

Statement of Lucas John Digney, HACSU

I, Lucas John Digney, of [REDACTED], received a Notice to Prepare and Produce a Document or Statement from the Commission of Inquiry Response Unit (**the Notice**). The Notice was dated 28 July 2022.

I am the Assistant State Secretary of the Health and Community Services Union (Health Services Union, Tasmania Branch) and I have held this position since 21 September 2021. Prior to this date I held a number of positions at HACSU, including Industrial Organiser and Industrial Officer.

I commenced employment with HACSU in February 2010. I spent approximately 20 months working elsewhere in 2014 and 2015. I have had direct involvement with HACSU members employed at Ashley Youth Detention Centre (AYDC) since 2010.

I provide the below in response to the Notice on behalf of the Health Services Union, Tasmania Branch (HACSU).

General

1. How many members does the HACSU have in Tasmania?

As of 4 August 2022, HACSU has 9414 financial members.

2. What are the usual services it offers to members?

HACSU is an industrial association that provides advocacy, legal support, and miscellaneous member benefits such as professional indemnity insurance, holiday homes and commercial discounts. We provide representation to our membership in bargaining, collective disputes, and individual workplace matters. We have membership across the private and public sectors in health, nursing, disability support work, aged care, and allied health.

3. What percentage of State Service employees working in the community services sector are members?

36% of HACSU members are state service employees. It is difficult to gauge the percentage of the entire cohort of community services sector state service employees who are members. This figure varies from workplace to workplace. We are not the dominant Union in relation to Department of Communities Tasmania employees, albeit we have workplaces where we have a high percentage of employees as members.

4. Is HACSU a child safe organisation? Why or why not? If so, please provide copies of any relevant policies and procedures.

HACSU is currently seeking advice in relation to a specific child safe policy. Nonetheless, the organisation and its leadership have demonstrated commitment to child safety and wellbeing and the promotion and protection of children's rights. We have members employed in child safety and other associated community services. We have and will continue to advocate for better services and protection of children. We do not deal in any way directly with children.

HACSU membership at Ashley Youth Detention Centre

5. Provide a table setting out the following for each year of the Relevant Period:
 - (a) the number of Ashley Youth Detention Centre Officials who were members of HACSU; and
 - (b) the number of workplace delegates at Ashley Youth Detention Centre.

Given the short timeframe, we are unable to provide membership data for the entire relevant period. HACSU currently has 52 members who are employed at Ashley Youth Detention Centre.

HACSU currently have 8 members who are workplace delegates.

6. If the number or percentage of Ashley Youth Detention Centre union members has changed over the course of the Relevant Period, what is the reason, as far as the HACSU is aware, for that change?

Anecdotally, HACSU membership at Ashley Youth Detention Centre has remained constant over the relevant period. There are natural ebbs in union density at all worksites. HACSU is not aware of any notable or specific incident which has caused union density to increase or decrease.

7. How frequently does the HACSU hold meetings at Ashley Youth Detention Centre?

HACSU regularly contacts workplace delegates by telephone and/or email and will conduct site visits to Ashley Youth Detention Centre on a six-weekly basis. However, we may conduct more regular visits or conduct more frequent meetings when representing members on a specific issue. For example, during the recent lockdown HACSU Officials made frequent visits to Ashley.

8. Please describe how the HACSU works with other unions, including the Community and Public Sector Union (**CPSU**) and Australian Nursing and Midwifery Federation (**ANMF**), in relation to the representation of Officials at Ashley Youth Detention Centre, including details of any information sharing mechanisms, meetings and memoranda of understanding between union organisations.

Save for the Public Sector Unions Wages Agreement, where a collective strategy may be agreed, we deal very little on a formal or structured basis with the CPSU or the ANMF. That being said, we have cross coverage with both CPSU and ANMF and generally, however not always, our members have similar workplace issues and we often advocate for similar if not same solutions or outcomes for our respective members.

Member concerns

9. Briefly outline the key concerns raised by HACSU members who work at Ashley Youth Detention Centre. If these have changed over time, please identify the change and what you consider to be the reasons for the change.

Workplace concerns have changed very little in the relevant period. As with most worksites, those major issues are:

- a) Workloads;
- b) Workplace health and safety; and
- c) Wages and conditions of employment.

In relation to Ashley, the overwhelming majority of concerns raised to us relate to workplace health and safety.

10. What (if any) action or support does HACSU provide members to assist in addressing those concerns?

HACSU provides workplace advocacy and representation to its members. This includes but is not limited to:

- a) Representing members at meetings with management to present workload concerns and advocate employee interests;
- b) Training and engaging with members to inform them about safe work practices, relevant legislation and policy;
- c) Managing, advancing and assisting members in enterprise bargaining to advance claims and improve wages and conditions;
- d) Negotiation of agreements and outcomes on disputes related to the specific workplace; and
- e) Advocating publicly through media and campaigning activities to highlight service deficiencies or risks to our members or the community more broadly.

Disciplinary proceedings

11. What role does HACSU have when disciplinary proceedings have commenced against a member, including ED4, ED5 and ED6 proceedings? In answering this question please address:

- (a) whether HACSU represents the member;

Where requested, HACSU will provide industrial advice and will often provide representation in the event that disciplinary procedures commence.

- (b) what form any representation takes;

Providing advice over the phone or in person, attending meetings with the member and assisting with written responses.

- (c) the general advice provided to members in relation to these matters;

We do not provide 'general advice'.

- (d) how HACSU approaches the resolution of these proceedings;

Our role as an industrial advocate is to advocate on behalf of our member. We seek to ensure that procedural fairness and natural justice are upheld in the disciplinary process and that any outcome is proportionate to the alleged or proven misconduct.

- (e) whether independent legal advice is sought by members in relation to these proceedings.

Employees may seek advice from anyone they choose. Most members will opt to be represented by their union. In workers compensation matters or matters that are not industrial in nature, Members are referred to independent legal advice.

12. Does the answer to question 11 change if disciplinary proceedings have commenced because of allegations of child sexual abuse? Why or why not?

No. We will provide advocacy which is commensurate with the needs of that member and the circumstances of the particular matter.

13. The Commission has received information suggesting a perception in the community that the Department is reluctant to take action against Ashley Youth Detention Centre Officials if those Officials are HACSU members. Please comment on:

(a) whether HACSU is aware this perception exists;

HACSU is not aware of any perception. We severely doubt that such a perception is well founded and reasonable. We reject the inference that providing ordinary advocacy to our membership enables or condones child sexual abuse.

(b) what, in HACSU's opinion, could explain this perception; and

If anything, the explanation lies in the fact that we are enthusiastic and skilled advocates and we ensure that any process is in line with policy, powers and any other relevant factor.

(c) HACSU's view on whether this perception is likely to put detainees at risk of sexual or physical harm.

As stated above, we reject any assertion that providing advocacy and representation to union members would be a factor in placing detainees at greater risk of sexual or physical abuse. For example, my union has advocated significantly for change in the aged care sector, a sector also subject to a significant Inquiry (The Aged Care Royal Commission). That Commission found that whilst there were allegations of abuse by workers, the larger issues impacting on the care and quality of care provided to residents largely related to the systemic and funding issues facing the sector. To that end we have advocated for increases to wages to attract and retain staff and for increases in staffing.

14. What (if any) role does HACSU have when there is an allegation of child sexual abuse made against an Ashley Youth Detention Centre Official who is a HACSU member? In particular:

(a) what advice would ordinarily be given to the member;

HACSU will provide advice which would aim to give effect to paragraph 11(d). This principle does not change depending on the nature of the allegations. We do not provide general advice. We will provide advocacy and advice which is commensurate with the needs of that member and the circumstances of a particular matter. In simple terms, the advocacy we provide centers on ensuring the employee is afforded natural justice and procedural fairness in any process.

(b) what influence or power does HACSU have to ensure a member is still able to work whilst investigations into the allegation are occurring?

HACSU is not the employer and has no power to decide whether an employee is suspended from the workplace. That decision making power rests with the employer.

15. What (if any) role does HACSU have when there is an allegation of physical abuse made against an Ashley Youth Detention Centre Official who is a HACSU member? In particular:

(a) what advice would ordinarily be given to the member: and

HACSU will provide advice which would aim to give effect to paragraph 11(d). This principle does not change depending on the nature of the allegations. We do not provide general advice. We will provide advocacy and advice which is commensurate with the needs of that member and the circumstances of a particular matter.

- (b) what influence or power does HACSU have to ensure a member is still able to work whilst investigations into the allegation are occurring?

HACSU is not the employer and has no power to decide whether an employee is suspended from the workplace. That decision making power rests with the employer. We have no power or influence regarding that decision.

Stand downs

16. The Commission is aware that there have been a significant number of stand downs since the announcement of the establishment of the Commission in November 2020, including stand downs where the allegations against Officials had been known to the Department for some time.

- (a) Do you consider the stand downs are appropriate?

With all due respect, the term 'stand downs' is being used incorrectly. In an industrial relations sense, an employee is 'stood down' if there is no useful work for them to do because of circumstances beyond the employer's control, e.g. in the case of machinery or equipment break down.

It is assumed the Commission is referring to the practice of issuing a 'suspension' to an employee to not attend work whilst a disciplinary process is conducted. S. 43 of the State Service Act 2000 provides that Employment Directions may make provision for suspension from duties of employees, with or without salary. In turn, Employment Direction No. 4 sets out the procedure the employer must adhere to in suspending an employee with or without pay. Suspensions are an industrially necessary tool where an employer wishes to remove an employee from the workplace while serious allegations are investigated. Allegations which involve sexual or physical abuse will usually result in employee being suspended.

Given the nature of the allegations that we are aware of, suspension is entirely appropriate. However, suspension should be coupled with support to the affected employee and the consequential investigation should be undertaken expeditiously.

- (b) Are the stand downs consistent with HACSU's past experience of the kinds of allegations which would result in an Official being stood down?

Allegations that establish, prima facie, that an employee may be a risk in the workplace, will generally result in a suspension. As stated above, the allegations of which we are aware are consistent with suspension from the workplace whilst being investigated.

- (c) To what extent do you consider the establishment of the Commission was a relevant matter in staff being stood down?

An employer determines whether an employee is to be suspended. HACSU is not privy to their reasoning when doing so. That being said, the establishment of the Commission and the national redress scheme has resulted in historic allegations being raised that were previously not.

17. In light of the large number of stand downs of Ashley Youth Detention Centre Officials due to allegations of sexual or physical abuse of detainees, what are HACSU's reflections on whether children in Ashley Youth Detention Centre have been exposed to sexual and physical abuse? Explain your answer.

There has been a longstanding perception in the community that children have been abused at Ashley Youth Detention Centre. This has been ubiquitous in Tasmanian and national media prior to the conception of the Commission. Several employees have been suspended in light of the findings of the

Commission which suggests that victims have bravely come forward. HACSU sincerely hopes that all children who experienced physical and sexual abuse while in the State's care can find justice. HACSU similarly is hopeful that offenders of abuse against young people are identified and face the consequences of their offending.

18. What (if any) improvements would HACSU recommend to the Commission to ensure that children detained at Ashley Youth Detention Centre are protected from sexual and physical abuse in the future?

HACSU would recommend the implementation of a proper and sustainable therapeutic residential care model to be implemented in youth justice. The announcement of the closure of Ashley Youth Detention Centre is welcomed by HACSU. Numerous reports have clearly stated that the facility is not fit for purpose to deliver proper and consistent therapeutic residential care, nor can it be repurposed to be fit. Proper staffing, where young people can build trusting relationships that are consistent and reinforced, would empower young people to understand and activate their own rights. This would also give better and more consistent oversight to the interactions with young people. HACSU are ready, willing and able to work with the Department to ensure that children in the Government's care are protected from abuse.

19. Has the large number of stand downs caused HACSU to reflect on its own processes or policies in any way? Particularly, in relation to nominations of workplace representatives, membership, assisting members in disciplinary proceedings or child safeguarding practices.

We sincerely hope that victims of child sexual and physical abuse receive the justice they deserve. Our role as industrial advocates does not change and we will continue to advocate in line with the principles expressed in paragraph 11. We are seeking advice in relation to a specific child safe policy for HACSU.

20. Provide a table setting out the following for each year of the Relevant Period:

Member name	Date	Process	Allegation/issue	Outcome	Notes
[REDACTED]	/2021	Internal inquiry	Misconduct	RTW	
Edwin	/2020	ED5	Sexual	Cleared	Awaiting RTW
Ira	2020	ED5	Sexual & physical	Awaiting investigation	Suspended
[REDACTED]	2019	ED5	Physical/assault	Awaiting outcome	Suspended
[REDACTED]	2019	ED6	Capacity	Failed	Negotiated termination
Mia	2019	ED5	Misconduct	Terminated	
[REDACTED]	/2019	Internal matter	Problems with management	Resolved	
[REDACTED]	2018	ED5	Sexual & physical	Awaiting investigation	Suspended
Arnold	/2016	ED5	Assault	Cleared	RTW
Arnold	/2021	ED5	Sexual & physical	Awaiting investigation	Suspended/unfit for work
Walter	/2016	ED5	Assault	Unknown outcome	
[REDACTED]	2011	ED5	Assault	Misconduct	Terminated
Fletcher	/2010	ED5	Contraband	Unknown outcome	

Lionel		/2011	ED5	Contraband / sexual communications	Unknown outcome	
		/2011	ED5	Contraband	Unknown outcome	
		2007	ED5	Physical	Unknown outcome	
		/2010	ED5	Contraband	Cleared	RTW
		/2004	ED5	Inappropriate language	Unknown outcome	RTW
		/2004	ED5	Assault	Allegations dropped	RTW
		/2003	ED5	Misconduct	Unproven	Resigned from employment
		/2022	ED5	Sexual/physical	Awaiting investigation	Suspended

21. Where disciplinary action is taken and some form of misconduct is established, what, in HACSU's experience, are the kinds of sanctions or outcomes which are imposed?

Where an employee has breached the code of conduct, the Minister may enact Section 10 of the State Service Act and impose any of the following sanctions.

- a) Counselling
- b) A reprimand
- c) Deductions from salary
- d) Reduction in salary
- e) Reassignment of duties
- f) Reduction in classification
- g) Termination of employment.

Generally, less serious breaches result in counselling, reprimand or retraining. Serious breaches generally result in termination of employment. The other sanctions are only used in limited circumstances in our experience.

Workers' Compensation Claims

22.

HACSU refers members that wish to make Worker's Compensation claims to private solicitors. We do not run legal cases relating to Worker's Compensation claims. We do not keep records of Worker's Compensation claims made by members.

23. The Commission is aware that over the Relevant Period there has been a large number of Workers' Compensation Claims made by Ashley Youth Detention Centre Officials and that there are a number of Officials who have made numerous claims over the course of their employment.

- (a) How does the number and nature of claims made by Ashley Youth Detention Centre Officials compare to the number and nature of claims made by your members working at other institutions?

Working in Corrections, specifically youth detention, is more physically and emotionally demanding than most occupations. A higher number of workers compensation claims is likely proportionate to these heightened demands. Employees make these claims because they have been injured while at work and we are not aware of another motivation.

- (b) What, on the material available to you, is the explanation for the number of cases and why the Officials are making multiple claims?

Again, we do not keep records of workers' compensation claims made by members.

24. The Commission has received information suggesting that there is a practice, where disciplinary proceedings are proposed or commenced against Ashley Youth Detention Centre Officials who are HACSU members, for the Officials to make a Workers' Compensation Claim or take sick leave. Please comment on:

- (a) whether HACSU is aware that this perception exists;

We are not aware of this perception and doubt that it is well-founded.

- (b) whether HACSU has ever provided advice to members to commence Workers' Compensation Claims or take sick leave:

Where an employee is injured or ill, they are entitled to take personal leave. Where an injury or illness is caused in the workplace, they are entitled to make a workers' compensation claim. We would provide this advice as a matter of course if the specific circumstances warranted such a claim.

- (c) what, in HACSU's opinion, could explain this perception; and

We are not aware of this perception. However, an employee making a claim for personal leave or workers compensation after the commencement of disciplinary proceedings may lead to a perception that the employee is avoiding the disciplinary process. That perception is nonsense. Employees must be ill or injured to make such claims and the Department can and does often dispute claims made for workers compensation.

- (d) whether you consider the rate of Workers' Compensation Claims and sick leave claims at Ashley Youth Detention Centre is higher than would ordinarily be expected, and if so, what you consider to be the reasons for that higher rate.

We do not keep records nor are we privy to statistics on the 'rate of Workers' Compensation Claims and sick leave claims at Ashley Youth Detention Centre' and thus do not know if the rate is 'higher than would ordinarily be expected'.

If the rate is higher, and we do not know that, in consideration of our response at paragraph 23, we would likely consider the number of claims proportionate to the work undertaken.

Child Sexual Abuse

25. During the Relevant Period, did HACSU ever receive complaints from members about child sexual abuse, including harmful sexual behaviours, occurring at Ashley Youth Detention Centre? If yes, provide details.

We have no immediate records of complaints but have not had the opportunity to scour past records. It would be unlikely such a complaint would be made to the Union.

26. During the Relevant Period, did HACSU ever receive complaints that any of its members have allegedly engaged in acts of child sexual abuse at Ashley Youth Detention Centre? If yes, provide details.

Not on the basis of our immediate records.

27. Would HACSU expect to be notified if there were concerns about a HACSU member being a perpetrator of child sexual abuse? Why or why not? If yes, by whom would HACSU expect to be notified?

No. Our members number in the thousands and are a broad cross-section of the community. We are not a regulator or an authority of any sort. Other than requests by the member seeking our representation regarding resultant disciplinary allegations, we would not expect to be notified. HACSU only plays a role in providing industrial relations support, advice and advocacy to members who seek that support, advice and advocacy.

28. In the event HACSU had concerns about a HACSU member being a perpetrator of child sexual abuse, what steps (if any) would HACSU take to notify:

- (a) Child Safety Services;
- (b) Tasmania Police; and
- (c) the member's employer?

The hypothetical event has not occurred and I am reluctant to speculate. There is clear distinction between 'having concerns' and having reasonable evidence. In either situation we would likely seek legal advice regarding competing duties (i.e. confidentiality and disclosure).

If a staff member holds a legal practicing certificate it is understood they may not be forced to disclose information which has been communicated for the purpose of obtaining legal advice but this is subject to conduct rules.

If HACSU held any genuine concerns about a child being abused or neglected, we would notify Child Safety Services.

Staff shortages

29. The Commission is aware that staff shortages have been an ongoing issue at Ashley Youth Detention Centre. As far as HACSU is aware:

(a) What is the main cause of these staff shortages?

An inability to manage the centre to be appropriately staffed. This is caused by a combination of factors. Under-resourcing, poor working conditions, employment related injury and lack of staff retention leads to staff shortages.

(b) What if any steps have the Department taken to address staff shortages?

Apart from normal recruitment processes, very little. Some contingency staff from Youth Justice and Child Safety Services have been deployed to address the chronic understaffing recently. This is of negligible value because those workers are not fully trained to deal with all situations at Ashley.

(c) What actions has HACSU taken to advocate for adequate staffing at Ashley Youth Detention Centre?

HACSU has run worksite specific and sector wide campaigns to improve resourcing, working conditions and staff retention. We have raised our concerns through the media and directly with the Agency and the Minister. We have and continue to advocate for ongoing recruitment and above establishment appointments to avoid the issue arising again.

30. What is HACSU's view of the risk posed to detainees at Ashley Youth Detention Centre by staff shortages? Please explain your answer.

Staff shortages damage employee morale and heighten workloads. It creates a significant safety risk. This consequentially harms the standard of service which employees can provide to detainees. Further Detainees see it as isolation, which, in the view of HACSU, it is. This can often make them agitated and more difficult to engage with. It leads to frustration and confrontation between staff and detainees.

31. There has been recent media attention noting that recent staff shortages have caused detainees to be locked down for two weeks, and that HACSU issued a provisional improvement notice (**PIN**) to the Department.

(a) Are the recent staff shortages continuing?

There has been some improvement, but staff shortages continue. Without the reliance on overtime, there would be shifts unstaffed by Youth Workers as at the date of this statement.

(b) What was/is the main cause for this particular staff shortage?

The factors outlined above at 29 are the main reasons. Exhaustion of remaining staff also contributes to shortages.

(c) What is HACSU's view on whether the detainees' health and wellbeing is at risk due to the lockdown?

Detainees see it as isolation, which in the view of HACSU, it is. This makes them agitated and more difficult to engage with. It leads to frustration and confrontation between staff and detainees. In our view, it is detrimental to the detainees' health and wellbeing, and it is compounded by the number of days it continues.

(d) Why was the PIN issued? Please provide a copy of the PIN.

The Provisional Improvement Notice (PIN) was issued because the actions taken by the Department in relation to staffing was not sufficient and an imminent risk to members' health and safety remained. We did not issue the PIN; we are not empowered to do so. The PIN was issued by Health and Safety Representatives who are employees of Ashley Youth Detention Centre. The PIN was also designed to seek some assistance from the safety regulator, Worksafe Tasmania. This has not eventuated.

(e) What actions has the Department taken to comply with the PIN?

Ongoing consultation with the Health and Safety Representatives in relation to daily staffing; an application to the Department for above establishment recruitment; and further advertising of vacancies at Ashley. The department have not been able to provide immediate contingency staff.

(f) What further actions does HACSU wish to see the Department take to comply with the PIN?

A continuous and ongoing recruitment and induction program for additional staff, in addition to the assessment and release of any detainees not currently sentenced to detention. Young people on remand awaiting trial should not be detained.

(g) Have concerns been raised in relation to similar issues previously? Please provide details including copies of any PINs relating to similar issues that have been previously issued during the Relevant Period.

A PIN relating to staffing numbers was issued by the HSRs in or around 2019. We are currently awaiting a copy of that PIN from the HSRs.

Provisional improvement notices

32. Please provide details of any PINs during the Relevant Period that are not addressed in response to paragraph 31.

HACSU is not aware of other provisional improvement notices.

33. Have you refreshed your memory for the purposes of this statement by reviewing any documents or other records or by speaking to any other person (other than any lawyer assisting you with the statement)? If yes, provide:

No. I have only spoken to HACSU Legal Officers to assist with the statement.

34. Is there further information you would like to provide to the Commission regarding Ashley Youth Detention Centre? If yes, provide it here.

Youth Justice in Tasmania needs to be modernised and focused on therapeutic residential programs that are evidenced to provide the greatest opportunity for young offenders to get out of the criminal justice system. This cannot be provided at Ashley despite the best efforts and intentions of the various stakeholders.

The plan to close Ashley is not really a plan of any substance, but rather a plan to come up with a plan. There are no sites identified, there are no replacement facilities designed, there is no information as to the framework that will be utilised to engage with detainees and no consultation with the workforce has occurred. The Government are not focussed on this at all. Instead, we see a subsequent announcement to put youth justice and other child, youth and family services into the Department of Education. We

have serious concerns that this is occurring, particularly because the Commission of Inquiry has yet to make any recommendations.

The vast majority of HACSU members employed at Ashley Youth Detention Centre care for the young people they work with and do everything in their power to advocate for them and to assist them. They have suffered due to the nature of the media reporting of issues surrounding Ashley. They have a perception that nobody is prepared to speak on their behalf and it is not clear that anyone from the Department or the Government has done so.

35. Is there further information you would like to provide to the Commission in relation to its inquiry? If yes, provide it here.

No further information

36. Produce a copy of any document referred to in response to any paragraph in this Notice (including any document which you used to refresh your memory referred to in your answer to paragraph 33 above).

37. Please also produce an up to date copy of your CV. My CV is annexed and marked 'Digney Lucas - CV'. This CV current as of September 2021.