration Board?

26 A. Well, that's a sweeping statement and I think we were  
27 fortunate, and I know the Commission was fortunate enough  
28 to hear from Ms Carter. So, someone like Ms Carter in a  
29 school would be dealing with that and knowing Teachers  
30 Registration Board has to know. We can't replicate  
31 Ms Carter across - unfortunately - across the whole  
32 organisation, so that's why again I've said we've  
33 centralised a lot of these things so that we can tick off,  
34 if you like, the range of reports that we need to make.

35

36 Q. You're still dependent on the ground level, it coming  
37 up through the principal, the principal then referring;  
38 that's a common pathway, isn't it?

39 A. Coming up through the principal, and the principal  
40 then referring, but there is also an opportunity because we  
41 need to accept that some people might not feel comfortable  
42 with that, and I'm not saying that principals would  
43 necessarily be involved; there is the ability for any  
44 member of staff to ring Workplace Relations or Legal  
45 Services and to report that in.

46

47 Q. So then, as you correctly identified, that precursor

1 conduct was - never went anywhere, then in about 2015 there  
2 was an allegation that the same person had been seen  
3 putting his hand on a student's thigh and there are no  
4 records of that incident that you have been able to locate.  
5 Is that fair?

6 A. My understanding, and you will correct me if I'm  
7 wrong, is that that was a matter that came to light during  
8 a Supreme Court trial in relation to other matters which we  
9 will discuss.

10

11 Q. Yes.

12 A. So, my understanding is, and you're nodding so I'm  
13 taking that it's correct, that during the course of the  
14 trial there was some evidence led from other people in the  
15 school who made that disclosure but there is no record of  
16 that.

17

18 Q. That's right, so there were other people at the school  
19 who didn't make the disclosure at the time they observed at  
20 2015?

21 A. And provided evidence at the trial, yes, that's  
22 correct.

23

24 Q. I guess that's the proposition I'm trying to tease  
25 out, is that, receiving the information from the people who  
26 observe it at the time can be down to luck sometimes?

27 A. Well, it's down to training, isn't it?

28

29 Q. Yes.

30 A. So, acknowledged skills and capabilities in this area  
31 are front and centre. There are a number of aspects of  
32 that which I think we need to - I say "we" collectively  
33 here - turn our minds to, there is action and what I  
34 observe and whether I should be concerned about that or  
35 not, and we know that when we get into the areas of  
36 grooming that becomes highly complex, and then there's the  
37 weight that we should give to intent.

38

39 I believe that sometimes the intent aspect is given  
40 too much weight. "I see you do that, but I believe that  
41 you would have done that because you care, or that you were  
42 trying to help", and so, the training needs to provide  
43 really clear focus on both the types of actions or  
44 activities that are of concern, and also what weight do you  
45 give or impute around the intent that may or may not attach  
46 to those.

47

1 Q. Going then to 2016, another student alleged that  
2 Jeremy took the student into a small storeroom, kissed her  
3 on the mouth, put his hand under her sweater inside her  
4 bra, touching her breast, grabbed her hand, put it on his  
5 penis, told her she must not tell anyone or he would go to  
6 gaol and have to kill himself, and after she left the [REDACTED]  
7 he asked if she enjoyed the lesson. That report was made  
8 shortly after the occurrence and the teacher was sent home.  
9 The Teachers Registration Board was notified in three days  
10 and he was suspended as a teacher. Is that a fair summary  
11 of what happened there?

12 A. Yes, it is.

13  
14 Q. Do you accept there was an oversight by the department  
15 in failing to notifying the Integrity Commission, I think  
16 you say that at paragraph 207 of your statement?

17 A. In terms of how we would now proceed I think that that  
18 was an oversight, yes.

19  
20 Q. He was charged in 2016, found not guilty in [REDACTED]  
21 2019 and from [REDACTED] 2019 there was no barrier from that  
22 time to carrying out an investigation, was there?

23 A. No, there was not.

24  
25 Q. It took a little while to do that; what was the cause  
26 of the delay, Mr Bullard?

27 A. I sought advice on that because it was a matter of  
28 concern to me that really only came to light when I was  
29 preparing this statement. I am told that there was some  
30 interaction with the Solicitor-General around legalities; I  
31 don't have the information as to those legalities, but I  
32 absolutely concede that the time was not acceptable from  
33 the Supreme Court trial concluding and me actually starting  
34 an investigation, because I think that's an important thing  
35 to note. Whilst I had stood him down, I couldn't  
36 investigate whilst the police investigation and trial was  
37 underway. So, it was only once it had concluded that I was  
38 able then to proceed with an ED5 investigation. But I  
39 can't shed any more light, I'm sorry, about why - exactly  
40 what happened in that time except to concede that it was  
41 too long.

42  
43 Q. Thank you. I think you say in your statement at about  
44 208 that if information about the outcome of ED5  
45 investigations is personal information, and that therefore  
46 you can't tell the complainant, the child about the outcome  
47 of that investigation --

1 A. That's correct.

2

3 Q. Do I understand that correctly?

4 A. That's correct.

5

6 Q. You'd accept that that's a pretty significant flaw in  
7 the system?

8 A. It is, and I think I may have said this in my evidence  
9 yesterday, of significant concern to me.

10

11 Q. Yes.

12 A. And I might reflect that that concern's only been  
13 compounded as we have gone through the review of matters,  
14 because as part of that we have gone to Tasmania Police  
15 and, where appropriate, ask that they contact adult  
16 complainant - people who are now adults, to see whether  
17 there's any further evidence that they wish to provide to  
18 us that may assist in our consideration of the matter. And  
19 in at least one of those that come to mind the impact of  
20 believing that the matter was never investigated or dealt  
21 with has only compounded the hurt and suffering of the  
22 initial complainant.

23

24 So, I accept that that is the statutory regime that  
25 Parliament has set. I have sought advice around a number  
26 of ways that we might be able to deal with that, wanting to  
27 provide at least some level of information, and I've been  
28 advised that I can't do that.

29

30 Q. And I think you refer, in 209 of your statement, to  
31 Solicitor-General advice, and you've set out there that the  
32 advice that you've received is that it would breach the  
33 Personal Information Privacy Act if any detail of the ED5  
34 was revealed to the complainant. That's your  
35 understanding?

36 A. That's the advice that I have received, yes.

37

38 Q. We'll return to this tomorrow, but you're obviously  
39 bound to accept Solicitor-General advice?

40 A. I am, yes.

41

42 Q. Can you seek a second opinion to put to the  
43 Solicitor-General?

44 A. I cannot.

45

46 Q. So, even if you wanted to spend your own funds to  
47 engage a private member of counsel or firm to provide an

1 alternative view for the consideration of the  
2 Solicitor-General in performing that really important  
3 function, you are unable to do it?  
4 A. I am unable to do it, and - look, maybe we can discuss  
5 this more.  
6  
7 Q. We will, we'll come back to the role of the  
8 Solicitor-General.  
9 A. But it certainly needs to be framed in a Westminster  
10 system where the Attorney-General is the first law officer  
11 of the Crown and the Solicitor-General is the second law  
12 officer of the Crown, so it's under that auspice and  
13 framework that we come to a position where we are bound to  
14 accept that advice. For people in corporations or private  
15 business they might think that's odd, and certainly if  
16 you're in private business you might want to shop around  
17 for advice that suits, but we do not have that opportunity  
18 and it's a moot point as to whether that should be  
19 available.  
20  
21 Q. Would you like it to be available? Would you like to  
22 be able to get other advice?  
23 A. You're asking someone who worked in the Office of the  
24 Solicitor-General for five years.  
25  
26 Q. Yes.  
27 A. Certainly, with that - no, I wouldn't, and there's a  
28 reason for that, and that is that government has to have a  
29 clear position on matters of law until such time as a court  
30 overturns that. And so, what it does provide us with is  
31 guaranteed certainty to proceed on a path to frame our  
32 decisions in, and know with confidence that, until a court  
33 of law has overturned that position, that's what stands.  
34 And for the good operation of government, that certainty  
35 needs to stand: we can't have duelling pieces of advice.  
36 The administration of agencies regarding legal matters  
37 would grind to a halt.  
38  
39 Q. We'll return to that tomorrow, if we may. Let's turn  
40 to the matter of Mark, if you have a look at you're  
41 pseudonym list. Do you know who I am referring to when I  
42 talk about Mark?  
43 A. Yes, I do.  
44  
45 Q. You've made a statement in relation to Mark, and at  
46 its core this is a matter that concerns potentially  
47 inappropriate correspondence on social media?

1 A. Yes, it does.

2

3 Q. Your view, as I understand your statement is, the  
4 matter may not have been investigated appropriately at the  
5 time; is that a fair summary?

6 A. Yes.

7

8 Q. And that's because key parts of the allegations could  
9 have been tested but were not?

10 A. That's right, yes.

11

12 Q. And this was - there was no report of this  
13 investigation to Workplace Relations, so this is another  
14 example - I think 59(d) of your statement - another example  
15 here where there was no central record, no searchable  
16 record, for this to go to Workplace Relations?

17 A. No, that is correct. Just on the matter, and not, I  
18 suppose for full disclosure, I think there's a question on  
19 this one around whether it does constitute child sexual  
20 abuse.

21

22 Q. Yes.

23 A. Or simply a breach of a social media policy.

24

25 Q. Yes, and it's something that ought to have prompted a  
26 perhaps more fulsome investigation than happened; I think  
27 that's fair, isn't it?

28 A. Well, as you have set out, you end up with a piece of  
29 data which, if you then move into an investigation, might  
30 reveal other pieces of data. So, on its face one-off  
31 interaction with a student on social media --

32

33 Q. I think you'll find it's more than one-off, but I  
34 accept that. It was not child sexual abuse on its face, I  
35 accept that and I think we can take that as part of this  
36 case study.

37 A. Yes.

38

39 Q. What I'd like to understand perhaps is that, it was  
40 because the Learning Services, the report made it to  
41 Learning Services and it was never reported back to  
42 Workplace Relations?

43 A. That's correct.

44

45 Q. Do I understand that that's part of the silo that  
46 you've been talking about?

47 A. It's not so much a silo; there are - so, for full - to

1 provide full information, there is a central HR that  
2 undertakes the payroll, recruitment and retaining staff,  
3 and there is a regional HR. So, local offices that have HR  
4 people in them that assist with day-to-day matters; if you  
5 can imagine the volume of transactions related to schools  
6 in terms of people coming on, going off, et cetera, they  
7 are great and someone needs to be at the frontline to  
8 assist schools to do that.

9  
10 In the past there have been determinations made around  
11 the seriousness of matters, and certainly in terms of  
12 regional HR, it may not be unusual for schools to go and  
13 seek advice about how to deal with a matter.

14  
15 Q. And that's something I'd like to just explore briefly  
16 with you through the lens of [REDACTED]. If you have a look at  
17 your pseudonym list you can see who I'm referring to when I  
18 refer to [REDACTED]?

19 A. No, I don't have anyone down there called [REDACTED].

20  
21 Q. I may have an old list, we did change the names at the  
22 last minute. I'm sorry, it's Brad.

23 A. Yes.

24  
25 Q. Yes, thank you. Now, there are allegations - I'll be  
26 clear about these parts, this is not information that comes  
27 from Tasmania. There were allegations of sexual misconduct  
28 made against Brad in 2003 in New South Wales, interstate,  
29 that resulted in no disciplinary action. There was an  
30 investigation in 2006 that concerned Brad, again  
31 interstate, and there was a finding that he be subject to  
32 disciplinary action on the basis that he engaged in  
33 Reportable Conduct as understood in that scheme, and he was  
34 formally monitored for a period of six terms. Is that all  
35 reasonably fair?

36 A. That, again, my understanding of what happened in  
37 another jurisdiction is not great, but that - I accept your  
38 assertion as to those facts, yes.

39  
40 Q. No, that's right. He came to Tasmania as a relief  
41 teacher and was engaged in 2012; is that your  
42 understanding?

43 A. Yes.

44  
45 Q. None of that - now, this is not a defect I lay at the  
46 feet of the department, but none of that information  
47 followed him?



1 A. No.

2

3 Q. So, is it part of your practice now to ask recruits if  
4 they have previous investigations or findings?

5 A. Yes.

6

7 Q. Was it in 2012, do you know?

8 A. I don't believe - well, no, because that's something  
9 that we've introduced since I've been Secretary.

10

11 Q. Thank you. And you'd agree that coordinated  
12 information sharing between jurisdictions is a priority for  
13 this kind of work?

14 A. Yes, it is, and certainly in terms of the  
15 communication of this type of information, between one TRB  
16 or registration authority and another, it's very, very  
17 pertinent and important. And I note and I think I may have  
18 made a statement to the fact that there is some work  
19 underway to sharpen up that data sharing.

20

21 But I'd also like to bring to the Commission's  
22 attention the mutual recognition agreements that have been  
23 entered into nationally of which we have very significant  
24 concerns, because they will basically allow members who are  
25 registered in other jurisdictions to come and work here  
26 almost in a Free Trade sense that you can just move between  
27 states and registration here is worth registration there.

28

29 Q. And you lose the oversight in that system, don't you?

30 A. Well, the TRB loses the oversight. There is a high  
31 level of - it is very, very useful to have a local  
32 registering body that teachers still have to go to once  
33 they arrive to say, "Here I am, and are you okay with me  
34 moving to this jurisdiction and teaching?"

35

36 Q. I'm going to summarise quite briefly the sequence of  
37 events that followed Brad from about 2018, and I won't be  
38 fulsome but I'll try to be fair.

39 A. Yes.

40

41 Q. Tell me if I miss anything that you think is  
42 important. So, I'll refer to these as school 1. Brad was  
43 reported to have displayed some inappropriate conduct by  
44 being too close to other staff, calling an autistic child  
45 "stupid", calling Aboriginal people "savages", and passing  
46 naked dolls around the classroom. Is that a fair summary?

47 A. Yes.

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47

Q. In school 2 in 2009 Brad was - so this is a different school, he's a relief teacher at all of these schools?

PRESIDENT NEAVE: Sorry which date, I thought you initially said 2018.

MS BENNETT: Yes, 2018 was school 1. Then, he's a relief teacher at school 2 in 2019, where he was alleged to have stared at female students for long periods of time, be in their personal space, put his hands on their shoulders while explaining work, and he was told by the principal to be careful with his actions around children. Is that fair?  
A. Yes.

Q. I think we know that around that time the principal was sufficiently concerned about Brad that she contacted a previous teacher, and that is reminiscent of Ms Carter's evidence about her practice to check in.  
A. Yes.

Q. And you'd accept that's a reasonably ad hoc approach?  
A. Very.

Q. And it needs to be systematised?  
A. Absolutely.

Q. Brad then moved on to school 3, and again, I think it's common between us that none of these complaints followed Brad; is that fair?  
A. That's correct, yes.

Q. And that at school 3 in [REDACTED] 2020 Brad went on an orienteering trip with his students and was reported to have been overly familiar with some of the female students and called a Grade [REDACTED] student "beautiful" and that again was reported to school 3 but it made nowhere towards any sort of a record capable of identifying a pattern; is that fair?  
A. That's right, yes.

Q. That system just didn't exist as at February 2020.  
A. That's correct, yes.

Q. School 4, again another school, later in 2020 the teacher's assistant at that school raised concerns about Brad's compliments to students and physical touching of students. A Grade [REDACTED] student talked about how he had hit or

1       tapped her on the backside and placed his arms on her and  
2       told her she was beautiful. You will find this in new  
3       statement at about 131. That's [REDACTED] 2020. Is that a  
4       fair summary of school 4?

5       A.    M'hmm, yes.

6  
7       Q.    We can see there a reasonable example of the  
8       accumulation of conduct over the time, can't we?

9       A.    Very concerning, yes.

10

11       Q.    The sort of thing that a systemic approach would  
12       capture and allow to be reviewed and allowed to be red  
13       flagged?

14       A.    Yes.

15

16       Q.    And it wasn't in this system because no such system  
17       exists?

18       A.    That's right.

19

20       Q.    And even on the SSS system that does exist, that  
21       tracks only the students, not the teachers?

22       A.    Yes, that's right, and one of the things through the  
23       case management platform that we want to develop is how  
24       these matters are recorded and escalated with the system  
25       dictating the way that they are then put up and dealt with.

26

27       So, absolutely accept here that the fact that you have  
28       a person working in multiple schools displaying behaviour  
29       which I would argue on some of that behaviour should have  
30       been escalated, but on other behaviour you'd think, well,  
31       that's a one-off and a bit odd but, you know, not going to  
32       report; it's only when you see that accumulated as a set of  
33       evidence that you are alerted, very alerted, to the fact  
34       that there is an issue that needs to be dealt with.

35

36       Q.    As I've gone through it, you can see the trend  
37       escalating, can't you, from 2018 to 2020, it's gone from --

38       A.    Yes, the behaviour becomes, if you like, more overt.

39

40       Q.    Yes. And the aim of the system that has children at  
41       its centre will be to prevent it becoming more overt and  
42       prevent it becoming more harmful?

43       A.    Yes, and we need to be really careful that a  
44       child-centric system doesn't only acknowledge the behaviour  
45       toward a child; you could see that there might be a  
46       behaviour, not rely on the child, that it also needs to be  
47       able to flag, oh, there's five children with one employee

1 as much as it does to flag, there's one child who's subject  
2 to an employee; so there's a real opportunity there, I  
3 think, to be able to draw evidence together.  
4

5 I think, can I just - to describe the complexity of  
6 what we're dealing with, it is again that fairness to an  
7 employee that they're not getting, you know, flags against  
8 them - which, to be honest, I think is secondary - with the  
9 confidence and ability to be storing, if you like, what  
10 might appear on the face to be minor matters of concern to  
11 allow a system and someone reviewing that to make judgments  
12 that there's an issue.  
13

14 Q. And you heard about the evidence from South Australia  
15 that they've struck that balance very much in favour of the  
16 identification of trends and allowing that information to  
17 be identified and stored; did you hear that evidence?

18 A. I didn't hear the evidence of South Australia, but on  
19 the basis of that evidence we agreed that we will be  
20 following up with South Australia to better understand how  
21 they do that because it's of great interest to us.  
22

23 Q. Is there any barrier to the sharing of information of  
24 this kind between schools in the department?

25 A. Absolutely not.  
26

27 Q. And so, schools are free to say, "Brad was here and  
28 I've got a bad feeling about him"; there's no Privacy Act  
29 concerns about that?

30 A. No, not between schools at all. What I do think  
31 though is important, and again I'm talking a lot about  
32 reporting it in, is that it comes in at the time in the  
33 absence of the system being live, is that it's reported in  
34 centrally. I understand from the evidence that I've  
35 provided and putting that together, there was a  
36 misunderstanding about actions that we could take with  
37 relief teachers, which is removing them from the register  
38 or in fact flagging them on the register as having  
39 concerns. So, certainly on the basis of what happened  
40 here, we've made sure that people out in our Learning  
41 Services and schools understand that we can do that, and  
42 we've asked that they do come in and tell us so we can make  
43 a determination as to putting a flag against a person.  
44

45 Q. So, as I understand it, concerns were raised along the  
46 way and, as you explain in paragraph 61(e) of your  
47 statement, that those concerns were raised with Learning

1 Services?

2 A. Yes.

3

4 Q. And Learning Services, you tell us was unaware at the  
5 time that there was an ability to remove an employee from  
6 the register?

7 A. Yes.

8

9 Q. And so, just to make clear what that means is, a  
10 relief teacher can be employed by any school provided  
11 they're on this register; is that right?

12 A. That's correct, so --

13

14 Q. And relief - I'm sorry.

15 A. I was just going to expand on that. So, in terms of,  
16 if you want to visualise it as a casual pool of employees,  
17 we can't just have people randomly going off and employing  
18 whoever they want because there are some preconditions to  
19 employment around, do you have your RWVP, are you a  
20 registered teacher, that need to be acquitted, as well as  
21 teachers wanting to record information about, I only work  
22 Wednesdays and Thursdays and I'd prefer to teach in  
23 science. So, the register is a compilation of all casual  
24 employee teachers and schools can only employ teachers who  
25 are on that register.

26

27 Q. So, while Brad remained on the register, he could be  
28 employed?

29 A. That's right.

30

31 Q. And Learning Services didn't know that they could take  
32 him off?

33 A. Yep.

34

35 Q. And so, they left him on?

36 A. Yes.

37

38 Q. And they would have taken him off had they realised?

39 A. Yes, they - well, they should have taken him off.

40

41 Q. They should have taken him off but they didn't know  
42 that they could?

43 A. That's right.

44

45 Q. And that's in 2020?

46 A. That's correct, yes.

47

1 Q. How is it possible, Mr Bullard, that in 2020 such a  
2 fundamental aspect of Child Protection was not known by  
3 those in Learning Services?

4 A. I can't explain that, but it is of concern to me.  
5

6 Q. It is a systemic failing, is it not?

7 A. In terms of people not knowing our controls that we  
8 needed to have around relief, yes.  
9

10 Q. And, it is a systemic failing that has the potential  
11 to place children at risk?

12 A. Yes, absolutely, and again, coming back to the case  
13 management platform, in terms of the way that we've  
14 structured the information management systems across the  
15 department, our view was that they are not going to fix  
16 this; that just school A putting something in a file that  
17 other schools can see is not going to fix it. The case  
18 management platform, on the other hand, will provide a very  
19 easy way that schools can enter information of concern and  
20 that that will then go through a chain of decision making  
21 without schools having to take further action. So, in  
22 terms of what we see with Brad it is of considerable  
23 concern to me.  
24

25 Q. Yes, thank you.  
26

27 COMMISSIONER BROMFIELD: Q. Just in relation to the case  
28 management platform, can I just check - I'm always keenly  
29 interested in implementation. If I am a school social  
30 worker and I have observed behaviour that perhaps involved  
31 five different students, would I need to go to each  
32 student's individual record on the SSO to record the  
33 incident and record the incident on the new data platform?

34 A. The new data platform will replace the SSS system as  
35 well.  
36

37 Q. And, does that include the technical fixes around  
38 being able to, I guess, tag something in multiple files?

39 A. Yes, absolutely. So, the case management platform  
40 actually started as a child-centric platform to replace the  
41 SSS system, which I think you've heard from our very  
42 experienced staff provides a number of barriers to being  
43 able to flag activity of concern, but running alongside  
44 that there's another component which will deal with this,  
45 if you like, Reportable Conduct and how it's escalated.  
46

47 What we're trying to do is make it as easy as possible

1 for people to be doing their job but at the same time  
2 putting in flags where they think there are matters that  
3 need to be reported elsewhere, so we're trying to drive  
4 information sharing in a way that's the least burdensome it  
5 can be to people like social workers, psychologists and  
6 school leaders.

7  
8 PRESIDENT NEAVE: Q. Can I ask what the timing is for  
9 that system to be up and running?

10 A. So certainly my understanding is that at the moment  
11 the component regarding the reporting of conduct of concern  
12 that's flagged to employees is under testing, so it's in  
13 the test phase. And the SSS replacement is underway, but  
14 there is some testing and - that has gone on by people who  
15 has to use it on the ground which means there are parts  
16 that need to be revisited. One of them is that ability to  
17 tick a box to say, I'm concerned that this may relate to  
18 grooming or harmful sexual behaviours, et cetera, so that  
19 the data extraction out the back end doesn't rely, as it  
20 does at the moment, on keyword searching.

21  
22 Q. I may have misunderstood you; I thought that you were  
23 saying that the case management system will ultimately  
24 replace the SSS system?

25 A. Yes, it will.

26  
27 Q. But for a while they'll be operating side-by-side; is  
28 that right?

29 A. No, sorry, I wasn't clear. There's a number of  
30 components to the case management platform. So, one is the  
31 SSS. So, if we look at the, if we want to call it,  
32 reporting matters of concern component; that's being  
33 actively tested now. There's another module around SSS  
34 which is under development.

35  
36 PRESIDENT NEAVE: Thank you.

37  
38 COMMISSIONER BROMFIELD: Q. Sorry, I'm still interested  
39 in this. Is the intent that, when it's rolled out, it will  
40 be the complete system that includes the replacement of  
41 SSS. So, from day one it'll be --

42 A. There will be - I will need to come back on the timing  
43 of that. There is a three-year work program for all  
44 different components, so this will be the platform that is  
45 going to service a whole lot of aspects of our business and  
46 tie the information together. I would need to come back on  
47 the timing of the, if you like, the issues of concern or

1 matters of concern component and the SSS component and when  
2 they're rolling out.

3  
4 Q. I'd be interested to see that, so the multiple parts;  
5 I guess I'd like to ultimately know the timing for when an  
6 individual within a school could complete one record and it  
7 will serve the multiple purposes of being uploaded on a  
8 child's file, where it's relevant, and being flagged  
9 against a teacher's?

10 A. We can certainly provide information around the design  
11 and implementation of those components and provide a  
12 timeframe, yep.

13  
14 Q. Thank you, that will be helpful, thank you?

15  
16 MS BENNETT: Q. I wanted to clarify one final thing from  
17 your statement as it relates to Brad and that's at  
18 paragraph 69. I want to make sure I understand what you  
19 understand the limitations of the Personal Information  
20 Protection Act to be because you there say that:

21  
22 *It contains a general prohibition on the*  
23 *use or disclosure of personal information*  
24 *for a purpose other than for the purpose*  
25 *for which the information was collected.*

26  
27 You say in there "generally". Well, Brad was not an  
28 ED5 case?

29 A. Yes.

30  
31 Q. But I understand you to be saying there that there are  
32 limits, because of that Act, on matters that you can  
33 disclose to the regulator and the Department of Justice who  
34 are administering the Working with Vulnerable People  
35 register. Do I understand your evidence correctly about  
36 that?

37 A. So, those limitations need to be read in terms of the  
38 requirements or powers of those bodies as well, and so,  
39 it's understanding the interrelationship of all of the  
40 legislation. The personal information protection, that  
41 should be, Act 2004 has a blanket disclosure, but then  
42 under the TRB Act and the RWVP there are requirements to  
43 provide some information.

44  
45 If we move to the TRB Act, for example, we can provide  
46 information that pertains to the ED5 in its broader sense  
47 but we've been advised, I believe, that we can't provide



1 witness statements or a full investigation file. Now, we  
2 overcome that by advising people at the opening that their  
3 statements may be used for other purposes and asking  
4 whether they want to say that they don't want that to  
5 happen.

6  
7 But what I'm showing there is that there is some  
8 discomfort - and I'm using "discomfort" in a broadly legal  
9 sense - there's some discomfort between the  
10 inter-relationship; it's not very, very clear around how  
11 they'll relate. On top of that, and in relation to - you  
12 might be coming to this, so I err - but in relation to  
13 Brad, there is an element of inter-agency communication  
14 that did not occur.

15  
16 Q. Yes.

17 A. And again, there's Personal Information Protection Act  
18 requirements there as we move agency-to-agency. But also,  
19 I understand - and this is not my area of expertise - that  
20 the Children, Young Persons and Their Families Act has  
21 certain requirements in it regarding the sharing of  
22 information.

23  
24 Q. Can you tell the Commissioners, if you're - sorry. Is  
25 this something that needs to be streamlined and simplified  
26 for your sake and the sake of other regulators?

27 A. Yes, please. So, there are a number of bodies that  
28 have either regulatory or decision-making functions that  
29 are receiving pieces of data, either around children who  
30 may be being impacted or actually around individuals who  
31 may be causing harm, and I think you can see on this matter  
32 that there are - there would have been different  
33 opportunities, had information been shared, to ascertain a  
34 pattern of behaviour that would have been of concern that  
35 would have allowed regulators to act more quickly.

36  
37 Q. Can I just conclude by suggesting, I want to just  
38 identify, based on my review of your various statements,  
39 what I understand to be at least some of the deficiencies  
40 or areas of improvement that you've identified. And I just  
41 want to see if I understand correctly.

42  
43 Firstly - I won't go through them all, and we take and  
44 accept and are grateful for the candour with which you have  
45 identified areas for improvement. We acknowledge that that  
46 is a comprehensive identification of areas for improvement,  
47 and I'd also like to identify that you have made

1 concessions around those matters or made those  
2 identifications without substantial prompting from us, and  
3 we see that as an appropriate engagement with the  
4 Commission.

5  
6 You've identified some areas where the department  
7 needs to improve as including the ED5 process. There are  
8 some shortcomings around that process; is that fair?  
9 A. Yes.

10  
11 Q. It's not best practice, it's not timely and it's  
12 fallen short in various respects of community standards and  
13 expectations; is that fair?

14 A. Yes, it is. And can I add that through the course of  
15 questioning yesterday there are other things that, through  
16 that process, we need to turn our minds to, particularly in  
17 relation to the gender balance of investigators and  
18 ensuring that the qualifications are correct. So, I'd also  
19 like to say that, out of yesterday's examination, that  
20 we've become aware of other things that we need to look at,  
21 too.

22  
23 Q. Would you add to that list the coordinated approach to  
24 support for children and families who are making the  
25 allegations and complaints?

26 A. Yes, although that's something that I do want to  
27 assure the Commission that we've become a lot better at.  
28 So, I haven't had an opportunity through today's hearing to  
29 say - to assure the Commission that in our contemporary  
30 management student support are notified immediately of a  
31 child making an allegation of this nature and that social  
32 workers and psychologists are made available to support  
33 those children and young people, because I think it's  
34 really important that we understand that, before the  
35 machine ramps up to look at the Code of Conduct, that we're  
36 supporting the children and young people who have made  
37 disclosures.

38  
39 And I also want to say that I believe that we can be  
40 better at that, and that we are moving now to employ case  
41 managers who oversee the coordination of that support to  
42 ensure that it occurs immediately but also ongoing into the  
43 future.

44  
45 Q. You've identified a document, "Our Approach to  
46 Improvement - A Guide to Student Voice and Agency" as a  
47 recent improvement?

1 A. Yes.

2

3 Q. That's a document from this year; is that right?

4 A. I think it might be the end of last year.

5

6 Q. Early - last year?

7 A. Yes, that's right. Through my professional experience  
8 overseas, this is a particular area of interest to me  
9 because this is the area I worked in, which was child  
10 agency and youth voice, and the voice of children and young  
11 people. One observation that I'll make is that going out  
12 and saying to young people, "Please make disclosures if you  
13 feel uncomfortable," is not going to cut the mustard.  
14 You've actually got to empower young people and show that  
15 you're serious, and sometimes that might actually start  
16 with, "Let's have a discussion about what we're going to  
17 serve in the canteen or the configuration of the playground  
18 or how the timetable works or what your learning style is,  
19 because that builds the confidence and trust in adults in  
20 school environments that may well lead to a disclosure.

21

22 Q. I think you acknowledge as well that there is some  
23 work to do around mandatory report training of staff; is  
24 that fair?

25 A. Yes, that's fair. But in, I suppose, caveating that,  
26 recognising that we've got to actually come back to the why  
27 and build that culture of understanding.

28

29 Q. Yes.

30 A. We have had for a number of years a requirement, a,  
31 "You must undertake yearly with your staff a mandatory  
32 reporting training," and I believe in a majority of  
33 settings and a majority of years that's delivered. Do  
34 people understand why they're doing it? Do people  
35 understand all the other aspects of safeguarding children,  
36 or do they just think, "Now, I know there's a phone number  
37 for me to ring if I'm concerned"?

38

39 Q. How do you check if they're doing it?

40 A. In previous years we have done surveys and we've  
41 actually asked, "You're required to do this; have you done  
42 it?"

43

44 Q. So, do teachers have to certify they've carried out  
45 their mandatory reporting training?

46 A. Principals have to, and for the past couple of years  
47 have not been, but at points in times principals are asked

1 to certify, "I have delivered these things that are  
2 requirements of the department." When we move into an  
3 online training environment we will be able to see, not  
4 just schools, but down to every individual that has or  
5 hasn't been through that. And this was a model that we  
6 used around COVID. So, COVID did provide some benefits.  
7 One was, how do we set up an online training module around  
8 COVID-safe behaviours that at the end of you need to answer  
9 a series of questions, and then in the back of the database  
10 every manager can see who has or who hasn't successfully  
11 answered those things?

12  
13 Q. You heard there was some evidence from Ms Collins,  
14 Ms Drake and Ms Carter --

15 A. Yes.

16  
17 Q. -- all emphasising the need for greater support from  
18 social workers or Allied Health. Can you tell the  
19 Commissioners about whether there are any plans towards  
20 improvement in that direction?

21 A. So, the first thing I'll say is there has already been  
22 a significant increase in social workers and psychologists  
23 into the system, not as an excuse but just as an  
24 observation that it's been a commitment since 2014 that we  
25 need more of these people, and yes, we're in active  
26 discussions around how we may be able to obtain more  
27 through the budget process. I think that the necessity for  
28 support, not only in child safeguarding but more broadly,  
29 the lives of children are more complex than they've ever  
30 been and supporting them to ensure that they're in a state  
31 where they're happy and well and engaged in learning is  
32 requiring significant skill and investment.

33  
34 The other side though that I will say - and I keep  
35 coming back to this - is that certainly at the moment there  
36 may be a perception in our system that that's where the  
37 accountability and responsibility lies for keeping children  
38 safe, and we need to build that universal level of  
39 understanding. And not saying that every teacher is a  
40 skilled social worker, but every teacher understands the  
41 importance of child safeguarding, understands what our  
42 expectations are, knows how to deal with a report and where  
43 to refer it.

44  
45 So, we've got 10,500 people in our system. Each and  
46 every one of them knowing what part they play and how to  
47 respond, I believe will make a difference.

1  
2 MS BENNETT: Thank you, Commissioners, those are the  
3 questions --

4  
5 PRESIDENT NEAVE: Yes, sorry. I have some follow-up  
6 questions to that. There were some issues raised in  
7 Ms Collins statement, which you will have read, about the  
8 structure of social work, the status of social workers,  
9 their pay, all of the issues which may arguably stand in  
10 the way of recruiting good people to those positions.  
11 A. Yes.

12  
13 Q. Do you have any comments to make on that or is that an  
14 area which is going to be the subject of a budget  
15 submission?

16 A. Well, Ms Collins has as one of our senior and most  
17 experienced social workers been working with Learning  
18 Services around some of those ideas, and not since she  
19 revealed that in the Commission. My understanding is, a  
20 number of those ideas are around residents, you know,  
21 residents for social workers, social workers on the West  
22 Coast, how do we support their transport are actively being  
23 discussed and I think some have been taken up.

24  
25 So, we need to make the jobs in Tasmania much more  
26 appealing to those people that we wish to recruit, and we  
27 need to accept that we're a small state but we're actually  
28 very regionally dispersed and quite remote, and so, we've  
29 got to be clever in how we do that.

30  
31 PRESIDENT NEAVE: Thank you.

32  
33 MS BENNETT: Commissioners, I had no further questions for  
34 Mr Bullard today. The only other matter I was going to  
35 identify: My learned instructor noted that our records  
36 indicate that Wayne resigned on ■ - well, was teaching  
37 until this year.

38 A. Yes, and --

39  
40 Q. Last year, sorry.

41 A. Last year. He has resigned.

42  
43 Q. Yes.

44 A. I just want to assure the Commission, we've continued  
45 with the investigation of Wayne.

46  
47 MS BENNETT: Yes, thank you. Commissioners, those were

1 the matters, unless there's anything further?

2

3 PRESIDENT NEAVE: Thank you, Ms Bennett. Any questions?

4

5 COMMISSIONER BROMFIELD: Q. I just wanted to check in,  
6 and it came up yesterday in your evidence; in relation to  
7 ED5, is it your view that there should be a more customised  
8 approach rather than a one-size-fits-all for the types of  
9 complaints you get?

10 A. Yes, that is my view. I understand, having gone back  
11 and looked at the State Service Act last night, that there  
12 may be an opportunity in section 10 to do that. I think  
13 that there is a recognition in, might be 4 - 10(4), that in  
14 the employer, which is in this case is the Premier, making  
15 Employment Directions there can be different treatments of  
16 different matters.

17

18 My point yesterday was at the moment the ED treats  
19 everything at the same level, and my observation was that  
20 in previous iterations in CD5, I think the 2002 version,  
21 there were a number of pathways that could be taken. I  
22 think that would bring about expediency in dealing with  
23 some of the matters, yes.

24

25 Q. Do you believe that that would - I certainly accept  
26 the expediency argument, but do you also believe there  
27 would be an opportunity within that to create a more  
28 specialised response to those allegations that involve any  
29 potential harms to children?

30 A. Absolutely, and I would be a strong advocate for more  
31 centralised management and decision-making around matters  
32 of this importance but also where the impact is this great,  
33 and I think I reflected that the State Service  
34 Commissioner, when that role existed, did have a role; and,  
35 refreshing my memory, in matters that could lead to  
36 termination, which these invariably are, that it was most  
37 appropriate that they were managed centrally by someone who  
38 was, if you like, one step removed from the Head of Agency  
39 but also had experience and resources to undertake that.  
40 And my personal view is I would be very, very supportive of  
41 that.

42

43 Q. Do I take that to mean that you would be supportive of  
44 these matters being dealt with under the responsibility of  
45 the Head of State Service? Have I got the structure right?

46 A. As it exists now, that would be the head of the State  
47 Service. And what occurred, and I couldn't tell you

1 the year - it's certainly since I've been back in the  
2 service - is that the State Service Act was amended to  
3 remove the role of State Service Commissioner and many  
4 powers were then handed to the head of the State Service to  
5 deal with. I think there's a question about whether it  
6 sits there or whether there is a separate role that's  
7 established to do it. And that would be a matter, really,  
8 for the Commission to consider.

9  
10 Q. Are you hampered by the fact that these are considered  
11 under Employment Directions rather than under a safety  
12 investigation?

13 A. I don't believe we are hampered, but it is not  
14 explicit. Does that make sense? So, it doesn't get in the  
15 way of people that want to do it in a way that is  
16 child-focused and Child Safe, but it doesn't also amplify  
17 that as being a - it doesn't provide the guidance around  
18 the pathway that should take.

19  
20 Q. It allows for individual digression as to whether  
21 they - you decide to be child-focused in the way you  
22 undertake these; is that what you're saying?

23 A. Yes, it does have a clause in the ED around  
24 interviewing children and the way that you come to that,  
25 but it doesn't set out a guidance that puts you into a  
26 train of process, where it involves a child, that sets out  
27 best practice around how each of those elements should be  
28 dealt with. So it really is up to the individual  
29 decision-maker or Head of Agency about how they equip their  
30 responsibilities.

31  
32 Q. So at present across the State of Tasmania we rely on  
33 heads of agencies deciding to be child-focused?

34 A. Yes, that's absolutely correct. Yes.

35  
36 COMMISSIONER BROMFIELD: That's all I had. Thank you,  
37 Mr Bullard.

38  
39 COMMISSIONER BENJAMIN: No, I have no further questions.

40  
41 PRESIDENT NEAVE: Thank you very much indeed, Mr Bullard.  
42 We'll see you again tomorrow.

43  
44 And can I just remind everybody that there is an  
45 order in place which, I reminded people of at the beginning  
46 this morning, requires that anyone who watches or reads the  
47 evidence given by Mr Bullard not to share any information

1 which may identify the people who were referred to as  
2 "Brad, Jeremy, John, Justin, Mark and Wayne", and that  
3 there's also an order in place relating to the sharing of  
4 the information which may identify any school, and a copy  
5 of that order is outside the hearing room and is available  
6 to anyone who needs a copy.

7  
8 **LUNCHEON ADJOURNMENT**  
9

10 MS BENNETT: Commissioners, the next witness is Ms Ann  
11 Deborah Moxham, the registrar of the Teachers Registration  
12 Board of Tasmania. If I could ask that she be sworn in, or  
13 perhaps before we do that we might --

14  
15 PRESIDENT NEAVE: Yes, I've got to make a restricted  
16 publication order.

17  
18 So, the Commission will make a restricted publication  
19 order in relation to the evidence of the next witness in  
20 order to avoid identifying particular schools and other  
21 relevant people. In the context of the scope of this  
22 inquiry, the Commission makes this order because it is  
23 satisfied that the public interest in the reporting on the  
24 identities of certain people who may be discussed during  
25 this hearing, as well as the identity of any particular  
26 schools, is outweighed by other considerations, namely, the  
27 potential impact of the evidence on the wellbeing of the  
28 relevant school communities and relevant privacy  
29 considerations.

30  
31 The order requires that anyone who watches or reads  
32 the evidence given by the next witness to the Commission  
33 must not share any information which may identify the  
34 people who will be referred to as "Brad, Jeremy, John,  
35 Justin, Mark and Wayne".

36  
37 In addition, the order also requires that anyone who  
38 watches or reads the information must not share any  
39 information which may identify any school which may be  
40 referred to during the evidence unless the Commission  
41 advises otherwise. I make the order which will now be  
42 published. A copy of the order will be placed outside the  
43 hearing room and is available to anyone who needs a copy.  
44 Thank you.

45  
46 <ANN DEBORAH MOXHAM, affirmed:

[2.07pm]



1 <EXAMINATION BY MS BENNETT:

2  
3 MS BENNETT: Q. Would you tell the Commissioners your  
4 full name and professional address?

5 A. Ann Deborah Moxham, and the address is 213A Cambridge  
6 Road, Warrane.

7  
8 Q. Thank you, Ms Moxham. You are the registrar of the  
9 Teachers Registration Board of Tasmania; is that right?

10 A. That's correct.

11  
12 Q. Can you tell us about how you came to have that role  
13 and your previous roles?

14 A. Okay. So, I first joined the Teachers Registration  
15 Board in April 2018 as the manager of Professional  
16 Standards and Initial Teacher Education accreditation. In  
17 2019, I undertook some work as an acting registrar when the  
18 then-registrar was on long service leave, and in 2020 when  
19 she went on leave for sickness and various other reasons, I  
20 again became the acting registrar until November when I was  
21 appointed on a fixed term basis and then again appointed on  
22 a fixed term basis, which you might find odd, but the  
23 reason for this ongoing process of appointment is because  
24 of the review of education regulation. And the idea is  
25 that the current registrar role will be subsumed into The  
26 Education Director role and a new type of role will exist  
27 within the board to run the office.

28  
29 Q. I see. So, after those reforms are completed, can you  
30 tell the Commissioners where you understand your role will  
31 sit?

32 A. I'll either revert to the Manager of Professional  
33 Standards role that I was originally appointed to, because  
34 that's my substantive position; or in the alternative I may  
35 apply for and I may be successful in gaining whatever the  
36 new role is going to be called, with whatever its new  
37 functions will be, because the actual registrar role or the  
38 Executive Officer role as described in the Act will become  
39 part of the Director of Education Regulation position, as I  
40 understand it.

41  
42 Q. And that will sit within the Department of Education  
43 or in a new department?

44 A. No. It will sit, as I understand it, reporting to  
45 each of the three boards for the regulators.

46  
47 Q. At present - so we'll talk today about the way things

1 are now and the way that they have been in the past, and  
 2 I'd like to talk to you about how things have changed and  
 3 where they need to change. We'll do that on the basis of  
 4 the Act as it exists today, not on the basis of what those  
 5 reforms might look like. Is that okay with you?

6 A. Yes. I'll just say that the bulk of our Act isn't  
 7 being reformed; there's lots of things we'd like reformed,  
 8 but they're not being fixed this time round.

9

10 Q. I'm very keen for to identify what you think needs to  
 11 be reformed, and so we'll come to that in a moment.

12

13 I just want to step back and identify, is it fair to  
 14 say that the role of the Teachers Registration Board,  
 15 speaking as a corporate entity, is to prevent, identify,  
 16 report on and respond to - sorry, let me go back. Its role  
 17 is to regulate teachers in Tasmania?

18

A. Correct.

19

20 Q. How do you understand, in a summary form, what are you  
 21 regulating for?

22

A. The welfare and best interests of students.

23

24 Q. That's your paramount --

25

A. That's our absolute paramount provision in the Act.

26

27 Q. And so, you do that by trying to make sure that  
 28 teachers who gain registration through you are fit and  
 29 proper?

30

A. They're of good character, fit to teach, properly  
 31 qualified; that's correct, yes.

32

33 Q. And so, let's just pause there. Are those three  
 34 tools, are they sufficient for you to capture what you  
 35 think you need to, to make sure the best interests of  
 36 children are protected?

37

A. Theoretically, yes. But some of the provisions within  
 38 the Act limit our capacity to gain the information we need  
 39 and, furthermore, to actually apply the sanctions that are  
 40 a part of our Act.

41

42 Q. I'm not going to hold you back anymore from telling us  
 43 what they are; what is it that's stopping you from getting  
 44 the information that you need, Ms Moxham?

45

A. Primarily, it's the fact that the Personal Information  
 46 Protection Act is interpreted narrowly by other bodies from  
 47 whom we would expect to get prima facie evidence. The Act

1       itself allows us to receive from employers section 31  
2       notifications which tell us that they've undertaken a  
3       disciplinary proceeding, but they don't have to provide us  
4       with the evidence that they've accumulated in undertaking  
5       that disciplinary proceeding, and they very often don't.  
6       That's changed recently for one of the employer groups, but  
7       it's not the case for the Department of Education.

8  
9       Q.    So, let's start with the Department of Education,  
10       given the focus of this week, and the focus of your office  
11       indeed. What's your experience of the provision of  
12       information from the Department of Education through to the  
13       Teachers Registration Board?

14       A.   It's patchy. It sometimes depends upon individuals  
15       communicating with individuals in my office, but primarily  
16       the information that comes to us, because I believe and  
17       understand there was Solicitor-General advice to the  
18       Department of Education that said that they cannot provide  
19       to us information they've collected in the course of their  
20       enquiries or determinations. And so, it means that we will  
21       get to know what the allegations were and what the decision  
22       of an ED5, for example, was. But we don't get the actual  
23       information we need to delve into, and so we have to carry  
24       out our own investigation. And my concern for young people  
25       is that sometimes that requires re-interviewing children.

26  
27       Q.    So, you can't get access to the records of interview  
28       that children have given to the Department of Education as  
29       part of the --

30       A.   Not in all cases. In fact, in most cases, no.

31  
32       Q.    And is that true as we sit here today?

33       A.   That is true as we sit here today. In fact, we've  
34       had - in my time in the registrar's role, we've had a  
35       meeting to try and overcome some of these issues. One of  
36       the things that came out of that is that pre-employment  
37       checks are now done at the Department of Education, but the  
38       things we wanted around getting the information haven't  
39       come to pass.

40  
41       Q.    Let's return to that in a moment, but let me come back  
42       to the investigation. Do I understand correctly that so  
43       far as you understand your role, if the Department of  
44       Education carries out an investigation - let's just say  
45       something happens on 1 January 2020, it is investigated by  
46       the department and they conclude their investigation by  
47       30 June 2020; at what point do you get notified that

1 there's an issue?

2 A. Well, the Act says that it has to be notified to us  
3 within 28 days, and generally speaking that will be  
4 complied with. But it's not always the case.

5

6 Q. Within 28 days of?

7 A. Of the investigation being concluded and they've got  
8 something to tell us about.

9

10 Q. So, if an allegation is made of child sexual abuse on  
11 1 January, you don't need to hear about it until 28 July;  
12 is that fair? Assuming that the investigation concludes on  
13 30 June?

14 A. That could be the case. Very often they're more happy  
15 these days to alert us earlier than that.

16

17 Q. But so far as - and I'm just trying to understand  
18 systemically. I'm not asking at the moment about what the  
19 practice is; I'm just trying to understand what the system  
20 is there's no requirement for you to be notified of the  
21 allegation but you often are; is that right?

22 A. Yes.

23

24 Q. And the obligation to notify you kicks in at the  
25 conclusion of the investigation; is that right?

26 A. That's correct.

27

28 Q. And then they get 28 days to notify you?

29 A. Yes, that's what the Act says.

30

31 Q. And often it's done quicker than that?

32 A. Sometimes it's done quicker than that.

33

34 Q. Sometimes it's done slower than that, I'm going to  
35 suggest?

36 A. I believe so, although those notifications don't come  
37 to my personal attention; they go to the officers of the  
38 board who deal with conduct matters. And they complain  
39 about the slowness, so ...

40

41 Q. So when you are then told of the outcome of the  
42 investigation, you are told whether the investigation has  
43 been substantiated? What are you told about the  
44 investigation outcome?

45 A. Generally speaking, if we're notified about an  
46 investigation after it's concluded, we'll be told what the  
47 conclusion was that was drawn by the investigation done by

1 the department.

2

3 Q. So, you will know the allegations and the conclusion?

4 A. Yes.

5

6 Q. But you won't know the evidence that sits between  
7 those two propositions?

8 A. Maybe some overview statements in some cases, but  
9 definitely not the prima facie evidence.

10

11 Q. Is it fair to say that, as you understand it, the  
12 purposes of the department's processes are to determine,  
13 generally, there's been a Code of Conduct breach; your  
14 processes are directed towards determining if the person is  
15 fit to teach, those three limbs that you gave to us  
16 earlier?

17 A. Good character and fit to teach.

18

19 Q. Those are prospective matters; is that right?

20 A. Yes.

21

22 Q. And they will often be informed by the past conduct of  
23 that individual?

24 A. Well, I have to say that our Act entitles us to look  
25 at conduct more broadly than in the employment workplace.

26

27 Q. Yes.

28 A. So we will look at matters relating to a whole raft of  
29 things that are not taken into account in an ED5, for  
30 example, which is only about workplace behaviour.

31

32 Q. Yes. It seems to me, Ms Moxham, that it's matter of  
33 concern to you that you're not getting the investigation  
34 materials; is that right?

35 A. That is correct.

36

37 Q. Can you tell the Commissioners why that's matter of  
38 concern to you?

39 A. Well, because there's several reasons: one of the key  
40 ones for us is that we don't wish to unnecessarily impact  
41 people who have already been potentially through trauma, so  
42 we don't really want to be in a position where we are  
43 interviewing children, young people, who have been through  
44 difficult circumstances.

45

46 Then, in addition to that, it's the fact that we have  
47 a very small office with very little in terms of

1       resourcing, and we have to go out and re-investigate the  
2       entire matter from the beginning, and that can take a very  
3       long time.

4  
5       Q.   And you're investigating, aren't you, from later in  
6       time. And so, is it fair that as a general proposition the  
7       quality of the evidence might not be --

8       A.   Yes, I'm sorry, I should have included that.

9  
10      Q.   Don't apologise. No, that's okay. Is that one of  
11      your concerns as well?

12      A.   Definitely.

13  
14      Q.   The quality of the evidence might have degraded, given  
15      the effluxion of time?

16      A.   Definitely the case.

17  
18      Q.   And that concerns you in terms of being able to  
19      properly fulfil your functions?

20      A.   Indeed, it does.

21  
22      Q.   And your primary concern in doing that is the best  
23      interests of students?

24      A.   That is correct, and their welfare.

25  
26      Q.   You regulate around, if I look at table 1 of your  
27      statement at paragraph 3.1 on page 3, it seems to have  
28      varied between about 11,500 and just over 12,000 teachers  
29      in Tasmania; is that fair?

30      A.   That is correct.

31  
32      Q.   What's your full-time equivalent staff to do that?

33      A.   Right at this moment?

34  
35      Q.   As we sit here today?

36      A.   I have to look at that.

37  
38      Q.   No, no. I think it is --

39      A.   Sorry, we have about 15 people in the office but  
40      they're not all on full-time salaries, so --

41  
42      Q.   If I could direct you to page 7 of your statement, it  
43      says:

44  
45               *During 2018 the TRB office operated an*  
46               *overall FTE staffing of 12.8. There were*  
47               *on average 14 persons employed with*

1           *part-time loads.*

2

3           And then I think it goes slightly up from there  
4 following at 2020, 14 persons employed with a part-time  
5 load, meaning 12.8 FTE. Let's call it 12 to 15; is that  
6 fair?

7           A. Yeah, so definitely not 15. It would be somewhere  
8 between 12 and 13.5, something like that.

9

10          Q. And that includes your administrative support right up  
11 to your role as the registrar itself?

12          A. That's correct, yes.

13

14          Q. And is it fair to say that that's not a level of  
15 staffing that's capable of carrying out a lot of  
16 investigations independently?

17          A. Well, I should make clear that that total staffing  
18 only includes two investigators, a person who deals  
19 initially with applications, and so does the initial  
20 looking at good character and fitness to teach based on the  
21 national criminal history checks and on the declarations  
22 made by the individuals, and may take on some of those  
23 matters if they're relatively straightforward. The other  
24 two, the investigators, take on all the big investigations;  
25 they are both full-time.

26

27                 The other person that works in our conduct team is  
28 largely there to undertake Right to Information requests  
29 recently and also to do trends reports for heads of agency  
30 to help them understand the sorts of things that are going  
31 wrong in the teaching profession across Tasmania, and  
32 address them, and in addition to that reports to the board  
33 and also to sort out which matters are going to be handled  
34 by which investigators. So, the team there is four people  
35 and at the moment it's 3.9 and one of those people isn't  
36 really trained; we've had to - we were unable to get  
37 someone to replace a maternity leave position, and so we've  
38 promoted a band 4 clerk, basically, into that role. She's  
39 doing a great job.

40

41          Q. Under what sounds like difficult circumstances; is  
42 that fair?

43          A. That's correct, yes.

44

45          Q. You said before that your understanding, and you can't  
46 speak for the Department of Education, but they tell you  
47 they can't provide you with this investigation material

1 because of legal advice they've received?

2 A. Correct.

3

4 Q. What about your power to share information? Are you  
5 similarly constrained if you have concerns?

6 A. We're able to share information with all other  
7 regulatory bodies around Australia. We are able to share  
8 certain types of information in accordance with different  
9 sections of the Act, and it's quite partitioned, so please  
10 excuse me if I don't actually give you the sections that go  
11 with which bits, but we are certainly able to provide  
12 information to employers. We're able to provide  
13 information to individuals who seek that information, but  
14 it is fairly limited in terms of, for example, a member of  
15 the public can ask for the board's minutes. However, under  
16 Right to Information, which we've really only had in the  
17 time that I've been at the TRB. So, to the best of my  
18 knowledge and belief we've only had three RTI requests in  
19 the last two years, so that information can be requested.

20

21 We provide information to the Department of Justice  
22 for RWVP purposes, but we don't get anything back when we  
23 ask for anything, and we provide information to Child &  
24 Family Services - or that's probably not their name now -  
25 but we don't get anything back from them either.

26

27 Q. Just to pause, when you say you don't get anything  
28 back, let's go back to Justice and the Working With the  
29 Vulnerable People register. So, if somebody reports  
30 something to that agency for the purposes of considering  
31 their vulnerable person registration, do you receive  
32 notification from Justice about that?

33 A. We receive a written notification if they are taking  
34 action, so if they're going to suspend or they're going to  
35 remove their RWVP. We don't receive in that notification  
36 any information about why.

37

38 Q. And so you then have to initiate your own  
39 investigation into that person to determine --

40 A. Well, because we've now got section 17BA, as soon as  
41 they suspend we can suspend.

42

43 Q. You suspend on the basis of that suspension? It's  
44 automatic; it comes across?

45 A. Well, it's not quite automatic because the Act says  
46 "the board may" instead of "the board will", and so we've  
47 had to send some of these to the board initially, so that



1 we'll be in a position to now say, "These are the  
2 conditions under which the board just simply says that it  
3 requires it to happen." So, I think the drafting of the  
4 Act was a little astray in that section.

5  
6 Q. And so, those were some recent amendments, I think,  
7 that allowed that to happen?

8 A. That's correct.

9  
10 Q. Do you remember roughly when those amendments went  
11 through?

12 A. I think they went through in 2019.

13  
14 Q. So, you're not notified about any notifications to  
15 that agency which are dismissed?

16 A. No.

17  
18 Q. And what about through the ARL? Do you get  
19 notifications through the Advice & Referral Line --

20 A. No.

21  
22 Q. -- of any concerns about any individuals?

23 A. Not that I'm aware of, no.

24  
25 Q. So the sources of information for you are from the  
26 public?

27 A. Yes.

28  
29 Q. People can make complaints to you directly?

30 A. Yes.

31  
32 Q. From the Department of Education?

33 A. And other employers, yes.

34  
35 Q. And other employers. So any school?

36 A. Yes, that's correct. In fact, they're required to  
37 under certain situations.

38  
39 Q. But you don't have other integrity bodies providing  
40 referrals to you?

41 A. TAS Police.

42  
43 Q. TAS Police do?

44 A. TAS Police do, but we would like that to happen every  
45 night instead of once a month. So, for example, in  
46 Victoria they have a system where their register is updated  
47 every night so that all the information from police in

1 Victoria updates on a daily basis instead of a monthly  
2 basis, which is our situation.

3

4 Q. So, police get a report about a person who, on the  
5 weekend, so outside entirely, has been involved in a  
6 violent incident --

7 A. Correct.

8

9 Q. -- or an incident of sexual abuse?

10 A. Yes.

11

12 Q. Let's say that comes in on 1 January; your  
13 notification will come to the Teachers Registration Board  
14 on 30 January?

15 A. It may slightly different, because it's actually  
16 related to the cycle, so yes.

17

18 Q. Yes. So, it won't be more than 30 days; it could be  
19 two days if you're lucky?

20 A. Yes.

21

22 Q. We've had some evidence that these are matters that  
23 ought not be left to luck, but it seems to me that is a  
24 matter of --

25 A. A lot of luck.

26

27 Q. Really? In what other respect is the regulation of  
28 teachers in Tasmania left to luck?

29 A. Well, a number of our co-regulators in other states  
30 and territories are required also to notify other  
31 regulators, but some are not. And in other - and sometimes  
32 they are actually unable to do so about certain matters  
33 because their Acts are different from ours.

34

35 In addition to that, in New South Wales the largest  
36 employer of teachers in the country, NESA - sorry, I can't  
37 think of what the acronym stands for, but NESA is sort of  
38 an equivalent to us. They're an accrediting body; they're  
39 not truly a regulator or a registering body, if you see  
40 what I mean. They do not conduct enquiries and  
41 disciplinary processes; employers do that in New South  
42 Wales. And so, if a teacher comes here and they've been  
43 under a disciplinary process in New South Wales, we would  
44 have to ask that teacher for their permission to go and get  
45 the information from their employer. We can't just get it  
46 from the regulator.

47

1 Q. Can you decline to register them until they give you  
2 that permission?

3 A. No, because the Mutual Recognition Act requires us -  
4 if we can't get the information within 30 days, requires -  
5 we run out of time. We're required to register them.

6  
7 Q. Does that cause you some concern?

8 A. Yes, it does. And the Automatic Mutual Recognition  
9 Act will make that worse.

10

11 Q. Can you tell the Commissioners why that will make that  
12 worse?

13 A. Well, there's several reasons: the first of those is  
14 that I'm awaiting to find out whether Treasury and Finance  
15 in Tasmania are going to give us a notification capability,  
16 which would mean that anyone intending to come and work in  
17 Tasmania would have to notify us that they were intending  
18 to come here. If that doesn't happen when we take on the  
19 Act, then we won't know they're even in the state but  
20 they'll be deemed under the Mutual Recognition Act to be on  
21 our register, even though we don't know they're here. That  
22 will create a lot of problems for employers and obviously,  
23 if we don't know they're here, we won't know we need to  
24 carry out any kind of disciplinary processes.

25

26 Then, secondly - I think I've lost track - oh,  
27 secondly, the automatic mutual recognition is the case that  
28 once they are here and working here they, as I said,  
29 they're deemed to be on our register, in other words,  
30 they're registered teachers in Tasmania. And the only  
31 thing that protects Tasmanians is that they will have to  
32 get RWVP, so we won't be able to carry out our good  
33 character and fitness to teach test, which is broader, much  
34 broader than the RWVP.

35

36 Q. Much broader in terms of things you can take into  
37 account?

38 A. Yes, that's right.

39

40 Q. And also more specific on the other side that you can  
41 take into account for people's fitness to teach?

42 A. Correct, yes.

43

44 Q. Yes.

45 A. Which could be a health matter in terms of mental  
46 health, which is very much an increasing area of risk, or  
47 it could indeed be fitness to teach in terms of

1 qualifications and all of that.

2

3 Q. So, those are issues that you foresee and are  
4 concerned about under mutual recognition in the future?

5 A. Yes.

6

7 Q. As we sit here today, there appear to be additional  
8 gaps, or gaps that concern people transferring from  
9 interstate; is that right?

10 A. That's already an issue both for interstate and from  
11 New Zealand, because there's also a Trans-Tasman Mutual  
12 Recognition Act, and so there are risks in terms of both  
13 from other states and territories and also from  
14 New Zealand.

15

16 Q. So, if someone comes to Tasmania from Victoria, I take  
17 it a not unusual happenstance --

18 A. No.

19

20 Q. -- and they want to work as a relief teacher in the  
21 Tasmanian system; what checks do they have to go through as  
22 far as you're concerned?

23 A. So, we need to check that they actually are registered  
24 in Victoria. And if they are registered in Victoria and  
25 the information they've provided us about their name,  
26 address, birth date, all of that sort of thing checks out,  
27 then they become "deemed". And we need to do that within  
28 seven days, and then we have a further 30 days in which to  
29 check on other things that we might have concerns about as  
30 a result of our initial checks.

31

32 Q. And any disciplinary actions that have been taken by  
33 the Victorian Regulator, are they visible to you?

34 A. Not necessarily. Victoria does display disciplinary  
35 matters on their website, but they don't name people, of  
36 course. We do have very good relationships with other  
37 regulators, and we can contact them and ask them about  
38 issues. We do get information about conditions that are on  
39 people's registration, and that can trigger our interest in  
40 what might be behind those conditions.

41

42 We have up until recently been carrying out  
43 international criminal history checks, but under the Mutual  
44 Recognition Act we're actually not entitled to do that, so  
45 we're ceasing doing that.

46

47 Q. All right.

1 A. But that was the Andriotis case.

2

3 COMMISSIONER BROMFIELD: Q. Can I just check: You  
4 talked about TasPol provides you information?

5 A. Yes.

6

7 Q. But Child Protection don't provide you information?

8 A. That's correct; they don't provide us with  
9 information.

10

11 Q. So you could potentially have a report go through to  
12 the ARL about concerns about a teacher in their parenting  
13 capacity that maybe doesn't reach the criminal threshold,  
14 not reported to TasPol; you wouldn't know about that?

15 A. That's correct, unless the teacher did the right thing  
16 and declared the matter on their declarations when they  
17 were undertaking either registration or renewal. And those  
18 things, if you hold provisional registration you need to  
19 re-apply for registration every five years; if you hold  
20 full registration, you apply for renewal every five years.  
21 So we really only get a chance to look into you carefully  
22 every five years. And in the alternative, if you fail to  
23 pay your registration on time, which is by 31 December, you  
24 then have to re-apply, and so we again get a chance to have  
25 a look at that time.

26

27 In addition, if you're moving from provisional to full  
28 registration, we get a chance to get you to do declarations  
29 and have a look at you in terms of Tasmania Police at that  
30 time as well.

31

32 MS BENNETT: What you get to have - sorry, Commissioner.

33

34 COMMISSIONER BROMFIELD: No, I was saying thank you.

35

36 MS BENNETT: Q. What you get to have a look at is what  
37 your four staff have time to have a look at, don't they?

38 A. Well, yes. But they're very thorough, and so the  
39 issue is that we get rather large backlogs of matters,  
40 which is in itself a huge risk.

41

42 Q. Yes. I think I've made the point a number of times  
43 that your primary concern is for the welfare of children,  
44 but you'd accept, wouldn't you, Ms Moxham, that child  
45 sexual abuse is one of the most significant risks presented  
46 for which you regulate?

47

A. Definitely. Very concerning.

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Q. And it goes without saying that people who present risk of child sexual abuse are not fit to teach?

A. They're not of good character, for sure.

Q. Yes.

A. And yes, you're right, the line between good character and fit to teach is grey.

Q. On either limb, this is a cohort of people that you're trying to weed out; is that correct?

A. Correct. Yes, that's right.

Q. And it sounds to me as though you're being hampered in that effort by information flow; is that right?

A. That is right.

Q. From both inside Tasmania and nationally; is that fair?

A. That's correct, yes.

Q. You're being hampered by a lack of funding and personnel to actually carry out proactive regulation; is that fair?

A. Yes, I think that's true. I think the addition to that is that we started out much smaller than we are now. And in fact, we've only had two investigators and the other two people in our office that I mentioned for the last, approximately, three years; before that we have had a situation where there was one point - it varied - people working in this area when the office was a lot smaller. And so, yes, there's been a great deal of under-resourcing, which has meant that a lot of the policy procedure and process work and the leveraging of our technological solutions is lagging behind other parts of our office, primarily the registration part of our office, for our Professional Conduct Team. And I've actually engaged an office - a person to work on a policy project that includes those preparations for our new customer records management system.

Q. Just to pause there, while we're talking about personnel, you talk at pages 6 to 7 of your statement about your funding structure. Am I right to understand that the bulk - the substantial bulk of your funding comes from teacher registration fees; is that fair?

A. Yes, up until 2017 it was all from teacher

1 registration fees unless we got some small grants from  
2 AITSL and the like.

3

4 Q. And at about 2017 you started getting some revenue  
5 from government?

6 A. That's correct.

7

8 Q. So until then you had teacher registration fees of  
9 about \$1.3 million from which to run your operations?

10 A. Correct.

11

12 Q. And then you started getting revenue from government  
13 of about \$150,000 in 2017; is that right? It's not a  
14 memory test; it's at page 6 of your statement.

15 A. So we - that's not the funding that I'm really talking  
16 about.

17

18 Q. Sorry, tell me what's the funding that you're talking  
19 about?

20 A. So we got \$600,000 during the period that they thought  
21 it would take to undertake their review of education  
22 regulation. But also in relation to some solicitors  
23 advice, our board had taken some considerable trouble to  
24 put together a paper to say that all teacher registration  
25 fees needed to go up significantly, which the Department of  
26 Education rejected - and I can understand why - and said,  
27 "Instead, let's have a look at the functions and powers of  
28 the board and see which ones are most properly registration  
29 and which are 'other'."

30

31 And so, professional conduct, the area we're talking  
32 about here today, was deemed to be outside of the central  
33 role of registration. And so, 5.14 FTE of staff were  
34 deemed to be part of the registration functions or the  
35 functions of the Teachers Registration Board that  
36 government should pay for. And so, there's kind of a  
37 duality around why we got that money. And it's indexed, so  
38 it goes up each year. But we don't know whether it's going  
39 to continue to be that amount or something different after  
40 the review of education regulations are finalised.

41

42 Q. And then you can see that that tracks through on  
43 pages 6 and 7 with increases over time, but fairly closely  
44 pegged to that general formula; is that right?

45 A. Yes, and we have had a special project grant for  
46 highly accomplished and lead teacher pilot that's being  
47 operated in the state, so that's been an additional amount

1 of money.

2

3 Q. I want to understand a little bit more about some of  
4 the information that you receive. At any given moment, can  
5 you tell where a particular teacher is teaching?

6 A. Not necessarily, no.

7

8 Q. So, John - poor Johns - but John Smith, you can't tell  
9 where he is teaching on any given day?

10 A. I couldn't be certain that I knew where he was, no.

11

12 Q. And, why is that? Is a teacher's registration not  
13 tied to a particular school?

14 A. No, that's right. So, we're not required under the  
15 Act to collect that information. Teachers are not required  
16 under the Act to update us whenever they change schools,  
17 only if they change address and they don't even always do  
18 that, and there's some limitations with our Act about  
19 actually pursuing them over those matters. But the school  
20 that they're teaching in is not a requirement.

21

22 We do - we've created a workaround, which is a Watched  
23 Registrations list that we have created for the employer.  
24 But it's only as good as the employer keeping it  
25 up-to-date, so on any given day you couldn't be certain  
26 that the information you hold is accurate.

27

28 Q. So, if a teacher is moving around a lot, is that  
29 something that, in an ideal world, could trigger your  
30 interest and investigation?

31 A. If we were aware of it, yes.

32

33 Q. You don't have a way of being aware of it necessarily?

34 A. No. I mean, obviously at times we get to know that  
35 people are relief teachers, and sometimes we even have  
36 Learning Services, for example, contact us and say that  
37 schools have been talking about that person, and that would  
38 trigger our interest in why they don't want them to come  
39 back to their school.

40

41 Q. And you get those informal, it sounds like,  
42 communications?

43 A. So, just telephone calls usually. Not to me, to the  
44 offices.

45

46 Q. And what does that trigger at your office?

47 A. Generally, trying to find out if there's information



1 in other sectors or information from other schools within  
2 the Department of Education that would alert us to the need  
3 to, at the board's own motion, undertake an enquiry. That  
4 can be very difficult though, because for the board to do  
5 that, they need a certain amount of original evidence for  
6 them to understand exactly what's going on.

7  
8 Q. And are there additional barriers to knowing where  
9 relief teachers are and how long they're teaching in a  
10 particular place?

11 A. It's almost impossible. It's pretty scary, isn't it?

12  
13 Q. Well, it is. What's happening in response to what  
14 you're describing as "scary"?

15 A. How do you mean?

16  
17 Q. What do you want - well, is there a move to - how is  
18 this being fixed? Is it being fixed?

19 A. Well, I don't see that it's being fixed other than, as  
20 I say, some schools, one of the sectors, and some  
21 individuals who have good connections with our staff, those  
22 people will contact us - and you would call it an ad hoc  
23 basis, but they will contact us and say, "We've had these  
24 things take place", and that will start to form a picture.  
25 But, as I say, our own technological solutions that would  
26 help us to track that more efficiently, because of lack of  
27 funds I guess - I couldn't say for certain 'cos some of  
28 this predates my time even at the TRB, let alone in the  
29 Registrar's Office, some of those systems aren't allowing  
30 us to actually put together - you know, draw the dots  
31 together in the way that you might like to. We are getting  
32 a new customer records management system, but it's only  
33 just going to tender now.

34  
35 Q. When do you expect that tender to be completed?

36 A. Well, we are hopeful that it would be within the next  
37 12 months, but we have to follow all the normal government  
38 processes and Treasurer's instructions.

39  
40 Q. Ms Moxham, I have an impression, and I'd like to see  
41 if you share it: it seems to me that there is a lack of  
42 urgency around fixing the issues that you've identified  
43 generally in the Tasmanian Government. Do you see a lack  
44 of urgency?

45 A. Well, it's certainly very frustrating that the PIP Act  
46 is rolled out to explain why we can't be given information  
47 that would help us to protect children.

1  
2 Q. You say "it's rolled out" - no, well, Ms Moxham you've  
3 been very frank and I appreciate the frankness with which  
4 you are giving evidence to this Commission. You say it's  
5 rolled out; do you see it as being used to constrain the  
6 provision of information?

7 A. Well, I certainly do because I believe there is a  
8 provision in that Act that would allow all these bodies to  
9 share information with us, because the purpose for which  
10 this information's being shared with us is one that's  
11 covered by that provision in the Act.

12  
13 Q. And that is the regulation provision?

14 A. Yes.

15  
16 Q. You're acting as a regulator?

17 A. Yes.

18  
19 Q. You don't do anything unless you're regulating?

20 A. Correct.

21  
22 Q. And in some circumstances, the nature of the  
23 regulation is to prevent people who are at risk of abusing  
24 children, you're trying to prevent them from having access  
25 to children?

26 A. That is right, yes.

27  
28 Q. And would be it be fair to say you find it difficult  
29 to see how an Act could be construed in a way that's so  
30 inconsistent with that beneficial purpose?

31 A. Yes, I mean, I appreciate that there are balances that  
32 need to be in place because individual human being's lives  
33 can be ruined by inappropriate information being shared in  
34 an inappropriate manner, but we are not in the habit of  
35 sharing information anywhere other than where it's needed  
36 to conduct our regulatory function and protect children.

37  
38 Q. And I say, "construed", but it could be that that's  
39 the way the Act operates, in which case your position would  
40 be it needs to be amended; is that right?

41 A. That's correct.

42  
43 Q. How long - have you been advocating for that  
44 amendment?

45 A. Yes. To the best of my knowledge and belief, there  
46 has been advocacy from our office for changes to our Act in  
47 all sorts of different sections of the Act for well over

1 10 years.

2

3 Q. And what sort of response do you get when you say we  
4 need greater access to information?

5 A. Well, I was going to say to you that - because I  
6 thought your follow-on was about that 10 years - we  
7 generally get told that, "The Act will be looked at, please  
8 keep a list of all the things, and when we get to the next  
9 time we're reviewing it, we'll look at it." And it's been  
10 reviewed for information sharing, for purposes that have  
11 nothing to do with our regulation. It's to do with sharing  
12 information for projects and research, and the ATWD was the  
13 main thing, that's the Australian Teacher Workforce  
14 Dataset. That was the main reason for us getting a change  
15 to information sharing within our Act, but it's not the  
16 information sharing we need.

17

18 The other change that was made was for the RWVP  
19 sections that were changed at the same time as that  
20 information, but we really haven't had any traction at all  
21 on the other changes that we require.

22

23 Q. You say that you take a different view of the PIP Act.  
24 Are you able to get advice other than from the  
25 Solicitor-General's office?

26

A. No we're not.

27

28 Q. Are you required to go to the Solicitor-General's  
29 office?

30

A. Yes.

31

32 COMMISSIONER BROMFIELD: Q. Excuse me. Ms Moxham, do  
33 the independent and Catholic schools interpret that  
34 legislation in the same way?

35

A. So, Catholic Education under its current workforce or  
36 workplace team give us everything.

37

38 Q. Right.

39

A. They didn't use to. I don't know whether I really  
40 want that in a public record, because they give us  
41 everything whether they're allowed to or not.

42

43 Q. I think you just put it in a public record.

44

A. But independent schools, it just varies completely  
45 between one school and another school. Some schools don't  
46 even notify us under section 31, the notifications they're  
47 required to notify us under. We might find out about it

1 later on. I think sometimes they say they don't know that  
2 that's a requirement, but I do know that a large part of  
3 the first probably 10 years of the operation of the TRB was  
4 spent on a program of trying to inform schools of their  
5 responsibilities, and I think we probably need to refresh  
6 and renew that process again.

7  
8 Like, it's not that we stopped telling them things,  
9 but we used to have a newsletter that went out all the  
10 time, and there were complaints about us using our  
11 resources in that manner, because we were using teacher  
12 fees, and so I think our board got a bit gun shy of  
13 publications. And so, they closed down that section of our  
14 office, and I've been campaigning for us to re-open it.

15  
16 COMMISSIONER BENJAMIN: Q. Are there any consequences  
17 for a school that doesn't comply or consistently doesn't  
18 comply?

19 A. Allegedly, the Act has consequences for offences  
20 against the Act, but they have never been pursued. And the  
21 main reason, I'm told, is because the only process by which  
22 we can do that is to take the matter to the Magistrates'  
23 Court, the administrative division of the Magistrates's  
24 Court, and the time, energy, effort and resources to  
25 undertake that process has mitigated against the board ever  
26 taking any of those matters. So, we write letters, but you  
27 can imagine that if you've got a school that regularly  
28 offends and they've had five letters and a visit from us -  
29 no teeth. It's something that should be fixed in our Act.  
30 So, we have some regular offenders who employ unregistered  
31 teachers, and they do it every year.

32  
33 MS BENNETT: Q. You say you lack the power to take any  
34 steps in response?

35 A. Well, the Act says that it's an offence and it lists  
36 the number of units for a fine, but there's no mechanics in  
37 the Act for actually levying that fine. I note that the  
38 RWVP Act does have the necessary mechanics for that  
39 process, and I also note that the RWVP Act has the power  
40 given to the registrar to obtain any information that it  
41 requires, and I would like that in our Act.

42  
43 Q. Ms Moxham, I feel like I've been barely holding back  
44 the dam of your concerns. I don't want to hold them back,  
45 so can I ask you - because I want to ask you about some  
46 matters that took place in some cases that have been the  
47 subject of some evidence this week, and I want to do that

1 so that there can be some public acknowledgment and  
2 accountability for those matters, but I don't want to get  
3 in the way of your airing of concerns. So, please don't  
4 feel constrained. We have your statement, so you don't  
5 have to say it now, but can you identify for the  
6 Commissioners what else is getting in your way of  
7 protecting children in the state as the Teachers  
8 Registration Board Registrar?

9 A. I don't know whether this is "getting in our way"  
10 per se, but I do see that in South Australia, the South  
11 Australian Teachers Registration Board has a requirement  
12 that all teachers have to undertake mandatory notification  
13 training in regards to abuse and neglect. And I was  
14 registered in South Australia at one time, and so I went  
15 through that training. And they cannot be registered until  
16 they've completed that training, and I think that that  
17 would be a good addition to our registration processes or  
18 something like that.

19  
20 I also note that Victoria and a couple of other  
21 jurisdictions have recently had created for  
22 whole-of-government frameworks, Child Safety frameworks.  
23 That, particularly the Victorian one, looks like it will be  
24 very successful in assisting in making sure that all the  
25 different agencies and regulators receive all the necessary  
26 notifications and information, and that we can also feed  
27 into that framework. So I would recommend something like  
28 that be put in place in Tasmania as well, but I don't know  
29 if I've answered your question

30  
31 Q. Well, no. My question was really an opportunity for  
32 you to tell the Commissioners what else needs to change for  
33 you to protect children insofar as it's relevant to your  
34 role. We have the benefit of your statement, and I might  
35 come back about one or two small issues in a moment, but I  
36 want to make sure that I identify in your statement you  
37 were asked to set out for us, if you like, the process in  
38 relation to somebody that we are referring to as "John".

39  
40 Commissioners, John is the person who is subject of  
41 the matters raised by Ms Kerri Collins on Monday. I  
42 understand, Ms Moxham, you weren't able to watch the  
43 evidence on Monday, but you've received a high level  
44 briefing; is that right?

45 A. Yes, that's right. I was moving house. I'm sorry  
46 about that.

1 Q. That's all right. You've provided what appears  
2 attached to your statement as an outline of what I assume  
3 to be steps concerning John which are extracted from the  
4 TRB database; is that right?

5 A. Well, that is correct. From our records of this  
6 particular individual's matters, yes.  
7

8 Q. Were you personally involved in this individual's  
9 matters at any stage?

10 A. No, I was not.  
11

12 Q. I think, Commissioners, you'll recall and the records  
13 reflect that there were police investigations in '91 in  
14 response to the allegations made by four children. This  
15 appears, Commissioners - I'll tell you the document  
16 reference not for the sake of it going on screen but just  
17 so that the Commissioners can identify it. It appears as  
18 an attachment to Ms Moxham's statement, and I believe is  
19 identified as Attachment 17. It is  
20 TRFS.0014.0036.0002-0001. I'm not asking for that to be  
21 put on screen. And, it's page 1 of 13.  
22

23 So, the first page, Ms Moxham, simply recounts what I  
24 understand to be a summary of what is recorded in the TRB  
25 records. It is not that this was provided to the TRB at  
26 the time it's recorded here. Indeed, the TRB did not exist  
27 in '91, did it?

28 A. No, that's correct. The TRB does not exist until  
29 2002.  
30

31 Q. So, it records as matter of the record that there was  
32 an investigation following allegations by four female  
33 students; they did not result in charges at the time. In  
34 [REDACTED] 2001 as a result of police investigation, the DoE  
35 removed John from his teaching role and placed him at  
36 another office so he did not have contact with students.  
37

38 A. M'hmm.

39 Q. In [REDACTED] '02 he was arrested and charged with four  
40 counts of indecent assault. Now, just to pause there, that  
41 was just before the TRB commenced; is that right?

42 A. No, the TRB commenced in 2002. So it would have been  
43 right on the --  
44

45 Q. Right on the start? Okay.

46 A. And I will just mention for everybody's benefit that  
47 at that time, to the best of my knowledge and belief, the

1 TRB invited employers to send all matters, all disciplinary  
2 matters and so on, to the TRB that had occurred pre our  
3 existence. And I will note that a huge number of them  
4 obviously were never forwarded to us until recently, the  
5 end of last year.

6  
7 Q. Do you mean by that, that the end of last year you  
8 received a substantial number of notifications of matters  
9 that had not until then been notified to you by the  
10 Department of Education?

11 A. That is correct.

12  
13 Q. And they're the matters we've been referring to as the  
14 stand down matters?

15 A. Yes, that's correct.

16  
17 Q. I don't think the Department of Education refers to  
18 them that way, but following from the review by Professors  
19 Smallbone and McCormack there was a review carried out by  
20 the Department of Education and that led to a substantial  
21 disclosure to the Teachers Registration Board?

22 A. That's right. I mean, we did know about some of them,  
23 like John, for example, because obviously we do have  
24 information on our records about John and about a number of  
25 the others, but we didn't know about some of the more  
26 contemporaneous ones, and we didn't know about all of the  
27 matters that came to us and are still coming to us.

28  
29 Q. And, I take it from what you've said earlier that the  
30 investigation files have not followed the notifications?

31 A. In some instances they have, but that's usually where  
32 we've asked for them and someone's been prepared to provide  
33 them. Parts of them. I think that's an accurate  
34 statement.

35  
36 Q. All right. Returning to John for the moment in 2018 a  
37 review of the board's records prompted by the suspension of  
38 John's Working with Vulnerable People registration found  
39 the following: that on [REDACTED], the board received an  
40 application for registration as a teacher from John. The  
41 board decided it needed further information, including  
42 information from the Crown Prosecutor. That's in [REDACTED]  
43 2004. Do you see that?

44 A. I'm just lost track of where you're looking.

45  
46 Q. So, page 2 of 13 in Attachment 17 to your statement.  
47 Do you have that?

1 A. I do.

2

3 Q. And then there was a board meeting in [REDACTED] of '04,  
4 where the chair and the members expressed concern --

5 A. Yes.

6

7 Q. -- that four unidentified young women had not had an  
8 opportunity to know that the board was considering John's  
9 application for registration. The board requested the  
10 executive officer seek advice from the Solicitor-General on  
11 how to achieve this?

12 A. Yes.

13

14 Q. And then there's a range of correspondence and  
15 documentation when the board was considering John's  
16 application for registration?

17 A. That's correct.

18

19 Q. And then, on [REDACTED] 2005, the DPP wrote to each  
20 complainant in the matter to explain that it would not  
21 proceed to the Supreme Court. And did you receive a copy  
22 of that correspondence, do you know?

23 A. I don't know, I'm sorry.

24

25 Q. That's okay.

26 A. It may well be in the original tranche of documents  
27 that were requested by the Commission.

28

29 Q. I'd like to just skip - there seems to have been  
30 another attempt in [REDACTED] 2004 with a meeting with the  
31 Solicitor-General, and was it - where your office was  
32 advised to contact prosecution services to ask for  
33 assistance to contact the four young women.

34 A. (Witness nods).

35

36 Q. And then that contact appears to have been made --

37 A. Yes.

38

39 Q. -- and three of the four agreed to speak to the board?

40 A. Yes.

41

42 Q. And then you received, on [REDACTED] 2004, a letter of  
43 support regarding John from the Department of Education?

44 A. That's correct, yes.

45

46 Q. And you saw me put that letter on the screen earlier  
47 today with Mr Bullard?



1 A. I did.

2

3 Q. You say there it's a letter of support. Is that how  
4 it was read and understood by the TRB so far as you see it?

5 A. I expect it had two connotations to be drawn from it.

6

7 Q. Yes.

8 A. One being a degree of pressure on the TRB, and the  
9 other one being support for the individual.

10

11 Q. And in both instances you view that as inappropriate?

12 A. Absolutely.

13

14 Q. Then in [REDACTED], just skipping over a little bit, the  
15 board considered all information available and determined  
16 to grant John registration?

17 A. Yes.

18

19 Q. Now, you say then - can I draw your attention over the  
20 page, you say:

21

22 *Looking at this information in 2002 it is*  
23 *difficult to understand board reasoning in*  
24 *2004. The onus of proof is always on the*  
25 *applicant and the burden of proof is on the*  
26 *balance of probabilities rather than the*  
27 *criminal standard. It is unclear why the*  
28 *evidence available was not sought until*  
29 *2006.*

30

31 So, just to pause there, do I understand correctly,  
32 Ms Moxham, that the evidence that was before the Supreme  
33 Court was not provided to your office when --

34 A. We have to apply to get information from the Supreme  
35 Court.

36

37 Q. And you didn't ask for it?

38 A. Apparently not, no.

39

40 Q. And you see that as a failing of your office?

41 A. I do. We wouldn't have that situation occur today.

42

43 Q. How do we know it wouldn't occur today, Ms Moxham?

44 A. You really only have my word for it, m'mm.

45

46 Q. Would you agree with me that we need to have some  
47 systems and processes in place that mean that whoever is at

1 the top, whatever their priorities, that information makes  
2 it to where it needs to be?

3 A. So, we do have processes that make it clear that that  
4 has to happen within our office, but to be honest with you,  
5 they're not published anywhere. So you wouldn't - that's  
6 why I said you'd have to take my word for it. So, probably  
7 on the new website and - because we're also getting a new  
8 website - we will be having a look at the voluntary  
9 disclosures that we might be able to make. But there's  
10 still considerable work to be done in our office, as I was  
11 alluding to earlier, to get those things into a useful  
12 format for the public.

13  
14 Q. So, I want to be fair to you and to others mentioned  
15 in this chronology, and I'm conscious of the time, but over  
16 the page the Children's Commissioner, then David Fanning,  
17 wrote to the Minister for Education raising concerns about  
18 the processes which led to John's registration; is that  
19 right?

20 A. Yes, that's right.

21

22 Q. And that triggered a review; is that right?

23 A. Yes.

24

25 Q. And that review led to a change in the way that the  
26 processes and procedures of the TRB operated; or did it?

27 A. The review actually made additions to our Act. So at  
28 that time we didn't have section 17K in regard to fitness  
29 to teach. We also didn't have some of the aspects that are  
30 currently in our section 12 and 13A applications,  
31 section 19 complaints, or sections 20 to 24 enquiries: they  
32 all only came into effect in 2010. And so, once they came  
33 into effect then new procedures and processes followed in  
34 the board.

35

36 Q. It didn't change John's registration status though?

37 A. No.

38

39 Q. Why not?

40 A. That's very difficult to understand. It could well  
41 have been to do with what I was mentioning before in regard  
42 to if an individual maintains their payment for a five-year  
43 period, we don't automatically get an opportunity to review  
44 their good character and fitness to teach.

45

46 Q. Ms Moxham, it was raised though that there had been  
47 significant gaps in relation to the way that this person

1 had been reviewed. Those gaps led to amendments to the Act  
2 but never a review of his actual registration to teach; how  
3 is that possible?

4 A. To be honest with you, I don't know; I think it's  
5 really unforgivable and I can't say anything else.

6  
7 Q. It's unforgivable: has that been reviewed? Has anyone  
8 ever looked into why there was that really substantial  
9 failure?

10 A. Not to my knowledge. I certainly haven't taken it on.

11  
12 Q. Is that something - and I understand what your  
13 evidence is about how stretched your office is, but are  
14 there lines for accountability around how people manage to  
15 be registered for a substantial period without the  
16 substance of their suitability being tested?

17 A. There's probably a number of ways to answer that. The  
18 board can of its own determination commence an inquiry: why  
19 it hasn't been done in this instance, I really don't know.

20  
21 Q. And ultimately, it was registration to work with  
22 vulnerable people that triggered his suspension as a  
23 teacher?

24 A. That is correct.

25  
26 Q. It's an entirely unsatisfactory chronology, isn't it?

27 A. It is.

28  
29 Q. And, Ms Collins who gave evidence --

30 A. It is a really nasty black mark on our record, and I  
31 think our board is quite - our current board is quite upset  
32 and concerned that this took place.

33  
34 Q. Are you in a position, assuming that Ms Collins is  
35 watching today or will read a transcript of today, are you  
36 in a position to offer an apology for that?

37 A. Yes, I am. I am really sincerely sorry that the board  
38 has failed in this situation, and I --

39  
40 Q. Sorry, please don't let me cut you off. I don't want  
41 to at all.

42 A. And I know that our board would also join me in that  
43 apology.

44  
45 Q. Again, conscious of the time, I want to deal briefly  
46 with the matter of the person we refer to as - can you just  
47 give me one moment?

1  
2 COMMISSIONER BENJAMIN: Q. Whilst you're doing that, I  
3 think the registration of John ended in 2020?

4 A. That's correct.

5  
6 Q. Thank you.

7 A. Actually, I think it's only suspended. And that's  
8 another issue with our Act. We could take someone's  
9 registration away, and the very next day they could  
10 re-apply for registration. And then our resources would  
11 have to go to the task of determining good character,  
12 fitness to teach and all of that over again.

13  
14 Q. Thank you.

15 A. Suspension's better; it can go on and on.

16  
17 MS BENNETT: Q. In relation to the person we've been  
18 referring to as "Wayne", do you want to have a look at that  
19 pseudonym list and see the person we're referring to as  
20 "Wayne"?

21 A. Yes.

22  
23 Q. This has got a long and complex history and I don't  
24 want to go through the full outline of it now, but it's  
25 fair to say that you received an application from Wayne  
26 in [REDACTED] 2007. You weren't proactively notified by  
27 anybody about concerns about Wayne?

28 A. That's correct, yes.

29  
30 Q. And then you made enquiries about Wayne's  
31 appropriateness to be registered with the Department of  
32 Education?

33 A. Yes.

34  
35 Q. Were you present for the part of the examination of  
36 Mr Bullard where I was discussing the registration of  
37 Wayne?

38  
39 COMMISSIONER BROMFIELD: I think you mean, "Ms Moxham".

40  
41 MS BENNETT: Q. Were you present, Ms Moxham, for the  
42 examination of Mr Bullard when I was discussing the  
43 registration of Wayne?

44 A. I think I may have been for part of it, yes.

45  
46 Q. There were some materials that I suggested to  
47 Mr Bullard that some correspondence from the Department of

1 Education had been capable of misleading the Teachers  
2 Registration Board; were you present for that part of the  
3 examination?

4 A. I can't recall, I'm sorry.

5

6 Q. I think it might be unfair for me to put that to you  
7 in this way, I think I won't take that any further. It's  
8 fair to say though, that Wayne was ultimately the subject  
9 of quite a lengthy process --

10 A. Yes.

11

12 Q. -- at various hearings through the Teachers  
13 Registration Board, and that ultimately you declined his  
14 request for registration?

15 A. Yes.

16

17 Q. And what happened next?

18 A. I'd have to refer to my notes, I'm sorry.

19

20 Q. Yes, have a look at your notes there, I think it's  
21 down at page 2, you declined in 2008. He lodged an  
22 application for registration and numerous references?

23 A. Yes.

24

25 Q. You granted a registration for a period of one  
26 calendar year until [REDACTED] 2009?

27 A. That's correct.

28

29 Q. And then after that, what happened?

30 A. He was required to provide professional and character  
31 references with his next application, and the - I've lost  
32 track, I'm sorry.

33

34 Q. No, that's okay, it goes over the page. The next  
35 page, these are again from your records: there's a request  
36 from the Department of Justice, the Registration for  
37 Working with Vulnerable People to provide documentation  
38 about Reportable Conduct?

39 A. Yes.

40

41 Q. And then a request for historical information is made  
42 in [REDACTED] of 2021?

43 A. That's correct, yes.

44

45 Q. And then you were notified that Wayne had been  
46 suspended as at [REDACTED] of 2021?

47 A. That's right.

1  
2 Q. And, so far as you're aware, then he's resigned at  
3 some stage?

4 A. Yes. The - yes, he had been suspended on full pay  
5 while there was an investigation undertaken by the  
6 Department of Education and we were notified of that, and  
7 the board became aware of a possible third victim which we  
8 notified the Department of Education about, and then we  
9 wrote to the Office of the Solicitor-General to seek advice  
10 regarding legalities of investigating historical matters,  
11 and a reminder email was sent to the Office of the  
12 Solicitor-General, and we still haven't received a  
13 response.

14  
15 PRESIDENT NEAVE: Q. Can I just have those dates again?  
16 So that, you asked the Solicitor-General for advice when?

17 A. [REDACTED] 2021.

18  
19 Q. Thank you. And you have not yet received a response?

20 A. So I'm informed, yes. It would not have come to me,  
21 but I'm informed by the person to whom it would have come  
22 that we have not received.

23  
24 Q. And the advice related to your ability to look at  
25 historical matters?

26 A. Yes, the legalities of investigating historical  
27 matters, yep.

28  
29 MS BENNETT: Q. Just for context, that comes in the wake  
30 of having received a large volume of his notifications of  
31 historical matters; is that right?

32 A. That's correct, but in this instance as well, it's  
33 actually related to the fact that there was a third victim  
34 that we hadn't known about previously, and so it's like  
35 re-opening the investigation, yes.

36  
37 Q. Ms Moxham, are you independent of government?

38 A. We're meant to be, yes. Shall I explain it this way:  
39 the board itself is. All of the employees in the office  
40 are state servants, and hence, we come under the Department  
41 of Education.

42  
43 Q. Do you need greater independence to do your job?

44 A. Well, that's what we put forward in the Review of  
45 Education Regulation, that we believe that we should be  
46 funded directly from the public purse and not be seen as  
47 part of the Department of Education, but in fact the Review

1 of Education Regulation will bring us more clearly under  
2 the Department of Education.

3  
4 MS BENNETT: Please, Commissioners, those are the matters  
5 for Ms Moxham.

6  
7 PRESIDENT NEAVE: Thank you, Ms Moxham. Any questions?

8  
9 COMMISSIONER BROMFIELD: No, thank you. Thank you.

10  
11 COMMISSIONER BENJAMIN: Q. Yes, just to be clear, you  
12 talked about the value of suspension as against  
13 deregistration.

14 A. Yes.

15  
16 Q. Do you seek powers to deregister for a period - for a  
17 long - or do you already have the powers to deregister for  
18 a period of time?

19 A. No, we don't have any powers to deregister someone for  
20 a set period of time. So, if we take someone off the  
21 register they can re-apply the next day. What we would  
22 seek is to be able to have a period of time that they're  
23 not able to re-apply for registration, that's correct, and  
24 it might be that the Act would allow us, our board or  
25 whomever the decision maker is, to decide on different  
26 lengths of time depending on whether there's some chance of  
27 rehabilitation in the period or whether in fact it's for  
28 life, and other regulatory authorities do have the capacity  
29 to take someone off the register for life.

30  
31 Q. And presumably there'd be some provision to come back  
32 if there are a marked change of circumstances or something  
33 along those lines, is that right?

34 A. Yes, that's right.

35  
36 Q. The other thing you raised early in your evidence was,  
37 you were making Right to Information requests. Are they  
38 promptly and effectively responded to generally?

39 A. So, I was really talking about people making Right to  
40 Information requests --

41  
42 Q. You --

43 A. To us.

44  
45 Q. Sorry, I misheard your evidence.

46 A. And we find it extremely difficult to meet the  
47 timelines that are in the Act because we have such a small

workforce, and in fact the most recent one that we have had is the subject of some of these case studies here, and we are very much delayed in responding to that one, because the key member of staff has had to have serious surgery and has been on a return-to-work plan, and you might say, why isn't somebody else in the office trained to do it? And the reality is, they aren't and we need to find some way to get that done, but with the huge volume of historical matters that have now descended upon us that makes it even more problematic to sort out those sorts of issues for our office.

COMMISSIONER BENJAMIN: Thank you.

THE WITNESS: Thank you.

PRESIDENT NEAVE: Thank you very, very much indeed, Ms Moxham, for your very frank and helpful evidence.

MS BENNETT: Sorry to interrupt. Could I just impose on the Commissioners that we could perhaps sit until 4.15 to complete the evidence today?

PRESIDENT NEAVE: Yes. Thank you.

#### SHORT ADJOURNMENT

PRESIDENT NEAVE: Thank you, Ms Norton.

MS NORTON: Commissioners, our final session this afternoon is a plaintiffs' solicitor panel. Ms Sdrinis and Mr Strange are here to speak about their experiences dealing with the State of Tasmania in litigation and civil redress, and if the witnesses can be sworn in, please.

<ANGELA SDRINIS, affirmed and examined: [3.34pm]

<WARREN GEOFFREY STRANGE, sworn and examined:

#### <EXAMINATION BY MS NORTON:

MS NORTON: Q. Ms Sdrinis, if I'll start with you, if you can again state your full name, please.

MS SDRINIS: Angela Sdrinis.

MS NORTON: And your professional address and occupation.



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MS SDRINIS: 239 Park Street, South Melbourne. I'm a solicitor.

MS NORTON: Ms Sdrinis, you've prepared a statement to assist the Commission. That's a statement dated 5 May 2022?

MS SDRINIS: Correct.

MS NORTON: Have you recently reviewed that statement?

MS SDRINIS: I have.

MS NORTON: And is it true and correct to the best of your knowledge and belief?

MS SDRINIS: Yes.

MS BENNETT: Ms Sdrinis, you're a director of the firm, Angela Sdrinis Legal, and you have offices in Hobart and Melbourne?

MS SDRINIS: Correct.

MS NORTON: Would you like to just briefly outline for the Commissioners the work that your Hobart office does?

MS SDRINIS: We're a specialist institutional abuse practice, mainly historical sexual and physical abuse claims.

MS NORTON: I think you say in your statement you've been advising clients in Tasmania in relation to institutional abuse in government settings since 2015; is that right?

MS SDRINIS: Correct, yes.

MS NORTON: And you've had an office since 2018?

MS SDRINIS: That's correct.

MS NORTON: And you've advised in that capacity over 300 clients?

MS SDRINIS: Yes, that's right.

1 MS NORTON: Mr Strange, can you state your full name for  
2 the Commissioners.

3  
4 MR STRANGE: My full name is Warren Geoffrey Strange.

5  
6 MS NORTON: And your professional address and occupation.

7  
8 MR STRANGE: Our office in Brisbane is 144 Edward Street.  
9 I'm a lawyer and I'm the Chief Executive Officer of  
10 knowmore Legal Service.

11  
12 MS NORTON: Mr Strange, you have also prepared a statement  
13 dated 28 April 2022?

14  
15 MR STRANGE: I have.

16  
17 MS NORTON: Is that a document you have reviewed recently?

18  
19 MR STRANGE: It is, yes.

20  
21 MS NORTON: And it is true and correct to the best of your  
22 knowledge and belief?

23  
24 MR STRANGE: Correct.

25  
26 MS NORTON: Mr Strange, you just made reference to  
27 knowmore Legal, would you like to explain for the  
28 Commissioners the work that knowmore does, particularly in  
29 relation to Tasmanian clients?

30  
31 MR STRANGE: We're a national community legal centre, we  
32 were established in 2013 to assist survivors who were  
33 thinking about or engaging with the Royal Commission into  
34 Institutional Responses to Child Sexual Abuse. Following  
35 the completion of that Royal Commission we've continued to  
36 assist survivors around the country, including in Tasmania,  
37 with advice about their redress options including under the  
38 National Redress Scheme. We also assist with other  
39 services including financial counselling and we also now  
40 have some funding to assist people with the territories,  
41 the Commonwealth territories Stolen Generation Redress  
42 Scheme.

43  
44 MS NORTON: And, Mr Strange, you don't have an office in  
45 Tasmania; how is it that knowmore provides services to  
46 Tasmanian clients?

47

1 MR STRANGE: Yes, we have not been able to establish an  
2 office in Tasmania, so we provide services remotely; we  
3 have telephone and other remote means of communicating with  
4 clients. We come to Tasmania on an outreach basis. In our  
5 current COVID world we're aiming to do that every  
6 two months on a regular basis of coming to the state and  
7 meeting with partner services and engaging with clients and  
8 any other stakeholders around the State.

9  
10 MS NORTON: And, Mr Strange, despite not having a bricks  
11 and mortar office in Tasmania you say in your statement,  
12 and it's at paragraph 45, that "the State of Tasmania is  
13 over-represented in knowmore's client base". Can you just  
14 explain to the Commissioner the extent of that  
15 over-representation and perhaps some of the reasons why you  
16 think it exists?

17  
18 MR STRANGE: That's historically been the case throughout  
19 the lifetime of our service, that our percentage of clients  
20 who come from Tasmania sits generally around 4 to 5% of our  
21 total client group, which, as you would know, is  
22 proportionately above the population of the - or Tasmania's  
23 contribution to the overall population of Australia.

24  
25 We think one of the reasons for that is the past abuse  
26 in care scheme that operated in Tasmania. We've seen in  
27 other states, and particularly Queensland, that have had  
28 those types of schemes, that survivor communities tend to  
29 be better connected with support services and with each  
30 other, so they tend to be communities that are more  
31 cognisant of their rights and their opportunities to engage  
32 and exercise legal rights.

33  
34 Tasmania has also had some significant institutions,  
35 and the Ashley Detention Centre comes to mind; we've had  
36 quite a number of clients from that institution and I know  
37 it's featured in media reports and other commentary about  
38 this inquiry as well.

39  
40 MS NORTON: Thank you, Mr Strange. Now, in addition to  
41 your experience as a solicitor which is detailed in your  
42 statement, you also have experience as the Assistant  
43 Commissioner For Misconduct within the Queensland Crime and  
44 Misconduct Commission?

45  
46 MR STRANGE: That's right, yes; I held a number of roles  
47 within the Crime and Misconduct Commission and its

1 predecessor, the Criminal Justice Commission.

2

3 MS NORTON: Thank you. I might ask you while I'm with  
4 you, Mr Strange, you talk in your statement at  
5 paragraphs 15 and following about the particular  
6 difficulties - well, I'll take a step back.

7

8 It's difficult for any survivor of abuse to come  
9 forward and speak of their experiences, but in your  
10 statement you talk about the particular difficulties that  
11 survivors of institutional child sexual abuse face. Would  
12 you like to explain to the Commissioners a bit about that  
13 experience?

14

15 MR STRANGE: I think, to try and explain that in simple  
16 terms, they are a population of clients who are very  
17 distrustful of institutions and authority and officials in  
18 general because - understandably because of their  
19 experience with institutions and with officials as children  
20 where they suffered abuse and all the consequences of that  
21 and often made complaints that were not acted upon or  
22 believed, and that tends to resonate with them throughout  
23 their lives; they've often had very negative experiences,  
24 some of them with lawyers and with the courts; some of them  
25 with police when they have sought to report complaints.

26

27 Going back historically, there have been very few  
28 outcomes through the Justice system for those people, so  
29 that they tend to be very distrustful of institutions.  
30 It's hard to tell their story for many survivors because of  
31 the legacy of complex trauma that they have, and engaging  
32 with institutions with that distrust, there's often, aside  
33 from the distrust, an element of, "What is the benefit of  
34 telling my story? What is this going to do? I've told my  
35 story before and no-one has acted on my story". That's  
36 quite a common theme.

37

38 MS NORTON: I'd like to talk about the importance of  
39 trauma-informed responses, but before I do so, just picking  
40 up on some things you've said there, Mr Strange, about the  
41 difficulties that survivors of institutional abuse face in  
42 coming forward.

43

44 You talk in your statement, it's at about 78 and 79,  
45 of the difficulty or concerns that knowmore has about the  
46 current National Redress Scheme, in particular the fact  
47 that it's limited to abuse prior to 2018 and to claimants

1 who come forward within the 10-year life-span.  
2

3 Against the background of those concerns, and bearing  
4 in mind that this Commission has heard, and unfortunately  
5 will continue to hear about abuse going on beyond 2018, do  
6 you think there's a need for the lifetime of that scheme to  
7 be extended?  
8

9 MR STRANGE: Very much so, in my view. In my current  
10 role, I'm somewhat removed from direct client work, but  
11 when I was - held the role of principal lawyer with  
12 knowmore I dealt with a number of clients who had had  
13 possible options of engaging with a Redress Scheme in  
14 Queensland that followed what was known as The Forde  
15 Inquiry in that state, and a Redress Scheme ran for a  
16 number of years but it had a closing date, and you would  
17 often have conversations with survivors about, why didn't  
18 you apply? And the answers would be things like, "It just  
19 wasn't the right time. It wasn't safe for me, I didn't  
20 have any support, I had other things in my life that were  
21 happening".  
22

23 So, we know it takes a long time, and at least  
24 22 years on average for survivors to make a disclosure  
25 about their experience of child sexual abuse, often longer.  
26 There will be people who are eligible to apply for the  
27 National Redress Scheme, and it won't be the right time for  
28 them or they won't have the supports or the safety to apply  
29 during its life. There will be people who are eligible to  
30 engage with your Commission of inquiry who won't come  
31 forward for those same reasons, and I feel very much that  
32 these people need to have justice options available into  
33 the future that are appropriate for them and suit their  
34 timing rather than the timing of what we or what  
35 governments might impose.  
36

37 MS NORTON: Would you agree that the imposition of a  
38 deadline on the lines of the current 10-year deadline isn't  
39 really a very victim-centric approach to scheme design?  
40

41 MR STRANGE: There is a review clause, a further review  
42 clause in the National Redress Scheme legislation, and we  
43 would hope to see the case made for the scheme to be  
44 extended by whatever government or governments because of  
45 the state involvements as well, whatever governments are in  
46 place at that time. But, if it closes, there will be  
47 survivors who are potentially eligible who will not have

1 had the opportunity to engage through absolutely no fault  
2 of their own or no responsibility of their own, it's just  
3 simply not the time for them and we need to recognise that.  
4

5 COMMISSIONER BROMFIELD: Q. What about the date around  
6 2018? This Commission is hearing from survivors of  
7 institutional child sexual abuse whose abuse occurred post  
8 2018?

9 A. That was the date the National Redress Scheme  
10 commenced, so that was the date set in the legislation for  
11 effectively the eligibility provisions; it required abuse  
12 to occur before the starting date of the scheme. I think  
13 part of the thinking around that was also, the recognition  
14 of the changing landscape around civil litigation and that  
15 that may be a more preferable option for people who've  
16 experienced more contemporaneous abuse to be investigating.  
17

18 MS NORTON: Can I then come to civil litigation,  
19 Ms Sdrinis, is there anything you'd like to add to  
20 Mr Strange's reflections on the reasons why institutional  
21 abusers - sorry, people who have been abused in  
22 institutional settings face particular difficulties coming  
23 forward?  
24

25 MS SDRINIS: I absolutely agree with Warren, that's been  
26 my experience with survivors over some 25 years of working  
27 with them, and even though the National Redress Scheme has  
28 got some very, very significant flaws, what I find is that  
29 survivors need options, and whilst it is certainly the case  
30 that civil litigation options have opened up and can  
31 deliver significant compensation in the right cases, I  
32 think survivors need to have options that suit them and  
33 that it is important on that basis for the National Redress  
34 Scheme to continue beyond 2028.  
35

36 MS NORTON: And indeed, one of the principles of  
37 trauma-informed practice, as I understand it, is the giving  
38 of options as a way of empowering victim-survivors; would  
39 you agree with that?  
40

41 MS SDRINIS: Absolutely.  
42

43 MS NORTON: And I'll throw this open to both of you to  
44 discuss: both the importance of a trauma-informed practice,  
45 the difference that that makes for your clients and the  
46 impact on your clients when trauma-informed principles are  
47 not observed?

1  
2 MS SDRINIS: In my experience, it's not always about the  
3 money for survivors. The money's important because that's  
4 the tangible acknowledgment of wrongdoing, but when  
5 survivors go on a journey where they're listened to, where  
6 they're believed, where the right amount of compensation is  
7 offered - and that's not always more money - it's about an  
8 amount of money that the survivor feels is adequate  
9 recognition, where there's an apology, a proper apology at  
10 the end of that process, and I'll say it again, most  
11 importantly where the survivor feels listened to and  
12 believed, then that is trauma-informed practice and I've  
13 seen it change survivors' lives; like, completely change  
14 their lives.

15  
16 Where it's an adversarial, litigious, you have to  
17 prove every allegation, when we know in historical abuse  
18 cases that that's virtually going to be impossible, where  
19 technical legal defences are raised, you know, where  
20 survivors have to sit there and listen to what's wrong with  
21 their claims and why they're going to fail, and why they  
22 don't deserve a lot of money, that can actually destroy  
23 survivors; and, when that happens, you look at the redress  
24 option and say, "Well, that's not great, a lot of things  
25 are wrong with it but you know what, it would have been a  
26 whole lot better than this alternative".

27  
28 MS NORTON: Just picking up on a few things you've said  
29 there, Ms Sdrinis, you've said it's not always about the  
30 money and you talked about the life changing effect that  
31 being listened to and believed can have. It sounds from  
32 what you're saying that a trauma-informed practice has the  
33 ability to be part of a healing process?

34  
35 MS SDRINIS: Absolutely, yes, I've seen it.

36  
37 MS NORTON: And that, would you agree that defendant  
38 lawyers can play a part in that healing process, and  
39 clients obviously, if they follow a trauma-informed  
40 approach to litigation?

41  
42 MS SDRINIS: Yes, I agree with that.

43  
44 MS NORTON: Government parties are bound by model litigant  
45 obligations, and it seems to me, and I'd be interested in  
46 your views, on whether and to what extent there's a  
47 crossover or whether you see trauma-informed principles

1 represented in some model litigant obligations?

2

3 MS SDRINIS: Yes. I mean, the Model Litigant Guidelines  
4 include that defendants should not deny things they know to  
5 be true, that there should be consistency of approach, that  
6 liability should be admitted, and matters assessed if the  
7 liability issues are clear; they are consistent with  
8 trauma-informed practice.

9

10 Now, nobody would deny any defendant the right to  
11 defend a claim in the most appropriate way, you know, none  
12 of us are saying that governments shouldn't defend these  
13 claims; of course, they've got the right to defend them.  
14 But I think there needs to be a recognition that historical  
15 child abuse claims, particularly when it was the government  
16 which had the care of that child, and it is the government  
17 which has passed the laws over long periods of time,  
18 including limitation periods which existed in Tasmania in  
19 child abuse claims until 2018, there has to be a  
20 recognition that the relationship between government and a  
21 child which was in the government's care is quite a  
22 different relationship to someone who wants a fisheries  
23 licence, for example, and the government is saying, no, you  
24 don't meet the criteria.

25

26 So, I think that that recognition of that unique  
27 relationship has been somewhat lacking in the way the  
28 Tasmanian Government at least initially responded to these  
29 child abuse claims, and I think we've gone on a bit of a  
30 journey as to how best to acknowledge that relationship and  
31 respect it, whilst at the same time, you know, defending  
32 the claims or at least talking about legitimate legal  
33 issues when discussing the claims.

34

35 MS NORTON: I'd like to hear more about the journey you've  
36 just referred to, but before we get there, before civil  
37 litigation can take place or a redress claim often there's  
38 a need to obtain information from government departments.

39

40 Mr Strange, can I ask you to speak to knowmore's  
41 experience of dealing with Tasmanian Government departments  
42 in relation to Right to Information requests?

43

44 MR STRANGE: Yes, and we've addressed this in my statement  
45 and also in our earlier submission to the Commission. The  
46 response of the Tasmanian Government to record requests is  
47 often less than desirable. Requests take a long time to



1 process, and we've seen from the past scheme that operated  
2 in Tasmania requests for records from that scheme can take  
3 up to 18 months. And that can just exacerbate distress and  
4 trauma for survivors.

5  
6 Records are particularly important, not just in the  
7 context of exercising legal rights such as a common law  
8 claim or a redress claim, they can assist with proof of  
9 those types of claims, but they're inherently and  
10 fundamentally important to survivors, many of whom were  
11 taken into care as young children and separated from their  
12 families. We've seen - we've all met survivors that were  
13 taken into care as young children and separated from  
14 siblings, and it took 30, 40 or 50 years to reconnect with  
15 those siblings. And then, for those people in that  
16 situation to bring a records request and then to be met  
17 with a response that takes so long to get those records and  
18 then to have significant redactions that take out, for  
19 instance, the name of those family members, it is viewed as  
20 perpetuating the abuse that happened to them as children  
21 and the negative experiences of being placed in an  
22 institution; they see that as re-traumatising, that it took  
23 them so long to try and reconnect with their family and  
24 here is the government or the state trying to keep  
25 information from them about their family again and using  
26 the sort of third party provisions that exist in RTI  
27 legislation, applying them in a very black and white way to  
28 make those redactions.

29  
30 MS NORTON: You've spoken about issues with delay and  
31 redactions; are they problems that you encounter - knowmore  
32 encounters to the same degree in other jurisdictions?

33  
34 MR STRANGE: They are national problems, but Tasmania's  
35 position is probably worse than the majority of other  
36 jurisdictions in that respect in terms of the -  
37 particularly the delay of meeting timeframes and turning  
38 those requests around.

39  
40 MS NORTON: And from what you've said just now, it seems  
41 that not only is the delay, the redactions, a matter of  
42 frustration, but they can in fact be re-traumatising for  
43 your clients?

44  
45 MR STRANGE: Very much so.

46  
47 MS NORTON: Ms Sdrinis, do you have anything to offer on

1 Mr Strange's reflections?

2

3 MS SDRINIS: I agree with Warren's comments, and my  
4 assessment is, the situation in Tasmania is worse than what  
5 we see in other states.

6

7 MS NORTON: Ms Sdrinis, in your statement you speak about  
8 your engagement with dealings with the Department of  
9 Education in relation to RTI requests; would you like to  
10 explain a bit about that experience?

11

12 MS SDRINIS: Well, earlier on we were - records requests  
13 were being met much more promptly by the Department of  
14 Education, actually, as compared to the Department of  
15 Health and Human Services, for example, but over time the  
16 timelines with the Department of Education have blown out,  
17 taking over 12 months now to get responses to RTI requests,  
18 and we're seeing very regular requests for extensions to  
19 provide the records that we are requesting.

20

21 MS NORTON: I'd like to go now - Ms Sdrinis, you spoke  
22 before about the special relationship that exists in  
23 circumstances where a plaintiff, a victim-survivor, has  
24 brought civil proceedings against the state in  
25 circumstances where they say they've been abused in state  
26 care, whether that be in Out-of-Home Care, Education, any  
27 of those settings. I'd like you to speak to the  
28 Commissioners, please, about your experience about the  
29 extent to which the State of Tasmania, the various  
30 government departments, conduct civil litigation in a  
31 manner that recognises that unique relationship?

32

33 MS SDRINIS: Well, I said before it had been a bit of a  
34 journey, and it has been. When I first approached the  
35 Tasmanian Government and suggested to them - and this was  
36 in 2015 before limitation periods had been abolished in  
37 historical child abuse claims - I suggested to them - and  
38 before we had a Redress Scheme as well, of course - I  
39 suggested to the government that it was important that we  
40 develop a settlement protocol, a trauma-informed protocol,  
41 where the government would not automatically rely on  
42 limitation periods, where the government would not  
43 necessarily put claimants to proof of every allegation or  
44 require, you know, medical records and criminal records and  
45 all the sorts of things that, if you're running a trial,  
46 the government legitimately might request. That was in  
47 2015. I really had no response until 2017, when I had a

1 meeting with the Solicitor-General's office and a  
2 government representative.

3  
4 The government at that point seemed to be open to a  
5 type of settlement protocol, although wouldn't really  
6 commit to any detail. There were some positives coming out  
7 of that meeting: the Solicitor-General's office indicated  
8 that it wouldn't require statements of claim, for example,  
9 which the Victorian Government required in our informal  
10 protocol; indicated that they might cover the cost of some  
11 joint medical examinations to relieve some of the financial  
12 burden for survivors.

13  
14 But really, not much more came out of that meeting,  
15 and in fact we still weren't able to get the government to  
16 the negotiating table, probably until 2019, where we  
17 scheduled a day of settlement conferences which were  
18 actually a disaster. The government was very aggressive,  
19 the Solicitor-General's office was aggressive in the way in  
20 which it approached the three matters that we were going to  
21 try and resolve that day. One matter settled against  
22 advice because the client was quite traumatised by the  
23 responses that we were getting.

24  
25 MS NORTON: Can I just stop you there. When you say it  
26 settled against advice, do you mean by that that your  
27 client settled against your advice?

28  
29 MS SDRINIS: Correct, strong, my strong advice that the  
30 matter should not resolve. We had the second settlement  
31 conference where we had a similar sort of approach,  
32 response from the Solicitor-General's office: that client  
33 accepted advice and the matter didn't resolve. And we rang  
34 the third claimant and said, "Don't even come, this is not  
35 going to be a good experience. We have no expectation that  
36 there will be any offer which we could recommend and,  
37 frankly, it will just be traumatising to you".

38  
39 Now, after that --

40  
41 MS NORTON: Can I just stop you. I know you've been on a  
42 journey and I want to get to the end of the journey, but  
43 can I just stay at the point at which you're at now: you  
44 talk in your statement about the Office of the  
45 Solicitor-General insisting that your clients attend  
46 opening sessions in mediations; is that something that you  
47 generally experience in other jurisdictions in plaintiff

1 litigation?

2

3 MS SDRINIS: No. Other governments that we deal with, and  
4 indeed private institutions, don't require that. Some  
5 claimants want to be present at the opening session and,  
6 when they do, of course, it should be up to the claimant  
7 whether or not they are present at the opening session.

8

9 MS NORTON: For the benefit of the Commissioners and  
10 others listening today, can you just explain why being  
11 required to attend an opening session at a mediation could  
12 be a very traumatic event for one of you're clients?

13

14 MS SDRINIS: The opening session is where each party puts  
15 forward its arguments where we discuss the facts and the  
16 law, and the Commissioners will appreciate that in these  
17 historical child abuse claims causation, what events  
18 actually caused a claimant's loss and damage, is a very big  
19 issue and can be very confronting to claimants.

20

21 People who are abused as children often develop  
22 self-destructive behaviours post the abuse. In ward of  
23 state claims we have situations where children probably  
24 experienced trauma or at least neglect, because that's why  
25 they've gone into care, so to sit there and hear government  
26 lawyers analyse those life experiences in a way which is  
27 designed to support an argument that compensation should be  
28 reduced or minimised because of non-related trauma, can  
29 obviously be very hurtful to a claimant.

30

31 MS NORTON: Thank you. Mr Strange, I just invite you at  
32 this point to offer any reflections you might like to on  
33 that.

34

35 MR STRANGE: Just going back to what we were talking about  
36 with the re-traumatising of survivors: that's the language  
37 they use often to describe legal processes. We have to all  
38 bear in mind that we are dealing with someone who is a  
39 victim of child sexual abuse who is going back bringing a  
40 claim against the institution that was responsible for that  
41 child sexual abuse. It's not a motorvehicle accident, it  
42 didn't happen by accident, it's not a breach of contract  
43 claim, it's somebody's experience of childhood sexual abuse  
44 and they are engaging with that same institution.

45

46 And, when institutions take - whether it's the  
47 government or other institutions - when they take a hard

1 line or aggressive line in responding to those claims, it  
2 just can take the survivor back to their childhood  
3 experience, and they use language of, I've heard survivors  
4 talk about mediations and using words like, "It took me  
5 back to that 5-year-old boy again, the way they treated  
6 me", when they're lined up against a table full of  
7 officials from an institution.

8  
9 So, the Model Litigant Principles need to be adhered  
10 to, but they need to be underpinned with an understanding  
11 of trauma-informed practice; understanding what the  
12 consequences of some of those actions will have for  
13 survivors, such as delay, such as the type of language  
14 used, such as taking those technical legal points that  
15 Angela has spoken about; they need to understand what  
16 impact that is going to have upon a survivor and the trauma  
17 that they have as a result of their childhood experience.

18  
19 MS NORTON: And, can either of you identify a legitimate  
20 need for a victim-survivor to be present in an opening  
21 session? Is the opening session compromised in any way by  
22 the absence of that victim-survivor?

23  
24 MS SDRINIS: I don't believe so, because competent legal  
25 representatives will convey - you know, obviously we convey  
26 to our clients what is said in an opening session, but we  
27 can do that through a filter of - a kind of filter, if you  
28 like, it's not brutal. It's still hard for claimants to  
29 hear it and, as I said, I don't deny that the government  
30 has every right to raise causation issues or legal issues  
31 in these abuse claims, but the bottom line is, the  
32 adversarial legal process is not great; it's a very blunt  
33 and cruel tool to be using in these historical abuse cases,  
34 you know, which is why from very early on I tried to get  
35 the Tasmanian Government to consider other ways of doing  
36 things. And, if you can't resolve a matter, yes, we've got  
37 the independent umpire, we can litigate, but that shouldn't  
38 be the first option.

39  
40 MS NORTON: Ms Sdrinis, another concern that you discuss  
41 in your statement is the Office of the Solicitor-General  
42 taking a technical and legalistic approach to litigation,  
43 civil litigation. Can you explain your concern in that  
44 respect?

45  
46 MS SDRINIS: Well, a very recent example. I've talked  
47 about going on a journey but the journey hasn't been

1 perfect, and we obviously haven't arrived at the end of it.  
2 A very recent example is where, in defences filed by the  
3 state in sexual abuse claims involving a female child who  
4 you might say was in a relationship with an older male.  
5 The defence was made that, because the claimant consented  
6 to the relationship, then it could not be regarded as abuse  
7 for the purposes of the Limitation of Actions Act, so that  
8 limitation period still applied to that part of the  
9 conduct.

10  
11 That's a pretty technical defence in matters where the  
12 child was in the care of the older male, either as a  
13 teacher or in a de facto sense as a ward of the state, and  
14 I raised on a couple of occasions with the  
15 Solicitor-General's office that I thought that defence was  
16 repugnant, inappropriate, and frankly wrong at law, but it  
17 really wasn't until we went to the media - which I advised  
18 the Solicitor-General's office I would do, just out of  
19 frustration - and, of course, the Attorney-General, Elise  
20 Archer, within 24 hours made it very clear that that  
21 defence would no longer be relied upon in circumstances  
22 where I can't be sure that she was even aware that the  
23 defence was being put forward by the Solicitor-General's  
24 office.

25  
26 PRESIDENT NEAVE: Q. Can I just follow up on that one  
27 because I'm aware of that example. It seemed to me that  
28 that particular "alleged offence" was completely wrong in  
29 law.

30  
31 MS SDRINIS: I agree.

32  
33 PRESIDENT NEAVE: Thank you.

34  
35 MS NORTON: Just to pick up on President Neave's  
36 point there, would you say that it's an argument - reliance  
37 on that defence represents an entirely outdated  
38 understanding of consent?

39  
40 MS SDRINIS: And a very sexist understanding of consent,  
41 because we've got cases where there was adult male on boy  
42 abuse, where the boy thought he was in love with the  
43 perpetrator, and where equally there was a relationship  
44 which developed: that defence was never put forward in a  
45 male on male situation.

46  
47 MS NORTON: Can I go back to something you said earlier,

1 Ms Sdrinis. You said there was media attention on this  
2 issue and then within a very short period of time the  
3 approach was changed, defences were amended, that defence  
4 was no longer relied on, and you said you're not sure  
5 whether the Attorney-General knew that those defences were  
6 being taken in litigation being conducted on behalf of the  
7 state?

8

9 MS SDRINIS: Obviously - I mean, I didn't hear Elise  
10 Archer make a statement to that effect, but my impression  
11 was that she was blind-sided by the information, and the  
12 reversal was so immediate that one would have thought - and  
13 I'm speculating, of course - but, if she'd known about it,  
14 you would have thought that earlier on there would have  
15 been a direction to say, "Our government does not condone  
16 this type of defence".

17

18 MS NORTON: Let's just assume - and I take your point that  
19 you can't speak to Ms Archer's state of mind at the moment,  
20 but is it the case by reference to general practice that,  
21 in order to plead a limitation defence, a lawyer generally  
22 requires instructions from a client?

23

24 MS SDRINIS: Yes, I would absolutely assume that the  
25 Solicitor-General's office would get instructions about the  
26 defences pleaded.

27

28 MS NORTON: And is it the case, and I appreciate that  
29 you're a plaintiff lawyer, not a defendant lawyer, but are  
30 you able to comment on whether limitation defences are  
31 pleaded as a matter of course when they're available or  
32 whether in some cases a client might instruct solicitors  
33 not to rely on a limitation defence even when it's open?

34

35 MS SDRINIS: Yes, that's happened in the past. It's not  
36 as relevant since limitation periods have been abolished.

37

38 MS NORTON: Of course.

39

40 MS SDRINIS: But I have had institutional defendants in  
41 the past instruct their lawyers not to take a limitations  
42 defence. Mind you, on the other hand, some institutions  
43 are still instructing their lawyers to rely on delay and a  
44 judge's common law discretion to stay or strike out a  
45 matter if the delay means that a fair trial can't be had.  
46 That's not a defence that the State of Tasmania has raised  
47 in any of our matters.

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MS NORTON: Yes. But in any event, whether a defence, a limitations defence is either pleaded or not pleaded, that's a decision for the client, isn't it?

MS SDRINIS: I would assume so, yes.

MS NORTON: Is it a decision that you would expect lawyers representing the client to make?

MS SDRINIS: No.

MS NORTON: This Commission has heard evidence which raises a question about the extent to which the Solicitor-General's office is responsible for decisions, not only in relation to the day-to-day management of civil litigation, but in relation to more fundamental decisions in relation to the conduct of litigation.

Now, I'll throw this open to both of you as experienced lawyers: would it be a matter of concern for you to have a lawyer effectively given decision-making power in relation to all aspects of civil litigation?

MS SDRINIS: That would be entirely inappropriate and completely misunderstanding the solicitor/client relationship. Clients give instructions, solicitors give advice: that's it.

MS NORTON: Mr Strange?

MR STRANGE: I agree, absolutely.

MS NORTON: I'll just invite you, and you may not have anything further to add, but why is it - apart from the fact that it is just the way the relationship must work, why is it so problematic for solicitors, lawyers, to be making decisions on fundamental matters concerned with litigation rather than clients?

MS SDRINIS: Because the solicitors don't have to wear the consequences of those decisions; clients have to wear the consequences, and it's just a fundamental tenant of our common law system that clients give instructions, solicitors give advice.

Clients do not have to follow solicitors' advice. If



1 they don't want to follow solicitors' advice they can sack  
2 them, they can, you know, tell them "no, we're not doing  
3 that". A prudent client will follow solicitors' advice,  
4 but it seems to me that when the solicitors are making the  
5 decisions, not the client, then that is really a complete  
6 topsy-turvy situation.

7  
8 And I guess the concern is that, you know, in  
9 solicitors making those decisions, probably they are  
10 seeking to protect the client, but again, that is not how  
11 the solicitor/client relationship should work.

12  
13 MS NORTON: Can I just unpick that a little bit because,  
14 would you agree that, subject to responsibilities that  
15 lawyers have to courts, it is the duty of the solicitor to  
16 act in the best interests of their clients.

17  
18 MS SDRINIS: Of course, yes.

19  
20 MS NORTON: To protect their clients' interests; that's  
21 not a problem. The problem, would you agree, arises where  
22 a person whose obligation it is to limit or protect the  
23 interests of a client is also making decisions about the  
24 conduct of litigation?

25  
26 MS SDRINIS: Yes.

27  
28 MS NORTON: Is that where the problem arises?

29  
30 MS SDRINIS: That's where the problem is, if indeed that  
31 is what has been happening.

32  
33 MS NORTON: Yes, and we don't know, I'm just interested in  
34 exploring this with you. You said one of the problems is  
35 that solicitors don't live with the consequences of  
36 litigation, that's for the client. Would you also agree  
37 that the solicitors aren't - they didn't create the  
38 problem; the solicitors are not responsible for the system  
39 in which, in these instances, children were abused in state  
40 care. Would you agree with that?

41  
42 MS SDRINIS: Yes.

43  
44 MS NORTON: And so, you've got solicitors making decisions  
45 on this hypothetical in circumstances where they're not  
46 accountable for the conduct?

1 MS SDRINIS: Yeah, it's what I said before: the client has  
2 to live with the decisions that are made and it is the  
3 client who was responsible for the conduct which gives rise  
4 to the circumstances in the first place.

5

6 MS NORTON: Mr Strange, has there been any experience of  
7 these sorts of difficult issues in Queensland?

8

9 MR STRANGE: There has, and before I address that I just  
10 wanted to make the observation that the context you're  
11 talking about is not one where the client is  
12 unsophisticated in terms of legal capacity or understanding  
13 of the issues.

14

15 MS NORTON: Yes.

16

17 MR STRANGE: I don't know exactly how the system works  
18 here, but I would anticipate that the Crown Solicitor is  
19 not being instructed by junior public servants but more  
20 senior people who should have a full understanding of the  
21 issues that are being litigated and the policy  
22 considerations and the position of the relevant government  
23 entity and they should be well capable of providing  
24 instructions to guide Crown Law's actions in a matter.

25

26 I was thinking when I was listening to the previous  
27 witness, it's quite reminiscent in some respects of a  
28 debate or a focus that's happening in my home state of  
29 Queensland at the moment around public sector integrity.  
30 That witness was talking about a lack of resources, failure  
31 to have the proper powers to do her job in the way that it  
32 sounded to be necessary and the consequences of that.

33

34 We've had similar issues ventilated in the media in  
35 Queensland about the public service, including some former  
36 senior public servants and one current senior public  
37 servant who have raised similar issues, have raised a  
38 concern about public servants tailoring their advice to  
39 Ministers and others in order to make it palatable, not  
40 tell them things that they don't want to hear, protecting  
41 them, those sorts of things, and the ultimate response to  
42 that has been, the government has established a review into  
43 the culture and accountability of the public sector that's  
44 being conducted by Professor Peter Coaldrake who's had a  
45 long history in public administration in Queensland and  
46 nationally I understand, and he's undertaking that review  
47 at the moment into, in effect, the culture and

1 accountability of the Queensland public sector.

2

3 MS NORTON: Thank you. I have just one final question.  
4 Ms Sdrinis, I said I'd come back to the journey, it's  
5 Thursday afternoon, let's end on a slightly more positive  
6 note. You adverted to the fact that things have improved  
7 in terms of your interactions, I'll just give you an  
8 opportunity to finish that.

9

10 MS SDRINIS: In 2021 we started seeing a much more  
11 cooperative situation with the Solicitor-General's office;  
12 happy to meet and talk about issues. We were seeing real  
13 efforts, I think, to provide us with documentation as much  
14 as is possible. We do have a silo situation in Tasmania as  
15 the previous speaker alerted to. We've also got another  
16 situation where, on the one hand, the Solicitor-General  
17 says, "Oh, we can't get this documentation from the  
18 department", on the other hand they seem to have free rein  
19 about what they can get, so there's a little bit of  
20 contradictory stuff going on there.

21

22 But certainly by late last year we were resolving  
23 matters, we were resolving matters for amounts commensurate  
24 with what we see on the mainland; there was good  
25 cooperation. You know, still some issues maintaining  
26 privilege over independent medical examinations that the  
27 Solicitor-General's office has obtained, which we say is  
28 completely inappropriate in child abuse matters, where the  
29 assessment can be very traumatic for the claimant, and then  
30 to be told, "Well, we're going to maintain privilege over  
31 this report, we're not going to give it to you", is pretty  
32 triggering and I think inappropriate in this environment.

33

34 Certainly, at law they're entitled to do it, but I  
35 think it's wrong.

36

37 MS NORTON: Is it the case that it's a blanket maintenance  
38 of the privilege, or is there a somewhat inconsistent  
39 approach?

40

41 MS SDRINIS: Yeah, on some occasions we've been told,  
42 "Well, we're maintaining privilege over the report and  
43 we're not giving it to you. But by the way, doctor so and  
44 so says this, that and the other and we say this goes to  
45 these facts", and that's both frustrating because you  
46 haven't seen the whole report, and again, I would say  
47 triggering and traumatising to our clients, because the

1 assumption is, if privilege is maintained over the report,  
2 on the whole it would have been supportive of the client,  
3 so that can be frustrating and really traumatising in some  
4 cases.

5  
6 MS NORTON: Mr Strange, I'll just give you a final  
7 opportunity if there's anything you'd like to raise with  
8 the Commissioners before I finish?

9  
10 MR STRANGE: No, I don't think there's anything additional  
11 to what I've said in my statement and our earlier  
12 submission, thanks.

13  
14 MS NORTON: And I should say, there is a lot of additional  
15 information in the statements, we've just gone to some key  
16 matters this afternoon. Commissioners?

17  
18 PRESIDENT NEAVE: Thank you so much, Ms Sdrinis and  
19 Mr Strange, that was really very helpful evidence, very  
20 interesting.

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22 **AT 4.24PM THE COMMISSION WAS ADJOURNED TO**  
23 **FRIDAY, 13 MAY 2022 AT 10.00AM**  
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