TRANSCRIPT OF PROCEEDINGS

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

At Kannenner Room, Mövenpick Hotel
28 Elizabeth Street, Hobart

BEFORE:

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

On 26 August 2022 at 9.34am

(Day 31)

PRESIDENT NEAVE: Thank you, Ms Rhodes.

MS RHODES: Thank you, Commissioners. Our first witness this morning is Ms Alison Grace, she's being interposed before we recommence with Mr Pervan later this morning. If she can be administered the affirmation.

<ALISON LYN GRACE, affirmed: [9.34am]

<EXAMINATION BY MS RHODES:

MS RHODES: Q. Ms Grace, could you please state your full name for the transcript?
A. Ms Alison Lyn Grace.

Q. And your occupation and professional address?
A. I am the Deputy Centre Manager at Bimberi Youth Justice Centre in the Australian Capital Territory.

Q. You've been in that role since about April 2020; is that correct?
A. Yeah, I was acting as the Executive Branch Manager from April 2020 till August 2020, and then moved into the Deputy Centre Manager role.

Q. Prior to that, you've had at least 20 years experience in the Youth Justice space in the ACT?
A. Yeah, that's correct.

Q. You've kindly attached your CV which is very lengthy and very detailed, so I don't mean to embarrass you, but you seem to be very qualified in the area of Youth Justice both starting as a youth worker and then making your way up into policy roles through government and now as a Centre Manager?
A. Yes, thank you.

Q. What is your role as the Deputy Centre Manager?
A. As the Deputy Centre Manager I work with the rest of the management team and the team at Bimberi to ensure the safe care and custody of young people who have been remanded in custody or sentenced to a period of detention in the ACT.

Q. What is the age cohort that comes into Bimberi?
A. So, at Bimberi we can have young people as young as the age up 10 up to the age of 21 where the young person

has committed an offence prior to the age of 18.

Q. Before Bimberi there was Quamby?
A. That's correct.

Q. Which was the Youth Detention Centre prior to Bimberi and Bimberi was brought in because there was a change in legislation which had more of a Human Rights focus than what the previous centre did. What was it about the need to change from Quamby to Bimberi to have this Human Rights Framework?
A. In 2008 we had new legislation introduced, the Children and Young People's Act. We also had the Human Rights legislation introduced in the ACT around the same time. The focus of Youth Justice in the ACT had moved from a Justice focus to a Community focus, so custody as a last resort, so Quamby was no longer fit for purpose to be able to do that in both the infrastructure and the policies and procedures so there was work done over several years to design and develop a new centre which was Bimberi.

Q. It's embedded in the legislation, the Human Rights Framework and other legislation. How do you put the Human Rights on paper into practice in a Youth Detention Centre?
A. Yeah, so we have worked with our Human Rights Commission and our department to ensure that it's not just on paper and in our legislation but through our recruitment of staff, through our training of our team, and also the work that we do with our oversight agencies to ensure that young people and their families are aware of their rights and their responsibilities, that our team are aware of young people's rights and that our policies and procedures reflect those rights to ensure that young people do have a voice and can speak out.

Q. So, there's a lot of moving parts there to make sure that the Human Rights Framework is adopted and embedded into a Youth Justice Centre.
A. Yep.

Q. So, I'll just go a bit at a time. You talked about oversight bodies; how are the oversight bodies in the ACT working together to ensure that the Human Rights Framework is embedded and adopted?
A. Yeah, so we have a Human Rights Commission, there is a Children and Young People's Commissioner within that who is also the public advocate and she has a team of advocates

who are responsible for visiting young people in Bimberi and also for overseeing our registers. We have official visitors who are appointed by the Minister and report to the Minister directly to hear complaints from young people. One of those official visitors is an Aboriginal and Torres Strait Islander person. We have the Office of the Inspector of Correctional Services. We also have the Ombudsman Office who are responsible for Reportable Conduct. So, their roles and responsibilities are different but they're all responsible for ensuring the safe care and custody of young people.

We work with them both individually and as a group through the Bimberi Oversight Committee to ensure that they're not only looking at the rights of individual young people but also the systemic nature of the centre and how we can work to improve outcomes for young people and ensure their safety.

Q. It sounds like there's quite a lot of people who have oversight?
A. Yep.

Q. What is the benefit of having them all together in this one meeting that you have?
A. Yeah, so the Bimberi Oversight Group allows us to bring oversights together once a quarter to discuss the strategic direction of Bimberi and also any concerns that they might have that are overlapping across their different responsibilities and to share, you know, what's the direction we want the centre and the Youth Justice in the ACT to take and how we can work together to achieve that.

Q. Has that oversight meeting always been in place or were there points where they were coming in individually?
A. No, so that has only been in place for the last few years, and prior to that we just worked with them all individually. And we've had a few extras come in, so Reportable Conduct has come in in the last probably four years I think, and the Office of the Inspector of Correctional Services has been in place for a couple of years, so the additional oversight saw the need to bring everybody together so that we could work most efficiently.

Q. You talked about the induction process for recruitment and induction also being part of being able to embed the Human Rights Framework. Could you give a brief overview of

what the recruitment and induction process is?
A. Yeah, so from the very beginning we recruit youth workers and that is to ensure that the people who want to come and work with us do want to work with young people and come from an angle of wanting to ensure their safety and their rehabilitation and re-integration back into the community.

We run an Assessment Centre which includes psychometric assessment, psychometric interviewing, and health and fitness assessments prior to people being offered an opportunity to come and work with us.

All staff who are coming in as operational staff need to participate in a seven-week induction program, and through that program we provide all manner of training from our policies and procedures, we have the Human Rights Commission, all of our oversights come in and speak with our new recruits; they go through a range of observation shifts. We have training in trauma-informed care, working with young people with a disability, cultural awareness training, just to ensure that it's not just about policies and procedures but also what are the expectations of staff to work in a trauma-informed therapeutic and responsive manner to the young people.

Q. You say in your statement at 92, if that would be of help, that you have a principal practitioner who I understand is a clinical psychologist?
A. That's correct.

Q. And is responsible for oversight and supervision of youth workers to ensure that they are applying what they've learned in practice, but as part of their induction or part of their training you say that the person provides training to staff to ensure services are delivered in a trauma-informed and therapeutic way, and that includes training in relation to professional boundaries and self-disclosure, self-care and reliance and working with communities.

Can you explain to the Commissioners what you mean by self-disclosure and why that's important in this training?
A. Yeah, so Canberra is a small place, it's not uncommon for our staff to know young people who are in our care, and so, we make sure staff understand that they have a requirement to let us know if they do know a young person

or a young person's family and what that pre-existing relationship might look like so that we can provide them with the support and also ensure the young people - you know, that that relationship is known about and if there's anything we need to put in place.

So, self-disclosure is also about our staff understanding that we're there to support them and if they do have things going on in their own personal lives that might impact their work at the centre, it's important that we know about them so we can support them with that and that it doesn't impact them when they come to work and their role with the young people.

Q. You said that there's training by Australian Childhood Foundation; what sort of training do they offer your staff?
A. So, the Australian Childhood Foundation come and provide two sessions to our staff: one of those sessions is about working with young people, understanding adolescent development and trauma and working with young people who have a trauma history or also young people with sexualised behaviours, so they provide that training to staff.

The other training that they provide is training about - that goes more into how you engage with young people who have a trauma history or may have different developmental needs, so it's about how you engage with those young people, how you create professional but mentoring relationships, but also how you then - if a situation is becoming difficult, how you diffuse situations and things you might need to consider for the client group with which we work.

Q. You also say, at paragraph 132 of your statement, that there's training on mandatory reporting and the Reportable Conduct Scheme?
A. That's right.

Q. With all of this training, this occurs at the induction phase?
A. That's right.

Q. But is there ongoing training on these issues?
A. On these topics? Yes, so we have skills maintenance sessions every Tuesday and Sunday morning, we do them twice a week to ensure that we catch both lines of staff, we have two lines of staff. The training provided by the principal

practitioner is reiterated through that training, at least a couple of times a year.

Q. You say two lines of staff, could you just explain what that means?
A. Yes, so our youth workers work in two teams, and they work opposite days. So, they do 12-hour shifts two days a week, and then the other team comes on for two days a week, then the first team comes back for three days a week and then the other team comes for three days a week.

Q. You said that the policies and procedures are designed to be therapeutic. At paragraph 126 of your statement you explain that there is a way of - you have adopted a method of monitoring or supervision that - sorry, I'll rephrase that question. You talk about, that if people aren't following those policies and procedures, there is a way that that's addressed within the centre. Could you explain to the Commissioners what that is?
A. Yeah, so we have supervision for staff and that's live supervision and also face-to-face supervision one-on-one with staff. So, through that we can start to address any immediate concerns where we see that a staff member might not be following policies and procedures or we might have concerns about their practice, we can address it through that; and then, if we do have concerns, we can make things more formal and following it up with our People Management Branch.

Q. I'll come back to that more formal process, but one of the big features of Bimberi to help with the implementation of the Human Rights Framework is the actual physical infrastructure of Bimberi. Could you give a brief outline of what that looks like and how that compared to Quamby?
A. Yeah, so Quamby was not initially designed as a Youth Detention Centre, so it was outgrowing its capacity, it did not have the technology that we have at Bimberi, it wasn't designed in a way that would meet Human Rights compliance or the therapeutic requirements of the young people, so investment was made in a new centre and it was purpose-built designed. It was based on a sort of - a school campus model where the community features such as the school, the dining hall, the health facilities, the visitor centre and the spiritual centre are within the central area of the site, with the units on the outside of the centre.

The units are smaller in size, so we have wings of four to six young people in each unit, and each unit has - you know, within those four, each young person has their own room with their own ensuite.

Q. You give detail of the units at paragraph 27 of your statement. Would I be correct in saying that the units have their own bathroom, their own kitchenette, their own living area, so it is very much like a home?
A. Yeah, that's right. So, each unit has a duty point for staff but then it's got a common area for the young people that has a small kitchenette, it has a telephone booth where the young people can lock the door and have private conversations with their family and professionals. It has a communal toilet but then within each room there is also a shower and toilet for the young people to have that, and each unit has its own courtyard which is secure.

Q. In addition to that, they're free to move around the centre quite easily compared to what was in Quamby; is that correct?
A. Yeah, besides the courtyard and one basketball court the site at Bimberi is completely open with an external perimeter fence but there is no fencing inside the centre which allows the young people to move around; the movements are controlled by radio and via a control room so we always know where the young people are moving around, but there's no fences or gates within the internal area of the centre.

Q. How do you see that infrastructure playing into the Human Rights Framework and getting better outcomes for young people?
A. Yeah, it's a really nice environment for young people, we use a lot of - there's a lot of bright colours, and also, a lot of people that come and visit Bimberi say, "Oh wow, I didn't expect it to look like a school, it's so open and it doesn't have the feel of a jail", I guess, is what some people expect.

Q. Another factor of this Human Rights Framework is actually informing the young people of their rights. What is the importance, from your perspective, of young people knowing about their rights?
A. Yeah, it's really important that they understand that we are there to support them, that we're there to help them and that we're there to keep them safe. We have a

responsibility to the courts to keep them secure within the centre, but beyond that it's about their rehabilitation and their re-integration back into the community.

So, we make sure that young people are aware that they have rights and minimum living conditions, and that they are free to talk to us about those if they feel that they're not being met, and there's also the ability to complain to our internal complaints processes or through the number of oversights that visit the centre, that they can have a voice and they can speak up if they would like things to change.

Q. The centre provides that information in a written form?
A. Yep.

Q. But there's other forms that you tell young people about these rights to ensure that they actually do understand them and know them; is that correct?
A. Yeah, that's right. So, as part of the induction process we are required to explain to young people their rights and their minimum living conditions. We understand that's a difficult time for young people, it's also often in the middle of the night where they may be impacted by their arrest or by drug and alcohol or, you know, the trauma of being arrested.

So, over the following few days that they're with us we also provide them with a handbook that has that information in it for them to read on their own. They're also shown a video at induction, but over the days that they're first with us, the staff re-explain that to them and we've got a form that we sort of check off to make sure that we have - a rights and responsibilities form that ensures that we have gone back through all of that information with the young person so they can understand that. And our oversights, our official visitors and our public advocates, they visit regularly, at least fortnightly, and they'll also share that with the young people as well.

Q. Thank you, I'm just going to move back to the complaints topic. You explain at paragraph 136 of your statement what I'm calling a routine process in relation to incidents. Could you explain what incidents you're looking at and what that process is?

A. Yeah, so we have category 1 and category 2 incidents. So, category 1 incidents are those high level incidents such as escape, serious assault, serious self-harm or death in custody. But we also have category 2 incidents which are assault, threats to the safety and security, fights, self-harm, those sort of things, yeah.

Q. And, once those incidents are known, what steps do you take to investigate those incidents?
A. Yep, so all incidents that occur, anybody who was part of that incident or has witnessed that incident is required to write up a statement that staff - and any other person that saw that incident. Young people are offered the opportunity to make a statement as well and we support them in writing that down. From that point we also review any footage that we might have of the incident; that's all compiled into a report that is reviewed by our Operations Manager as part of - if there's young people involved we need to complete a use of force statement if there was a use of force; we need to offer the young person medical, and they can decline that and they have to sign a form if they choose to decline, but they must be offered medical assistance. We report that to our insurance agency to make sure there's a record of what's occurred with the insurance agency, and so all of that information is compiled and goes to the Operations Manager, (1) to ensure that it's all completed as it's required to, including debriefing notes from the debriefing that occurs with staff, and then the information goes to our Executive Branch Manager or who also needs to review all of the information from that incident, look at any recommendations from the Operations Manager or the Unit Managers, and then how we implement any of those changes.

Q. Part of that process, you explain in your statement, is the - I'm going to get this wrong - but the People & Culture Management Branch; is that right?
A. People Management Branch, yes.

Q. Thank you, People Management Branch are there, so that's you're Human Resources Department?
A. Yes.

Q. They're part of that process in some capacity; is that correct?
A. Yeah, so if we see that there is any concerns raised that might relate to misconduct by staff, then we seek the

advice of the People Management Branch in, you know, what do we need to do further if we need to look at that matter through the Public Sector Management Act.

Q. So, the incidents that you talked about go through the process that you said?
A. Yep.

Q. But when there's any allegation about misconduct or inappropriate behaviour by a staff member, the process is different or similar?
A. So, the process could be different. So, if the misconduct or the concerns about a staff's behaviour are identified through the incident report, then People Management Branch will have access to that information, but if it is just - it may not come from an incident, it may just be a complaint or an allegation made by somebody, then we will investigate that. We will seek their advice early on to see what we need to do, and if there is any substance to those allegations, then it will be written up and a preliminary assessment completed which is under our EBA, and then seek their advice on where we need to take that further.

Q. As a centre you do the preliminary --
A. Assessment.

Q. -- assessment, so would that involve the steps that you said in terms of looking at CCTV footage, getting witness statements and speaking to the young person?
A. Yes.

Q. And then you get that information with the assistance of --
A. People Management.

Q. -- People Management, to make sure you've done all the things you need to do to then make that preliminary assessment report?
A. Yep.

Q. And, whatever your decision - is it a recommendation?
A. It's recommendations at that point, that's right.

Q. So, you haven't made a decision yet, you've made a recommendation about whether someone possibly is in breach of the State Services Act?

A. Yep.

Q. And then it goes to the People Management Branch?
A. That's right.

Q. What do the People Management Branch do with that report?
A. So they'll look at that report, they'll ask us for any further information that they might think is necessary to that investigation; so they might ask for different footage or, you know, further information on that staff member, so we'll provide them with whatever information they need and then they will make decisions based on that. So, it might finish at that point where there might be no substantiations of anything, or it could be, if there is, then they'll make recommendations under the Public Sector Management Act under, you know, counselling for the staff member or further extension of their probation if they're still within that first three months of their employment, or they might refer it on to the Chief Minister's area who have an investigation branch and will investigate further.

Q. Just going back slightly. With the preliminary assessment that you do, how long does that process usually take?
A. It will depend on the incident. So, it may need to be done very quickly depending on the serious nature of the incident or how - you know, if something's very clear then it can be done very quickly, or it might take several days to weeks to complete.

Q. But we're not looking at longer timeframes like months or years to complete a preliminary assessment?
A. No, a preliminary assessment is just that initial gathering of information to see that there is possibly something there, and then it goes on further, so it's just, is their basis there, is there something there but it's not the full investigation.

Q. You said that if it's something significant the People Management Branch would refer it to the Chief Minister's Investigation Team.
A. Yep.

Q. What is that Investigation Team? Is it a specialist team just for your area?
A. No, so that's across the ACT Government. So, they are

the ones that are responsible for then looking at it further and under the Public Sector Management Act and determining if that person has actually breached their requirements under the legislation for their employment as a public servant.

Q. So it's a specialist team for whole-of-government?
A. That's right.

Q. That deals with disciplinary matters?
A. Yes.

Q. Investigating those disciplinary matters?
A. That's right.

Q. And, once they've investigated, are there any other referrals beyond that? Where does it go from there once they've done their investigation?
A. Once they've done their investigation I don't think there are any - I think that a person can appeal it if they feel that they've been, you know, wrongly named in something, but that we'll make a decision based on their employment with the ACT Government.

Q. As a Deputy Manager of the centre, what reporting obligations do you have to other organisations like police or Ombudsman or something?
A. Yeah, so I'm a mandatory reporter, all our staff are; that means that any child sexual abuse we need to report, or physical abuse we need to report to Child and Youth Protection Services. In the ACT we're also required to report that to the police, and if it has to do with a person's conduct within the workplace and it meets the threshold for an allegation under the Reportable Conduct Scheme, that needs to be reported to the ACT Ombudsman's Office, so we do that through our People Management Branch; we share with them and then they ensure that the appropriate paperwork is done and the information's shared with the Ombudsman's Office.

Q. Whilst this whole process is being conducted from when you start your involvement in your preliminary assessment, what has happened to that staff member who's faced with that allegation?
A. That will depend on the nature of the allegation and the advice from the People Management Branch. If there are concerns about a young person's safety or the treatment of

that staff member and we're looking into that further, they might be removed from working with young people and moved into another position with us or within the Directorate; they might be stood down pending that investigation outcome as well; so, might be dismissed quite quickly.

Q. If there was an allegation of child sexual abuse at the centre, would it be an expectation that that staff member who the allegation is about would be stood down until that investigation is completed?
A. Yes.

Q. You provide an example, at paragraph 130 of your statement, in relation to your own personal experience with dealing with a sexual allegation.
A. Yep.

Q. Could you explain to the Commissioners what happened in that circumstance?
A. Yeah, so I was made aware that a staff member, a non-operational staff member, may or may not have formed a relationship with a young person outside of Bimberi. We reported that immediately to the People Management Branch and started to look at the evidence available to us through CCTV within the centre to see if there were any concerns about the interactions of those two people while the young person was in our care and all of that information was shared.

It was evident that nothing had occurred while the young person was at the centre, but obviously information had been shared between the young person and the adult that allowed the adult to contact the young person in the community. So, that information was shared with People Management Branch who came in and the staff member was stood down pending that; they were on contract, so then their contract was ended immediately pending further investigations.

Information was passed on to the ACT Ombudsman as a Reportable Conduct matter and also passed on to the police for investigation in case there was other information or evidence available to them that we weren't aware of that might have meant that adult was having inappropriate relationships with young people in the community.

Q. When you heard that allegation you took it at its

highest?
A. That's right, yep.

Q. And during the investigation - these are my words, not yours --
A. Yeah, that's okay.

Q. -- it wasn't as grave as you originally thought in terms of the intimate nature of the relationship?
A. Yeah, that's right.

Q. But he was still stood down and contract terminated because you as an organisation took the allegation seriously and recognised it as professional boundary breach; is that correct?
A. Yeah, that's right. There was definitely concerns with the professional boundaries and so that was - you know, we knew that that had happened, that the person hadn't acted under the Public Sector Management Act and maintained the boundaries that they needed to hold as a professional, but we believed that was the extent of it.

Q. When someone is stood down from their position whilst these investigations are going, how does that affect your staffing levels and how do you cope with removing someone, if it is an operational staff member, how do you cope with losing a team member?
A. Yeah, we have pretty good staffing levels, so we do bi-annual recruitment to try and ensure that we always do have enough staff, but you know, there are a lot of things play into your staffing levels: there could be staff that are under investigation, we have staff that are often on return to work because they may have injured themself in the workplace, mostly through sporting injuries, and also staff need to be given their opportunity to have their personal and their annual leave as well, so we need to manage that as best we can.

So, we risk assess each day to ensure that we have enough staff to safely operate the centre. We have a casual pool of staff that we call in if we require additional staff, we offer staff overtime if we need to but we can go into our business continuity which is to have lunchtime lockdowns or rolling lockdowns if necessary.

Q. Having a stand down and going through the process of - a disciplinary process obviously has an industrial

relations implication or employment issue. In your experience, where's the balance between the industrial relations issues and the safety of children in your organisation?
A. In?

Q. Sorry --
A. Yeah, you want me to explain a little bit?

Q. Sure. So, you are caring for the children?
A. Yeah, that's right.

Q. So your focus is the safety of the children. Do industrial relations issues play into any of your decision-making when you're going through the assessment of whether the allegation is true or not?
A. No, if there's an allegation then, you know, that needs to be addressed; it's not about, we'll take other measures to ensure - you know, we need to make sure the staff are safe as well, so if that means we need to put other measures in place such as lockdowns because our staff numbers are too low, then that's what we'll do; we won't keep staff working if we're concerned about their behaviour and the way in which they're acting with young people.

Q. The Commission has been looking at harmful sexual behaviours between detainees, and you explained that with the training there's the Australian Childhood Foundation that talk about these behaviours?
A. Yep.

Q. What steps do you take in Bimberi to keep kids safe where there are allegations of harmful sexual behaviours, if that has occurred in Bimberi?
A. Yeah, it's not - we don't often see young people with either coming to stay with us because of an alleged sexual offence or a proven sexual offence, and we don't see many young people that do have any harmful sexual behaviours; I can't think of any in the last two years that I've been back at the centre. However, there are advantages of being a small centre and that means that we can put a plan around that young person to keep other young people safe and them safe, so we will work with our colleagues in Child and Youth Protection Services, in Justice Health Services, our Education team and our principal practitioner to ensure that we have, you know, a plan in place to keep that young person and the other young people safe as well.

Q. You've got education staff who are managed by Department of Education?
A. That's right.

Q. You've got a Health Team that's managed by the Health Department?
A. That's right.

Q. And then your Operations Team who are under - some are under the Communities --
A. Yes, so where all the Community Services Directorate, our Operational Team, Management Team were the Community Services Directorate, and our case managers are as well, but they don't work on site at Bimberi, they work across Child and Youth Protection Services.

Q. There's multiple agencies working here; how do you work together to ensure that decisions are being made in the best interests of children?
A. Yeah, so we have written within our legislations the requirements of the Health Team and a Memorandum of Understanding with them. We have procedures in place with Education for that. We also have a single case management framework that provides the requirements and how we work with our Case Management Team who are in the broader Community Services Directorate, and we have a client services meeting that brings all of those parties together each week to discuss each individual or young person, how they're going in Bimberi, what's their plans for transition out of Bimberi, where there's any concerns and where's the best service to address those concerns or, you know, what needs to be put in place for them and who can do that best, and so, each young person is discussed within their first week in our care and then at least monthly.

Q. Just one final question. You said at the beginning that Quamby wasn't fit for purpose to fully implement this Human Rights Framework. How was it that ACT was able to move from what was happening at Quamby to Bimberi?
A. Yeah, I think it was a whole range of things; it was, you know, building a new purpose-built facility was part of that, the change in our legislation, but then also the way in which we recruit and train our staff and that professional expectation for them. We introduced a supervision framework that allows them to be provided with that supervision, both individually and as a team through

skills maintenance sessions, and so, it was that whole range of things put together, and just creating a service that was more open and transparent, ensuring that we have our oversight agencies that then other services come in to work with those young people and support them.

MS RHODES: Thank you, that's the end of my questions. Commissioners, it if there's anything?

COMMISSIONER BENJAMIN: Q. I've got a couple of questions, if I may. As you know, I visited Bimberi earlier this year. It's quite an open campus-style facility, isn't it, once you get inside?
A. It is, yes.

Q. My understanding is that the management of Bimberi have broader engagement; you attend conferences with other managements from other centres around Australia and that's a regular occurrence?
A. Yeah, that's right, so we're part of the Australasian Youth Justice Administrators.

Q. And is that to ascertain what others are doing to inform your practices?
A. Yeah, that's right. So, we work with our colleagues across Australia and New Zealand. The Australasian Youth Justice Administrators come together twice a year, they also meet via AVL several times a year. There's also a meeting for detention centre managers, so that's occurring in Queensland later this year, and we come together and share information; we also do that out of session, so there's a Secretariat for that group that will pass questions between jurisdictions and where we can we will share our policies, our procedures, you know, what's working for us and what isn't working for us across and between those jurisdictions and New Zealand.

Q. Thank you. I think you in your statement say you have capacity for 40 beds but you're funded for 21?
A. Correct.

Q. And that in each of the units you might have, you generally have one set of rooms which are adjoining generally for Aboriginal and Torres Strait Islander children or siblings who are close to each and where it's appropriate?
A. Yeah, correct.

Q. My recollection is they haven't been used in that form so far?
A. No, they haven't been used in the time that I've been there.

Q. You also said at one stage during your evidence that, if there's a category 1 or a category 2 incident, the staff debrief after.
A. Correct.

Q. Is that debriefing for the mental health of the staff but also to see what happened and what can be done about that in the future?
A. Yeah, that's right. So, we do secure the young people following those incidents so that we can bring the staff that were involved in the incident together and talk through what they - you know, the role they each played in that incident, what they thought went well, what they thought could be improved, any concerns that they had, and that's usually run by one of our Unit Managers, and then also to ensure that everybody - that there's no injuries to the staff, that there are no welfare concerns for the staff; staff are reminded of their opportunity to come and speak with a member of the Management Team if they've got any concerns and also that the Employee Assistance Program is available to them.

Q. You have both young people, that's the 18 to 21-year-olds and the children that are 10 to 17 there.
A. Yes.

Q. Are they debriefed or provided with support after incidents such as that?
A. Yeah, so our young people involved in the incident are offered the opportunity to see a Health professional, whether that be the nurse, the doctor or psychologist, and they're also offered the opportunity to make a witness statement and talk about their involvement.

Q. Finally, you gave a list of people who come in with whom you engage; I think you also have someone from OPCAT, the Optional Convention Against Torture; is that correct?
A. So, the OPCAT is just starting to be implemented in the ACT, so that's being overseen by the Office of the Inspector for Correctional Services and the Human Rights Commission.

Q. So it's one office being - or that office is being shared by somebody who's already involved in the process?
A. Yeah, so the Office of the Inspector of Correctional Services and the Human Rights Commission will be looking after OPCAT within the ACT.

COMMISSIONER BENJAMIN: Thank you.

COMMISSIONER BROMFIELD: Q. I just had a couple, I'll be quick. I just wanted to confirm that, in addition to CCTV, you had some other ways of monitoring staff movements in, I think there was key fobs or audio?
A. Yeah, so each staff member that comes on site has their own pin to a set of keys. A lot of our movements through the centre are via a fob and we can track those so we can see who's moved through which doors, so which units they've moved up to at what times. We also have intercoms within each young person's room and they pick up and record audio, so we can go back and listen to the audio as well.

Q. Thank you. And, you made a comment in your statement about how the complexity of children and their needs, their complex needs, have increased as you've seen a decrease in the number of detainees.
A. Yeah, so ACT has made a move, you know, it's several years ago now, back in 2008, to ensuring that custody is a place of last resort, and so, what we do see is young people who have committed the more serious ends of offences or have complex recidivism in their offending, and the complex nature of the young people we've also seen an increase in, so the level of undiagnosed disability, mental health concerns, is definitely something in my 20 years that I definitely think the young people are a lot more complex now in their trauma experience and their needs.

Q. Thank you. My final one was, I believe that the young people and maybe even their family members have also got right of review in your system?
A. Yeah, that's right. So, there are decisions that, you know, that young people and their family members can make complaints about anything that they've got concerns about and we will look into those complaints, but they also do have right of review over decisions that are made about them, such as if they're put on a safety and security segregation or, you know, even if they get a fine they can ask for that decision to be reviewed.

COMMISSIONER BROMFIELD: Thank you, that was all of my questions. Thank you for your evidence.

PRESIDENT NEAVE: Q. Thank you very much, Ms Grace. I have one quick question, and I ask it having regard to the fact that you've said that the young people who are in custody are now more complex and have more complex needs than was perhaps the case in the past. Has there been an improvement in terms of recidivism, I suppose is a crude measure but one measure, following the move from Quamby to Bimberi?
A. Recidivism, I think, is something that's really difficult for us to measure. We have such a small population that, you know, the way in which we counter it jumps back and forth so much. We definitely have lower numbers of young people in custody and that has been quite consistent, but I wouldn't be able to say off the top of my head.

Q. I think we heard here about a pattern of people coming back again and again?
A. Yeah.

Q. And, have you got a cohort who come back again and again?
A. Yeah, we do have a cohort that come back, and come back to us, and they are some of our most complex young people in the ACT, so yeah.

PRESIDENT NEAVE: Thank you. Thank you very, very much for your evidence and for coming here to give it.
A. Thank you.

MS RHODES: Thank you, if Ms Grace could be excused for our next witness.

PRESIDENT NEAVE: Thank you very much.

MS ELLYARD: Thank you, Commissioners, I'll now recall Mr Pervan to continue his evidence. I understand that he's waiting outside. I'll invite him to come back into the witness box and his counsel to take their place again at the Bar table.

Thank you, Commissioners, I believe we're ready to resume and I'll ask those in the public a galley to take

their seats.

PRESIDENT NEAVE: We don't need to re-swear, Mr Pervan, but of course he's conscious of his obligations.

<MICHAEL PERVAN, recalled: [10.22am]

MS ELLYARD: He understands that he's bound by the oath he made yesterday, and I think it's also important to note, Commissioners, that Mr Pervan's here today and continuing with his evidence in the context of some health issues that are being managed and, if at any time, Mr Pervan, you need to step down for health reasons, please do let me know and we can take any necessary break.
A. Thank you.

Q. Mr Pervan, you'll be aware of the fact that over the 20-year period which the Commission is considering there have been a large number of reports or reviews that have considered or touched on Ashley and its operations?
A. Yes.

Q. And indeed in the more recent past you've commissioned some of them yourself, you touched yesterday on the fact that you commissioned the report by Ms Harker; is that right?
A. Yes.

Q. And thereafter the report by Noetic?
A. Yes.

Q. There's also a number of other reports in the more recent past from the Custodial Inspector and the Children's Commissioner which have touched on Ashley and relevant matters?
A. Yes.

Q. Would you agree with me that the kinds of issues that were raised in Ms Harker's report are very similar to issues that had been raised in reports earlier in the life of Ashley?
A. Yes, I would agree.

Q. If we go, for example, to Ms Harker's report, she found in 2015 that there had been a cohort of staff who had been there a long time which had impacted workplace culture; do you agree with that?

A. I do.

Q. She found that, although there was a willingness on behalf of operational leadership to working well with young people, leadership's influence appear to have dissipated over time so that there was still a culture leaning towards punishment rather than rehabilitation as at 2015?
A. Yes.

Q. And she found that there was a lack of governance and management presence and direction in a number of critical areas at the centre?
A. Yes.

Q. Particularly in relation to staffing, she found that at that time in 2015 there was an over-reliance on casual staff and a lack of what was regarded as an appropriate ratio of staff to young people?
A. Yes, I recall that.

Q. And she found at that time in 2015 the number of WorkCover and sick leave applications raised concerns about whether staff were able to care appropriately for young people whilst keeping themselves healthy?
A. Yes.

Q. And that there were some poor conditions for young people with one bright light perhaps being, even then, the school: yes?
A. Yes.

Q. As I understand it, that report concerned you?
A. M'mm.

Q. It was a report which came to your attention in June 2015?
A. Yes.

Q. So when you'd been in the role as either Acting Secretary or Secretary for perhaps a year?
A. More or less, yes.

Q. As I understand it from your evidence yesterday, in the light of that report from Ms Harker you commissioned the Noetic review?
A. In terms of the design of the building, yes - of buildings and the centre itself, that was where the Noetic

work started and it quickly grew into a model of care, but separate work was undertaken around the other recommendations of Ms Harker's report.

Q. And so, thinking about 2015, her report raised a number of serious issues, what was that separate work that you're saying was done to deal with such matters as workplace culture and staffing?
A. The division that was subsequently managed by Mandy Clarke, at that stage it was Tony Kemp who was the Deputy Secretary, took on board all of the recommendations - in fact I have a report related to the work plan that was undertaken in that division following the Harker and Mark Morrissey's major report which implemented within the resources we had all of the recommendations.

And, if I can reflect back at this point, I think reading this over the last few days it's occurred to me that we've always embraced all of the recommendations of the independent reviewers and of the Commissioners for Children and what follows is a traditional, if you like, public service response where we see an action that's recommended, we implement the action, we mark it completed and we move on and we report back to government that all the recommendations have been implemented.

In retrospect, those cultural issues are far harder to change, and reflecting on Mandy and Pam Honan's evidence, I think myself personally didn't understand the depth and strength of, if not the culture of the institution, the culture around a group of individuals and their resistance to change.

So, the assumption made in implementing the recommendations was that substantial training and resources being put in, education, performance management, supervision and so on could actually result in a cultural change, and all those things were implemented but, as we've heard from subsequent reports, the culture of that group of people didn't shift where we wanted it to go to.

Q. And that culture of that group of people, recognising that it wasn't ever the whole of the workforce, but that culture has dominated over what it appears have been successive attempts at reform over the years, both since you were the Secretary and perhaps even before then?
A. Yes.

Q. And so, that means that what we saw then in the report that was done in 2020, the AYDC Discovery Report, which I think you've said in your statement you weren't aware of at the time but you've looked at since we asked you to do it, we see really the very same themes, don't we, that Ms Harker had brought to your attention five years previously in terms of a lack of understanding and implementation of a therapeutic framework?
A. Yeah.

Q. And in effect what Ms Harker observed was the failure, in terms of actually being embedded in a real way, of the therapeutic framework that your staff and you had sought to implement after the Harker and Noetic work was done?
A. Yes. And, to credit Pam Honan and her team, the approach they took with developing the current practice framework, which was built from that ACF 2020 report, was done in an entirely different way. So, the practice framework as she was describing was actually driven through a co-design process with the young people at Ashley and the staff.

Our response prior to that was to bring in an expert, tell us what to do, and to try and implement it by direction, and as a consequence people who were resistant to change found it quite easy to let it wash over them and wait for the next turnover of Secretary or Deputy Secretary, and I'm aware that amongst a few of the staff there, there has been that attitude of, if we just bunker down and wait, there will be a new Director, there will be a new Centre Manager, there will be a new Secretary. I've seen emails to that effect, that they rely on the turnover in management to outlast any attempts at reform. The difference in the practice framework is that the staff who are there now own it because they helped to develop it, as did the young people.

Q. At the beginning of your statement in response to Request for Statement 104, you make the observation that since your appointment as Acting Secretary the department hasn't been successful in being allocated the additional funds necessary to drive faster reforms of the service. We heard about a particular example in Ms Clarke's evidence yesterday of a budget decision that didn't work. But I take it you're making a larger point about the extent to which funds have been allocated to your department over the

last eight years --

MR GUNSON: I must object, Commissioners, to this line of questioning that, unless my friend is very careful, is moving into Cabinet-in-Confidence budgetary processes which, with respect, are Cabinet-in-Confidence and the allocation of budgets is not within the terms of reference of this Commission.

PRESIDENT NEAVE: As I understand it, Ms Ellyard's question was a slightly different one. Can I ask you to clarify that question, I think that you were asking about budgetary processes, I thought that your point was a broader one.

MR GUNSON: And out of fairness to my learned friend I have jumped up potentially a little bit early just to flag the issue.

PRESIDENT NEAVE: Thank you.

MS ELLYARD: Let me make it plain that, to the extent that this witness is aware of Cabinet-in-Confidence processes I'm not inviting him to reveal them. I'm inviting him to speak to what he has said in his statement which is a reflection on his time as Secretary and the extent to which, whatever the reasons for it, there hasn't been money flow through to the extent that he thinks appropriate to enable the reforms to be done more quickly. That's the question I'm asking and, no doubt the witness can answer it conscious of the matters that Mr Gunson has raised.

PRESIDENT NEAVE: Mr Gunson.

MR GUNSON: And I have no issues with the witness giving evidence that as Secretary of the Department he felt that he didn't receive from the budget as much as he would have liked --

MS ELLYARD: With respect, Mr Gunson shouldn't tell the witness what the answer should be.

MR GUNSON: No. With respect, I'm not telling the witness what the answer should be, I am simply saying that, for a Secretary of a department and that is any department to make a comment on whether they were satisfied with the amount of money that was received from the budgetary

processes to achieve what they wanted to achieve is a perfectly legitimate question to be asked.

PRESIDENT NEAVE: Mr Gunson, you are no longer raising concerns about the question Ms Ellyard is asking.

MR GUNSON: No.

PRESIDENT NEAVE: Thank you.

MS ELLYARD: Do you want me to re-ask the question, Mr Pervan, or do you have the sense of it?
A. I've got the sense of it.

Q. Please.
A. And I'll borrow from the words of Kathy Baker from yesterday, that the budget process in Tasmania is hotly contested, agencies do put bids in for a range of initiatives from Education, Health in particular, and of course our own. The results of the deliberations of government in allocating budget was that perhaps we weren't able to win the funding we needed to meet our ambitions for the service, but that's a reality of public administration, we took the budget that we were granted and we did, as has been demonstrated for me again, we did a pretty good job of implementing all the recommendations within the funding we had. Could we have done more? I think any senior administrator would do more if they had the funds, but what we tried to do was to cut the cloth, I believe the expression is.

Q. Thank you, and you go on in the immediately following paragraph at the beginning of your statement to say that you don't recall a time when you've been involved as Acting Secretary or Secretary when the level of staff with necessary skills was ever sufficient to support the transformation of the service that was required; is that right?
A. Yes. So, in saying that, what I was pointing to was a dynamic, it was two things. In an ideal world you would have sufficient staffing so that you could maintain full safe staffing while you had other staff away from the service undertaking training and development and bringing them up to speed with an emerging area which is therapeutic care.

The dynamic at Ashley is that, because of staff

turnover, we've never actually ever been able to get a full permanent workforce up there so that there has been times, as we all know, when we've been unable to maintain full safe staffing without using overtime and double shifts and things like that.

Q. We've heard evidence that at the moment the problem's particularly acute at certain times with particularly acute consequences for young people.
A. Yes.

Q. But it's an issue that was certainly being flagged with you as early as Ms Harker's review and it's been a constant over the period of time you've been involved as Secretary?
A. Yes, we've had times where we've been very fortunate with recruiting and we've come very close to full staff, but then through a variety of reasons we've then lost significant numbers through retirement, illness and so on, and we've had to go back and keep recruiting. It's a very, very hard service to recruit to, not many people want to work in the area and certainly having it based where it is doesn't help with recruitment.

Q. Indeed, and one of the recommendations of the Noetic Report which Mr McGinness has given evidence about earlier in these hearings but which you received in your capacity as Secretary, was that the service should be located other than where it is?
A. Yes.

Q. Because of issues associated with workforce as well as issues associated with young people having access to family and support and professional support?
A. Yes.

Q. When the Noetic Report was commissioned with its clear recommendation coming to you and to the government that there should be a closure of Ashley and the replacement of Ashley with two new centres, did you yourself form a personal view about whether the proposal offered by Noetic should be accepted by the government?
A. I recommended it to government, so yes, I did. Can I - sorry, counsel, if I could just note: that was the preferred option in the Noetic Report. Noetic also gave us an option keeping the current site and significantly investing in it and redeveloping it and training the staff.

Q. It did.
A. So, it wasn't a single reception.

Q. No, but just to be clear, they had a preferred model which they commended to you and is that the model which you commended to government?
A. Yes.

Q. Was it, in your view, the best option going forward for detention facilities for young people in Tasmania? The best of those available?
A. Thank you. Within the report, that was the best recommendation. Even in 2016 I was unsure whether we needed one or two centres, but certainly having a new facility closer to either Launceston or Hobart was, I saw as a logical way of addressing the staffing challenges we had as well as some of the issues around the support services from Health and Education having to travel great distances to get to Deloraine when we need them sometimes in an emergency.

Q. There was quite a long period of deliberation, was there not, between when the Noetic Report was received and when a decision was made and publicly communicated about which option would be taken up? As I understand it, the report's dated October 2016 and it wasn't until June 2018 that there was an announcement made by government that they were going with not the preferred option but a secondary option of additional resourcing to Ashley where it was?
A. That's my recollection, yes.

Q. In that two-year period, aware as you obviously were of the issues that Ms Harker had raised and that the Noetic Report had raised, what steps were you able to be taking in the interim, as it were, to be addressing the issues that Ms Harker and the Noetic Report had identified?
A. So, the report was with government from 2016. In the meantime we were continuing to pursue Heather Harker's recommendations, and those that were made and additional recommendations or requests that came from the Commissioner for Children. As with the current Commissioner, I met with Mr Morrissey on a monthly basis, and those discussions were predominated by issues at Ashley?

Q. As I understand it one of the pieces of work that emerged was the Ashley+ approach which then became the

Ashley Model of Care approach, and I think as we've already touched on, the work that was done on each of those approaches didn't ultimately take root and solve the issues of culture and practice that had been identified?
A. I would agree with that, and I think out of respect to the people involved, that was our best efforts, our best endeavours to try and implement the kind of changes that we saw from those reports and that we knew we needed to do within the resources we had.

Q. And certainly, given the descriptions of the experiences of some detainees that the Commission has heard either through their own direct evidence or through the observations of witnesses like Alysha and Ms Gardiner when they gave their evidence, it would appear that, at least to some extent, concerning practices in relation to young people persisted despite the good efforts of those who were trying to put in place new frameworks; do you accept that?
A. Yes.

Q. And so, Ashley was defeating, as it were, or at least the culture at Ashley was defeating the attempts that were being made to implement and embed new practices?
A. Yes, and without wanting to repeat myself, I think that was not so much the culture at Ashley, but it was the dominance of a group of people at Ashley who were able to outlast or just dominate all efforts at change.

And if I could, having listened to the lived experience witnesses and knowing the years that they were in Ashley, what I have noticed is that the people whose time at Ashley is oldest have a general and very understandable disdain for the youth workers and their experiences there. As we get into more recent times you'll get statements like, "Not all the youth workers were bad, some of the youth workers were great", and that's not enough, I'm not saying that we're on our road to where we want to be; I've just noticed that there is change starting to creep through over time.

And, it's a very small thing, a very, very small thing, but one of my personal strong memories of an indication of change is when - and I'm sorry, I can't remember whether it was 2016 or 2015 - but after discussion with the young people a proposal was put to me through the staff that the young people at Ashley should have a school uniform and they should design it. They shouldn't have to

go to school in their Ashley tracksuit, they should have the same right as any other school child and be allowed to have a uniform. And just that little tiny gesture was a sign for me that there were people in Ashley who were trying to make it better, who were trying to make it more something approaching a normal life for young people.

Q. Yesterday you agreed with - well, I think you accepted that it was your own observation too, the observation that Ms Clarke and Ms Honan had made in their evidence about the disconnect between Ashley Management and Operations from the broader department which they observed in October 2019 or thereabouts when each of them started.
A. Yes.

Q. You'd been the Secretary for the best part of five years by then, of course recognising a period of time when you weren't the Secretary because Ashley was in a different department from yours.

Q. Doesn't that reflect on the management above Ashley in the hierarchy up to and including you if, if up to 2019 the Ashley Management had been permitted to isolate themselves and not participate properly as part of the department?
A. There is a reflection there, I'll own that; I was also running the Tasmanian Health System, so it wasn't as if I wasn't aware of the issues at Ashley, and I very much depended on a succession of Deputy Secretaries to be informing me, as I was those conversations with the Commissioner for Children and Young People as to what was happening at Ashley and what I needed to do to remedy it. And, as I've said before in respect to out-of-home care, part of that response of responding to the information I had access to was to get Heather Harker in and then the subsequent reports from Noetic and the ACF.

It was very difficult to find out exactly what the situation was at Ashley other than noting that it was a facility that was isolated and had isolated itself over a considerable period of time. As with the Deputy Secretary and Director level, there was a succession of centre managers, and getting to grips with not only what was the problem but what we could actually do about it was incredibly challenging.

Q. And so the practical effect of that, and I've heard what you've said and I want to come back to the

point you've made about also running Health at the same time, was that it appears that over a series of years the self-isolation of Ashley from the scrutiny that might be best practice in terms of an open line of communication up through the Director of Custodial Justice and up through the Deputy Secretary to you, that was able to continue so that it was still in place in October 2019?
A. Yes.

Q. And so, I'm interested to understand, it's clear from your evidence that you commend very highly to the Commission the work done by Ms Honan and Ms Clarke in a their respective roles?
A. Yes.

Q. And it's clear that you would draw quite a bright line from perhaps early 2020 onwards in terms of steps that had been taken to bring about what you would regard as genuine cultural change now; is that right?
A. We're on the way. It'll take a decade before what you've got there is at least a benchmark facility and service, whether it's at Ashley or it's, you know, at the two new facilities. Changing those cultures are not just about changing people's attitudes; in many respects they're about changing the people themselves.

Q. If this Commission had been happening four years ago when the Ashley+ Model was being rolled out might you not, Mr Pervan, with respect, have been saying exactly the same thing, "We're on the way, we've got this new framework"?

We now know with the benefit of hindsight that, for the reasons you've explained, the solution hadn't been found; what is it that gives you confidence that in another five years we wouldn't be reflecting in the same way on what's happening now that we can reflect on in previous models?
A. I think the difference between four years ago and now is - well, are two things: four years ago it would have been faith in the staff reporting to me and hope, because I would have received a report just like this one that would have had all of the actions that have taken place in response to the various recommendations.

I'm still hopeful, because of the leadership that we've recruited, and particularly the newest recruit that we have and his experience and his credentials and

understanding in providing trauma-informed care. The difference four years ago to now is, I have some evidence of change in front of me.

Q. Pardon me a moment. So, clearly what you've identified is the significance of leadership, leadership in the form of the current holders of positions like Ms Honan and the recently former Deputy Secretary, Ms Clarke?
A. Yes.

Q. You've made it clear in your evidence that the way in which you exercise your responsibilities as a Secretary is in a delegated way, and you're not yourself an expert in Custodial Youth Justice and you rely on others to provide you with expert advice as and when you need it.
A. Yes.

Q. And I'm conscious of the fact that there's about to be administrative changes and you'll cease to be the person who's responsible for Ashley, but what to your mind is the role of the Secretary in leading the kind of change we're talking about? You're not the expert, but you've got to make sure that the change happens; what is it that you have sought to do or that you think needs to be done by the Head of Agency to ensure that the changes that are in place now are changes that will endure?
A. Principally, it's providing the authorising environment to make sure that I get whatever resources I can get to back it up; that I enable the people in those leadership positions to do that and, where I do go recruiting, I go recruiting for someone who's got the skills, the capability, the experience and credentials to deliver that, and the new Executive Director of Youth Justice reform fits that bill and I am - one of the things, one of the few things I'm happy about in saying farewell to this service in a few weeks time is that Chris Simcock has started and I think he will be excellent in driving the sort of change we need at those services.

Q. One of the things that you said when I asked you about the extent to which it reflected on you that Ashley management had been able to distance itself in the way that it had was that you were at that time also running the Health Service, and you were reflecting on the fact that in those years Ashley was part of Human Services which was part of a large Department of Health and Human Services.
A. Yes.

Q. I was going to come back to this later but I'll ask you now. I take it you were saying there, you couldn't give all of your attention to Ashley, you had to also give attention to other, and frankly larger, parts of your portfolio, namely the Health Department; is that fair?
A. Yes.

Q. The proposal for the future is that Ashley is going to be part of a department that involves what's currently the Education Department as well as parts of what's currently the Department of Communities, and the practical effect of that will be that Ashley and the Child Safety Service will be part of a portfolio for a Secretary who's also managing the whole of the Education system.

And I'm interested to invite you to comment on the issues that that raises, something as complex and difficult as Ashley being part of a very broad suite of responsibilities for a Secretary where Ashley is smaller in size, much smaller in number of children, but very important.
A. I can't foreshadow what the Secretary of Education, Children and Young People will do in terms of the structure he might roll out. What I know he's got the benefit of in terms of eyes on the services and the care that children are receiving, is the Office of Safeguarding, and I'm sure that will have an expanded role when the current Communities Tasmania Services move across.

Since those days, those early days of 14/15, the resources and the role of the Commissioner for Children and Young People has been expanded and I think that that level of independent oversight is going to be critical to how the Secretary who's taking on the service will be able to keep an eye on those issues of quality of care and the individual concerns that young people moving through the system have got.

Q. So, I don't want to put you on-the-spot, you're still a senior member of the State Service and you're going to continue to be with different responsibilities, but we've had some evidence and reflections offered to us through this week and through other evidence concerned that Ashley will be lost in a larger department and that it won't - it's the hardest point, yes, most difficult part perhaps of any portfolio and that it just won't get the attention that

it's going to continue to need, Ashley or its replacements, in such a large departmental structure. Is there a comment you would make on the risks of that? I'm not asking you to comment on particular people and whether they'll do their job.
A. Thank you. Look, I think it's an identifiable risk and I think that the new agency is focusing on, not just that but in the other services that are moving across and how they can be assured that those risks are being mitigated.

Q. Thank you. Can I turn to a different topic before we take the morning break. One thing that isn't delegated in your department and that you remain responsible for is the commencement of Employment Direction 5 and Employment Direction 4 processes, that is, investigations into whether there is a breach of the Code of Conduct and associated to that whether or not a worker should be stood down?
A. Yes.

Q. And it's clear that, although investigations are done by others and advice is provided to you, ultimately it's your decision to make about whether to commence an investigation?
A. Yes.

Q. And it's your decision ultimately to determine, after the investigation's done where it's been completed, what action, if any, should be taken?
A. Yes.

Q. And similarly, it's your decision to decide whether or not to suspend someone with pay?
A. Yes.

Q. And you also have the power to make a representation in an appropriate case to the Head of the State Service that someone should be suspended without pay?
A. Without.

Q. And we know that in the recent past there have been a number of ED5 processes commenced which are ongoing; is that right?
A. Yes.

Q. Associated with that there are a number of people who have been suspended under ED4?

A. Yes.

Q. I'm obviously not going to ask you to comment on any current investigations, but I wanted to ask you: you were present yesterday for the evidence of Ms Clarke and Ms Baker which touched on the way in which information is gathered to help a Head of Agency decide whether they can have a belief on reasonable grounds that a breach of the Code of Conduct may have occurred?
A. Yes.

Q. It appeared from their evidence that, thinking particularly about historical matters, there's sometimes quite a bit of work that's gone into investigating before matters have been put up to you for your consideration?
A. Yes.

Q. And that's been your experience, that you've heard about things sometimes after they've been bubbling away for a while?
A. Yes.

Q. And, in particular, thinking about three matters which came up in 2020 in relation to people who we're calling Lester, Ira and Stan --
A. Yes.

Q. -- it appears that there were processes that were underway for a number of months prior to you ultimately making the decision to stand each of those people down in around November 2020?
A. Yes, 8 November.

Q. In the context of ED5 processes being commenced?
A. Yes.

Q. And you were present when I questioned Ms Baker and Ms Clarke about when and how they themselves became aware of information and allegations about each of those three workers?
A. Yes.

Q. And I wanted to clarify with you when you became aware. Thinking firstly about Lester, the evidence is that an allegation that Lester may have engaged in an act of child abuse in the past was brought to Ms Honan's attention in early January 2020, and on the evidence she made it

known to Ms Baker, who says that she told you. Do you recall when you became aware that an allegation had been made against a current employee of an historical nature?
A. I can recall the conversation that an historical allegation had been raised. I recall that I was advised it was problematic in that it lacked sufficient particulars for us to act on right at that point, and that we were also - I was also told that, because of the nature of where the information had come from, we had been told at that stage that we couldn't use it because it was a redress matter.

Q. So, I just want to understand that. I'm asking about - and you've received lots of information over the years - I'm asking about information that was derived from a report from a current Ashley staff member of an allegation that she, Alysha, had become aware of. So, as at January were you told that it was a redress-related matter?
A. My recollection was that it was one and the same. So, the information had come forward out of redress; I don't know how Alysha obtained the information, but in terms of where the allegation originally emerged from, the advice I had was that it was a redress matter.

Q. So, the advice you received was that it was a matter that was known to the department already through a redress claim?
A. Yes.

Q. I want to pushback on that: it certainly does seem on the evidence, Mr Pervan, that over the course of the period from January to November additional matters may well have come to your attention revealing that, in relation to Lester, matters were known through the Abuse in State Care System.
A. Yes.

Q. But the evidence of Alysha and of Ms Baker is that the information brought forward in January was derived from - Alysha heard it from another worker and forwarded it on to Ms Honan. I don't think the evidence is that it was related to a redress matter at that early stage, but you have a different recollection?
A. I have a different recollection. It may be that the allegation is identical to one of the ones that came in redress and that the worker who reported it to Alysha got

it from another source. Regardless, sorry, what I should have said up-front was, it doesn't really matter to me on a personal level what the source of the allegation is: if I hear an allegation of sexual abuse or abuse of any sort against a young person at Ashley, I'm going to ask for it to be investigated or at least progressed as quickly as possible. The fact that - sorry - the fact that it didn't, as was indicated yesterday, was because there were problems around that information, but I wouldn't have said, "I don't want to hear it anymore", or, "Don't do anything about it", I would have said, "Get back to me with what we can do about it as quickly as possible".

Q. And it seems that they did ultimately get back to you in November and when presented with the information you formed the requisite view and you commenced an ED5 process and you suspended Lester, but that does leave a period of some 10 months where, on the evidence, Lester remained in the workplace. Were you aware through the year of the fact that this matter that was perhaps bubbling away being investigated involved someone who was continuing to work at Ashley?
A. The assurances I had at the time was that there were measures in place to make sure that Lester wasn't having unsupervised or direct one-on-one access to young people. I'm also aware that we were doing everything we could, and certainly Jacqui Allen and the people that came before her were doing everything they could to get sufficient information for us to progress a matter if we could get the necessary information, and that the authorising environment, to use that expression, to progress with that ED5.

Q. It mustn't have sat very well with you, though --
A. No.

Q. -- the fact that he was remaining in the workplace where there were these issues of potential very serious conduct being investigated?
A. Yes - no, that's - no, it did not sit well with me at all.

Q. I want to ask you the same question about Ira. As we understand the evidence, in the case of Ira information was received by you arising from a National Redress claim and you yourself made a report to police in February 2020 --
A. Yes.

Q. -- that allegations had been made. And, I take it, you did that because the information that had been brought to your attention did seem to you a proper matter for the police to be aware of?
A. Any allegation of child sexual abuse is something I want police to be notified of.

Q. Yes, and you thought that it was appropriate that that be done in a timely manner?
A. Yes.

Q. Which you did?
A. Yes.

Q. But again, Ira wasn't stood down until 9 November, and what steps, if any, did you take to satisfy yourself during that quite long period of time that children weren't going to be placed at risk from him?
A. I was meeting on a very regular basis with Mandy Clarke and with Kathy Baker, and they were - I don't want to say that they were assuring me, because they were, but they were also assuring themselves that measures were in place to make sure that children weren't at risk by any of these people who were under suspicion.

Q. And so, I take it then, you received assurances which you felt able to be comforted by, that although Ira was still in the workplace, he wasn't in the workplace in a way that would give him access to children?
A. Yes.

Q. In the context of Lester, you'd received a similar assurance as I understand it?
A. Yes.

Q. And there's been some evidence that, notwithstanding the role that he had not being a role that formally gave him access to children, there was at least one occasion after the issues with him were raised where he did have direct contact with children and was involved in a strip-search. Have you been made aware of that evidence?
A. I am aware of that search and that was the subject of a very vigorous discussion at the time where I was assured that, while he was present at the - sorry, while he did conduct that search, it was under the watch of another youth worker who was in the room with him. So, once again,

even though the search proceeded in accordance with procedure, he was witnessed doing that and it was logged that there were two people undertaking the search at the time, which has now become the standard practice.

Q. Nevertheless though, that's evidence of him engaging in direct child-related work contrary to what it appears from yesterday's evidence was Ms Baker's understanding about --
A. Sorry, counsel, it wasn't just an understanding, it was a direction and it had come from Mandy Clarke and from Pam. So, I'm not sure of the particular operational necessity for --

Q. Lester --
A. Lester, thank you - to have participated on that search, but I was told that there was no choice and that, because it was necessary to admit the young person, they addressed the risk by having someone attend the search with him.

PRESIDENT NEAVE: Q. So, can I just clarify that? There was a formal direction given by either Ms Clarke or Ms Honan that he should not come into contact with children in any way; have I got that right?
A. That's my understanding, President, yes.

Q. And do you know when that was done?
A. I'm sorry, I can't remember that exact date.

Q. Can you take that on notice?
A. We can take that on notice, of course.

MS ELLYARD: Q. Just to complete the trio, thinking about the way in which matters relating to Stan were raised, as I understand the evidence, allegations of potential sexual misconduct by Stan were brought to the department's attention around June or July through a potential civil claim that was raised; is that right?
A. That's my understanding now, yes.

Q. And so, that was evidence of someone who was prepared to assert, through civil proceedings, that he or she had been sexually abused in the past by Stan?
A. Yes.

Q. And again, it appears that it wasn't until November

that you were presented with and took action to suspend and commence an ED5 process in relation to Stan?
A. That's correct.

Q. And in all of these cases, as I understand it, Mr Pervan, the practice has been not to present a matter to a Head of Agency until there's a sense that there's sufficient particulars of the alleged allegations so that you can form a belief on reasonable grounds?
A. Yes, that's correct.

Q. In practice what that seems to be is that there's sometimes quite a long period of investigation --
A. Yes.

Q. -- before you're given the opportunity to consider whether you have formed the relevant view?
A. Yes.

Q. And so, it seems then in practice that, although an ED5 process is meant to be the start of an investigation, in practice where these historical matters have been concerned at least, quite a lot of investigation has in practice been done before the matters have been put to you?
A. Once again, it comes down to what we're going to call an investigation. So, some of the redress statements are very, very broad, may not even give time spans, or often the names are incorrect, and so, a lot of work goes into just verifying the basic facts.

I'm aware that the people that were involved were working as quickly as they could, there were the attempts, going back through the Redress Scheme to contact the victims. There was a lot of work going on, it wasn't something that anyone was taking less than incredibly seriously, and so, as much as you could call it an investigation, it really was just seeking to validate sufficient facts for us to proceed.

And, if I may, just to give a comparison - and I know Jacqui Allen did this far more eloquently than I can - where we were with ED5s, and by way of example I'll pick on someone inappropriately using a government vehicle for private purposes. We would require the specific dates, times - this is before the ED5 investigation starts. So, "On or about 4 August you used government vehicle registration No.X to undertake private interests in

travelling to Melbourne on the ferry, and that's a breach of the Code of Conduct for the following reasons"; it was as full particulars as we could.

In the case of these more contemporary ones, we have only sought to validate, if you like, the redress claims, so in some cases the ED5s can be referring to a time span of up to years, and very, very broad allegations. So, in terms of that requirement to have a belief, where child sexual abuse is concerned we've lowered the standard on what we require for me to have that belief to trigger an ED5 substantially.

Q. But I take it, and you've dealt with this in detail in your statement, that you would take the view that, because of the need to sufficiently particularise matters, even matters relating to child sexual abuse, there's an extent to which the ED5 and ED4 process is not fit for purpose if that purpose is protecting children from the risk of sexual abuse?
A. I would absolutely agree, counsel; I don't think ED5 - ED5 is actually meant, or any public service disciplinary process - and I've got experience of this in a few jurisdictions - are based on behavioural correction, that's why they're called disciplinary processes, and it does go to inappropriate use of government resources or, you know, deliberate misleading information in a timesheet; it's generally those sorts of issues. Where you get to that nexus where you're talking about essentially horrendous crimes, it's not fit for purpose.

Q. Now, Ms Baker gave some evidence yesterday that, if we think about matters that might come forward now for current employees, she would ordinarily be - there'd be a briefing by People & Culture and then a briefing for you immediately so that you would become aware, even before you're being presented with ED5 documentation, that a matter has been raised. Is that your experience?
A. Yes.

Q. So that would mean that, to the extent that there's any matters that might be going through - I'm going to call it a preliminary investigation, that's not its formal title - but the process of investigation to see whether there's material to put to you, you would already know about the existence of those matters?
A. I can actually give you direct reference. I think

two, maybe three weeks ago, an allegation was forwarded to us on a Saturday afternoon from the Commission and the ED5 was commenced and the individual ED4'ed and asked to leave the workplace on Monday.

Q. Okay.
A. So, a little different to the first two efforts.

MS ELLYARD: Thank you, Mr Pervan. Is that a convenient moment, Commissioners, to take the morning break?

PRESIDENT NEAVE: Yes, thank you.

SHORT ADJOURNMENT

MS ELLYARD: Thank you, Commissioners. Mr Pervan, I understand you're okay to continue, but please do let me know if you need a break.
A. Thank you.

Q. I want to ask you some questions now about the materials which it has become clear were made available to People & Culture and ultimately used in some of the ED5 processes that have occurred in the last two years, and that's records derived from the State-based Abuse in State Care Redress Scheme which had four rounds between, as I understand it, 2008 and 2013.
A. Yes.

Q. As I understand it, different parts of the apparatus of government took responsibility for each of the four stages; is that right?
A. Yes.

Q. And the final stage, which was reported on, as I understand it, in 2014, was administered or held under the auspices of the Department of Health and Human Services?
A. Yes.

Q. And so you in your capacity then as the recently appointed Acting Secretary of the department, were the author or signed off on the public reporting of that final phase of the Scheme?
A. Yes.

Q. We understand from looking that report and the records that sat behind it that of course that Scheme went much

more broadly than Ashley, but there were a significant number of claims that were made under the Scheme relating to the former Ashley Boys' Home and/or Ashley Youth Detention Centre?
A. Yes.

Q. And you would have been aware, at perhaps a high level of generality, that that was the case; that claims had been made alleging abuse at Ashley?
A. Yes.

Q. At the time you became aware of that, which I assume was around about the time that the report was published under your name, did you turn your mind to the question of whether or not any of the alleged perpetrators might still be working at Ashley?
A. I don't recall that I did do that. What I do recall was asking, regardless of whether they were employees or not, what happens with this information on the grounds that it was pretty clear that we were talking about horrible criminal offences, and I just asked the general question, "What happens with these?", and I was referred to particular advice and a general practice which was current across government until late 2020 where matters raised in redress were not to be used for investigation, prosecution, and the assumption of course that would have been made by people in the People & Culture or Human Resources area was that, if we were told that they couldn't be used for ED5, then those matters weren't open anymore, that they weren't tracked across time. Of course, regardless now, in retrospect, regardless of that advice that we couldn't pursue those matters, we should have come up with some way of keeping track of that information, I can see that.

Q. As I understand it, the advice that you received when you asked, "Well, what can we do with this information?", was nothing?
A. Effectively. May I --

Q. And you understood that to be the practice that was in place as at 2014 when you made that enquiry?
A. It wasn't just the practice, it was indeed that, but looking at the independent assessments from the then Ombudsman, Mr Allston, I think it was Simon Allston, there are quotes in his reports which are in our summary review that we did, where he actually references that someone put to him that he should make a recommendation that this

material should be used for disciplinary purposes and he rejected that on the grounds that redress was about healing and compensation and not about punishment or pursuit, and there were several explicit quotes across his reports as to why information garnered from redress should not be used. So, it wasn't just the presence of policy and legal advice from the Crown, it was also these other reflections that kept on reiterating that very uncomfortable message that none of us were happy with.

Q. And so as I understand it you came to understand that sitting behind the policy and practice that was in place as at 2014 was legal advice that had been obtained from the Solicitor-General's Office?
A. To my several predecessors behind me, yes.

Q. And that's advice that we've seen and privilege over which has been waived, and I'll just ask my instructor to place a copy of that advice from May 2017 in front of you; I take it, that's a document you've seen - 2007, I'm sorry?
A. Thank you, I'm familiar with the advice, yes.

Q. That's advice that was provided, as you've said, to your predecessor. The context of the advice was a concern in the mind of your predecessor that allegations had been made through the Abuse in State Care Scheme against persons who were, relevantly for our purposes, still employed by the department in some capacity?
A. Yes.

Q. And that some of the allegations might involve criminal conduct or other inappropriate conduct?
A. Yes.

Q. And in the light of that three particular questions were posed to the Solicitor-General: one related to whether there should be prosecution; one related into whether there should be any disciplinary action, and the third question that was posed to the Solicitor-General was, is some other action required to ensure proper protection for children in care either now or in the future.

So it appears as at 2007 your predecessor was alert to the possibility that the material being derived through the Abuse in Care Scheme was potentially relevant to whether children who continued to be in the State's care were safe?
A. Yes.

Q. And advice was sought about the way in which, if at all, the material derived from the Abuse in State Care Scheme could be used?
A. Yes.

Q. And without doing full justice to the detailed advice which was there, it appears that the advice at that time was, the only way to achieve a successful disciplinary or indeed criminal prosecution outcome would be to have sworn evidence from the complainants?
A. Correct, yes.

Q. And that, in the absence of evidence on oath and a willingness to participate, it would be highly unlikely that a disciplinary process or a criminal process would be successful?
A. Correct.

Q. It doesn't appear that the advice, this advice, gave any specific reference to the extent to which the material might be able to be used in some other way?
A. No, I agree, yes, but of the --

Q. That it might be used in some other way to inform the way in which the department sought to protect children from people who had been identified in the Abuse in Care materials?
A. I agree, yes.

Q. So it's clear, therefore, that the Solicitor-General's advice wasn't that nothing could ever be done with the information; the advice was, absent evidence in a more traditional sworn form from complainants, it's unlikely that successful action could be taken against any individual person?
A. Yes. May I just add? Because this is an issue which has weighed heavy on me for quite some time, and while I don't welcome this advice and I'm glad that policy has now progressed past that, any action by the employer is appealable. So, for instance, if I were to take action against a particular employee because significant allegations had been raised against them, to transfer them to a job at level elsewhere, that's still appealable.

And one of the things that concerns me is, I can think of no greater nightmare for a victim to come forward, be it

through a sworn statement or otherwise, and to report, for us to take action immediately and transfer that person, have them win at appeal and have the Industrial Commission direct us to return that person to the presence of the victim.

Q. Clearly, and I think this is a point you've made in your statement and it's made in other evidence as well, the reality is that disciplinary processes must of necessity favour the interests of the employee who's subject to potential disciplinary action?
A. Yes.

Q. And that can often, not inevitably, but can often mean that the benefit of doubt has to flow to that person in a way that might not seem completely trauma-informed for a complainant who's coming forward with significant allegations?
A. I absolutely agree, there's nothing trauma-informed about the ED5 process.

Q. To be clear, it appears that the Solicitor-General did leave open the possibility that those who come forward under the Abuse in Care Redress Scheme, if they wished to participate in the next phase and give sworn evidence, that would be open?
A. Yes.

Q. And so, what that would mean is that, it's not just a case of, well, we've dealt with them for redress and given them some more money, there's nothing more we can do; the Solicitor-General's advice left open the possibility of an invitation to those who had participated in the Scheme to be part of another process of a disciplinary or criminal nature?
A. Yes.

Q. And, as I understand it from the evidence we've had yesterday, part of the Scheme did involve, "Would you like us to tell the police?"; is that your understanding?
A. That's my understanding.

Q. As I understand the evidence though, there wasn't a corresponding process that formally asked people at the time whether or not they would be willing to be part of any disciplinary process?
A. That's correct.

Q. And so, what that means is that, as successive phases of the Scheme went through, the Solicitor-General's advice wouldn't have prevented contact being made with former detainees at Ashley who'd come forward with a claim to see if they would be willing to participate in disciplinary proceedings?
A. And that's what we've been doing for the last, I can't count, but it's certainly more than 10, of the matters that we're pursuing at the moment --

Q. That's what you've done since 2020?
A. Yes.

Q. But I'm inviting you to agree with me that even under the now superseded advice, if superseded is the right word, there was nothing preventing those in responsibility at various times as claims came forward under the scheme from reaching out to those claimants to see if they would participate?
A. I agree, and in hindsight I should have pushed for that. At the time, as I said, there were a number of signals of indications from people like the Ombudsman that that's not what redress information is for.

Q. Well, it's not what redress information is for, but there was nevertheless a rich source of potential complainants who it appears, by reason of a practice, weren't ever contacted?
A. I agree and we should have.

Q. And in the more recent past I think you've made the point some of them have been, and that's an ongoing process, but at around the time you were publishing the report in 2014 it appears that, because of practices that had come to exist, no-one invited you to and you didn't yourself reflect on the possibility of reaching out to some of those 172 claimants from Ashley Boys' Home to see if any of them wanted to be part of a disciplinary process?
A. No, the assumption was that we could not.

Q. Do you see with hindsight that perhaps that assumption which had come to exist perhaps more broadly wasn't in fact completely grounded in the advice that had been given?
A. Yes, thank you, counsel, I agree with you, I should have questioned that.

Q. And so, one of the consequences of that is, we can now see with hindsight, there were in fact a number of claims made through the various iterations of that scheme that related to people who were still employed at Ashley?
A. Yes.

Q. And who continued to be employed at Ashley, for years in some cases, after sums of money had been paid to people who claimed they'd been sexually abused by those workers?
A. Yes.

Q. And one such person is a person who we're referring to as Walter, and I wanted to invite you to turn in your most recent substantive statement, Mr Pervan, to paragraph 111 and following where you're answering Questions 30 and 31. Have you got that page?
A. Yes, I do.

COMMISSIONER BENJAMIN: What was that paragraph again?

MS ELLYARD: It's the answer to Question 30, Commissioner Benjamin. The question's 30 and then the paragraph of the answer is paragraph 111 and following.

Q. Just to orient us both, Mr Pervan, for the purposes of answering questions in your statement you were invited to review some documents which reveal in summary the following chronology in relation to Walter.

It appears that there were at least four Abuse in Care claims that were made and received a payment in relation to alleged sexual abuse by Walter in his capacity as someone who had worked at the boys' home or the detention centre, and the payments were made to people alleging that they were abused by Walter in 2008 and 2010; do you agree that's what the records show?
A. Yes.

Q. Walter remained employed at Ashley until 2017: yes?
A. (Witness nods.)

Q. And it appears that there wasn't ever a joining up, as it were, or a provision of the information about those allegations that had been made in 2008 and 2010; there's no evidence that that material was ever made available to those who supervised Walter or who might have been involved in any other disciplinary investigations relating to him?

A. We've been unable to identify any, I agree.

Q. Given what you've said was the practice that you came to understand existed, it appears most likely that there wasn't anything done with that information other than to have paid out the person who alleged the abuse?
A. Yes.

Q. And so, the fact of Walter being accused by at least four people of sexually abusing them remained utterly unknown, it would appear, to those who managed him at Ashley or to anyone in the hierarchy above him at Ashley?
A. Yes.

Q. At the same time that that was occurring, and during Walter's employment at Ashley he was the subject of multiple allegations of sexual and/or physical abuse of detainees which were investigated through a number of different ED5 processes?
A. Yes.

Q. In fact, on one occasion I think he was criminally charged though acquitted of an allegation that he'd physically assaulted a detainee; are you aware of that?
A. Yes, I'm aware of it.

Q. One of the allegations against Walter which was investigated related to the experiences of a young woman who we're calling Erin, relating to conduct by Walter which came to the attention of the Ombudsman?
A. Yes.

Q. You're aware of that?
A. Aware of that one, yes.

Q. What appears to have occurred in relation to Walter is that on each of the - and Walter was stood down, as we understand the records, at least six times during his employment at Ashley because of concerns that were raised about him which led to investigations: yes?
A. Yes.

Q. But on each occasion he was reinstated after the investigations?
A. Yes.

Q. And it appears that, certainly as each of those

investigations into concerns about his alleged sexually or physically inappropriate conduct occurred, no-one knew, and no-one could bring into the analysis, the fact that there were multiple historical claims of abuse alleged against him which had been the subject of payments?
A. Yes.

Q. And interspersed with this were a number of sick leave or WorkCover claims that were made by Walter?
A. M'hmm.

Q. Which appear, to at least some extent, to be lined up with the times on which he was the subject of allegations of misconduct: yes?
A. Yes.

Q. And the ultimate aftermath of all of that is that his employment ultimately came to an end by agreement between him and the department?
A. Yes, that's my understanding.

Q. Pursuant to an arrangement which saw him receiving a lump sum arising from claims that he had made?
A. Yes.

Q. And there's no reference anywhere in that documentation to the fact of the multiple allegations that had been made against him?
A. Correct.

Q. Or indeed to the claims that had been paid out in relation to alleged abuse by him?
A. That's correct.

PRESIDENT NEAVE: I'm sorry, this is my memory failure. The six times on which he was stood down were for complaints made subsequently to the Abuse in State Care claims. So, we had the Abuse in State Care claims and then an additional six complaints; have I got that right?

MS ELLYARD: That's my understanding, President, that the claims having been paid out under the Abuse in Care scheme in 2008 and 2010; between 2010 and 2017 the stand downs, as I understand it, occurred or at least most of them did.

PRESIDENT NEAVE: Thank you.

MS ELLYARD: Q. Is that your understanding, Mr Pervan?
A. Yes.

Q. And so, you've answered some questions about this and I wanted to touch on a couple of matters. Firstly, as I understand it, and consistent with your earlier evidence, there wasn't throughout this period any practice that would have sought to make any use of those historical abuse claims in assessing the current behaviour of a worker?
A. I've been unable to find any, no.

Q. And so, it appears that this rich potential source of information about Walter, a person who was regularly coming to the attention of management with serious allegations against him, was never brought into the analysis of whether he was someone who was suitable and appropriate to remain in his job?
A. I agree.

Q. And he ultimately left on his own terms?
A. Yes.

Q. In the context of a number of very serious allegations about him?
A. Yes.

Q. And in the context of, as the Commission now knows, additional allegations being made about him by other detainees who have come forward in the recent past?
A. Yes.

Q. Now, of course, I can't ask you to opine on whether any one of those particular allegations are true or not, but would you accept that stepping back and not attributing responsibility to any person, that's a process failure, is it not, the way in which information about Walter was received and not used?
A. It is a system failure, yes.

Q. And it may well have meant that an opportunity was lost to protect children entering Ashley in that period from 2010 onwards from the risk that he may have posed to them?
A. Yes, and to continue the discussion that has been underway in front of the Commission for the last few days, I have been present for discussions with the Head of the State Service and other Heads of Agency triggered by

recommendations of the Integrity Commission around the need to collect information around allegations; so, not completed ED5 processes, but just allegations, and there's been very robust discussion around the legality of keeping such information when it doesn't progress further than the stage of an allegation and, you know, what was the point and purpose of doing so.

But, having listened to the evidence given over the last week, I think that an exception, even if legislative change is needed, an exception for matters involving the safety of children needs to apply, such that that sort of information can be kept, be it in a secure repository kept by police or another body like that. But I agree that with this case and some others there was a lost opportunity in tracking those allegations across time. Whether they manifested in disciplinary or criminal action or not, they should have been watched.

Q. Thinking of course about the fact that ED5 processes give the benefit of the doubt to employees, consistent with an employer's obligations under industrial law, an allegation being viewed in isolation without bringing into account patterns of behaviour that have been alleged in the past is an investigation that may well mean that there's not a proper weight given to the particular allegation being considered?
A. Absolutely.

Q. And so, there's a particular allegation that was made in relation to Walter in 2016 of an allegation of sexually inappropriate conduct by him and the investigator who conducted that investigation and ultimately found, as I understand it, in Walter's favour didn't know at all the long history of similar allegations that had been made?
A. Yes.

Q. Which may have assisted that investigator in weighing the material that they were able to find?
A. I agree, and if I could make a small request? In looking to reform those sorts of processes, part of any change has to be around the current restrictions imposed on us from the Personal Information Protection Act, because it may be - and I haven't sought opinion on this obviously - but it may be that one of the reasons why that information about events other than the matter under investigation isn't provided to investigators is because there's a

general understanding that it requires the accused's consent to pass that on to the investigator.

Q. I see. So that, even though it's material held by the employer about previous matters relating to that employee --
A. If it's not related to that specific matter under investigation, then it's not ours to hand out to people, except with the person's consent. And that's come up in relation to reporting back to complainants about the results of ED5, that we've been told that, without the written consent of the person who's the subject of the ED5, we can't provide any information whatsoever, and I've been advised that that's entirely because of the PIP Act.

Q. So, I can understand there being potential limitations about information confidential to an employee being disclosed to an alleged complainant, but are you suggesting that you've received advice or have an understanding, Mr Pervan, that past complaints about an employee couldn't be used in a subsequent investigation into that employee without the employee's consent?
A. Yeah, with respect to passing them to an investigator.

Q. But isn't the investigator carrying out work on your behalf?
A. On my behalf with respect to a specific allegation. So, it's a flaw in the current system.

Q. And is that because the investigator doesn't work directly for you and the Department of Communities?
A. Yes.

Q. Is it a problem that wouldn't exist if investigators were State Servants?
A. If they were State Servants, but I also think we would need to change the way that ED5 is written because if you read it, and it might be a narrow reading, it appears that the focus is on allegations and those particulars, so if we're talking about bringing in other matters, the only way you could bring them in would be to add them as separate allegations, and have the whole lot investigated.

Q. To allege a course of conduct, as it were?
A. Yes.

Q. "It's alleged that on various occasions over this

period"?
A. Yes.

Q. And one might imagine that there might be individual matters that come forward that in and of themselves aren't sufficient to trigger a belief on reasonable grounds, but once you've got four or five allegations, for example, that might have some relevant similarities, the fact of there being that many might get you to that point of thinking, well, now I'm going to investigate?
A. Yes.

Q. But that will depend on having a system that --
A. Tracked.

Q. -- that tracked claims or allegations and kept them effectively on an employee's file?
A. Yes.

Q. And does that not happen?
A. Generally, no, because the allegations - sorry: if an allegation is made to us directly, then that information would be on that employee's file. If they're in redress applications, until recently, we wouldn't have been receiving them for that purpose, they would have been coming to us only to verify particular facts in order for redress to process them. Similarly, civil claims, we wouldn't keep that information on personal files. It is an area that clearly is one right for reform and improvement.

Q. Yes, because - and again, continuing with Walter - leaving aside the fact of there being information held on redress files that wasn't available for the reasons you've described, he was the subject over the course of his employment of multiple ED5 processes and allegations, but is it your evidence that even now, say he still worked for you and a new claim came up, the investigator tasked to investigate that wouldn't be told about the previous ones?
A. They would be tasked to investigate the specific allegation, yes --

Q. So they wouldn't be told, this is a person who has had multiple other matters raised against them?
A. Unless we wanted to put all of those allegations to Walter and have him respond to all of them; there is a procedural fairness issue in that and, once again, we're back to ED5 favouring the employee so --

Q. Because I could well imagine that, in thinking about your role as a Head of Agency, whether or not you formed a belief on reasonable grounds about a particular incident may well be informed by your awareness of the extent to which corresponding allegations had been made in the past?
A. Yes.

Q. But I think you're saying that the only way you would be permitted to have regard to them is if they're formally subject of the investigation. You couldn't use other matters to help you form a belief about a new matter; you'd have to --
A. So when the briefing comes up recommending me to consider an ED5, that would be the point where those historical issues should be raised. In the last few months, or last few years, I can't remember an occasion when they did and, once again, that information would need to flow through the investigation. So, if I thought that that information gave me a reasonable belief to commence an ED5, it would not be sustainable for me to have considered that information and for the investigator to then only investigate a narrow part of that, being the most current allegation.

Q. And this raises a question, and perhaps this is about ED5 as well, because as I understand it at the moment the way ED5 works is that, what can be alleged is specific breaches of the Code of Conduct.
A. (Witness nods.)

Q. One might imagine, and I want to get your comment on this: if you hear that a current employee has been the subject of, let's say, five or six allegations of a similar kind which, for whatever reason - time, availability of witnesses, whatever, haven't progressed but they're strikingly similar, made by people who wouldn't know each other tending to suggest that there's no collusion and so forth; at the moment it sounds like the only way you could do anything about removing that person from the workplace would be to investigate the truth of all of those allegations; is that right? You couldn't say, "Look, there's so many allegations, I'm just concerned, I'm losing confidence in you, I don't want you to work for me"?
A. So, I've just written myself a note to remind myself, I'm not a lawyer, and we are really getting --

Q. Of course, I'm asking you about process.
A. There's about 30 of them in the room so they probably know more about this than I do. You are asking about process, but it's a process bound by law.

Q. And I want to understand how it works in practice. My understanding is, because one might take the view, using Walter as an example: surely a point ought to have come, one might say, where the sheer number of allegations made against him of a similar size and shape over many years brought it to the point where you might have wished to say, "I don't want you working with children and I'm going to stop you working with children". It sounds like in practice, though, the only way you could achieve him not working with children is to investigate and have specific findings made about all of those different claims.
A. I agree with you, absolutely, and I would have loved to have had access to that kind of process, and I don't have it with me, but I can't recall whether it's in the principles to the State Service Act or in the Code of Conduct itself, where all decisions have to be procedurally fair and demonstrably so.

So, if I was to take that action against Walter, or anyone, I would have to be able to demonstrate that I granted that person procedural fairness, so I'm making this decision because of your history and you have a right of response to tell me why I should or shouldn't make that decision.

Q. And this is where we come to the question of a disciplinary and employment related process really not being the right way to deal with the risk, that one might take the view that the nature and number of allegations made against Walter invites a conclusion that you couldn't feel confident that he's safe to work with children?
A. On a general principle, if I had looked back over that history, I would have made the assumption on the balance of probabilities that he should not be working with children.

Q. But the only way, having regard to the processes available to you at the time --
A. At the time, would be to put all of those allegations to him and invite him to give me a response to them.

Q. Yes, and I think you agree that, whilst it's not perhaps fair to call on you to design the different model,

there should be a different model to at least be used where the person involved is someone who works with children?
A. Yes.

Q. To ensure that, rather than all of the benefit of the doubt in process and timing and procedure flowing to the employee, appropriate weight and priority is given to the safety of children?
A. Yes.

Q. Can I turn then, considering the question further of the Abuse in State Care claims, you were present for the evidence of Ms Clarke and Ms Baker yesterday in which they described the ways in which they during 2020 became aware of the existence of the Abuse in Care records?
A. Yes.

Q. In one case it was literally overhearing someone talking in the next office, I think?
A. That was Ms Allen, yep.

Q. That's right, and then I think Ms Clarke said that she became aware of them because of a conversation she had with a lawyer in private practice who hold her, "Go and look at records"?
A. Yes.

Q. Now, of course, you knew all of that time, presumably, even if it wasn't in the front of your mind, that those records existed?
A. Yes.

Q. But as I understand it, consistent with what we've said earlier, you had an understanding that they weren't records which could be made use of?
A. Yes.

Q. And ultimately a process occurred which led to advice being obtained from the Solicitor-General at the end of 2020?
A. Yes.

Q. Which changed the approach that had been in place?
A. Yes, and it was - it was a whole-of-government approach, it wasn't just the Department of Communities in particular; there were representatives of Education, Justice, Police attended at the meeting. And I can

remember when all of us as one wanted to progress with the matters that were coming out of redress, we were advised that there was a risk in that, in that, at the time we were the only State who were proposing to do that, I'm not aware that other States have shifted to our position, but back then, in 2020, we were the first State to actually start acting on the redress claims for disciplinary purposes.

Q. And I just want to be clear, because redress can mean a couple of different things --
A. That was the National Redress Scheme.

Q. So, as an aftermath of the National Royal Commission, the National Redress Scheme was put in place to which Tasmania is a participating entity; is that right?
A. Yes.

Q. And so, it appears that in 2019 and 2020 claims started to be made through that scheme which relevantly included allegations that people had been abused at Ashley?
A. Yes.

Q. And a process began, as I understand it, about the extent to which that material could be brought to bear into employment decision-making; yes?
A. Yes.

Q. But separate from that, although related to it, Ms Allen and others became aware of the materials that might be available through the State Redress Schemes that we've already been talking about?
A. Yes.

Q. And, as I understand it, advice was ultimately obtained that led to the conclusion that that material could also be brought into use?
A. Yes.

Q. And that that's what started to happen?
A. Yes.

Q. As I understand it, when that started to happen it was identified that there was still quite a significant number of current employees who were named either in National Redress matters or in the Abuse in State Care claims.
A. Yes.

Q. That must have been horrifying to you?
A. Yes, it was.

Q. Can I ask you when you first became aware of the potential scale of this?
A. I would have to go back and look at diaries and things; it was sometime before the end of December. There was a lot of activity in a very short period of time. It would have been towards the end of 2020 where we became aware of the extent of the number of current employees who were implicated from the various redress programs or processes, rounds, however you want to describe it, and the severity of the allegations.

As we've discussed earlier, I wasn't party to the information in redress, they were all processed at officer level, and it was only at this point that the nature of the substance of the allegations was actually starting to be put in front of me.

Q. And, as I understand it, you wrote to Ms McLean in September 2020 referring to the fact that a cross-check had been commenced of all Ashley employees against all client files relating to the Abuse in Care Scheme to see if there were allegations against current employees?
A. Yes.

Q. As I understand it from the evidence that we've heard from other witnesses, a big barrier to this cross-checking being done in anything like a timely way was the state of the records, the form that they existed in?
A. Yes.

Q. We've heard some evidence about attempts that were made to get particular budgetary assistance to help with that work - I don't want you to talk about Cabinet-in-Confidence matters - but one might reflect on this being a significant body of work that your department was called upon to give effect to without any additional resources, even though it's really a once in a 100 year event potentially in terms of the kinds of record-keeping investigations that you were being called on to undertake?
A. Hopefully it's even longer than once in 100 years. It's difficult to describe the size and scale of the work that had to be done, the number of people that we put into cars to drive around the state to collect files and to scan them in in a way which made them searchable and able to

support a cross-checking process.

But, to pay credit to the two women who sat here yesterday, there was no pause: as soon as - we commenced doing that work before we actually even put the budget bid in, so we started that work using whatever cash surplus or cash reserves we had in the agency, hoping that the budget bid would be successful; when it wasn't we just kept on going because we needed to.

Q. I understand from something you said a moment ago, Mr Pervan, that you hadn't been yourself aware of the details of National Redress Scheme claims as they were coming in, but that you then became aware of them?
A. Yes.

Q. As I understand it, it was Ms Clarke in her capacity as the Deputy Secretary who was clearing forms for National Redress during this time; is that right?
A. I think it changed over time, it moved between our Legal Services officer - we only had one - and Ms Clarke, but she was involved for some of that time.

Q. So, you weren't being briefed, I take it, for a period of time at least on the nature and seriousness of the claims that were being made; is that what you're saying?
A. No, but knowing how Ms Clarke feels about these issues, I think the redress claims she would have been processing or signing off would have related to previous employees and, if she had seen - if and when she'd seen a current employee come across her desk, she would have escalated that pretty quickly.

Q. And so, am I right then, is it your understanding that a claim in relation to Ira which you referred to the police in February 2020 after it coming through National Redress, was that the first one that you're aware of coming through National Redress in relation to an, at that time, current employee?
A. That's the first one I can recall.

Q. It would be fair to say, wouldn't it, that the bulk of the employees who were later identified as the subject of historical claims, those claims had been made through the state Abuse in Care Schemes?
A. I believe so.

Q. Although in the more recent past, as I understand it, there have continued to be claims made through National Redress as well?
A. Yes.

Q. Were you present in the hearing room for - or are you aware of the evidence that was given by Mr Graham, the Registrar for Working with Vulnerable People?
A. Yes, I listened to it.

Q. And you'll have heard him say that the observation that he made as the person receiving and often seeking additional information about people from the department, that it seemed to be, in his words, business as usual arrangement without appropriate regard being had to the seriousness of the issues and the urgency with which information should be being gathered.

I asked other witnesses about this as well, but what's your response to that observation that he made from the vantage point that he was in?
A. Primarily mine is the same as Kathy Baker's: that's not my recollection at all. And we've had a similar discussion around some of the witnesses that came forward during the out-of-home care hearings. He reported in his evidence that he was gravely concerned, and at no time did he escalate that to me, I'm quite disappointed about that. I would have responded immediately, and certainly, there was a great deal of activity.

He also made reference to not hearing information for periods of time: that may have been because we didn't have any additional information to give him, we were still investigating. And certainly, where we have any information that we think goes to the safety of children, when we have the information we provide it immediately; it's a routine process.

Q. So, just to put some of the more specific comments that he made, it was his experience that some requests for information took over a year to respond to. Whatever the reason, do you accept that that occurred?
A. I accept that that's his evidence. I am puzzled as to why he didn't escalate that to me.

Q. He had the observation that there was multiple transfers of responsibility within the Department of

Communities for who it would be, who was liaising with him and providing information; do you accept that that was the case?
A. Yes.

Q. What was the reason for those, I think he thought there were four different movements; why did the responsibility for that change?
A. So, when I moved from - when I was moved from - the Department of Health to Communities, at that point there was one part-time legal officer who was carrying the workload of about five people, and a very, very small records section.

It's worth, without breaching Cabinet Confidentiality, going into the history of the formation of the department. So, by government decision the Department of Communities was formed out of the Human Services area of the Department of Health and Human Services and a piece of the Department of Premier and Cabinet, but the decision was that no new resources would be added. So we took a large functioning department, or two functioning departments, and cut chunks off them and moved them.

There were some shared services arrangements, RTI was one of them, that didn't work well. So, we ended up having to, once again, using the skills of Kathy Baker, restructure our own workforce to identify resources we could commit to RTI.

So, the reason why things were moving across that period of time for the Registrar was that we went from one part-time legal officer to a more robust records area and a more robust Legal Services branch, and a very hands-on, capable, engaged Deputy Secretary of Children, Youth and Families.

Q. One of the things that Mr Graham also said, it appeared to him there had been a lack of urgency in appointing investigators for the various ED5 processes that he understands are underway. What's your response to that suggestion? I think it does seem clear from the evidence that there's been a delay; would you agree that that delay is attributable to a lack of urgency or is there some other reason for why, it would appear, there's been a long period of time before some investigations even have an investigator?

A. Once again I'd welcome that conversation with the Registrar. I sign the letters appointing the investigators at the same moment I sign a letter authorising an ED5; so that, it comes through as a package. So, if there's any delay, it's only in that assessment phase when the people pulling that information together are trying to put enough substance together to bring it to me to authorise it, and I haven't left an ED5 recommendation on my desk for more than about an hour.

Q. So, I think the Commission's seen materials suggesting that there have been difficulties in obtaining the services of sufficient numbers of sufficiently qualified investigators to carry out this work; is that right?
A. That is true, but whether that delays that package coming up to me to authorise or not, I can't say, I don't have that access to information, but the appointment letters are to specific investigators, so I'm not aware of a delay, I'm trusting the view that's been put to you.

Q. One of the things that Mr Graham also said is that he had a concern about the lack of continuous disclosure, that is, ongoing disclosure obligations and he recalled that he had made a request to you in your capacity as the Secretary in relation to that; do you recall that?
A. Yes, I do.

Q. What was the step that you took? Was it news to you that there was a concern or a lack of continuous disclosure to that point?
A. It was news to me because, as I said, as far as I was aware every bit of information that we thought would be of interest to the Registrar was being sent through, and without wanting to touch on any specific matter that's currently the subject of an ED5, where he perceives withholding, it is more likely attributable - and this is what was told to me - that we have no new information to provide.

Q. I see. Can I ask on a related point, stepping aside from disclosure to the Registrar, in your substantial statement that you prepared in response to Request for Statement 52, so that's one that you did a few weeks ago - is it time for us to take a break, Mr Pervan?
A. No, keep going, please.

Q. We're going to take the lunch break in about

10 minutes but we can take it now, it's a new topic.

PRESIDENT NEAVE: Q. Actually could I ask one question before we get to that new topic, ask Mr Pervan a question. You referred to reporting to the police on one occasion?
A. Yes.

Q. What is the normal practice in relation to these matters that have been exposed through either the initiation of an ED5 process or information which has come to light in relation to the Abuse in State Care or the National Redress Scheme?
A. So, in the past my observation is that part of the assessment process by our staff would have been determined if the information that's been brought forward constitutes a potential crime, and then it would be reported to police. What happens now is that we report any allegation involving child sexual abuse to the Registrar and the police at the same time. So, we don't analyse it, we don't apply any threshold: if it's an allegation, however broad or general, involving child sexual abuse, it gets referred and then the police assess it at their end.

Q. And that occurs before there's been any examination of the claim in any sort of detail?
A. Yeah.

PRESIDENT NEAVE: Thank you.

MS ELLYARD: Commissioners, unless there's another question on that discrete topic, can I invite you to take the lunch break now?

PRESIDENT NEAVE: Yes, we will do that.

LUNCHEON ADJOURNMENT

MS ELLYARD: Thank you. Commissioners.

Q. Thank you, Mr Pervan. As before, please do let me know at any time if you feel that we need to break. There's four topics that I want to cover with you: the first one relates to the experiences of a young man who we've been calling Henry, and a review that was ultimately done by the Serious Events Review Team, or perhaps to take up the evidence of yesterday, members of that team into his experiences at the hands of two young boys who we've called

Albert and Finn. You're aware of that matter?
A. Yes.

Q. In your statement you've answered some questions arising out of the SERT Review that was done. One of the things that the SERT Review concluded was that an incident briefing provided to you at the time of the incident was misleading. You're aware that that was found?
A. Yes.

Q. Having had the opportunity to know the SERT Review team's conclusion and to perhaps look again at the briefing in the light of what you now know to be the circumstances, do you agree that it was misleading?
A. The briefing did - was entitled and did contain the words that it was a potential sexual assault; what it didn't do was provide accurate details as to the full extent of the assault.

Q. Yes.
A. The motive for that I don't want to speculate at, but it was inappropriate, to say the least, and there was a follow-up as a result of the SERT Review over various issues that were raised in the report from the structure of that briefing note right through to the placement policy and the need to change that so that a similar circumstance couldn't occur again.

Q. So that's an example of a briefing note which, as we understand it, was prepared originally by the then manager of the centre and progressed upwards to you?
A. Yes.

Q. But it would be fair to say, I think, that there was reliance at all levels, including at your level, on what had been written by the Centre Manager being accurate?
A. Yes.

Q. And subsequent events revealed that, at best, there was a minimising and perhaps a lack of appreciation even by the manager himself of the seriousness of what had occurred to Henry?
A. I think there are two aspects to that - sorry, I agree, and in two ways: (1) there was at least one if not more essential facts missing, but the other thing, and I'm grateful to the way the questions in the RFS were structured, it reflected a lack of understanding of trauma,

and certainly it was not a trauma-informed briefing note, in that, it was very matter of factual, it was on a timeline and it didn't go into the impact that would have had on the young man involved.

Q. Henry.
A. Henry, it didn't go into the impact and what his needs would have been in response following, not just taken to the nurse or allowed to see a psychologist on a visit, there should have been an ongoing relationship therapeutically to support Henry.

Q. And so, one question that arises: you were being briefed for information, as I understand it, when that incident report was sent up to you, and we now know that some months latter as the result of advocacy from other people, including the clinical psychologist and Alysha, the issue came to the attention of new management, Ms Clarke and Ms Honan, and a SERT Review was commissioned.
A. Yes.

Q. Had you been provided at the time in August when the briefing was first made to you with a fuller and more accurate summary, not just of what had occurred but of the significance of it, do you think you would have done something more than just noting it as you did at the time?
A. I would have at least requested an independent investigation, if not through SERT. I think using one of the SERT trained investigators was a very good call because they were available and Mandy and Pam wanted to respond very quickly; but, yeah, there would have been far faster follow up if I had been acquainted with the full facts.

Q. So, the response that ultimately occurred, that is, the review that Ms Burton did, would have occurred sooner?
A. Yes.

Q. Thinking about the review that Ms Burton did; were you present for her evidence or were you able to watch her evidence?
A. Part of it.

Q. You were certainly present for the evidence of Ms Clarke and Ms Baker yesterday on this topic.
A. Yes.

Q. We've been proceeding on the understanding that the

review that Ms Burton did was a "SERT Review" and she gave some evidence that she was surprised and perhaps concerned that her review didn't follow the usual processes of report up to the committee. Yesterday we heard some evidence that it wasn't perhaps a SERT Review but a review done by a SERT member; that distinction strikes me as a fine one but is that a distinction that you are drawing too?
A. I would draw it because it's a matter of fact. By the time that Ms Burton was asked to undertake the review the SERT, the team, had been disbanded or returned to their substantive positions. The SERT was pulled together to investigate some specific infant deaths, and from existing resources, we weren't funded separately for it; it developed a set of skills, they were very useful, but we don't have - and I hope this is always going to be the case - we don't have the kind of ongoing workload that would necessitate standing up and maintaining a team like that. So, it was a recognition of the SERT skills and the skills of Ms Burton and of the process, and that's why the documentation refers to it as a SERT Review, because that was the template structure that they used.

Q. I want to test what you've said, Mr Pervan, about not having enough work for an ongoing stand up SERT Team to do. Some of the evidence that the Commission's had access to over the last seven days, including the evidence of people like Ms Gardiner and Alysha and what's emerged through the evidence of some lived experience witnesses, would tend to suggest that perhaps incidents warranting an independent review by SERT do occur at Ashley?
A. Yeah, I agree.

Q. And you would agree that it would be highly desirable, and this is perhaps partly thinking about looking forward, for there to be available to those managing Ashley a pool of people who have current relevant skills in investigating such matters?
A. Yes, I agree, and it would be very much advantageous to have them there and on standby. There are a few issues that in retrospect could have benefitted and I'm sure there will be issues in the future. In an environment where we are working with very fixed resources, that the decision that was made once we finished that matter for the Coroner was that we would pull SERT together as and when needed, rather than having the standing resource there ready to use.

The SERT was a particular, not only group of people, but it reported through to a committee, and the committee was mentioned yesterday, that wouldn't have been relevant in this case; the committee included the Chief Medical Officer and various other people. So, the processes are robust, the people that undertake the reviews have certainly got the skills to do it; I would take it a little broader if we're looking into the future. It would be really good following from the Safe Families Coordination Unit Model that the government put in place which has worked really, really well, if that process could include a presence from Tasmania Police and any other relevant agency.

Q. Can I just test your memory about when the SERT was formally dissolved. Ms Burton's evidence and recollection was that that had occurred in May or June 2020, so after she completed the review into Henry's matter. Could she be right about that?
A. Yes, but I think - and we were in lockdown at the time, so all of this was happening via phone and email.

Q. Of course.
A. My recollection was that the view was to try and keep the SERT work for the Coroner as a distinct entity, for want of a better word, and this was a piece of work, to use a Tasmanian expression, that was being done on the side of the desk or it was being done as a separate process while the other work was still being concluded.

Q. So it was a resource that was available to you and so you drew on it?
A. Yes.

Q. Tending to perhaps support the conclusion that it's good to have such a resource available to draw on?
A. Yes.

Q. Thinking about other sources of independent advice and assistance, there were for a time, as I understand it, senior quality practice advisors who could also be called upon to provide assistance in relation to individual detainees at Ashley; is that right?
A. Yes.

Q. SQPA?
A. It's a terrible public service thing to turn acronyms

into words, but I've only ever heard them called SQPAs, I've never heard the full title.

Q. There's clearly in the material some reference to the suggestion that in respect of the behaviour of some young people, including someone we've called Ray, a SQPA referral would be useful?
A. Yes.

Q. As I understand it, SQPAs don't exist in the form that they used to; is that right?
A. That's correct.

Q. And that's a decision taken in the recent past as part of a change that I think you gave some evidence about when you appeared before the Commission last time?
A. Yes. There are similar roles, just without the cumbersome title.

Q. But there have been some issues in relation to filling those roles; is that right?
A. Yes.

Q. In practical terms at the moment would it be fair to say that there's been an absence of a source of potential expert advice and support that previously existed that --
A. There's a shortage and we're actively trying to recruit to a number of positions. We had a little misfortune in recruitment lately but it's certainly something that's the highest priority.

Q. Thank you. Can I turn to a different topic. You've been at pains to say - or you've made it clear in your statement that you're not responsible for operational decision-making at Ashley in the sense that you don't take operational decisions?
A. Correct, yes.

Q. Of course, you're responsible for them because you're the Secretary, but they're done by people on the scene pursuant where appropriate to the delegations that we discussed yesterday?
A. Yes.

Q. You'll have heard, and we touched yesterday on the concept of isolation as an example of delegated practices?
A. Yes.

Q. We've had a lot of evidence in the course of these hearings about the previous practice of unit bound or the Blue Program, it's been known by various names: you're aware of that evidence?
A. Very.

Q. You were asked some questions which you answered in Request for Statement 52, so not the most recent one but the previous one, about the Blue Program and your answer was that it wasn't a formalised or approved program, not contained in any policy or procedure documents, but did have some level of acceptance amongst Ashley staff as being operationally utilised; do you recall that was the evidence that you gave?
A. Yes.

Q. And that was your understanding, I take it, at the time of your statement?
A. From the advice given, yes.

Q. Is it still your understanding that there wasn't ever a policy or procedure document that related to it?
A. My understanding is that there was a draft that was circulated amongst some staff, but that there was never a formal policy issued by the Director or the Deputy Secretary.

Q. But certainly we had some evidence from Ms Gardiner when she gave her evidence at the beginning of the week that she worked on documentation that, to some extent at least, was formalising a Blue Program or a unit bound program?
A. She was drafting, yes, but as we've discussed in other evidence it was non-compliant, it didn't meet the legislative requirements of isolation.

Q. And so, this is an example, isn't it, of operational decision-making and even policy making at the local level that, if drawn to your attention, you would be concerned about and would take action about?
A. Yes.

Q. But which didn't come to your attention at the time?
A. Yes.

Q. What processes would give you any comfort, as I take

it you have, that someone going kind of off reservation and drawing up policies of that kind now would come to your attention?
A. Once again, this comes down to the skills and competence of the people in the chain of command and what we've seen, what we've actually - the changes over the last two years, is that, people with the leadership and knowledge skills of the likes of Pam Honan have undertaken a number of policy reviews, have initiated that access to legal advice, have stopped very quickly processes that aren't compliant with legislation or that just don't reflect the practice framework and have replaced them with ones that do. So, getting the right people into these jobs, and it almost goes back to the discussion we had earlier on the Harker Report and Noetic: having a great report, even having really good legal advice isn't enough, you actually have to have the right leadership on the ground who understand what they're looking at and can then provide me with the assurance that it's all sound and appropriate.

Q. Would you agree that the unit bound or Blue Program was a form of isolation?
A. Very hard not to agree with that.

Q. And therefore not something that should have been in existence?
A. Yes, I agree.

Q. Without approval through the proper use of delegations in accordance with isolation policy?
A. Yes.

Q. We've heard evidence that in the recent past for reasons connected in part with staffing levels, children have been required, not for disciplinary reasons but for other reasons, to be subjected to restrictive practices and no doubt you're aware of that?
A. Yes.

Q. And there's been periods of time, in fact potentially in the very recent past, where children have had to be unit-bound, that is, kept in their units, if not their rooms, for nearly all of the day, and no doubt that concerns you?
A. Deeply. And not just me, it concerns, well, the acting Deputy Secretary is deeply concerned with it,

Narelle Butt, and it was deeply concerning to Pam, but it was purely because staffing was under such pressure that we couldn't safely bring them out for their normal routines. But to their credit, and this applies to Stuart and Fiona, they did come up with some incredibly flexible and creative ways to maximise the time each young person was out of their rooms, even when we had very minimal staffing on site.

Q. Are you aware of evidence or opinions that were expressed by Mr Morrissey, the former Children's Commissioner, and I think ultimately agreed to by a couple of other witnesses, that restrictive practices at Ashley which keep children in their rooms for such prolonged periods could be torture, within the definition as used in the optional protocol? Firstly, are you aware that that evidence was given?
A. I'm aware that that evidence was given, and in a small way I'm a little conflicted because, I would agree with Mark, I recruited him and he's an old friend of mine. Without wanting to go to a specific case, only because I don't have that detail in front of me, as I understand - and it's a superficial understanding - the definition of "torture" in that document goes to intent, and there was, I believe, looking at the past, a use of restrictive practice to - it would be argued by the staff involved it was used as a disciplinary measure, but yet the intent was to cause people to feel bad, it wasn't for their safety, it wasn't for any other purpose but to punish them.

Q. Yes, so I think you're drawing the distinction that perhaps no-one at Ashley right now is guilty of torturing children in the sense that it's not their intention, but the point that Mr Morrissey was making was that in practice, in terms of the effect on the young people who are subject to staff shortage-induced restrictive practices, the effect on them could be properly described as torture; would you have a response to that?
A. I would. There are two profound differences between isolation or restrictive practice being used as torture and what we've seen recently. One is that cognizance that it's damaging to the wellbeing of people to have them in isolation, and that in this instance when we haven't been able to get the young people out for the time that they've required, the staff there, up to and including Ms Honan, have explained to them what the context is, why it's happening and what we're doing to try and fix it. So, they

haven't just been locked in their rooms and not told anything; it's been explained to them that it's only because we're short of staff and we're doing everything we can to get them out of their rooms, and as soon as we've had more staff on deck they've been back to normal, programs and access to services and activities.

Q. Can I ask you - turning to my second-to-last topic, Mr Pervan, and this goes to some of the findings that might be open to the Commission, and in asking you these questions I want to make a couple of things clear. Firstly, it's clear that in your role currently as the Head of Agency you may be called upon to make decisions about the conduct of individual employees, and it's important that you not say anything to be perceived as prejudging any such matter: you agree with that?
A. Yes.

Q. And so, you're not in a position, and indeed nor is the Commission, to resolve the truth or otherwise of individual allegations against individual people?
A. Yes.

Q. But you would be aware, because a lot of it's been provided to the Commission by your department, of the very substantial body of evidence of complaints and allegations that have been made over time and through various means alleging sexual abuse at Ashley?
A. Yes.

Q. And you're aware in particular of the evidence that's been given by former detainees this week: yes?
A. Yes.

Q. And from other witnesses who have described their observations into the very recent past of children being harmed, whether by harmful sexual behaviours or other inappropriate and sexually abusive practices?
A. Yes.

Q. And so, the Commission's role of course is very different to the role that you hold as the Head of Agency; would you accept that?
A. Yes.

Q. And so, there's ways in which the Commission can consider evidence and make conclusions about the state of

affairs at Ashley on a more global level than is free for you under any individual ED5 process?
A. Yes.

Q. So, with all of those parameters in mind, would you agree that, having regard to all of the evidence that's available, it's open to the Commission to find that there has been ongoing sexual abuse of some detainees by some officials at Ashley over the last 20 years?
A. Yes, I would.

Q. And that, whether we describe it as a "pattern" or "repeated conduct" or whatever, nevertheless it's clear that it's not isolated incidents; would you accept that?
A. Yes.

Q. That there has been a widespread insurance amongst some detainees of abusive behaviour, including at the hands of some officials?
A. Yes.

Q. And it's in that context that you have offered an apology in your statement --
A. Yes.

Q. -- which I want you to give the opportunity to make out loud if you would like to.
A. Thank you, and I appreciate the opportunity to provide the apology. And I spent some time on putting these words together, so please excuse me if I read them off the page.

Q. Of course.
A.

I wish to acknowledge the survivors of child sexual abuse and any other forms of abuse that have occurred at Ashley Youth Detention Centre and its predecessors.

I have and continue to be personally deeply impacted by the survivors' experiences at Ashley and as Secretary of the department I sincerely apologise to each and every young person that Tasmanian Government Departments did not provide safe and secure care for at Ashley.

I acknowledge that the trauma that survivors suffered has and will continue to cause severe pain - physical, mental, emotional and cultural.

I also acknowledge that your pain will be lifelong, that the abuse impacts who you are, who you wanted to be, and how you feel about yourselves and others.

I acknowledge that trauma has been transmitted into your relationships with your families, including your children, and that that pain is lifelong and I deeply regret it.

Q. Thank you, Mr Pervan. There's one final topic that I wanted to raise with you, and that's about the future. We asked you some questions in each of the two most recent requests for statements, which you've answered, about the extent to which planning is underway for what's going to replace Ashley. The government's been very clear that Ashley is to close in what, to my calculations is just a little over two years from now.

The Commission heard from Ms Honan last week, and perhaps somewhat surprisingly when she was asked about the state of work towards the new centres she indicated that she wasn't aware of the work and that she wasn't involved in it, which struck us as, can I suggest, seems odd given the experience and competence that she obviously has in the role right now.

So, with that as a backdrop, can I ask you: what's the current state of planning towards where children who would be in Ashley two years from now would be moved to when Ashley closes, as the government has said it will?
A. Thank you. So, firstly, there is every intention to involve Pam Honan, particularly when she returns from leave. What's been happening at the moment is that the project team within the department has been working very diligently with Noetic and with the Australian Childhood Foundation more recently on developing the model of care and the "functional brief", is the expression used, that will then inform a design for the in you facilities.

The reason why Pam hasn't heard from them for a little

while was our observation that she was pretty well tied up with operational matters in preparing for the Commission, and that's the only reason why she hasn't been engaged to a greater extent. But certainly her knowledge and experience, and particularly across multiple systems, is second to none, so the intention when she comes back is to have her play a greater role.

We also were waiting for the commencement of the new Executive Director of Youth Justice reform to bring all of these individuals and the group, the team together to see where we were at in the detailed compilation of the plan forward and the functional brief, and to then engage with Pam about getting her direct feedback.

Q. Thank you. So, that certainly explains the way in which you're going to take advantage of her expertise, but as I understand it the Executive Director Youth Justice Reform's only recently commenced his role?
A. Yes, about two weeks ago.

Q. And as I understand it, and I want to understand the extent to which, as far you're aware, plans for what's going to replace Ashley are linked to and dependent on the outcome of the Youth Justice Blueprint that's been disseminated in at least one form and I think more recently in another form?
A. Yes, they're parallel pieces of work.

Q. But are they part of the same piece of work? Because one observation that might be made is that two years isn't very long to find a new place for Ashley, whereas the Blueprint might be said to have larger and longer term timeframes?
A. That's a very good point, and that's why they're being done in parallel. So, there is - sorry for speaking with my hands - the Blueprint is the longer term strategy that covers the whole Youth Justice service, but from that, and has to be synchronised or harmonised with the wider Blueprint, is the functional brief for the detention centre or centres that come out of that.

And the process to date, particularly with Noetic, has been particularly looking at international models to see where we can draw down from an international evidence base what the service needs to look like and how it needs to be structured to have the greatest benefit in terms of

trauma-informed therapeutic care for young offenders so that they're happening at the same time.

Q. As I understand it, the evidence that Ms Mitchell gave from the Australian Childhood Foundation was that there's been preliminary discussions about a possible role; would you accept that? Possible involvement of the ACF in determining the practice framework?
A. Yes, and that was commenced some weeks ago. There have been delays on both sides for private reasons that I don't think I should divulge, but they are very much involved. When Janise was down, she met with the new Executive Director; we're proceeding with that work, so that's been enabled, so it's gone beyond preliminary discussions now to an active piece of work --

Q. Sorry, go on.
A. My intention with engaging them is that I wanted to provide an independent assessment of the current state at Ashley, both for the Executive Director and for the new Secretary of the service; an appraisal of where we're at with the greater reform journey, but also to give them a bit of roadmap of how do we get from where we are today to where everyone wants to be and what do the steps in that look like?

Q. One of the things that Ms Honan said when invited to reflect on the timeframes by the Commissioners last Friday was that, I mean, two years and a bit is a very short space of time when one considers how much she's had to try and get done in the last three years. Would you accept that there's really not much time at all between now and when Ashley's closing to do all of the very detailed work that you've just described?
A. Absolutely. And there is two parts; there seems to be a lot of two-part answers. The target that the former Premier set us was, to be kind, very, very ambitious, but we're only gonna get one chance to do this in a generation and, up to and including the Minister and the current Premier, everyone wants to did it right. If it was just to design two detention facilities, we could probably find plans for those off the internet and we could deliver to the timeline a building with a fence and a sally port gate at the front and say that we've done the job, but we're actually putting the effort into making sure we're doing it right, notwithstanding that we're very aware of that compressed timeline. But if doing it right means that we

won't meet that timeline on the knocker, that's something that we'll take to government as early as we can and let them know why it's taking a bit longer; that's why it is, because we're trying to do it right.

Q. Yes, and so I take it then from what you're saying is that the idea is that, although there are parallel processes rather than the one process, nevertheless the intention is to keep them in step with each other --
A. Yes.

Q. -- so you're not going to go ahead and build the replacement facilities other than as part of a joined up Youth Justice solution?
A. Yes.

Q. And so in practical terms what that may mean is that Ashley can't close in two years and a month because its replacement facilities won't be ready yet. That's a possibility, I take it, from what you've said?
A. That's a possibility but that's not what we're planning for; we're planning on delivery. And it will be helped by a really, really well-informed functional brief that goes to a smaller facility, that's based on predictable fewer numbers coming through the system. So we are still hopeful that we will deliver this in time.

Q. Part pardon me a moment, Mr Pervan. I think those are the matters that I have for Mr Pervan, Commissioners, but I'm conscious that before I excuse him from the witness box there may be some matters of clarification or detail that you wished to raise?

COMMISSIONER BENJAMIN: Q. Yes, I have a couple of questions, if I may. In your evidence earlier today, Mr Pervan, you talked about the PIP Act, if that's the right acronym --
A. Yes.

Q. -- being a blockage to sharing some information; is that right?
A. Yes.

Q. Is that where, I think we heard yesterday or the day before, the notion of double jeopardy may have come in? Or am I conflating two matters? I know there's no double jeopardy other than in crime, but I'm talking about the

notion.
A. Yes.

Q. Only a lawyer would say that, by the way.
A. I think the matter of double jeopardy was raised with me - it was raised with me, but I think it was raised in evidence by Ms Allen, and that was in relation to considering, as we were talking earlier, considering matters that had been through an ED5 before and had been determined and either found not proved or have a disciplinary penalty - or sanction, sorry, applied.

The PIP Act is really just about communication to complainants, and in all sorts of ways that restricts us from what - and I'm sorry to keep going back to old roles, but what's known in the Health system as "open disclosure", where you are enabled to share facts with a complainant about particular clinical matters, whereas the PIP Act actually confines the extent of the information, and sometimes greatly confines the information, that we can pass to a complainant without the consent of the subject of the complaint.

PRESIDENT NEAVE: Q. So, the issue would be in that context, I think, a situation where a complainant is unaware that other complaints were made about the same person?
A. M'mm, or even the full details of the investigation that we've undertaken into their own complaint.

PRESIDENT NEAVE: Yes.

COMMISSIONER BENJAMIN: Q. My second question is: you talked earlier today about cutting your cloth to meet the --
A. I've forgotten the full expression, I'm sorry.

Q. Yes. So have I, so that makes two of us. But what you're saying is that the way the current but soon-to-be-broken-up department was created, for historical reasons, meant that it didn't have the funds that it really needed to bring about significant change. Is that the thrust of your evidence?
A. It didn't have the funds to meet our ambitions. I'll put it that way. We would have loved to have done more but we understand, as Kathy Baker said, it's a heavily contested budget environment, so we took what we were given

and made the most of it by creative means.

Q. And finally, just a bit out of left field: throughout this Commission so far we've looked at the importance of the office of the Children's Commissioner?
A. Yes.

Q. And I think the current Commissioner's office is funded out of your department?
A. We hold the funds, but the funds are determined through the same budget process.

Q. For the sake of not only the reality of independence, but the perception of that, do you have a view as to whether it ought to be separately funded so that children would know that it's not part of a single department?
A. I think there is merit in terms of the appearance of independence and the perception of it, of independently funding it: I would - for my part, I would encourage that. The only problem is that I've been able to support the Commissioner with additional funding from my budget in all sorts of --

Q. Yes, you gave evidence about that yesterday.
A. But that was the one that affected my ability to photocopy and present documents, but there have been broader ways; I've been able to provide funding for them for all sorts of things up to and including employee assistance for the Commissioner and her staff. So there is a benefit to having it attached to a broader budget entity, but I think for all sorts of reasons, you know, there might be alternatives to that: perhaps having some budget mechanism to fund all of the independent bodies, the Ombudsman and so on, together so that they can be truly add arm's-length of the bureaucracy.

COMMISSIONER BENJAMIN: Thank you.
A. You're welcome. Thank you, President.

COMMISSIONER BROMFIELD: Q. I just had one question, Mr Pervan. You've spoken about the, not just the leadership skills of Ms Clarke and Ms Honan, but the expertise that they brought to the role. Bearing that in mind as a new department's being formed, do you have any advice or reflections as to whether there needs to be leadership with content experience that sits at the top there within the Dep Sec level?

A. That's really for the new Secretary to determine. There are substantial leaders in the Children, Youth and Families group, and some really amazing emerging leaders; I won't embarrass them by naming them, but I do know that you've heard from them and they've given evidence.

I think that that focus, though, on identifying people with leadership skills, is something which I needed to do more formally. I was incredibly lucky to arrive at the Department of Communities after my predecessor, Ginna Webster, had made sensational appointments with Mandy and with Pam, as well as of course Kathy Baker and others. So, while I'll take credit for the most recent appointments, the reason why the Department of Communities had such a robust executive team that really did perform as a team goes down to Ginna Webster and her selections. In terms of the next generation coming through, I think right down to even the sort of operational shift managers - they have a different title to that - but people at that level at Ashley, we should be looking to doing leadership development that level so they understand what it is to get people to move to change their culture or to at least adopt a more contemporary and trauma-based or trauma-informed culture.

Q. Perhaps if I put it slightly differently so that I'm not asking you to tell the incoming Secretary your thoughts. Would you agree that it's helpful to the Secretary to be able to benefit from both people who hold both practice expertise and leadership?
A. Absolutely.

COMMISSIONER BROMFIELD: Thank you.

PRESIDENT NEAVE: I have no further questions. Thank you very much, Mr Pervan. You've had a long day, and yesterday too, so thank you very much indeed.
A. Thank you, President.

MS ELLYARD: Commissioners, can I ask you to stand down for the afternoon break now and then we will resume?

SHORT ADJOURNMENT

MS ELLYARD: Thank you, Commissioners. We now draw to a close this part of the hearings which was focused on the Ashley Youth Detention Centre.

The evidence that you've heard over the last seven days has highlighted the many systemic failures at Ashley that have allowed the abuse of children to occur, not only in the past, but during the entire life of the Ashley Youth Detention Centre from its inception in 2000 up until today.

We've heard evidence from victim-survivors and their family members who courageously came forward to share their experiences and I'll return to their evidence in more detail.

We've heard from previous employees of Ashley who reported allegations of child abuse and advocated for the safety of children at Ashley. Ms Gardiner and Alysha provided remarkably similar accounts of concerns about the safety of children as recently of 2019 to 2020.

Their concerns were echoed by Mr Morrissey and Ms Burton, who provided an outsiders' view of Ashley over different time periods.

All of those witnesses came forward to ensure that no other child is harmed at Ashley or in Youth Detention generally. To all of these witnesses we express our thanks for your trust in the Commission and its work and your determination to change the system.

We acknowledge the various witnesses who currently work at Ashley who have provided evidence and assistance to the Commission. Operational staff described the day-to-day difficulties and challenges of Ashley right up until this week. Unfortunately, those difficulties and challenges appear much the same as those identified in numerous reports provided to government over the past 20 years: staff shortages, lack of training, lack of support from management.

Mr Watson, Mrs Atkins and Ms Honan all described what they saw as a cultural change in the last 18 months and their efforts to work to create that change whilst noting that there's more to be done. Ms Clarke, while reflecting on the findings of the 2020 report into the conditions, culture and attitudes of staff at Ashley, said that it shows the gravity that's required in the change process.

Over the course of the hearings you've heard Ashley

described as a "gladiator pit", "a war zone" and "out of control". However it's described, Commissioners, it's clear that Ashley has harmed and continues to risk harming children, causing them harm on a systemic and ongoing basis. As we've said at the start of these hearings, there's a clear link between the culture and practices of an institution and the risk of sexual abuse occurring in that institution.

The evidence this week is directly relevant to the Commission's role of considering the management of risk of child sexual abuse at Ashley and how institutions like Ashley should respond properly when allegations of child sexual abuse are raised.

We heard evidence on Wednesday that there were, as at that time, 11 children on site at Ashley, 10 on remand, one who was serving a sentence. The youngest of those children was only 11 years old. Five of the 11 children identified as Aboriginal or Torres Strait Islander, one of them was female.

We heard from Mr Morrissey, the former Commissioner for Children and Young People in Tasmania that most, if not all, of the children and young people at Ashley have significant developmental disorders, have suffered lots of trauma from birth right through to their admission to Ashley. It's critical that any model of detention for Ashley recognises the complex backgrounds and needs of these children and provides a therapeutic, trauma-informed environment in practice not just in words.

The evidence suggests that under a good therapeutic model of care a child or young person entering Ashley would be entitled to expect certain things about the way they would be cared for there. They would be entitled to expect that they're only detained as a matter of last resort and if they're sentenced for a crime, not just because they don't have an address for bail.

They should be of an age where it's reasonable that they're held responsible for their crime. They're only searched if there's genuine reason to do so and in accordance with international and national standards that protect and recognise the rights of a child.

They are entitled to expect that they're placed with

other children or young people who are appropriate to their age, gender and other personal circumstances. They're entitled to expect that they would be kept healthy, that they felt safe, supported and protected with the opportunity to learn, to develop positive behaviours and relationships and have the chance to thrive.

They're entitled to expect that they'd be cared for by well trained staff who understand and can respond to their needs and who are themselves supported by management.

They're entitled to expect that they have access to trusted adults inside and outside the centre who will listen to and believe their concerns, including about child sexual abuse, and critically take all appropriate action in response.

They're entitled to expect that their diverse needs and specific vulnerabilities will be recognised and supported and that their cultural needs are met.

It's particularly critical that Aboriginal children and young people are supported to maintain connections to their culture and communities and have access to Aboriginal workers and community members.

All of those conditions, if met, would provide an appropriate environment for children and young people and assist in preventing, identifying, reporting and responding to the risks of child sexual abuse or to child sexual abuse itself.

It would create a context in which management and staff could proactively prevent and manage the risk of child sexual abuse.

It would create an environment in which children and young people could safely disclose complaints of child sexual abuse without facing risk either from staff or other detainees for speaking up. Their wellbeing would be the paramount consideration.

Their complaint would result in an immediate and comprehensive response that prioritises managing the risk of harm to children and young people rather than prioritising and focusing on a particular staff member's employment. Any investigation into their complaint would

be commenced and concluded in a timely manner. Any action arising from such an investigation would also be actioned in a timely manner.

In order for that to be the system we have, the system needs to provide wrap-around services for the child during their time in detention and ensure continuity of care during the transition in and out of detention.

As Mr McGinness said:

From the moment a young person comes into custody, we should be thinking about and planning for their eventual release.

There needs to be a therapeutic system, not a punitive one.

What does a therapeutic system mean? It means that the physical structure and facilities at the detention centre would be designed to support rehabilitation and recovery.

It would include direct access to adequate healthcare as well as support services to address a child's underlying reasons for offending, including consistent mental health support and treatment and alcohol and drug services.

In a therapeutic system the detention centre wouldn't be remote and isolated so that the child can maintain access to family and community networks and appropriate Community Services to facilitate their rehabilitation. Children would have consistent and meaningful access to education. The facility would embed the National Principles for Child Safety Organisations and comply with international Human Rights standards.

Upon release, children and young people would have access to stable accommodation, be enrolled in school, and have continued access to the support services they need.

The culture of the system wouldn't be dependent on who's in specific roles: all staff would be child-centred and working towards a shared purpose. Those staff would be safe at work and have adequate clinical supervision, support for vicarious trauma and an engaged and supportive management team.

In this context everyone in the Youth Justice System would be vigilant to the risks of child sexual abuse at any detention centre; they would encourage complaints and reporting, acknowledging that bad things can happen even in good systems and they would be willing to act quickly and respond appropriately to ensure the safety of children.

Many former and current Ashley employees and Department of Communities witnesses referred to Ashley as having "a dark past". There was reference to the abuse that is known to have occurred in the Ashley Boys' Home or at Wybra Hall. Importantly, you have heard evidence from victim-survivors and their families that that dark past is not just in the past.

The stories of physical and sexual abuse that you have heard cover the period from the creation of the Ashley Youth Detention Centre in 2000 up until as recently as a year ago.

On the first day of the hearings Simon told the Commission of the strip-searches that he endured at Ashley. He recalled an incident where he refused to be searched and the youth workers wrestled him to the ground, pulled his bottom cheeks apart and then put him in isolation. He spoke of how violence was commonplace at Ashley.

He described how youth workers would watch the children shower. He spoke of how he wanted to tell his story because of his friend who died in detention. He recommended that Ashley be torn down and not turned into an adult prison because people who are now adults would have to suffer being detained in the place where they had been abused as a child.

Warren told his story through his statement which was read to you, a story of continual sexual abuse by three youth workers when he was aged from 14 to 18. He described the abuse occurring during strip-searches and within his room. He told you his medication would be withheld until he performed sexual acts on these guards. He never complained for fear of further abuse and because of threats to his family.

He said:

They would tell me that no-one would believe me anyway because I was just a little criminal. I didn't want to say anything because I was afraid of what they could do.

Warren's experiences at Ashley have left him with mental health and substance abuse issues. He doesn't trust anyone and is extremely protective of his own children. He recommends CCTV cameras be put up everywhere, there be better training for workers and a safer way to raise complaints.

On day two of the hearings we heard from Jane whose daughter, Ada, was diagnosed with alcohol problems at the age of 12 and was skipping school. Jane sought help from the Department of Education but, instead of helping with school re-engagement, the department said not to worry about schooling and instead concentrate on dealing with Ada's problems. This was a green light for Ada to drop out of school and her alcoholism increased.

On the advice of the department, Jane agreed that Ada could be placed on an interim wardship. She believed the state would help. But the state sent Ada to Ashley under restraint, at the age of 12, even though she hadn't committed a crime.

Jane was conscious of not telling Ada's story for her, but Jane is aware that while Ada was in Ashley there were older children in the same facility and she had to fight boys off. Jane said she only wanted help for her daughter, including for her to get an education. Ada and Jane are still working through the trauma of Ada's experiences at Ashley.

We also heard on the second day from Eve who spoke of the extraordinary lengths she went to as a mother to ensure that her son, Norman, was receiving proper medical care for his mental health while he was living at Ashley. She tried speaking with the medical team at Ashley herself, then enlisted the help of her son's GP, then the help of an Opposition Minister, the Commissioner for Children and an advocate. She said she was putting up red flags everywhere and people just weren't listening. She said:

I spent most of my nights sitting up trying

to figure out ways to help my child.

She would call him and visit him regularly but over time Norman would stop telling her things and requested that she stop visiting. Later she found out that, for every attempt that she made to help Norman, he would be punished, including through isolation. He was also cavity searched every time she came to visit.

She described how her son was a completely changed child upon release. She said:

He didn't act like he did anymore, he wasn't the same person. He'd been through so much trauma ... it's like throwing a child into war. It's like you put someone in a jungle and you've got to survive. They'll find a way to survive, but he came out a different person.

Reflecting on the impact of him being in Ashley, she lamented that Norman was:

... a child that still could have been turned around and had a future but they changed that and his future has been pretty awful.

On day three of the hearings we heard from Erin who told us about being the only female at Ashley when she was remanded at the age of 14 for stealing a packet of Doritos. As soon as she entered Ashley she was sexualised by the youth workers and the detainees. She was a victim of a serious sexual assault when left unsupervised with 10 male detainees. She was forced to give handjobs to male detainees while youth workers looked on and did nothing.

She said that, "Saying that a Youth Detention Centre is therapeutic-based is not enough". She said:

Ashley had what was supposed to be a therapeutic-based system when I was there. The programs where I was made to give the boys handjobs were part of this therapeutic-based system.

Instead of stopping the abuse, she was placed on the

pill. She was regularly strip-searched by male youth workers and watched in the shower, describing the staff as "a pack of animals". She couldn't complain due to the fear that things would get worse. She was humiliated and degraded every day, not provided a bra or access to tampons.

Erin's experience caused her to go down a massive spiral of alcohol and drugs, she said, and she is still dealing with the trauma of what happened to her.

On day four we heard the most recent in time of our stories, that of Max. Max described how he was first sent to Ashley when he was 12. He described sexual abuse and violent assaults by other detainees, all of which were preventable. Max told us that he was moved to a unit despite his warnings to the youth workers that he'd be bashed. He was subsequently savagely beaten by another detainee after he refused to suck that detainee's penis. He said that he would be bashed by the guards in places where there were no cameras, and he spoke about aggressive, invasive strip-searches. He never complained because he was told no-one would believe him.

He gave evidence of the many occasions he tried to have his voice heard in relation to his placement and wellbeing, but the youth workers never listened. He told you about one occasion where he asked a worker to leave his room and said that, if he didn't leave he would hit him. The worker wouldn't listen, Max lashed out and was then beaten by the worker.

Reflecting on this, Max said:

The way they always say ... if you've got something, they say talk about it ... they say "talk about stuff before you do something", like, "just try and talk about it, talk before you use actions". So, I tried it and it just didn't work, so there was nothing else for me to do.

He said he was happy to go to Risdon Prison because the conditions there were better. He said:

Ashley will never change if the youth workers remain.

He said:

What's the point in making all these new centres? It's not the centres that does the stuff, it's actually the staff. If there's even some of the old staff, they could do the same thing.

Max also alleged that he had been bribed by an Ashley staff member in relation to his engagement with this Commission. That part of his evidence is contested. You've heard evidence from the relevant staff member and another witness that provide different accounts of those events and those matters will continue to be considered, including through seeking further submissions if required.

On day five we heard from Charlotte who was in Ashley on and off between the ages of 12 and 15. During this time she was sexually assaulted on multiple occasions by workers and by other detainees. One worker, Edwin, would talk dirty to her, tell her she was pretty and inappropriately touch her. On one occasion she was left unsupervised with four male detainees and subject to an horrendous rape.

She couldn't complain because, as she said:

The boy that did it had been in Ashley for a long time. He was liked by the workers.

She said that there was no rehabilitation at Ashley, she never received schooling when she was there, and is not now able to read and write. As a result of her experience, Charlotte said she doesn't like anybody touching her.

On day six we heard from Fred who described how he was from an abusive home and found himself homeless at age 16. At age 17 he was remanded to Ashley because he had no address. He was released and then sentenced and returned to Ashley. He described how the Franklin Unit was known as the gladiator pit where violence was encouraged by the staff. He was the victim of a number of violent assaults where no youth workers intervened and he was placed in isolation as punishment because the guards did not like him. He was regularly strip-searched which made him feel belittled. He said that it was "yuck, harrowing, I hated it". He attempted to complain without any response.

In addition to the abuse that he suffered he witnessed a violent rape perpetrated by one detainee on another, as well as staff beatings on other detainees. As a result of his experiences, he suffers from PTSD, and panic attacks. He has crazy flashbacks. He said that the experience has left him unable to trust anyone in a position of authority, which has had implications throughout his life where he has panicked, lied or done the wrong thing because he was fearful of what the person would do to him.

He said in relation to Ashley:

Tear the place down and start again. It's systemic, it's grown in that environment.

When we compare that evidence and other evidence against what a good institution would look like, it's clear that Ashley does not meet the best practice expectations or outcomes for Youth Justice that I've outlined. It's not just that it didn't meet them in the past, it doesn't meet them today.

The community is entitled to expect that children who enter Ashley are genuinely there as a matter of last resort. The community is entitled to expect that children at Ashley will be kept safe and not harmed. The community is entitled to expect that children will leave the facility in a better state than when they entered it having had access to care, services, education and therapy and a pathway to change the circumstances that might have led them to be placed there in the first place.

But the evidence that we have heard suggests that children and young people often exited Ashley further harmed and traumatised, disempowered, filled with shame and rage and all too often as victims of abuse.

Almost all, we were told, find themselves in Risdon Prison. We heard from Ms Phillips that Ashley is essentially a kindergarten for Risdon, it's like the quicksand of the Legal System.

This is a system that is failing to achieve its core purpose as set out in the Youth Justice Act and is creating opportunities for sexual abuse to occur.

Children have been subject to invasive strip-searches on a regular basis. This has been a humiliating and degrading practice that occurred upon admission after visits from family or excursions off property and when returning from mandatory court appearances. It occurred in cells, on property and out of sight of CCTV cameras. In many cases there's been no suggestion of a proper basis for the searches. In many cases the searches involved violence and serious sexual assault.

Whether under the name of unit bound, blue program, restrictive practice or isolation as defined under the Youth Justice Act children have been, and continue to be, subjected to being restricted to their rooms or their unit with limited or no access to education, exercise or engagement with other detainees for extended periods of time.

There is evidence that the practice of isolation as punishment has been used by staff in the recent past, sometimes just because staff dislike a detainee.

You have heard evidence that the culture at Ashley until very recently remained one of command and control. For detainees, this was a punitive culture that regularly involved violence and sexual or physical abuse both by staff or from other detainees. The consequence for speaking out or complaining of abuse would be retribution from staff or other detainees. Many learnt that it was best not to complain so that they could survive their time at Ashley.

There was a limited understanding of detainees amongst staff with a pervading view, it seems, that they were not really children, they were bad, they were the worst of the worst, they could make things up to get money, including false allegations. It's clear that some of those views are held by current staff.

While complaints need to be appropriately investigated, it's definitely difficult to see how children would feel safe or supported to make complaints at all in the context of such deeply embedded devaluing and disbelieving attitudes of detainees.

We recall that we heard from Professor Palmer as long ago as the first week of the hearings and the expert on

institutional culture. He said:

> *People who become guards in a detention facility very quickly learn from their peers what the culture of an organisation is and it may be, for example, "never trust a child and what they say". That might not have been a view they held before they took the job as a guard in a detection facility.*

This is perhaps why so many young people were at pains to say to you that it wasn't just a matter of removing a "few rotten apples" from Ashley, the entire barrel is contaminated. Any new additions from staff would only get infected as well, and that's what Max told you. He talked to you about new staff who he'd be happy to see come into the facility but over time he would see their behaviour change. Professor White's solution to this challenge is that he would "raze Ashley to the ground tomorrow".

The culture that you've heard evidence about is also toxic for the staff themselves. It presents as workplace bullying and harassment. We've heard evidence in earlier hearings of the Commission that, where staff do not feel safe in the workplace, children will not be safe. Staff who held genuine and well-founded concerns about the treatment of detainees were frightened or discouraged from reporting them. Those who persisted, such as Ms Gardiner or Alysha or the clinical psychologist, had their concerns ignored or downplayed. Ms Burton said that the view in relation to conducting independent SERT Reviews was that it wasn't helpful to air dirty laundry in public.

Commissioners, you may find, on your consideration of all the evidence, that Ashley was a closed institution, a closed culture that actively prevented any scrutiny of its operations. Its remote location, in addition to the practices that it adopted, made visits from family and support services difficult.

Investigations and reports into its operating practices were hindered by a lack of information, a residence to providing information, the provision of misleading information and in some cases important findings not being released to the public, and indeed even the evidence of the current Secretary was that until the very recent past Ashley was both isolated in location and had

isolated itself from the department.

We must acknowledge, as we have through the hearings, that Ashley staff worked with some of the most disadvantaged children in the state, many of whom have mental health and substance abuse difficulties, disabilities, have had poor education or have little or no family support. It's challenging work, it requires the right knowledge, skill and behaviours to be child-centred and therapeutic.

Many staff are doing the best they can in very difficult circumstances, but the evidence demonstrates that there is a lack of qualification, a lack of training, and a lack of support for staff.

Many staff have limited education. It appears that it wasn't until around 2012 or 2013 that some staff obtained a diploma of youth or custodial work. We've heard from Mr Digney that a more direct and therapeutic approach would likely require staff to have additional qualifications.

You may find, Commissioners, that the qualifications and training required of the staff at Ashley was and remains woefully inadequate to meet the needs of children.

From the previous reports and the evidence you have heard, it's clear that staff shortages have been a chronic issue for various reasons, including location, culture and workplace injury. A lack of staff in itself presents a risk to children.

Ms Mitchell stated that:

When things escalate and the system's put under stress it reverts back to the old way of doing things.

Inadequate supervision can mean that abuse is not prevented or detected. The lack of staff has put pressure on remaining staff. Some young people may now be paying the price for staff frustration and dysfunction.

The lack of support and the lack of staff, coupled with the intense scrutiny that workers have come under, has contributed to a workforce that presently feels besieged, misunderstood and unappreciated. This risks creating an

"us and them" mentality that can further fuel the closing of ranks amongst staff and a disengagement from processes that are designed to improve and change the culture of the centre.

You have heard from staff who were at pains to describe the difficulties of the job on a day-to-day basis and the genuine fears that they held for their own safety at work. We acknowledge that it's pretty easy for us who do not do that job on a day-to-day basis to have views about what should be done at Ashley. We make those views and those assessments removed from the grit and the grind of what is undeniably a very difficult and stressful job, but it would be to do a disservice to both detainees and the staff if we do not frankly consider the improvements that are necessary to the system, culture and practices there, improvements which will all protect children from harm.

We heard from Professor White that Ashley looks like a prison, it smells like a prison, it feels like a prison. As we've heard many times, the location of Ashley is remote. This remoteness has prevented the recruitment of qualified and professional staff, necessary support services have not been available, family connections have been lost, there's no connection to community.

There was certainly positive comments made by a number of witnesses about the school at Ashley, but the right to education has been limited because of practices either under the Behaviour Management System or the use of isolation practices or more recently through staff shortage-induced restricted practices.

It's also difficult to see how education can be delivered effectively to young people on remand who might exit and enter the system as part of a constant churn. And again, it's worth remembering of the 11 children there right now or yesterday, 10 of them are on remand.

It appears on the evidence that there is presently little or insufficient thought given to exit plans. Children can be released with no accommodation, no continuation of services, no education, only a bag of toiletries as was Charlotte's experience. They leave only to breach bail and re-offend and return.

The heightened risk of child sexual abuse associated with closed institutions when those in power have total control over the lives of those within the institution, what they eat, their privileges and punishments, their contact with the outside world, has long been recognised. It creates a critical role for those concerned with their oversight. In Tasmania this is, to different and varying degrees, the role of the Custodial Inspector who is also the Ombudsman and Health Complaints Commissioner and the OPCAT monitor and the Commissioner for Children and Young People.

We heard this week that the respective offices of the Custodial Inspector, the Ombudsman and the Commissioner for Children and Young People are not fully resourced nor fully empowered to perform a thorough and active monitoring function. They predominantly rely on children and young people themselves raising concerns with them. They often rely on anecdotal reports from staff and assurances from management combined with their own observations from site visits.

In their evidence, the Custodial Inspector, Ombudsman and the Commissioner accepted that the onus to raise systemic failures in child safety should not fall to the detainees who are the most disempowered and vulnerable. They also accepted that there are unique barriers that will likely deter young people in Ashley from speaking up.

We heard from Mr Connock of his regret of a complaint that did make its way to the Ombudsman being forwarded back to Ashley Management to manage without any independent scrutiny or management from his office. The complainant whose complaint was sent back went on to be sexually abused in Ashley again and again and she never again made a complaint.

While both Mr Connock and Ms McLean cited some measures that in the recent past have made them more accessible to young people, including direct phone access, promotional materials explaining their role, the question of how to create a culture where young people can feel that they can speak up and have confidence in the integrity of complaint processes remains a challenge to be addressed.

We heard that at times there have been deficiencies in the police's notifications processes to external agencies,

including the department and the Registrar for Working with Vulnerable People, and there have been challenges on information sharing that can have an impact on child safety. Acting Deputy Commissioner Higgins said that police members at times may have had a tendency to view allegations made by detainees as false. While he didn't think this was a common practice, he acknowledged that there is work to be done to address unconscious bias in this area.

Given the evidence of the victim-survivors who have come forward to the Commission, the large number of claims of abuse under the National Redress Scheme, state abuse claims and civil litigation against the State, it's our submission to you, Commissioners, that you are able to find that child sexual abuse has occurred at Ashley Youth Detention Centre since 2000.

You may also consider a finding that the State was aware of these allegations of abuse a number of years ago and did not, as a State, take sufficient action to satisfy itself that children at Ashley were safe from the risk of child sexual abuse from alleged perpetrators who remained in the State Service and working at Ashley.

While the government received allegations in relation to Ashley employees through the Abuse in State Care program from 2003 to 2013, it can now be seen that a number of those employees continued to work at Ashley with access to children and important records that might have helped keep children safe were, for reasons that you will consider as you deliberate, not made available and not used to keep children safe.

Once those records did start to get used and historical allegations started to be reviewed in 2020 Mr Graham, the Registrar for Working with Vulnerable People, took the view that the leadership of the department didn't see it for the crisis that it was. His view was that there were multiple grave allegations against current staff that got a "business as usual" response.

You've heard evidence that the state did work through a process of dealing with the implications of these very serious and multiple allegations once they reviewed the allegations and took some action. However, it may be open to you that there was a lack of sufficient urgency in the

department's response to the number of allegations that it came to be aware of both through a review of the Abuse in Care records and through new claims that were made.

Ms Allen has provided evidence of the efforts that have been undertaken to remedy problems that were identified. Ms Clarke and Mr Pervan have given evidence that in their view the department did act with urgency. It remains an open question for your consideration whether those efforts were sufficient.

We note that the resources for the effort of reviewing records and taking action came from inside and at the expense of the existing budget envelope within the Department of Communities.

Mr Pervan did accept in his evidence that, having regard to the cases put to him and based on the information available to the department from the various schemes, there was systemic failures in the way in which information known to the State through various processes were used to keep children safe.

There were lengthy delays in responding to allegations that were raised against current employees. For example, we heard about Lester, about whom a child sexual abuse allegation was raised in January 2020. It was not until November of that year that he was stood down and an investigation process was commenced.

The department's position is that Lester was in a policy role during this intervening period, but the evidence is that he still had contact with children and conducted at least one strip-search during that time.

We heard evidence from the Ashley Centre Manager, Mr Watson, that he raised concerns about employees like Lester remaining on site, including from Ms Honan who also said that she had expressed similar concerns.

We've heard evidence that the government's application of the ED5 process has meant that allegations raised against Ashley staff have not been treated with a child safety lens. They have not placed children and their rights and needs at the centre of decision-making.

You've heard evidence that harmful sexual behaviours

displayed by detainees towards other detainees have been referred to as "horsing around" or "adolescent behaviour" with the concerns of highly skilled practitioners disregarded, and the seriousness of behaviours minimised.

There's an open question, Commissioners, about whether these failings are not just systemic but also the result of individual decisions and actions which should be criticised. That is a genuine inquiry. During the course of these hearings new information has become available to the Commission and a range of factual matters have been raised by some witnesses which are contested by other witnesses, including Mr Watson and Ms Honan.

The Commission will continue to liaise with relevant parties to invite them to provide additional relevant information and will consider their submissions. The Commission will need to consider carefully the totality of the evidence, including evidence which may yet be received, before coming to any view about any individual's role.

However, moving then to consider the question of what's going to replace Ashley. It's open to the Commission to find that there has thus far been a lack of progress in planning for the progress of Ashley, both in terms of transition planning and building the new facilities.

Without wanting to unfairly diminish the challenge, if remanded children were taken out of the equations as we've heard on the evidence they should, they shouldn't be remanded, the state is essentially tasked with safely accommodating what will always be a handful of children. But as we speak, the current state of operations at Ashley sees children sometimes locked in their room for 23 hours a day, essentially warehoused, with one hour to do what they wish, usually to call home instead of school. They might talk to the Commissioner and her advocate behind locked doors, they have limited access to legal advice.

Mr Morrissey stated that isolation, which is what the current restrictive practices are, is tantamount to torture, but there appears to be a lack of urgency from the government to change the situation for these children, nearly all of whom are on remand.

It's likely that between now and the closure of

Ashley, a date which it now seems is actually yet to be fixed and not at all certain, many young people will come and go in and out of the doors of Ashley and be subjected to the same treatment in spite of the efforts of current staff to keep the centre operating.

Of course we must acknowledge that the issue of what is the best model to replace Ashley is a complex question, but there are existing models that Tasmania can consider including the one operating in the ACT which you heard from Ms Grace about today. There's an opportunity for Tasmania to look at these models and create the one that best suits Tasmania. Indeed, the small numbers of people who would require such a facility mean that Tasmania is uniquely poised to implement what Professor White called "a Tasmanian model", a bespoke system that matches the specific needs of Tasmania's children and young people and, rather than isolating and segregating children, they can be in home-like facilities with professional support and mentors.

This echoes what we heard from victim-survivor Sam Leishman during our Education hearings when he said:

> *Why can't we look at Tasmania as being a small isolated state and that's actually our advantage. We are small, we can set the standards and we can be the one that says, this is the benchmark that everyone else has to meet. There's no reason why we can't do things better than the rest of the country.*

But to see significant change there needs to be strong leadership and an ongoing commitment to see reforms implemented and monitored until they are embedded.

We heard from Ms Mitchell that:

> *Once we know what we want to happen, the implementation window is a five to seven year window. It's not planning to do it, but actual doing of it; the implementation of it as a long-term proposition.*

The government has announced consultation on the Youth

Justice Blueprint Discussion Paper which will set the strategic direction for the Justice System over the next 10 years, but it's unclear why action on Ashley has to be dependent on that wider Youth Justice reform. If it's accepted that there will always be some role for a detention centre, the closing of Ashley and actively planning for an alternative must be considered now.

As we've said in opening, nothing we have said and heard this week will have been new to the government. The government already knew all of the issues that are being raised. The government has had the benefit of 20 years of reports on Ashley, each report making recommendations and findings that are tragically similar cross the decades and could still be found by you now; findings that Ashley is not fit for purpose.

The government could implement recommendations that are currently outstanding in those reports. A failure to act now and implement a transition plan before Ashley's closure will see children continue to be subject to inhumane and degrading conditions and continue to be at risk of child sexual abuse.

If the Commission pleases.

PRESIDENT NEAVE: Thank you very much for your submission, Ms Ellyard.

Before we close: this has been a very difficult period in our hearings I think. I know that a number of the people who are here present today have got a direct interest, either as survivors of child sexual abuse or as people who have expressed their views and tried to do something about the matters that have been brought to our attention.

I just want to remind people that there is support available, some support available through the Commission through our Community Engagement Team. So, if anybody needs to - anyone falling into those categories needs to talk to the Community Engagement Team, people will be available to do that.

Now, I'm sorry, I'm not sure that there will be anyone available over the weekend, but certainly next week if anyone needs to contact our Community Engagement Team and

to seek support, that will be available. On the website we also refer to, I think, other sources of support.

So, thank you very much everyone who's present and I do hope that people who need assistance or help will avail themselves of it.

Thank you very much, Ms Ellyard, and also Ms Rhodes and other counsel who are not present, and also counsel for the State and other counsel, and we will now adjourn.

AT 3.06PM THE COMMISSION WAS ADJOURNED TO WEDNESDAY, 7 SEPTEMBER 2022 AT 10.00AM