
TRANSCRIPT OF PROCEEDINGS

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

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

BEFORE:

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

On 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.

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

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

Q. Yes, give it to me now.

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

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

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

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

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

A. Yes, I do.

Q. So, we've got the tucking into bed on at least two occasions, Wayne tucked in Rachel, the "nice arse" comment, the drawing of a penis with a biro, physical contact by piggybacking, touching and bruising on the leg, rubbing 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.

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

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

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

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

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

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

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

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

A. I believe so, yes.

Q. Have you read it?

A. I have read it.

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

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... it is apparent on the evidence obtained ...

Perhaps we could, at the first line 8.6:

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

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

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

A. Yes, have I.

Q. And you'd agree with that analysis?

A. The analysis as --

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

A. Absolutely. Yes.

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

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

A. Am I able to see the document?

Q. Yes.

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

Q. Yes.

A. Yes.

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

A. Yes.

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

A. At that point in time.

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

A. Yes.

Q. And that was upheld?

A. Ah --

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

A. Yes.

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

A. That is correct.

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

A. I do, yes.

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

A. Eventually.

Q. Well, do you mean by that, that that's the landing 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.

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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.

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

A. Yes.

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

Regarding our previous discussion ...

This is from the investigator to an officer of the department:

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

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

Further, it goes on:

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

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

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

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 ██████████ 2007.

3

4 By ██████████ 2007 Wayne had become aware of Rachel's
5 additional allegations against him that were made in ██████████
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 ██████████ 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 *blacked 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"?

47

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.

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

I'd also point out --

Q. Is it --

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

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

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

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

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

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

A. I'm happy to concede a step further; I'm happy to concede that, by not investigating the other matters that were raised by Rachel, that were raised in the email that 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?

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

COMMISSIONER BROMFIELD: Before we do.

Q. Mr Bullard, we heard from Rachel yesterday. I just wanted to give you an opportunity now, though, to make any observations you choose to in relation to the unnamed children who were referred to in the email, including the child who made disclosures about Wayne and allegations of sexual misconduct who was forced to apologise to Wayne?

A. Appalling. Absolutely appalling. It's very important that we create an environment where children and young people have agency and feel heard, and that's an absolute underpinning of our organisation now.

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

COMMISSIONER BROMFIELD: Thanks, Mr Bullard.

PRESIDENT NEAVE: I have one further question.

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

A. Absolutely.

Q. And that you have played - you have been very involved in ensuring child safety issues are taken seriously. I wondered if you wanted to make any comment on what will happen when the department expands in size and the challenges that that might present; you changed the culture in the context of education, you and your successors will have additional responsibilities. What are the sorts of 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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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.

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

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

A. Yes.

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

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

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

PRESIDENT NEAVE: Thank you.

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

A. Yes, and --

Q. Last year, sorry.

A. Last year. He has resigned.

Q. Yes.

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

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:
47

[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, NESAs - sorry, I can't
37 think of what the acronym stands for, but NESAs are 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.

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Q. You say "it's rolled out" - no, well, Ms Moxham you've been very frank and I appreciate the frankness with which you are giving evidence to this Commission. You say it's rolled out; do you see it as being used to constrain the provision of information?

A. Well, I certainly do because I believe there is a provision in that Act that would allow all these bodies to share information with us, because the purpose for which this information's being shared with us is one that's covered by that provision in the Act.

Q. And that is the regulation provision?

A. Yes.

Q. You're acting as a regulator?

A. Yes.

Q. You don't do anything unless you're regulating?

A. Correct.

Q. And in some circumstances, the nature of the regulation is to prevent people who are at risk of abusing children, you're trying to prevent them from having access to children?

A. That is right, yes.

Q. And would it be fair to say you find it difficult to see how an Act could be construed in a way that's so inconsistent with that beneficial purpose?

A. Yes, I mean, I appreciate that there are balances that need to be in place because individual human being's lives can be ruined by inappropriate information being shared in an inappropriate manner, but we are not in the habit of sharing information anywhere other than where it's needed to conduct our regulatory function and protect children.

Q. And I say, "construed", but it could be that that's the way the Act operates, in which case your position would be it needs to be amended; is that right?

A. That's correct.

Q. How long - have you been advocating for that amendment?

A. Yes. To the best of my knowledge and belief, there has been advocacy from our office for changes to our Act in 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.

47

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 A. M'hmm.

38
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?

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COMMISSIONER BENJAMIN: Q. Whilst you're doing that, I think the registration of John ended in 2020?

A. That's correct.

Q. Thank you.

A. Actually, I think it's only suspended. And that's another issue with our Act. We could take someone's registration away, and the very next day they could re-apply for registration. And then our resources would have to go to the task of determining good character, fitness to teach and all of that over again.

Q. Thank you.

A. Suspension's better; it can go on and on.

MS BENNETT: Q. In relation to the person we've been referring to as "Wayne", do you want to have a look at that pseudonym list and see the person we're referring to as "Wayne"?

A. Yes.

Q. This has got a long and complex history and I don't want to go through the full outline of it now, but it's fair to say that you received an application from Wayne in [REDACTED] 2007. You weren't proactively notified by anybody about concerns about Wayne?

A. That's correct, yes.

Q. And then you made enquiries about Wayne's appropriateness to be registered with the Department of Education?

A. Yes.

Q. Were you present for the part of the examination of Mr Bullard where I was discussing the registration of Wayne?

COMMISSIONER BROMFIELD: I think you mean, "Ms Moxham".

MS BENNETT: Q. Were you present, Ms Moxham, for the examination of Mr Bullard when I was discussing the registration of Wayne?

A. I think I may have been for part of it, yes.

Q. There were some materials that I suggested to 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.

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Q. And, so far as you're aware, then he's resigned at some stage?

A. Yes. The - yes, he had been suspended on full pay while there was an investigation undertaken by the Department of Education and we were notified of that, and the board became aware of a possible third victim which we notified the Department of Education about, and then we wrote to the Office of the Solicitor-General to seek advice regarding legalities of investigating historical matters, and a reminder email was sent to the Office of the Solicitor-General, and we still haven't received a response.

PRESIDENT NEAVE: Q. Can I just have those dates again? So that, you asked the Solicitor-General for advice when?

A. [REDACTED] 2021.

Q. Thank you. And you have not yet received a response?

A. So I'm informed, yes. It would not have come to me, but I'm informed by the person to whom it would have come that we have not received.

Q. And the advice related to your ability to look at historical matters?

A. Yes, the legalities of investigating historical matters, yep.

MS BENNETT: Q. Just for context, that comes in the wake of having received a large volume of his notifications of historical matters; is that right?

A. That's correct, but in this instance as well, it's actually related to the fact that there was a third victim that we hadn't known about previously, and so it's like re-opening the investigation, yes.

Q. Ms Moxham, are you independent of government?

A. We're meant to be, yes. Shall I explain it this way: the board itself is. All of the employees in the office are state servants, and hence, we come under the Department of Education.

Q. Do you need greater independence to do your job?

A. Well, that's what we put forward in the Review of Education Regulation, that we believe that we should be funded directly from the public purse and not be seen as 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

1 workforce, and in fact the most recent one that we have had
2 is the subject of some of these case studies here, and we
3 are very much delayed in responding to that one, because
4 the key member of staff has had to have serious surgery and
5 has been on a return-to-work plan, and you might say, why
6 isn't somebody else in the office trained to do it? And
7 the reality is, they aren't and we need to find some way to
8 get that done, but with the huge volume of historical
9 matters that have now descended upon us that makes it even
10 more problematic to sort out those sorts of issues for our
11 office.

12
13 COMMISSIONER BENJAMIN: Thank you.

14
15 THE WITNESS: Thank you.

16
17 PRESIDENT NEAVE: Thank you very, very much indeed,
18 Ms Moxham, for your very frank and helpful evidence.

19
20 MS BENNETT: Sorry to interrupt. Could I just impose on
21 the Commissioners that we could perhaps sit until 4.15 to
22 complete the evidence today?

23
24 PRESIDENT NEAVE: Yes. Thank you.

25
26 **SHORT ADJOURNMENT**

27
28 PRESIDENT NEAVE: Thank you, Ms Norton.

29
30 MS NORTON: Commissioners, our final session this
31 afternoon is a plaintiffs' solicitor panel. Ms Sdrinis and
32 Mr Strange are here to speak about their experiences
33 dealing with the State of Tasmania in litigation and civil
34 redress, and if the witnesses can be sworn in, please.

35
36 <ANGELA SDRINIS, affirmed and examined: [3.34pm]

37
38 <WARREN GEOFFREY STRANGE, sworn and examined:

39
40 <EXAMINATION BY MS NORTON:

41
42 MS NORTON: Q. Ms Sdrinis, if I'll start with you, if
43 you can again state your full name, please.

44
45 MS SDRINIS: Angela Sdrinis.

46
47 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?

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MS SDRINIS: In my experience, it's not always about the money for survivors. The money's important because that's the tangible acknowledgment of wrongdoing, but when survivors go on a journey where they're listened to, where they're believed, where the right amount of compensation is offered - and that's not always more money - it's about an amount of money that the survivor feels is adequate recognition, where there's an apology, a proper apology at the end of that process, and I'll say it again, most importantly where the survivor feels listened to and believed, then that is trauma-informed practice and I've seen it change survivors' lives; like, completely change their lives.

Where it's an adversarial, litigious, you have to prove every allegation, when we know in historical abuse cases that that's virtually going to be impossible, where technical legal defences are raised, you know, where survivors have to sit there and listen to what's wrong with their claims and why they're going to fail, and why they don't deserve a lot of money, that can actually destroy survivors; and, when that happens, you look at the redress option and say, "Well, that's not great, a lot of things are wrong with it but you know what, it would have been a whole lot better than this alternative".

MS NORTON: Just picking up on a few things you've said there, Ms Sdrinis, you've said it's not always about the money and you talked about the life changing effect that being listened to and believed can have. It sounds from what you're saying that a trauma-informed practice has the ability to be part of a healing process?

MS SDRINIS: Absolutely, yes, I've seen it.

MS NORTON: And that, would you agree that defendant lawyers can play a part in that healing process, and clients obviously, if they follow a trauma-informed approach to litigation?

MS SDRINIS: Yes, I agree with that.

MS NORTON: Government parties are bound by model litigant obligations, and it seems to me, and I'd be interested in your views, on whether and to what extent there's a 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 - know more
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?

47

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.

21

22 **AT 4.24PM THE COMMISSION WAS ADJOURNED TO**
23 **FRIDAY, 13 MAY 2022 AT 10.00AM**

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